

City of Fall River Massachusetts

Office of the City Clerk

ALISON M. BOUCHARD
CITY CLERK

SPECIAL MEETING OF THE CITY COUNCIL

INÈS LEITE
ASSISTANT CITY CLERK

MEETING: Tuesday, October 16, 2018 at 6:00 p.m.
Council Chamber, One Government Center

PRESENT: President Cliff Ponte, presiding;
Councilors Shawn E. Cadime, Joseph D. Camara,
Steven A. Camara, Bradford L. Kilby, Pam Laliberte-
Lebeau, Stephen R. Long, Leo O. Pelletier and Derek R.
Viveiros

ABSENT: None

IN ATTENDANCE: Joseph I. Macy, Corporation Counsel

President Cliff Ponte called the meeting to order at 6:01 p.m. with a moment of silence followed by a salute to the flag and announced that the meeting may be recorded with audio or video and transmitted through any medium.

Agenda:

1. Citizens' Input Time
Patricia Casey, 26 Mount Hope Avenue – City business
CJ Ferry, 300 Buffinton Street – City situation
Collin Dias, 560 Ray Street – City situation
Doug Carvalho, 360 Ferry Street – City
Amy Blanchette, 724 Second Street – City
Erica Scott, 187 Pitman Street – City
Robert Camara, 127 Gagnon Street – City
Jordan Silva, Barnaby Street/Whipple Street – City

On a motion made by Councilor Bradford L. Kilby and seconded by Councilor Pam Laliberte-Lebeau, it was unanimously voted to waive the rules to allow Citizen Input to exceed 30 minutes.

Dawn Saurette, 1984 Robeson Street – City

Council President Cliff Ponte called for a 5 minute recess at 6:35 p.m. to allow police officers to remove a member of the audience from the Council Chamber, after his refusal to remain quiet. The City Council reconvened at 6:36 p.m. On a motion made by Councilor Steven A. Camara and seconded by Councilor Pam Laliberte-Lebeau, it was unanimously voted to waive the rules to allow a non-Fall River resident to speak.

Leslie Rich, 201 Duxbury Ct., Warwick, RI 02886 – City
Michael Miozza, 84 Holland Street – City Charter
Peter Fernandes, 360 Second Street – City situation

Charles Chase, 3723 North Main Street – Mayor
M. Earle Gaudette, 38 Gaudette Drive – Mayor

2. City Council request to address recent issues relating to Mayor Jasiel F. Correia II in accordance with Section 3-8 of the City Charter

Council President Cliff Ponte made remarks regarding the recent issues relating to Mayor Jasiel F. Correia II. He stated that he agrees with many residents and that he is unsure if the Mayor can proceed with the everyday responsibilities of running the City of Fall River due to his impending legal matters. He also stated that he will vote to remove the Mayor, if a vote is taken. Councilor Shawn E. Cadime stated that the Mayor said he is drained emotionally, mentally, and physically. Councilor Cadime also stated that he believes that the Charter does allow for the temporary removal of the Mayor and the City Council President should step in as Acting Mayor.

On a motion made by Councilor Shawn E. Cadime and seconded by Councilor Pam Laliberte-Lebeau, it was unanimously voted to waive the rules to allow Corporation Counsel to answer questions. Councilor Shawn E. Cadime stated that he would like to have the day-to-day duties of the Mayor removed. Corporation Counsel stated that the Charter does not define what "unable to perform the duties of Mayor" exactly means and read part of his legal opinion regarding the absence or vacancy of the Mayor into the record. A motion made by Councilor Shawn E. Cadime and seconded by Councilor Bradford L. Kilby requesting that the Fall River City Council, as allowed for under the Home Rule Charter, determine that Jasiel F. Correia II is unable to perform the duties of the Office of the Mayor and that effective immediately the President of the City Council assume the role of Acting Mayor until such time as the federal criminal charges that have been brought against Jasiel F. Correia II by the United States of America have been resolved or until the next scheduled city election where the voters of Fall River have the opportunity to exercise their vote for the office of Mayor.

Councilor Steven A. Camara requested that the motion made by Councilor Shawn E. Cadime be provided to the City Council in writing and it was later provided. Councilor Stephen R. Long stated that he supports the removal of the Mayor from office, as he feels that it would be in the best interest of the City. Councilor Steven A. Camara stated that he believes that it is not the responsibility of the City Council to remove a Mayor from office, whether temporarily or permanently. He further stated that there are three ways to remove the Mayor from office and they are:

1. *The Mayor can resign.*
2. *The Mayor can be removed by a recall election.*
3. *The Mayor can be convicted of a felony, which would remove him from the office.*

Councilor Steven A. Camara then stated that he will not allow this motion to go forward. He then stated that some may see this as heavy handed, but he sees it as a time to pull back and to contemplate what the City Council as an elected body is now facing. Councilor Joseph D. Camara stated that voters should have a recall election and the voters should determine who the Mayor will be. He then questioned how the City Council President could work full-time as Mayor if he currently has a full-time job and stated that whomever is Mayor needs to work full-time. Councilor Pam Laliberte-Lebeau respectfully requested that Mayor Jasiel F. Correia II step aside and take the media spotlight with him and off of the City of Fall River. Councilor Leo O. Pelletier stated that he has been receiving numerous phone calls regarding this matter. He then stated "Jasiel, do the right thing for the City of Fall River, your family and everybody else and step down."

