NOT FINAL UNTIL DISPOSITON
OF TIMELY-FILED MOTION FOR
REHEARING OR CLARIFICATION

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

MIAMI-DADE COUNTY,
Petitioner,

APPELLATE DIVISION
CASE NO. 2019-167-AP-01

v.

CITY OF MIAMI,
Respondent.
_____/

On Petition for Writ of Certiorari from City of Miami mayoral veto of City Commission Resolution R-19-0169

Abigail Price-Williams, Miami-Dade County Attorney and James Edwin Kirtley, Jr., Assistant County Attorney, for Petitioner

Victoria Méndez, City Attorney, John A. Greco, Deputy City Attorney, and Kerri L. McNulty, Senior Appellate Counsel, for Respondent

Before: TRAWICK, WALSH and ZAYAS, JJ.

ORDER ON REHEARING

PER CURIAM.

The City of Miami has filed a motion for rehearing. For the following reasons, we deny rehearing. Exercising our inherent authority, however, we correct the relief granted by writ of certiorari.

Rule 9.330, Florida Rules of Appellate Procedure sets forth the parameters for a motion for rehearing:

> **(2) Contents**
> **(A) Motion for Rehearing**. A Motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its order or decision. The motion shall not present issues not previously raised in the proceeding.

A motion for rehearing should not be used to reargue the merits of the case. *Boardwalk at Daytona Dev., LLC v. Paspalakis*, 212 So. 3d 1063 (Fla. 5th DCA 2017), *citing Lawyers Title Ins. Corp. v. Reitzes*, 631 So.2d 1100, 1100 (Fla. 4th DCA 1993). Nor should such a motion be used to raise new or different grounds than those stated in the appeal. *See Gonzalez v. State*, 208 So. 3d 143 (Fla. 3d DCA 2016); *Cleveland v. State*, 887 So. 2d 362, 364 (Fla. 5th DCA 2004) ("No new ground or position may be assumed in a petition for rehearing.... This court need not entertain new argument or consider additional authority cited in support thereof.").

The City of Miami's motion for rehearing both reargues its position and makes new arguments. In addressing a violation of *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3d DCA 1991), in its original response to the petition for certiorari, the City argued that this Court lacked jurisdiction to review a mayoral veto[1] and that the

1 We originally agreed with this argument, but our opinion dismissing the petition was quashed by the Third District in *Miami-Dade County v. City of Miami*, 3D20-1195, 2020 WL 7636006 (Fla. 3d DCA Dec. 23, 2020)

remedy under *Jennings* would require the filing of an original action to address the prejudicial effect of the alleged violation. In its motion for rehearing, the City once again argues that the remedy under *Jennings* would require the filing of an original action to address the prejudicial effect of the alleged violation. This is improper. *See Paspalakis*, 212 So. 3d at 1063. Next, the City argues that instead of quashing the veto, this Court should have remanded with directions for the *Commission* to conduct a "new and complete hearing" on the *ex parte* violation. This ground impermissibly presents a new argument on rehearing never before argued in the briefs, which is also improper *Id.* Accordingly, the City's motion for rehearing is denied.

The County filed a response opposing the City's motion for rehearing without asking for affirmative relief. Instead, the County offers suggested corrections to the opinion only if the City's request for rehearing were to be granted. To the extent that the County's response is intended to be a motion for rehearing, this motion is DENIED as well. The City's Motion to Strike the County's Response is likewise DENIED.

Finally, in this Court's opinion on mandate from the Third District Court of Appeal, we concluded, "Accordingly, because we find that the County's due process rights were infringed, we quash the Mayor's veto and reinstate City Commission resolution R-19-169 -Coconut Playhouse Appeal." It appears that in ordering the

ordinance reinstated, we have exceeded our authority. Exercising our inherent authority, we correct the relief granted. We grant the writ and quash the Mayor's veto. *See Clay County v. Kendale Land Dev., Inc.,* 969 So. 2d 1177 (Fla. 1st DCA 2007) ("We have also noted that another "clearly established principle of law" is that, when considering a petition for writ of certiorari, a court has only two options—it may either deny the petition or grant it, and quash the order at which the petition is directed."); *Miami-Dade County v. Snapp Industries, Inc.*, 3D21-308, 2021 WL 1773502 (Fla. 3d DCA May 5, 2021).

In all other respects, rehearing is DENIED.

Done this 3rd day of June 2021.

TRAWICK, WALSH, and ZAYAS, JJ., concur.

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