



**VILLAGE OF BISCAYNE PARK**  
**Village Commission Agenda Report**  
**REGULAR MEETING**

**Item # 11.a**

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**TO:** Honorable Members of the  
Biscayne Park Village Commission

**FROM:** Rox Ross<sup>1</sup>

**DATE:** October 6, 2020

**TITLE:** Follow-up on 06/16/2020 Agenda Item 6.b. concerning Police Chief  
Position

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**Recommendation**

Accepting for the record the Village Attorney's analysis and recommendations by Resolution.

**Background and Fiscal Impact**

At the June 16, 2020 meeting Commission discussed Item 6.b. Employment Agreement for the Chief of Police. The topic started with a proposal to enter into an employment agreement with the police chief, a concept that comes up from time to time. The discussion progressed from a contract to a policy statement to protect the person in the position of chief from improper termination. In the end Commission directed the Interim Village Attorney to draft a policy or resolution to effectively prohibit interference with the Village Police Chief and Police Department.

Our new Village Attorney recently provided us with a reasoned analysis and recommendations, which are attached for reference.

I agree with the Village Attorney's opinion that state, county and village provisions already offer protections, including protection from Commission interference in administrative functions; an employment agreement would undermine the Village manager's authority as outlined by the Charter.

It would serve the Village well to adopt this Village Attorney memo as a policy statement by resolution so that we do not have to revisit the issue (and incur related expenses) in a few years.

**Attachment**

- 9/24/2020 Nabors Giblin & Nickerson, P.A. Memorandum

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<sup>1</sup> This item was originally brought by Commission Dan Samaria. I bring it back as a follow-up to establish a record or stated policy and to bring closure to the issue.

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## MEMORANDUM

To: Village Mayor and Commission  
Roseann Prado, Village Clerk and Interim Village Manager

From: Edward Dion, City Attorney

Subject: Item 6.b. on Commission Agenda of June 16, 2020

Date: September 24, 2020

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Below please find our legal analysis and recommendations concerning Item 6.b. that was discussed on June 16, 2020, wherein this Honorable Commission directed the then Interim Village Attorney to draft an agreement, policy, resolution, or ordinance which would have the effect of prohibiting interference with the Village of Biscayne Park's ("Village") Police Chief and Police Department.

Section 4.02. of the Village Charter, titled "Prohibitions" provides in pertinent part:

(B) Interference with administration.

- (1) It is the express intent of this Charter that individual Commissioners make any recommendations for improvement in Village operations to the Manager only. Individual Commissioners may discuss any matter of Village business with the Manager but are strictly prohibited from directing or otherwise ordering the Manager to take any particular action.
- (2) Except for the purpose of inquiries and investigations made in good faith, the Commission and its members shall deal with Village officers and employees who are subordinate to the Manager solely through the Manager. Neither the Commission nor its members shall give orders directly to any such officer or employee, either publicly or privately.
- (3) Any willful violation of this Section by any member of the Commission shall be grounds for removal from office by an action brought by the State Attorney of Miami-Dade County.

Pursuant to the express Charter language cited above, elected officials are already strictly prohibited from giving orders directly to any officer or employee of the Village, either publicly or privately, which would include the Chief of Police and his personnel. Therefore, the adoption of policies and procedures to that effect are not necessary, and in fact, would be duplicative.

Furthermore, both the Florida Statutes and the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance prohibit public officers and employees from using their position to secure special privileges or exemptions for him or herself.

Specifically, Section 112.313, Florida Statutes, titled, “Standards of conduct for public officers, employees of agencies, and local government attorneys” provides in pertinent part:

(6) MISUSE OF PUBLIC POSITION.—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

Additionally, Sec. 2-11.1. of Miami-Dade County Conflict of Interest and Code of Ethics Ordinance provides:

(g) Exploitation of official position prohibited. No person included in the terms defined in subsection (b)(1) through (6) and (b)(13)<sup>1</sup> shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

Therefore, there are both State and County laws that prohibit elected officials and employees from using their positions to secure special privileges or exemptions, which would include inappropriately directing the Police Chief or any police department personnel to take some action that would inure to the benefit of themselves or others.

