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April 13, 2022

Ms. Diana Grub Frieser
City Attorney, City of Boca Raton

Transmitted via email to: dgfrieser@myboca.us

Re: Your inquiry received on March 29, 2022

Dear Ms. Frieser:

This is in response to your above-referenced inquiry, which concerns how the voting conflict provisions in the Code of Ethics (Part III, Chapter 112, Florida Statutes) will apply to the City Council Member and Deputy Mayor, Ms. Andrea Levine O'Rourke (the Deputy Mayor), and the two other City Council Members, Ms. Monica Mayotte and Ms. Yvette Drucker, were they to vote on a resolution authorizing reimbursement of legal expenses to the Deputy Mayor. Your inquiry indicates that you write on their behalf. Your letter states that, on February 8, 2021, the Deputy Mayor sent emails to certain City residents endorsing the two other Council Members. You further state that, on March 1, 2021, a complaint was filed with the Florida Elections Commission, against the Deputy Mayor related to the endorsement emails. You further state that the Deputy Mayor retained a private counsel to represent her with respect to that complaint, and that the complaint was dismissed as legally insufficient by the Florida Elections Commission. You further state that the Deputy Mayor is now seeking reimbursement from the City for legal expenses incurred, and that a resolution authorizing the reimbursement will soon be presented before the City Council for a vote.

Based on the aforementioned facts, you inquire whether the Council Members, Ms. Monica Mayotte and Ms. Yvette Drucker, have a voting conflict with respect to their vote on the resolution authorizing the reimbursement of legal expenses. You further inquire if the Deputy

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Mayor herself has a voting conflict with respect to her vote on the resolution authorizing the reimbursement of legal expenses to herself.

Pertinent to your inquiries is Section 112.3143(3)(a), Florida Statutes, the voting conflicts law, which states:

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes

Section 112.3143(3)(a) prohibits a local public officer from voting on any matter that will inure to his or her special private gain or loss or that he or she knows would inure to the special private gain or loss of a principal by whom he or she is retained, a relative, or business associate.

Section 112.313(5), Florida Statutes, provides an exception to Section 112.3143(3), Florida Statutes, and states that:

No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, *as provided by law* . . . (Emphasis added).

The Commission, in CEO 88-46, has expounded on what actions may be encompassed within the expression – 'as provided by law' – and stated that "common law provides that a public officer is entitled to representation at the public expense in a lawsuit arising from performance of *official duties while serving a public purpose*." (Emphasis added). In CEO 88-46, a Water and Sewer District Commissioner voted, in his capacity as Commissioner, on a measure which would have extended a central sewage system along the property which the Commissioner owned. The critical factor in CEO 88-46 was that extending a central sewage system is well-within the proper performance of the official duties for a Water and Sewage District Commissioner. Based on that reasoning, the Commission found that the Commissioner could vote on the reimbursement of his legal fee without incurring a voting conflict under Section 112.3143, Florida Statutes, due to the application of Section 112.313(5), Florida Statutes.

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With respect to the two City Council Members, you state correctly in your letter that voting on the resolution to reimburse legal expenses incurred by the Deputy Mayor would not result in any special private gain or loss to the two City Council Members, Ms. Monica Mayotte and Ms. Yvette Drucker. The passage or non-passage of the resolution would not inure to the special private gain or loss of either of the City Council Members, or any principal by whom they may have been retained, or their relatives or business associates. Therefore, it appears that the two City Council Members do not have a voting conflict based on the facts presented in your letter.

However, with respect to the Deputy Mayor, the legal expenses were incurred in connection with sending endorsement emails to certain constituents. For the sole purpose of assessing the existence of a voting conflict pursuant to Section 112.3143(3), Florida Statutes, a Deputy Mayor's endorsement of fellow City Council Members is unlikely to meet the limited statutory exemption of Section 112.313(5), Florida Statutes. *See generally* CEO 88-46. Without the benefit of the exemption in Section 112.313(5), Florida Statutes, the Deputy Mayor will be posed with a vote to reimburse her legal fees; such a vote will inure to her special private gain or loss within the meaning of Section 112.3143(3), Florida Statutes. Therefore, it appears that the Deputy Mayor will have a voting conflict on the matter. When such a situation does arise, a City Council Member should, prior to the vote, publicly state to the assembly the nature of her interest in the matter; abstain from the vote; and file CE Form 8B, "Memorandum of Voting Conflict for County, Municipal and other Local Public Officers," within 15 days of the vote with the person responsible for taking the minutes of the meeting.¹

I hope my response resolves your inquiries. The guidance provided in this letter is limited to the facts that have been provided. If there are additional material facts, or if I have misstated them in this letter, please contact me again. The referenced statutes and advisory opinions are available on the Commission on Ethics website: <http://ethics.state.fl.us>. And if you have any questions concerning the content of this letter, please feel free to contact me.

Sincerely,

-/Suhail Chhabra

Suhail Chhabra

Staff Attorney

Florida Commission on Ethics

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¹ It be noted that the scope of this guidance is strictly limited to assessing the existence or non-existence of a voting conflict for the City Council Members, including the Deputy Mayor, within the meaning of Section 112.3143, Florida Statutes. This guidance does not comment on the merits of any forthcoming reimbursement resolution before the City Council.