

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov
Rafael A. Paz, City Attorney

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber
Members of the City Commission
Alina T. Hudak, City Manager

FROM: Rafael A. Paz, Acting City Attorney
Rafael E. Granado, City Clerk

DATE: July 8, 2022

SUBJECT: Discussion of Vacancy on City Commission



With the recent passing of Commissioner Mark Samuelian on June 22, 2022, the City mourns the loss of a friend, colleague, and dedicated public servant. Despite these difficult circumstances, the City Commission must now initiate the process to fill the vacancy that has been created in the office of City Commissioner, Group II, the term of which expires in November 2025.

As detailed below, the City Commission is required, under the City Charter, to fill the vacancy created by the passing of Commissioner Samuelian, by appointing a successor or calling an election. The filling of a vacancy on the City Commission is one of the most important fundamental duties that the City Charter entrusts to the City Commission, to serve the public's interest in continuity with respect to the important policy-making, legislative and oversight functions of the City Commission.

Indeed, when it comes to the filling of a vacancy due to illness or death, the City has been very fortunate that it has not had to make any such decisions in nearly forty-eight (48) years, when then-Mayor Chuck Hall died in office in 1974 and was succeeded by Harold Rosen, who thereafter remained an active part of Miami Beach history for decades.

Accordingly, this memorandum addresses the statutory and City Charter requirements regarding the vacancy, as well as information recently received from the Miami-Dade County Elections Department with respect to the City Commission's option to fill the vacancy via a Special Election.

In addition, a chart outlining the timeline and relevant dates for filling the vacancy by either an appointment or an election is included on page 5 of this Commission Memorandum, for ease of reference.

Section 2.07(a) of the City Charter, relating to filling a vacancy by reasons other than resignation, provides as follows:

The City Commission shall, within 30 days after the vacancy occurs, decide whether to fill said vacancy by City election or by Commission appointment. Should the Commission choose to appoint, said action shall be taken by vote of the majority of the remaining members of the City Commission within 30 days after the expiration of the above subject initial 30-day period, with the appointee serving the remainder of the unexpired term until the next succeeding General City Election and with any further remainder of said unexpired term to be filled by a Commission member elected at said General Election. If the members of the City Commission shall choose instead to fill such vacancy by election, then a Special Election shall be called to be held within 90 days after the expiration of the subject 30-day period to elect a Commission member to fill such vacancy for the remainder of the unexpired term.

I. City Commission Decision to Fill Vacancy by Appointment or Election.

As set forth above, the first step in the process is for the City Commission to decide whether to fill the vacancy by appointment or by calling an election, a determination which must be made within the 30-day period immediately following the vacancy, during the period from **June 23, 2022 until July 22, 2022**.

In view of the 30-day time period, the Mayor has placed this item on the July 8, 2022 City Commission agenda for initial discussion, as doing so would allow for a full discussion and ability to timely adopt associated legislation at the City Commission's regular meeting on July 20, 2022.

II. Filling the Vacancy by Appointment.

1. Timing. If the City Commission chooses to appoint, the City Charter provides that the appointment "shall be taken by vote of the majority of the remaining members of the City Commission within 30 days after the expiration of the above subject initial 30-day period." City Charter Section 2.07(a) (emphasis supplied). Accordingly, if the City Commission decides to appoint, the vote on the appointee must occur within the 30-day period **from July 23, 2022 to August 21, 2022**.

In view of the August recess, if the City Commission decides at the July 20, 2022 City Commission Meeting to fill the vacancy by appointment, the City Commission should consider convening a Special Meeting during the week of July 25, 2022, to consider qualified candidates and vote on a final appointment.

2. Term of Appointment. If the City Commission appoints, the appointment would be effective immediately upon the appointee being sworn in and taking the oath of

office. However, under the City Charter, the individual appointed to the Group II seat would only serve until the City's next General Election, which will be held on **November 7, 2023**. The remaining 2 years of the Group II term would be served by the candidate elected at the November 7, 2023 election, through November 2025 (i.e. through the expiration of the Group II term of office).

3. Process for Evaluating Candidates for Appointment. The City Charter provides the City Commission with complete discretion to determine what process, if any, it will use to consider individuals interested in an appointment to the Group II seat. By way of example, in December 2018, following Commissioner Rosen Gonzalez's resignation to run for Congress before the expiration of her first term as City Commissioner, the City Commission chose to fill the vacancy by appointment. The procedures the City Commission utilized for submission of applications, as well as for nominating individuals, is outlined in the attached January 23, 2019 Commission Memorandum.

If the City Commission desires to consider filling the current Group II vacancy by appointment, the City Clerk and City Attorney would need direction as to the process the City Commission would like to use for the evaluation of qualified candidates.

III. Filling the Vacancy by Election.

1. Timing / Date of Election. If, by July 22, 2022 (the expiration of the initial 30-day period following the creation of the vacancy), the City Commission chooses instead to call an Election, as discussed more fully below, the Election would need to occur on **November 8, 2022**, concurrent with the scheduled County-wide election, in accordance with State law. If a Runoff Election is necessary, the County Elections Department has advised that the Runoff Election would take place on **December 6, 2022**.