For all of the foregoing reasons, it is our opinion that a policy, resolution, or ordinance is unnecessary as there are already multiple laws that prohibit the type of conduct the Village is seeking to regulate.

Furthermore, to the extent that the Commission is seeking to dictate the terms of the relationship between a Village Manager and a Village officer or employee, such as the Chief of Police, by way of directing that an employment agreement be entered into, or dictating the terms of an agreement, said action is likewise prohibited by the Village Charter.

Section 3.01(C) of the Village Charter, sets forth the duties of the Village Manager, which include the following:

- (1) Be responsible for the hiring, supervision and removal of all Village employees;
- (2) Direct and supervise the administration of all departments and offices [...].

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<sup>1</sup> For brevity, only the positions are listed; however, each position is further defined in Section 2-11.1: (1) Commissioners (2) autonomous personnel (3) quasi-judicial personnel (4) advisory personnel (5) “departmental personnel” shall refer to the Manager, his or her department heads, the County Attorney and all Assistant County Attorneys (6) “employees” [...] (13) contract staff

Those provisions, taken together with Sections 4.02.(B)(1) and (2) of the Village Charter cited above, make clear that the Village Manager is responsible for the terms of the employment of his/her employees, free of interference of the Village Commission. While the Commission may make any recommendations for improvement in Village operations to the Manager, it is strictly prohibited from directing or otherwise ordering the Manager to take any particular action. Any change in that policy would require a Charter amendment.

If we misunderstood the intent or the direction of the Village Commission, and some other action is being requested, we remain available to discuss the policy direction of the Commission and will make every reasonable effort to prepare legally permissible legislation that effectuates that direction.



**VILLAGE OF BISCAYNE PARK**  
**Village Commission Agenda Report**

**Item # 6.b**

**REGULAR MEETING**

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**TO:** Honorable Mayor & Members of the  
Biscayne Park Village Commission

**FROM:** Dan Samaria, Commissioner

**DATE:** June 16, 2020

**TITLE:** Employment Agreement for the Chief of Police

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**Recommendation:** It is my recommendation that we adapt this resolution with regard to the Chief of Police Employment agreement based upon the demonstrated ability of the Chief of Police to deliver effective police and crime prevention services to the Village of Biscayne park, consistent with policies and direction from the Village Manager and Commissioners.

It is the best interest of the department and the Village focus on the ability of the Chief of Police to lead and manage the department and its resources to meet the expected needs of the department and the Village over the next five years, and to inspire confidence in the Department as an effective, community based policing organization.

**Background:** Luis E. Cabrera has held the position as Chief of Police for two years.

During his tenure at the Biscayne Park Police Department he has been able to meet the goals and objectives he set forth for the department to include but not limited to the following:

**1. VISION AND LEADERSHIP**

- The Chief has developed an overall vision and image of the Biscayne Park Police Department that enhances its accountability, integrity and professionalism.
- Has had the vision to communicate to the employees of the organization with respect to their roles in implementing the goals and objectives.
- He has established himself as a trusted and respected leader with the Police Department, with the Commission and the community.
- He had identified and prioritized specific polices and actions to achieve his vision and the image of the Biscayne Park Police Department

## **2. CONTROL AND PREVENTION OF CRIME:**

- He has created, implemented and evaluated strategies to deal with current, emerging and anticipated criminal activities and trends.
- He has created, implemented and evaluated strategies to deal with major events such as COVID-19 and Hurricane season.

## **3. MANAGEMENT:**

### **Fiscal Management**

- The Chief has developed the annual budget for the past two years that maximized the departments resources, enhanced its revenue and reflected the priorities set forth by the Mayor, Commissioners and the Village Manager.
- Has addressed the departments critical needs.
- He ensures the expenditures are proper.