Councilor Bradford L. Kilby stated that during his twenty-three years as an attorney, he has had clients who had federal charges against them and he has seen how meticulous the Federal Bureau of Investigation is. Councilor Derek R. Viveiros stated that there are many angles to this situation. He stated that he feels the Mayor has lost his effectiveness with state officials who have requested his resignation. Councilor Steven A. Camara asked the City Clerk if she knew if an Acting Mayor would receive the Mayor's salary in addition to the City Council salary and she stated that she was unsure. Councilor Shawn E. Cadime moved the question and Council President Cliff Ponte read the following from the City Charter:

"SECTION 2-9: ORDINANCES AND OTHER MEASURES

(c) Charter Objection – On the first occasion that the question of adoption of a measure is put to the City Council, if a single councilor present objects to the taking of the vote, the vote shall be postponed until the next meeting of the City Council, whether regular or special. If more than one councilor present objects, such postponement shall be until the next regular meeting. If it is an emergency measure, at least three councilors must object. This procedure shall not be used more than once for any specific matter notwithstanding an amendment to the original matter. A charter objection shall have privilege over all motions but must be raised prior to or at the call for a vote by the presiding officer and all debate shall cease."

Councilors Steven A. Camara and Joseph D. Camara subsequently objected to Councilor Shawn E. Cadime's motion and it was laid on the table until the next meeting in accordance with the City Charter. Council President Cliff Ponte then called for a two minute recess at 8:00 p.m. The City Council reconvened at 8:01 p.m. On a motion made by Councilor Steven A. Camara and seconded by Councilor Joseph D. Camara, it was voted 2 yeas, 7 nays to adjourn and the motion failed to carry, with Councilors Shawn E. Cadime, Bradford L. Kilby, Pam Laliberte-Lebeau, Stephen R. Long, Leo O. Pelletier, Derek R. Viveiros, and City Council President Cliff Ponte voting in the negative.

A further motion made by Councilor Shawn E. Cadime and seconded by Councilor Pam Laliberte-Lebeau to take a vote of no confidence on Mayor Jasiel F. Correia II was objected to by Councilors Steven A. Camara and Joseph D. Camara and laid on the table until the next meeting in accordance with the City Charter. On yet a further motion made by Councilor Bradford L. Kilby and seconded by Councilor Shawn E. Cadime requesting Mayor Jasiel F. Correia II resign from office was objected to by Councilor Steven A. Camara and laid on the table until the next meeting in accordance with the City Charter.

On a further motion made by Councilor Shawn E. Cadime and seconded by Councilor Bradford L. Kilby, it was unanimously voted to adjourn at 8:03 p.m.

List of documents and other exhibits used during the meeting:

Agenda packet (attached)

DVD of meeting

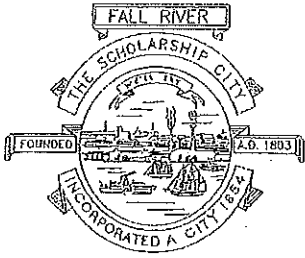
Legal opinion from Corporation Counsel Joseph I. Macy regarding the absence or vacancy of the Mayor

In City Council, November 6, 2018
Approved.

A true copy. Attest:



City Clerk



City of Fall River Massachusetts
Office of the City Clerk

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2018 OCT 12 P 3:57

CITY CLERK
FALL RIVER, MA

ALISON M. BOUCHARD
CITY CLERK

INÊS LEITE
ASSISTANT CITY CLERK


SPECIAL MEETING OF THE CITY COUNCIL

TUESDAY, OCTOBER 16, 2018 AT 6:00 PM

CITY COUNCIL CHAMBER, ONE GOVERNMENT CENTER

AGENDA

1. Citizen Input
2. City Council request to address recent issues relating to Mayor Jasiel F. Correia II in accordance with Section 3-8 of the City Charter


Alison M. Bouchard
City Clerk

ADA Coordinator: Gary P. Howayeck, Esq. 508-324-2650

One Government Center • Fall River, MA 02722
TEL 508-324-2220 • FAX 508-324-2211 • EMAIL city_clerks@fallriverma.org

