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February 18, 2019

Via USPS Mail and Certified Mail No. 7014 2120 0001 5793 2462

Mr. Matthew Charles Cardinale friendsofmatthewcharles@gmail.com
1326 Bernard Street, N.W.
Atlanta, GA 30314

**Re: Superintendent's Decision Regarding the Challenge to Candidacy Qualifications of
Matthew Charles Cardinale to Seek Election to the Office of Atlanta City Council
Member - District 3**

Dear Mr. Cardinale:

This letter is to inform you of the decision made in your candidacy challenge.

I am the Municipal Clerk and Election Superintendent for the City of Atlanta. In my capacities, and pursuant to the provisions of O.C.G.A. § 21-2-6, I served as the hearing officer in an evidentiary hearing held on February 13, 2019 to consider the challenge to your candidacy for election to the office of Atlanta City Council District 3 Member seat.

As Election Superintendent I filed, on my own motion, said challenge on January 28, 2019, as authorized by O.C.G.A. § 21-2-6(b) which provides the Election Superintendent the authority to challenge the qualifications of any candidate prior to the election of such candidate. An official Notification of Challenge was sent to you on that date advising that your candidacy was being challenged.

Mr. Cardinale has attempted to qualify for the Special Election to fill the Atlanta City Council District 3 seat that was vacated upon the death of sitting Council Member Ivory Lee Young, Jr. The election has been set to take place on March 19, 2019 and qualifying took place on January 23 through 25 of 2019. You appeared on January 23, 2019 to submit your qualification documents.

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The impetus of the challenge was information that came to me, in my capacity as the Municipal Clerk of the City of Atlanta, by encountering Mr. Cardinale on numerous occasions at various City Council and Committee meetings where he would speak about his personal issues with housing. Mr. Cardinale, a purportedly housing advocate, self-publicized a housing dispute he had regarding a rent-to-own contract that he entered into with Divvy Homes. Based on your self-reporting, I had an idea of when you moved into your current City of Atlanta residence, and that knowledge led me to challenge your candidacy.

Mr. Cardinale appeared on January 23, 2019, to qualify for the District 3 Special Election and I informed him of my concern as to whether or not he met the residency requirements. In response, you offered me various documents in support of your residency, all of which have been made part of this record.

On January 28, 2019, I sent notification of a challenge hearing to be held on February 13, 2019, at 10:45 a.m.

The notification of the challenge advised you that your candidacy was being challenged on my own motion as Election Superintendent, because it appeared that you did not meet the statutory residency requirements to hold said office, namely the requirement of the Charter of the City of Atlanta 2-102(2).

On February 13, 2019, you appeared at the scheduled 10:45 a.m. challenge hearing.

During the February 13th hearing, I introduced the following into evidence:

- Mr. Cardinale's lease with Kenco Briarcliff Apartments, at 2194 Briarcliff Road, Atlanta, GA, beginning January 10, 2017 and ending January 31, 2018.
- An email from expres@airbnb.com to matthew.cardinale@gmail.com sent on January 6, 2018 containing a receipt for accommodations at 217 16th Street Northwest 2, Atlanta, GA 30363 for 31 nights.
- Mr. Cardinale's lease agreement with Divvy Homes Acquisitions, Inc., executed on February 1, 2018 for 1326 Bernard St., NW, Atlanta, GA.

Upon conclusion of the Election Superintendent Challenger's presentation of evidence, you were given the opportunity to present documentary evidence, call witnesses and make a closing statement to show why you should be allowed to continue as a candidate to fill the office of City Council District 3 Member in the City of Atlanta's March 19, 2019 Special Election. You did offer testimonial and documentary evidence, however, you did not call any witnesses.

The following documents were introduced into evidence by Mr. Cardinale:

- Affidavit of Cheryl Rosenblum.
- Affidavit of Dr. Dwanda Lee Farmer.
- Affidavit of Sohaila Hokkamzadeh.
- Affidavit of Matthew Charles Cardinale.