### **Planning/Goals**

- Chief has achieved the goals set by the mayor, Commissioners and the Village manager during the past two years.
- The Chief has implemented in the past two years his initial vision and continues to implement procedures, and specific actions.
- The Chief's policies, procedures and specific actions have been effective.
- The Chief revised, modified and or adjusted the goals to comply with local, State and Federal Laws.
- The Chief made the reduction of crime his priority.
- The Chief provided innovation, leadership and direction in organizing, deploying and equipping the department personnel with updated technology and emerging techniques for dealing with criminal activity.
- The Chief implemented a plan to identify state of the art equipment to include non-lethal use of force devices and systems to enhance Patrol officers' safety and the Department's ability to handle trends in serious crimes.
- The Chief planning has been proactive rather than reactive in crisis situation.

#### **4. POLICE REFORM:**

- The Chief embraced police reform including, but not limited to, the implementation training to include diversity training?

#### **5. STRATEGIES FOR COMMUNITY POLICING**

- The chief implemented several programs such as the Village Resource Officer, Police Athletic League Officer (PAL) as tools for crime prevention.
- The Chief implemented a community-policing model for the department.

#### **6. COMMUNICATIONS**

- The Chief has maintained communication with in the Department with the rank and file.
- The Chief has maintained clear, consistent, accurate and timely communication between the department, the Mayor, Village Manger and the Commission.
- The Chief maintained clear, consistent, accurate and timely communications between the department and other law enforcement entities including state and federal police and prosecutors.
- The Chief has maintained informative and consistent communication with the village community at large.

#### **7. PERSONNEL ADMINISTRATION AND EMPLOYEE RELATIONS**

##### **Recruitment**

- The chief has provided leadership and creative solutions towards solving recruitment problems.
- The Chief recruitment goals were accomplished. His recruitment has been successful and the department now employees 10 full time officers including the staff, 4 part-time officers and 25 reserve officers.

##### **Retention**

- The Chief's leadership has improved morale.
- The Chief's proposed plan for retention in maximizing the number of active police officers in the village has been accomplished.
- The chief has provided opportunities for promotions within the Department.



## EMPLOYMENT AGREEMENT

This CHIEF OF POLICE GENERAL AGREEMENT (hereafter referred to as the "Agreement") is made and entered into between the Village of Biscayne Park, Biscayne Park, Florida, hereinafter referred to as "Village", hereinafter referred to as "Chief of Police".

### **WITNESSETH:**

**WHEREAS**, the VILLAGE desires the service of a Chief of Police for the Village of Biscayne Park Police Department, and the Chief of Police desires to provide services to the Village of Biscayne Park.

**NOW, THEREAFTER**, the parties agree as follows:

### **SECTION 1: EMPLOYMENT OF THE CHIEF OF POLICE**

- 1.1 Employment of the Chief of Police: The Village shall employ a Chief of Police to provide services to the Village subject to the terms and conditions of this Agreement.
- 1.2 Duties and Responsibilities: The Chief of Police shall perform such duties and responsibilities as are required of him pursuant to the Charter of the Village of Biscayne Park, Biscayne Park, Florida, the Code or Ordinances of the Village of Biscayne Park, Florida, approved resolutions by the Village Commission and all applicable local, state and federal laws or regulations. The Chief of Police is hired, terminated, and supervised by the Village Manager.

### **SECTION 2: COMPENSATION, BENEFITS AND PERFORMANCE REQUIREMENTS**

- 2.1 The City Manager reserves the right to increase the annual base salary or benefits if desired.
- 2.2 The Chief of Police shall provide to the Village Manager with yearly goals and objectives for the Police Department.
- 2.2. Benefits: The Village will agree to benefits for the Chief of Police as set forth on current Police Benevolent Association hereafter known as Police Benevolent Association contract.
- 2.3 Performance Requirements. The Chief of Police is responsible to administer and manage the Village of Biscayne Park Police Department in a manner consistent with Village policies as prescribed by the City Manager, to include:
  - a. Implement yearly goals and objectives for the Village of Biscayne Park Police Department.
  - b. Enhance, maintain and increase public safety, community relations and the delivery of superior policing services.

