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VIA HAND-DELIVERY

October 16, 2018

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

Re: City Council Meeting regarding Mayor Jasiel Correia and City Charter Article 3, Section 3-8

Dear Council President Ponte:

My firm represents Mayor Jasiel Correia. We are writing as a result of the scheduled City Council meeting regarding Mayor Correia's federal indictment. More specifically, we are concerned about the apparent intent, as espoused publicly by several Council members, to erroneously invoke the Fall River City Charter Article 3, Section 3-8, to declare that Mayor Correia "is unable to perform the duties of the office". The City Council's attempt to invoke Section 3-8 is inappropriate for several reasons.

First, Section 3-8 is entitled "Temporary Absence of the Mayor" and is not intended to apply to Mayor Correia's current situation. Section 3-8 states: "Whenever, by reason of sickness or other cause, the mayor is unable to perform the duties of the office". Section 3-8(a) is clearly intended to apply to situations where the mayor is too sick, disabled or otherwise physically or mentally incapacitated to the point where he can no longer perform his duties as mayor. In fact, Michael Miozza, a former City Councilor and Chairman of the Charter Commission, reiterated this position in a recent radio interview. Further, this section must also be read together with Section 9-13 which provides that "[a]n elected official that has been convicted of a state or federal felony while holding office shall be deemed to have vacated the office." Thus, simply being charged with a state or federal crime is insufficient to justify removal under the Charter.

Second, Mayor Correia has not given any indication that he is unable to perform his duties. He has kept his normal mayoral schedule since the indictment and will continue to do so. Given that your action will result in legal action against you and the City Council, we ask that you please identify on the record, before any vote, the specific evidence that you are relying on to determine that Mayor Correia is physically or mentally unfit to perform the duties of his office.

Third, the attempt to remove Mayor Correia would violate existing law, specifically Turner v. City of Boston, 462 Mass. 511 (2012). In that case, the Supreme Judicial Court ("SJC") held that the Charter for the City of Boston (which, through rules promulgated pursuant to that Charter, allowed City Council members to remove another City Council member by requisite vote) did

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NOT provide the requisite authority to allow the removal of the City Council member. The SJC explained that any removal of a public officer requires specific constitutional or state legislative authorization. It further explained that the Massachusetts Constitution only provides for the removal of "officers of the Commonwealth" pursuant to specific impeachment provisions of the Constitution and "judicial officers" pursuant to a separate article of the Constitution. The Massachusetts Constitution, therefore, does not provide the specific authorization necessary for the City Council to remove Mayor Correia.

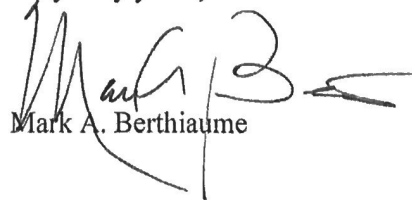
State legislative authority is also lacking. The SJC in Turner explained that G.L. c. 279, Sec. 30 provides that one who is sentenced to prison on a felony conviction in state or federal court is automatically removed. This is obviously inapplicable in the present case – but is consistent with Sec. 9-13 of the Fall River City Charter. With respect to the suspension of a municipal officer, G.L. c. 268A, Sec. 25 only authorizes "the appointing authority" to suspend a municipal officer who has been indicted for misconduct in office. This statute is similarly inapplicable because not only is the City Council not "the appointing authority" for the Mayor, but the pending indictment does not charge misconduct in office.

Thus, neither the Constitution nor the General Laws grant permission to a municipal body such as the Fall River City Council to remove the Mayor upon an indictment.

The City Charter does provide a process for the removal of a mayor and that is the recall procedure under Section 8-5 and which was recently used to remove Mayor Will Flanagan from office. However, removal under Section 3-8, which is directed to the "temporary absence of the mayor", is not legal and runs contrary to Massachusetts case law.

In sum, Mayor Correia is committed to carrying out his duties as mayor and has given no indication that he is unable to do so. There is no basis for the City Council to use City Charter Section 3-8 to remove Mayor Correia. Any attempt to do so runs contrary to the Massachusetts Constitution, existing state law, and the City Charter. Please be advised that should the City Council invoke Section 3-8 to remove Mayor Correia, appropriate legal action will be taken against you. We trust such action shall not be necessary.

Very truly yours,



Mark A. Berthiaume