

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CALLING FOR A SPECIAL ELECTION ON NOVEMBER 5, 2019, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORATE OF THE CITY OF MIAMI BEACH, FLORIDA, A BALLOT QUESTION ASKING WHETHER CITY CODE SECTION 2-459 SHOULD BE AMENDED TO ALLOW HISTORIC PRESERVATION AND DESIGN REVIEW BOARD MEMBERS WHO ARE ARCHITECTS OR LANDSCAPE ARCHITECTS TO LOBBY CITY PERSONNEL AND AGENCIES, EXCEPT THE BOARD ON WHICH THEY SERVE AND RELATED CITY STAFF, REGARDING LAND DEVELOPMENT APPLICATIONS.

BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, AS FOLLOWS:

SECTION 1.

In accordance with provisions of the Charter of the City of Miami Beach, Florida, and the general laws of the State of Florida, a Special Election is hereby called and directed to be held in the City of Miami Beach, Florida, from 7:00 a.m. to 7:00 p.m. on Tuesday, November 5, 2019, for the purpose of submitting to the electorate the question as set forth hereinafter.

SECTION 2.

That the appropriate and proper Miami-Dade County election officials shall conduct the Special Election hereby called, with acceptance of the certification of the results of the Special Election to be performed by the City Commission. The official returns for each precinct shall be furnished to the City Clerk of the City of Miami Beach as soon as the ballots from all precincts have been tabulated.

SECTION 3.

That the voting precincts in the City of this Special Election shall be as established by the proper and appropriate Miami-Dade County election officials. All electors shall vote at the polling places and the voting precincts as determined by the Miami-Dade County election officials.¹

¹ Pursuant to City Code Section 38-3(b), "[t]he City Clerk shall further publish, in a newspaper meeting the requirements set forth in Florida Statutes § 50.031 and on the City's website, the polling places for the election twice, once in the third week and once in the first week prior to the week in which the election is to be held."

SECTION 4.

Not fewer than thirty days' notice of the adoption of this Resolution and of its provisions calling this Special Election shall be given by publication in the Miami Herald, a newspaper of general circulation in Miami Beach, Miami-Dade County, Florida. Such publication shall be made in accordance with the provisions of Section 100.342, Florida Statutes, and Section 38-3 of the Code of the City of Miami Beach.

SECTION 5.

The Notice of Election shall be substantially in the following form:

THE CITY OF MIAMI BEACH, FLORIDA NOTICE OF SPECIAL ELECTION

NOTICE IS HEREBY GIVEN THAT A SPECIAL ELECTION HAS BEEN CALLED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AND WILL BE HELD IN SAID CITY FROM 7:00 A.M. UNTIL 7:00 P.M. ON NOVEMBER 5, 2019, AT WHICH TIME THERE SHALL BE SUBMITTED TO THE DULY REGISTERED AND QUALIFIED VOTERS OF THE CITY OF MIAMI BEACH THE FOLLOWING QUESTION:

Amending City Code Section 2-459: Exception to Prohibition on Lobbying By City Board Members

City Code Section 2-459, which prohibits City board members and their associates from lobbying City personnel and agencies, contains an exception allowing lobbying for non-profit entities. Should this Section be amended to include an additional exception allowing Historic Preservation and Design Review Board members who are architects or landscape architects to lobby City personnel and agencies, except the board on which they serve and related City staff, regarding land development applications?

_____ YES

_____ NO

The Notice shall further set forth pertinent information regarding eligibility of electors to participate in this Election.

SECTION 6.

That the official ballot to be used in the Special Election to be held on November 5, 2019, hereby called, shall be in substantially the following form, to wit:

OFFICIAL BALLOT

Amending City Code Section 2-459:

Exception to Prohibition on Lobbying By City Board Members

City Code Section 2-459, which prohibits City board members and their associates from lobbying City personnel and agencies, contains an exception allowing lobbying for non-profit entities. Should this Section be amended to include an additional exception allowing Historic Preservation and Design Review Board members who are architects or landscape architects to lobby City personnel and agencies, except the board on which they serve and related City staff, regarding land development applications?

_____ YES

_____ NO

SECTION 7.

The form of the ballots to be used in this Special Election and their preparation shall be in compliance with all statutory requirements relating to the use of mechanical or other approved voting machines or devices.

SECTION 8.

Registration of persons desiring to vote in the Special Election shall be in accordance with the general law of the State of Florida governing voter registration. Qualified persons may obtain registration forms to vote at the Office of the City Clerk, City Hall, 1700 Convention Center Drive, First Floor, Miami Beach, Florida 33139, during normal business hours, and at such other voter registration centers and during such times as may be provided by the Supervisor of Elections of Miami-Dade County. The Miami-Dade County Supervisor of Elections will register voters for this Special Election until 5:00 p.m. on October 7, 2019. All persons eligible to vote in this Special Election must be registered before the time and date set forth herein or have registered previously, as provided by law. Each person desiring to become a registered voter shall be responsible for properly filling out the registration form and returning it to the Miami-Dade County Elections Department. All questions concerning voter registration should be directed to the Miami-Dade

County Elections Department, 2700 NW 87 Avenue, Miami, Florida 33172; Telephone: (305) 499-VOTE (8683).