- c. Provide training annually to support the functions within the department to include but not limited to the Florida Department of Law Enforcement hereinafter referred to as "FDLE" Mandatory Retraining, FDLE Mandatory Firearms Qualification, etc.

2.4 Business Training Expenses and Indemnification. As the Village's Chief of Police, the Village agrees to budget and pay for the Chief of Police travel, lodging, registration fees and subsistence expenses for professional development, training, accreditation, ceremonies, seminars and conferences that are related to his official capacity as Chief of Police. All travel and expenses are subject to budget approval by Village Manager.

On behalf of the Chief of Police, the Village shall comply with all the provisions of Chapter 111.07 and 111.071 Florida States in regard to defense in civil actions against public officers, employees or agent and payment of judgements or settlements against public officers or employees.

2.5 Retirement.

- A) The Village shall be responsible for contributions to the Chief of Police, Florida Retirement Program from date of hire.
- B) The Village shall be responsible for the withholding or otherwise deducting of federal income tax, deferred compensation or social security.

### **SECTION 3: TERMS**

- A) The Chief of Police is responsible for the daily management, functions, administration, operations and investigations of the Village Biscayne Park Police Department without impediment from political leaders, resident's, or employees.
- B). Nonresidents, residents, political leaders or village manager shall not provide directives to police employees or the Chief of Police that are Illegal, unethical, amoral, violates the Charter Village of Biscayne Park or that weaponizes the police department against residents, political leaders or advisories.
- C) Nonresidents, residents, political leaders, employees and the village manager shall not hinder or impede the Police Department or the Police Chief or any police employee regarding any ongoing investigations.
- D) The Chief of Police has the authority and duty to report any crimes or violations listed above in section (3). The Chief will report such matters to any appropriate government agencies without fear of retaliation or termination of employment. Any retaliation for reporting inappropriate, unethical or unlawful acts will violate the terms and conditions of this general agreement. In the event the Village Manager terminates the employment of the Chief of Police.

- E) The Village Manager will give the Chief of Police a thirty-day (30) notice prior to termination. The Chief of Police will request in writing a public hearing within (15) days of the notice of termination. The Commission by majority vote will determine if the termination was unlawful.
- F) Nothing in this notice period shall be construed to limit, in any way, in the Village's ability to recruit or hire a new Chief of Police.
- G) If terminated without cause the Chief of Police will be entitled to (4) four weeks of severance pay.
- H) The Chief of Police shall be entitled to holidays, floating holidays and birthday as any other police Village employee.
- I) The Village Manager reserves the right to require the Chief of Police to work any State of Emergency.
- J) The Chief of Police will be entitled to set his/her work schedule based on the operational, departmental, and Village needs.
- K) The Chief of Police will be assessable (on call) to the Village of Biscayne Park seven (7) days a week, twenty-four (24) hours a day.

#### **SECTION 4: HEALTH AND INSURANCE**

- 4.1 The Village shall provide health insurance for the Chief of Police (single coverage) at one hundred (100) percent cost to the Village or reimbursement as set forth by PBA contract if the Chief of Police elects not join the Village Health and Insurance coverage plan.

#### **SECTION 5: GENERAL PROVISIONS**

- 5.1 The text herein shall constitute the entire agreement between the parties. If any provisions, or any portion thereof contained in the Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- 5.2 All notices, requests, and other communications required or permitted to be given under this Agreement shall be in writing (including telefax or teletype) and shall be sent by certified mail, postage paid, return receipt requested, or shall be hand delivered by a recognized national overnight courier service or shall be sent by electronic communication, whether by telefax or teletype, addressed as follows:

If to Chief of Police: Chief of Police  
Village of Biscayne Park Police Department  
600 Northeast 114<sup>th</sup> Street  
Biscayne Park, Florida 33161

If to Village: Village Manager  
Village of Biscayne Park  
600 Northeast 114<sup>th</sup> Street  
Biscayne Park, Florida 33161

- 5.3 This Agreement shall be construed pursuant to the laws of the State of Florida. For any litigation pertaining to this Agreement, the parties agree to venue in Circuit Court in Miami Dade County, Florida.