- A screenshot of a Facebook post by Mr. Cardinale purportedly from December 25, 2017, containing the message “The Kosher Gourmet is open! I’m gonna miss Toco Hills when I move back intown...”.
- Sec. 146-76 of the Atlanta, GA Code of Ordinances.
- Change of Address Confirmation Letter from the United States Postal Service dated January 15, 2018 which forwards Mr. Cardinale’s mail from 2194 Briarcliff Road NE Apt. 9, Atlanta, GA 30329 to P.O. Box 94973, Atlanta, GA 30377.
- An email from the United States Postal Service (donotreply@usps.com) to Mr. Cardinale (matthew.cardinale@gmail.com), dated January 9, 2018, acknowledging receipt of his application and payment for a P.O. Box.
- Printouts of copies of various mail items addressed to Mr. Cardinale at P.O. Box 94793, Atlanta, GA 30377.
- Various photographs of a residence purporting to be 217 16th Street Northwest 2, Atlanta, GA 30363.
- Various receipts from deliveries made to Mr. Cardinale during the month of January 2018 at 217 16th Street Northwest 2, Atlanta, GA 30363.
- An email from Divvy Homes (tiffany@divvyhomes.com) to Mr. Cardinale (matthew.cardinale@gmail.com), dated December 14, 2017 informing Mr. Cardinale that his application was being processed.
- An email from Divvy Homes (tiffany@divvyhomes.com) to Mr. Cardinale (matthew.cardinale@gmail.com), dated December 15, 2017 informing Mr. Cardinale that his application was pre-approved.
- An email from Erin Glynn (erin.glynn@harrynorman.com) to Adena Hefets (adena@divvyhomes.com) and carbon copied to Mr. Cardinale (matthew.cardinale@gmail.com) dated January 4, 2018, which purportedly had an attachment including a “fully executed agreement”
- An email from Dwolla (no-reply@dwolla.com) to Mr. Cardinale (matthew.cardinale@gmail.com) purporting to show a payment from Mr. Cardinale to Divvy Homes was being processed.
- A letter (unsigned and undated) purportedly written from Mr. Cardinale to “Adena” (presumably Adena Hefets at Divvy Homes) about changes that need to be made to his lease terms.
- An email from Adena Hefets (adena@divvyhomes.com) to Erin Glynn (erin.glynn@harrynorman.com) and carbon copied to Mr. Cardinale (matthew.cardinale@gmail.com), dated February 9, 2018, regarding a tax lien on the 1326 Bernard Street property.
- An email from Mr. Cardinale (matthew.cardinale@gmail.com) to Adena Hefets (adena@divvyhomes.com) and Erin Glynn (erin.glynn@harrynorman.com), dated February 12, 2018, showing a wire transfer from Mr. Cardinale to Divvy Homes.
- Limited Warranty Deed filed on June 28, 2018 showing the transfer of property from Divvy Homes to Mr. Cardinale.
- A letter from Georgia Power showing the initiation of electric service for Mr. Cardinale beginning on February 12, 2018 at 1326 Bernard Street.
- A letter from CapitalOne sent to Mr. Cardinale on March 26, 2018 at the 1326 Bernard Street address.

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- A bank statement from CapitalOne, dated September 23, 2018 to October 22, 2018 showing Mr. Cardinale's address as 1326 Bernard Street.
- A credit card statement from Nordstrom dates May 26 to June 25, 2018 showing Mr. Cardinale's address as 1326 Bernard Street.
- A New York Times article from February 2015 about the Waldorf Astoria hotel.
- O.C.G.A. § 21-2-217
- The abstract of a report titled "People Who Live in Hotels: An Exploratory Overview" by Leslie A. Brownrigg, 2006.
- Atlanta City Council Ordinance 11-0-0513.
- O.C.G.A. § 48-13-51.
- Atlanta City Charter, Section 2-102.
- O.C.G.A. § 21-2-2.
- Smiley v. Davenport et al., 139 Ga. App. 753, 1976.
- O.C.G.A. § 19-2-1.
- O.C.G.A. § 21-2-6.
- Midkiff v. Midkiff, No. S02A0619, 2002.

You argued, through testimonial and documentary evidence that you met the residency requirements as of January 14, 2018.

As the Election Superintendent I have carefully considered the testimony presented, and have further reviewed all documentary evidence.

Findings Of Fact:

- Mr. Cardinale had a valid lease at 2194 Briarcliff Road NE Apt. 9, Atlanta, GA 30329 through January 31, 2018
- 2194 Briarcliff Road NE Apt. 9, Atlanta, GA 30329 is not in Atlanta City Council District 3.
- Mr. Cardinale applied for a home through the Divvy Homes lease-to-own program on December 14, 2017.
- Mr. Cardinale was pre-approved for the lease-to-own program on December 15, 2017.
- Mr. Cardinale executed an agreement on or about January 4, 2018 to enter into their lease-to-own program.
- Mr. Cardinale was a guest at the residence at 217 16th Street Northwest 2, Atlanta, GA 30363, beginning on January 14, 2018, through "Airbnb."
- 217 16th Street Northwest 2, Atlanta, GA 30363 is within Atlanta City Council District 3.
- Mr. Cardinale applied and paid for a P.O. Box on January 9, 2018.
- Mr. Cardinale's had his mail forwarded from 2194 Briarcliff Road NE Apt. 9, Atlanta, GA 30329 to P.O. Box 94973, Atlanta, GA 30377 on January 15, 2018.
- Mr. Cardinale booked and paid for his stay at 217 16th Street Northwest 2, Atlanta, GA 30363 for 31 days on January 7, 2018.

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- Mr. Cardinale received access to the residence at 1326 Bernard St., NW, Atlanta, GA, which he acquired through the Divvy Homes lease-to-own program, on February 12, 2018.
- Mr. Cardinale started electric service in his name through Georgia Power on February 12, 2018.
- Mr. Cardinale moved into the residence at 1326 Bernard Street on February 14, 2018.
- 1326 Bernard St., NW, Atlanta, GA is within Atlanta City Council District 3.