SECTION 9.

That voters participating via a Vote-by-Mail ballot in this Special Election shall be entitled to cast their ballots in accordance with the provisions of the Laws of the State of Florida with respect to such voting.

SECTION 10.

That the City of Miami Beach shall pay all expenses for conducting this Special Election and will pay to Miami-Dade County or directly to all persons or firms, upon receipt of invoice or statement approved by the Supervisor of Elections of Miami-Dade County, Florida.

SECTION 11.

If any section, sentence, clause or phrase of this Resolution or of the ballot measure set forth above in this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, then the holding shall in no way affect the validity of the remaining portions of this Resolution or the ballot measure set forth herein.

SECTION 12.

This Resolution shall be effective immediately upon its passage.

PASSED and **ADOPTED** this _____ day of _____, 2019.

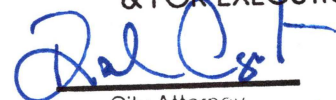
ATTEST:

Dan Gelber
Mayor

Rafael E. Granado
City Clerk

(Sponsored by Commissioner Joy Malakoff)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

7/8/19

Date
NK

**CITY CODE SECTION 2-459:
BALLOT QUESTION AND PROPOSED AMENDED CITY CODE TEXT
NOVEMBER 5, 2019 SPECIAL ELECTION**

I. BALLOT QUESTION:

**Amending City Code Section 2-459:
Exception to Prohibition on Lobbying By City Board Members**

City Code Section 2-459, which prohibits City board members and their associates from lobbying City personnel and agencies, contains an exception allowing lobbying for non-profit entities. Should this Section be amended to include an additional exception allowing Historic Preservation and Design Review Board members who are architects or landscape architects to lobby City personnel and agencies, except the board on which they serve and related City staff, regarding land development applications?

_____ **YES**

_____ **NO**

II. PROPOSED AMENDED CITY CODE TEXT

City of Miami Beach Code Section 2-459. "Certain appearances prohibited".

(a) No member of a city board, agency or committee or a member of any board, agency or committee created hereafter which is designated as a board, agency or committee subject to the purview of this section shall:

(1) Either directly or through an associate, appear, represent or act on behalf of a third person before the city commission or any city agency with respect to any agency action sought by the third person.

(2) Either directly or through an associate be engaged as a lobbyist for and on behalf of a third person with respect to any official action by any public officer sought by such third person.

(b) Definitions. As used in this section, the following definitions shall apply:

Agency means any board, commission, committee or authority of the city, whether advisory, ad hoc or standing in nature.

Associate means any person or entity engaged in or carrying on a business enterprise with a city agency member as a partner, joint venturer, or co-corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange or co-owner of property. Associate shall further include a

business affiliation with a city agency member where an "employee" or "of counsel" relationship exists.

Lobbyist means all persons, firms, or corporations employed or retained, whether paid or not, by a principal who seeks to encourage the passage, defeat, or modification(s) of any of the following: (1) ordinance, resolution, action or decision of any commissioner; (2) any action, decision, or recommendation of any city board or committee; or (3) any action, decision or recommendation of the city manager, deputy city manager, assistant city managers, all department heads, all division heads, city attorney, chief deputy city attorney, deputy city attorneys, and/or all assistant city attorneys (except when such personnel are acting in connection with administrative hearings) during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the city commission or a city agency. "Lobbyist," as defined above, specifically includes the principal, as described above, as well as any agent, attorney, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, attorney, officer or employee.

(1) For purposes of this section, and with limited applicability to those agencies that are not standing in nature, "lobbyist" shall exclude any person who only appears as a representative of a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union) without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.

(2) For purposes of this section, and with limited applicability to those agencies that are standing in nature:

a. Lobbying by a board, agency or committee member shall be permitted when such person is affiliated with a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union) in a capacity other than as a managerial employee and appears as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.

b. Lobbying by the associate of a board, agency or committee member shall be permitted:

(i) When a board, agency or committee member is affiliated with a not for profit corporation or entity in a capacity other than as a managerial employee, and the subject associate is appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance,

whether direct, indirect or contingent, to express support of or opposition to any item.

(ii) When a board, agency or committee member is a managerial employee of a not for profit corporation or entity, and the subject associate is appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item and is affiliated with said not for profit corporation or entity in a capacity other than as a managerial employee.

c. The term "managerial employee" shall mean any employee of a nonprofit corporation or entity who has supervision and operational responsibilities/control of all or some departments of said entity.

Public officer means any person elected or appointed to hold office in the city, as a member of an agency which shall include an advisory body.

(c) For purposes of this section, and with limited applicability to Historic Preservation Board and/or Design Review Board members who are architects or landscape architects, lobbying activities set forth in subsections (a)(1) and (2) above shall be permitted with regard to land development applications, insofar as said activities are restricted to City personnel and City agencies other than the agency (i.e. Historic Preservation Board or Design Review Board) on which the subject Board member serves, and related City personnel serving in their capacity as staff to such agency. This subsection shall not prohibit such architects or landscape architects serving on the Historic Preservation Board and/or Design Review Board from submitting plans to their board on behalf of a client so long as such member also makes known at meetings of their board his or her representation of the applicant, and disqualifies himself or herself from speaking or voting or otherwise participating on such application.