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2018 OCT 12 P 1:06

CITY CLERK
FALL RIVER, MA

October 12, 2018

Cliff Ponte
City Council President
City of Fall River
One Government Center
Fall River, MA 02720

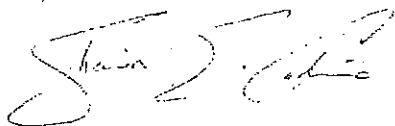
Re: Mayor Federal Indictment/City Charter Article 3 Section 3-8

Council President,

In light of the arrest and arraignment on 13 counts of federal criminal charges against Jasiel F. Correia II and whereas Jasiel F. Correia II refuses to resign his position of Mayor of the City of Fall River, I am requesting that you immediately call a special meeting of the Fall River City Council to exercise the Council's right, under Home Rule Charter Article 3, Section 3-8, to take a public vote to determine that the Mayor is unable to perform his duties of the office.

In addition as prescribe by the Home Rule Charter, if the vote of 7 yeas prevails the President of the City Council shall immediately assume the role of Acting Mayor. The role of acting mayor shall continue until such time as the federal criminal charges that have been brought against Jasiel F. Correia II have been resolved or concluded, or until the next scheduled city election where the voters of Fall River have the opportunity to exercise their vote for mayor.

Regards,



Shawn E. Cadime
City Council

**CITY OF FALL RIVER
IN CITY COUNCIL
OCTOBER 16, 2018**
See attached motions

City of Fall River, *In City Council*

**CITY OF FALL RIVER
IN CITY COUNCIL
OCTOBER 16, 2018**

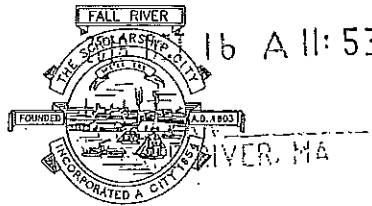
A motion made by Councilor Shawn E. Cadime and seconded by Councilor Bradford L. Kilby requesting that the Fall River City Council, as allowed for under the Home Rule Charter, determine that Jasiel F. Correia II is unable to perform the duties of the Office of Mayor and that effective immediately the President of the City Council assume the role of Acting Mayor until such time as the federal criminal charges that have been brought against Jasiel F. Correia II by the United States of America have been resolved or until the next scheduled city election where the voters of Fall River have the opportunity to exercise their vote for the office of Mayor was objected to by Councilors Steven A. Camara and Joseph D. Camara and laid on the table until the next meeting in accordance with the City Charter.

A further motion made by Councilor Shawn E. Cadime and seconded by Councilor Pam Laliberte-Lebeau to take a vote of no confidence on Mayor Jasiel F. Correia II was objected to by Councilors Steven A. Camara and Joseph D. Camara and laid on the table until the next meeting in accordance with the City Charter.

A further motion made by Councilor Bradford L. Kilby and seconded by Councilor Shawn E. Cadime requesting Mayor Jasiel F. Correia II resign from office was objected to by Councilor Steven A. Camara and laid on the table until the next meeting in accordance with the City Charter.

City of Fall River
Office of the Corporation Counsel

JASIEL F. CORREIA II
Mayor



JOSEPH I. MACY
Corporation Counsel

GARY P. HOWAYECK
Assistant Corporation Counsel

JESSICA A. ADLER
Assistant Corporation Counsel

October 16, 2018

Mayor Jasiel F. Correia, II
Cliff Ponte, President, Fall River City Council
One Government Center
Fall River, MA 02722

RE: City Council Meeting of October 16, 2018

Dear Mayor and Council President:

I am in receipt of the Notice of Special Meeting of the City Council scheduled for October 16, 2018. I have also been forwarded a copy of Councilor Cadime's letter of October 12, 2018.

Under the current circumstances it seems incumbent upon this office to provide the following opinion. This is especially the case as this factual situation is unique and the Charter is so new that this issue has not been previously addressed.

At the outset let me address the letter and meaning of Charter SECTION 3-8: TEMPORARY ABSENCE OF MAYOR. That section states, in pertinent part, "Whenever, by reason of sickness or other cause, the mayor is unable to perform the duties of the office, the president of the city council shall be the acting mayor...". The section goes on to state, "The city council by the affirmative vote of 7 members, shall determine whether the mayor is unable to perform the duties of the office."

There is no specific definition, in the charter, of what would constitute being "unable to perform the duties of the office". However, using standard statutory interpretation, a common-sense, plain language reading of the charter would apply this clause to "sickness" or "other cause" which would be disqualifying in nature, i.e. by virtue of physical or medical disability or geographic impossibility. It would not appear to apply to the current situation where a validly elected Mayor has been indicted but neither convicted nor sentenced.