When Mr. Cardinale attempted to qualify for the 2019 special election on January 23rd, 2019, the relevant date for the purpose of establishing residency, in accordance with Atlanta City Charter, Section 2-102(2), is January 23, 2018.

It is clear to me that Mr. Cardinale did establish residency within Atlanta City Council District 3 on February 14, 2018, when he moved to the residence at 1326 Bernard Street. That residency is supported by his execution of a residential lease agreement, establishment of electric service in his name at that residence, and remittance of a down payment for that property.

The only pertinent question, for the purposes of this analysis, is whether or not you had established residency within Atlanta City Council District 3 as of January 23, 2018. For this purpose, I find that you did, in fact, did occupy the premises of 217 16th Street Northwest 2, Atlanta, GA 30363 between the dates of January 23, 2018 and February 14, 2018. I also find that 217 16th Street Northwest 2, Atlanta, GA 30363 is within Atlanta City Council District 3.

The question of whether you established residency as of January 23, 2018 in District 3 is governed by O.C.G.A. § 21-2-217. The relevant portions of that code section are as follows:

- (a) In determining the residence of a person desiring to register to vote or to qualify to run for elective office, the following rules shall be followed so far as they are applicable:
 - (1) The residence of any person shall be held to be in that place in which such person's habitation is fixed, without any present intention of removing therefrom;
 - (3) A person shall not be considered to have gained a residence in any county or municipality of this state into which such person has come for temporary purposes only without the intention of making such county or municipality such person's permanent place of abode;
 - (9) The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention;
 - (15) For voter registration purposes, the board of registrars and, for candidacy residency purposes, the Secretary of State, election superintendent, or hearing officer may consider evidence of where the person receives significant mail such as personal bills and any other evidence that indicates where the person resides.

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At the outset, I noted that as the challenged candidate, you had the affirmative obligation to establish your qualifications for office. Haynes v. Wells, 273 Ga. 106, 108-109 (2000). It is your entire burden to show that you are eligible to run for Atlanta City Council District 3.

You testified that on January 14, 2018, that you had moved from your apartment on Briarcliff Road into the Airbnb rental on 16th Street due to unaddressed heating issues. You did not present testimonial or documentary evidence that you took steps to terminate your lease at the Briarcliff address early as required by the “Early Termination” clause in your lease. Also, you did not present testimonial or documentary evidence that you took steps to not renew that lease, which required a 60 day notice (*see* the “Renewal Term” clause of said lease).

Prior to moving into the Airbnb, you initiated the process of buying a home through the Divvy Homes lease-to-own program, as evidenced by your application, pre-approval, and execution of an agreement with Divvy Homes. Through your own testimony, you did not know where that home would eventually be located prior to making your reservation at the Airbnb.

It is my decision that, in accordance with O.C.G.A. § 21-2-217(a)(3), you did not gain residence in Atlanta City Council District 3 on or prior to January 23, 2018, as you occupied the 16th Street residence for temporary lodging purposes only without the intention of making that residence, or City Council District 3, his permanent place of abode. This decision is based on a number of factors, including your existing lease at the Briarcliff location in Dekalb County that was not terminated, and your active agreement with Divvy Homes to obtain permanent housing elsewhere. My decision is also based on (what I consider) the inherently temporary nature of obtaining housing through a service such as Airbnb. Unlike hotels, Airbnb bookings are not generally considered to be of a continuous nature based on the guests desire to remain and ability to pay. It is my opinion that a rental through Airbnb is short-term and not indefinite or continuous.

Further, I find that you did not reside at the 16th Street address “without any present intention of removing therefrom” as required by O.C.G.A. § 21-2-217(a)(1). It is evident from the testimony and documentary evidence that you, even prior to being a guest at the 16th Street residence, had the intention of removing himself to another residence through the Divvy Homes lease-to-own program. While the timing of that removal was uncertain, it is evidence that you removed yourself from the Briarcliff Road address to the 16th Street address without the intention of making that your residence, as contemplated in O.C.G.A. § 21-2-217(a)(9) (removal without intention shall avail nothing).

It is my decision as the Election Superintendent that you established residency in City Council District 3 on February 14, 2018 when you moved into the Bernard Street address. At that point, you promptly changed your voter registration from Dekalb County to Fulton County on February 23, 2018, evidencing the permanency of your residency at that address.

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Therefore, after a thorough review, it is my decision as Election Superintendent that you, Mr. Matthew Charles Cardinale, are not qualified as a candidate to run for election to the office of City Council District 3 Member.

Please be advised that if you disagree with this decision, you have the right to file an appeal of my decision to the Fulton County Superior Court. Please note that the appeal must be filed within ten (10) days of the date of this decision.

A court reporter was present at the challenge hearing and as stated at the time of your hearing, official transcripts are available to you from Elizabeth Gallo Court Reporting, LLC .

Sincerely,

Foris Webb III
Municipal Clerk/Election Superintendent
City of Atlanta

FW/pcm

Cc: Nina Hickson, City Attorney
Reginald McClendon, Assistant City Attorney