


MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

RAUL AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber
Members of the City Commission
Jimmy L. Morales, City Manager

FROM: Raul J. Aguila, City Attorney 

DATE: July 17, 2019

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CALLING FOR A NOVEMBER 5, 2019 CITY OF MIAMI BEACH SPECIAL ELECTION, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORATE OF THE CITY OF MIAMI BEACH A QUESTION ASKING WHETHER CITY CHARTER SECTION 2.07, WHICH ESTABLISHES PROCEDURES FOR THE FILLING OF VACANCIES IN THE CITY COMMISSION, SHOULD BE AMENDED TO CREATE SPECIFIC PROCEDURES FOR THE FILLING OF A VACANCY CAUSED BY THE RESIGNATION OF A CITY COMMISSION MEMBER, AND TO CLARIFY THAT IN CASE OF ANY VACANCY THE COMMISSION IS NOT REQUIRED TO APPOINT SOMEONE TO FILL THE VACANCY BUT INSTEAD MUST DECIDE WHETHER TO APPOINT OR SCHEDULE AN ELECTION, WITH ELECTION-RELATED PROVISIONS TO BE ESTABLISHED IN THE CITY RESOLUTION SCHEDULING SAID SPECIAL ELECTION.

Pursuant to the request of City Commissioner Micky Steinberg, the attached Resolution has been prepared calling for a City of Miami Beach Special Election to be held on November 5, 2019, for the purpose of submitting to the City's voters the following ballot question:

Shall City Charter Section 2.07, which establishes procedures for filling vacancies in the City Commission, be amended to create specific procedures for filling vacancies due to resignation of a Commission member, and to clarify that in case of any vacancy the Commission is not required to appoint someone to fill the vacancy but instead must decide whether to appoint or schedule an election, with election-related provisions established in the Resolution scheduling said election?

This Charter amendment is being proposed in order to address issues previously faced by the City in filling vacancies in the City Commission due to the resignation of a Commission member. Specifically, although Charter section 2.07 establishes a procedure for the filling of a vacancy (via Commission appointment within 30 days of the vacancy or, if the Commission chooses not to appoint, via electorate vote at a special election), a literal reading of Charter section 2.07 has provoked discussion regarding the City's ability to schedule such election at the same time as a

regularly-scheduled County or City election, **occurring prior to the actual vacancy**. Prior City Attorneys have opined that the Commission may schedule such special elections for placement on a regularly-scheduled City/County ballot (thus obviating the need to call a costlier stand-alone election). However, I recommend that this Charter section be amended in order to expressly provide as such.

Also, in order to clarify the Charter's provisions governing the filling of any vacancy on the Commission, the proposed amendment further makes clear that the Commission is not required to appoint someone to fill the vacancy but instead must decide whether to appoint or schedule an election to fill the vacancy. As a proponent of clear Charter language, Commissioner Micky Steinberg is sponsoring this agenda item with the recommendation that the subject Charter amendment be presented to the voters on the November 5, 2019 City ballot.

The proposed amended Charter section 2.07, and its amendments, are thus summarized as follows:

- The basic structure for filling vacancies on the City Commission is not changed. The City Commission retains the option of either filling the vacancy by appointment or, if no appointment is made, scheduling a special election in order to allow the voters to elect a candidate to fill the vacancy.
- The process for filling of a vacancy on the Commission **due to reasons other than resignation** (such as removal from office or death or serious illness) is not changed. Upon the vacancy occurring, the City Commission retains the power to appoint a person to fill the vacancy within 30 days, or to call an election for that purpose within 90 days thereafter.
- The primary change to Charter section 2.07 is the addition of a distinct process for filling a vacancy on the Commission **specifically caused by a Commission member's resignation from office**. Although this proposed process empowers the Commission with the same ability to appoint or call an election as presently provided in the Charter, **the timing of when these powers commence will change from the date the vacancy actually occurs, to the date the subject resignation is filed with the City Clerk.**¹ By establishing this earlier threshold date, the City Commission will be able to evaluate, in advance of the actual vacancy, its decision of whether to appoint someone to fill the vacancy or schedule a special election, with the benefit of being able to assess upcoming City or County ballots for possible placement thereon of the qualified candidates seeking election to the vacant Commission seat.² In this regard, if the Commission opts not to

¹ The submittal date of resignations filed pursuant to Section 99.012, Florida Statutes ("Resign to Run" law), is dependent upon the particular qualifying period for the corresponding elected office sought.

² For this reason, and in order to ensure uniformity concerning the effect of a resignation, the

appoint, the proposed Charter language will authorize the Commission to schedule a special election to be held within 120 days from the last day the City Commission could have appointed, yet if a City or County election is scheduled to be held anytime during the intervening period from the resignation's filing date up to and including the resignation's effective date, the City Commission may schedule the required special election at time of such City or County-wide election. Finally, provisions governing the induction of such persons appointed or elected to fill a vacancy, are also specified in order to implement the subject changes.

The above proposed amendments to Charter section 2.07 were considered by the Neighborhood/Community Affairs Committee at its May 20, 2019 meeting, resulting in its approval of the subject changes.

Finally, it should be noted that today is the last regularly-scheduled meeting of the City Commission at which a Resolution may be adopted placing a ballot question on the City's November 5, 2019 ballot.³

proposed amendment specifies that resignations are irrevocable upon the filing with the City Clerk.

³ Note: Should the City Commission wish, after today's meeting, to place a ballot measure on the November 5, 2019 ballot, such action could be taken no later than September 6, 2019 at a Special Commission meeting (such deadline established by County Charter and County Elections Department).