Section 3-8 (b) circumscribes the Powers of the Acting Mayor. It confines them to "those powers of the mayor as are indispensable and essential to conduct the business of the city in an orderly and efficient manner and on which action may not be delayed." The clear language of this clause is that an acting mayor may only act on "indispensable and essential" matters "on which action may not be delayed". This section also prevents the acting mayor from making a permanent appointment or removal from city service "unless the disability or absence" of the mayor shall extend beyond 60 days nor shall an acting mayor approve or disapprove any measure adopted by the council "unless the time within which the mayor must act would expire before the return of the mayor."


The view that Section 3-8 applies only to a temporary inability is given support by and is consistent with SECTION 3-10: VACANCY IN OFFICE OF MAYOR. That section states that whenever a vacancy occurs in the office of mayor by "death, removal, resignation or any other reason during the first 18 months of the term for which the mayor was elected, the city council shall call a special election to be held within 90 days following the date the vacancy is created to fill the vacancy for the remainder of the unexpired term. Between the date of the declaration of the vacancy and the certification of the results of the special election, the vacancy in the office of the mayor shall be filled as provided in section 3-8 (a). (acting mayor) Thus, the charter makes a clear distinction between temporary inability (3-8) and complete vacancy (3-10).

The Charter also addresses the possibility of criminal charges being brought against an elected official. SECTION 9-13: FELONY CONVICTION states succinctly, "An elected official who has been convicted of a state or federal felony while holding office shall be deemed to have vacated the office." Given the very specific language of Section 9-13 the framers of the charter must have contemplated the very situation the city is now in and determined an incumbent elected official would remain in office unless and until there was a conviction. (MGL 279 s 30 is in accord with the charter except that it goes further and provides that the office is vacated upon "sentencing" not conviction.)

The case of *Turner v City of Boston*, 462 Mass. 511, (2012) is instructive in this regard. In that case Charles H. Turner, an elected Boston city councilor, was convicted of Federal crimes in the U.S. District Court. The Boston city council voted to remove him from his office of city councilor pursuant to a city council rule (40A) of the Boston city council. The vote took place before Turner was sentenced and removed automatically by operation of MGL c 279 s 30. The Massachusetts Supreme Judicial Court ruled specifically that "the city council was authorized to promulgate rule 40A but did not have the authority, under the Charter of the City of Boston (city charter) or under any provision of State law to remove Turner from office." The court stated, "the rule has been that municipalities in Massachusetts have 'no power to remove public officers except that which is given by the statutes.'" "The election, removal, and replacement of public officers are 'subjects of elaborate legislation' and 'in the absence of any ... provision (for their removal) ... they cannot be removed by a vote of the town, either with or without a hearing before the town or a committee thereof.'" "(W)e take from both the Massachusetts Constitution and the General Laws that the removal or suspension of a public officer requires specific constitutional or legislative authorization. ... In GL c 279 s30 the Legislature has mandated specifically that one who holds public office, including one who holds municipal office, is automatically removed from office only when he or she is sentenced to prison on a felony conviction in State or Federal court." (W)e conclude that the city charter does not provide the requisite authority for the city council's removal of Turner from office before he was sentenced to prison."

Ultimately, the question of when, whether and how long an elected official may serve resides in the hands of the voters. To this end regular city elections are routinely held. The charter further provides a citizen remedy between elections. SECTION 8-5 RECALL provides in (a) "Any holder of an elective office may be recalled therefrom by the voters of the city as herein provided." Thus, the framers of the charter provided a mechanism for the voters to act within an elected officials term.

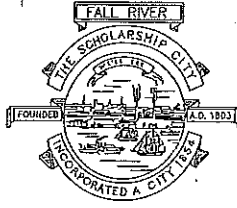
It is important to realize that the above is written in advance of any meeting or vote and provided in an effort to afford some legal guidance in uncharted waters. I would be happy to expand upon the contents hereof upon request or to issue a further opinion upon actual facts as they occur.



Joseph I. Macy, Corporation Counsel,
City of Fall River

City of Fall River
Office of the Corporation Counsel

SIEL F. CORREIA II
Mayor



JOSEPH I. MACY
Corporation Counsel

GARY P. HOWAYECK
Assistant Corporation Counsel

JESSICA A. ADLER
Assistant Corporation Counsel

October 16, 2018

Collen Taylor
One Government Center
Fall River, MA 02722

Colleen,

Please distribute to all Councilors.

Cliff says may be released to press at 1:00 p.m. Please check with him.

RECEIVED

2018 OCT 16 A 11: 53

CITY CLERK
FALL RIVER, MA

Joseph I. Macy, Corporation Counsel