2. Term of Appointment. If the City Commission chooses to fill the vacancy by Election, the successful candidate would serve the full remaining 3 years of the Group II term of office, expiring November 2025.¹

3. Availability of County Elections Department. Although City Charter Section 2.07(a) provides for an election to fill a vacancy on the City Commission to be held within 90 days of the expiration of the initial 30-day period following the vacancy (requiring in this instance that the Election be held by October 20, 2022), the County Elections Department has informed the City Clerk that due to the unavailability of voting machines for a separate stand-alone election to take place by October 20, 2022, the County is only

¹ The term limits of the City Charter would not preclude any otherwise term-limited former City Commissioner from serving to fill the vacancy for a period of approximately 14 months (less than 50% of the 4-year term of office). However, the same does not hold true if there is an Election. If the City Commission calls an Election to fill the remaining 3-year term, the term limits of the City Charter would bar any former Commissioner who is otherwise term-limited from qualifying for the race, as any term of service in excess of 50% of a subject term would count toward the lifetime term limits in the City Charter.

able to accommodate an Election, if it is held concurrent with the November 8, 2022 General Election.

In circumstances such as the foregoing, where voting machines are unavailable for a municipal election within the timeframes specified by a municipal charter, Florida law expressly provides the City Commission with the ability to adopt an ordinance, to change the date of the election to coincide with a scheduled statewide or county election. See Fla. Stat. §101.75(3) (“Notwithstanding any provision of local law or municipal charter, the governing body of a municipality may, by ordinance, move the date of any municipal election to a date concurrent with any statewide or countywide election”).

4. Procedure to Specify November 8, 2022 as Date of Election to Fill Vacancy. Should the City Commission decide, at the July 20th City Commission Meeting, to call an Election to fill the vacancy, I will prepare an Ordinance for the City Commission’s consideration on first reading on July 20, 2022, to move the date of the Election to fill the vacancy to November 8, 2022, concurrent with the Countywide election, in accordance with State law.

A Special Commission Meeting would need to be convened during the week of July 25, 2022 to hold the second reading of the Ordinance calling the Election for November 8, 2022, if the City Commission decides to fill the vacancy by Election.

The City Commission would need to adopt the Ordinance and call the Election prior to Friday, July 29, 2022, which is the County Elections Department’s deadline for submission of all Elections-related matters to the County.

5. No Early Voting for Runoff Election. In addition to waiting four weeks for any Runoff Election (which, if necessary, would be held on December 6, 2022), the County Elections Department has advised that it will be unable to provide Early Voting for any Runoff Election.

6. Cost of Election. The Office of the City Clerk has received the attached cost estimates from the Miami-Dade County Elections Department to hold an election to fill the vacancy as part of the November 8, 2022 General Election, and Runoff Election, if necessary.

As the City expects that in the ordinary course it will have referendum questions for placement on the November 8, 2022 ballot, the filling of the vacancy by Election will involve an additional cost of approximately \$25,000, plus \$18,810 for additional advertisements.

However, the filling of the vacancy by Election would require the City to cover the estimated \$195,175 in additional costs for any Runoff Election, plus approximately \$15,000 for legally required advertisements, for a total of approximately \$210,175.

IV. Summary of Timeline and Relevant Dates.

The following table summarizes the next steps, including deadlines, for the City Commission to fill the vacancy as required by the City Charter:

Commission decision to fill vacancy by either appointment or election	June 23, 2022 to July 22, 2022
If Commission chooses to appoint, vote on appointment must be made:	July 23, 2022 to August 21, 2022 Ideally, Special Commission Meeting would be scheduled during week of July 25, 2022, prior to August recess
If Commission chooses to appoint to fill the vacancy, the appointee would serve until:	November 7, 2023 Election
If Commission appoints, Election for remaining final 2 years of Group II term of office would be held:	November 7, 2023, with successful candidate to serve remainder of term, until November 2025
If Commission decides to fill vacancy by Election:	First reading of Ordinance specifying November 8, 2022 Election date: July 20, 2022 Second reading of Ordinance specifying November 8, 2022 Election date: Week of July 25, 2022 prior to August recess
If Commission fills vacancy by Election, in accordance with State Law, Election would be held:	November 8, 2022
If necessary, a Runoff Election would be held:	December 6, 2022

If you have any questions, please do not hesitate to contact either the City Attorney or City Clerk directly.

RAP/ag

Attachments:

Commission Memorandum dated January 23, 2019
Miami-Dade County Elections Department, Election Cost Estimates

New Business and Commission Requests - R9 B

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Rafael E. Granado, City Clerk
DATE: January 23, 2019

SUBJECT: FILLING OF THE VACANCY IN CITY COMMISSION SEAT GROUP IV.

ANALYSIS

The City of Miami Beach is seeking to fill a vacancy in the City Commission seat for Group IV, following the resignation of Commissioner Kristen Rosen Gonzalez, which resignation was effective January 3, 2019.

At the December 12, 2018 City Commission meeting, the City Commission directed the City Clerk to issue a Notice of City Commission Vacancy to provide an opportunity for all interested individuals to submit an application for consideration.

Pursuant to City Charter Section 2.07, "[a]ny vacancy occurring in the City Commission shall be filled by the vote of the majority of the remaining members of said City Commission with the appointee serving the remainder of the unexpired term until the next succeeding general City election"

In accordance with City Charter Section 6.03, each applicant shall be a "qualified elector of the City residing within the City at least one year prior qualifying" In this case, each applicant must have resided within the City for at least one year prior to the date of application.

The individual appointed to the City Commission seat for Group IV will serve for the remainder of the unexpired term, which will end in November 2019.

As approved by the City Commission on January 16, 2019, the procedure that will be followed during the January 23, 2019 Commission meeting, which starts at 5:00 p.m., in order to fill the vacancy in City Commission Group IV are:

- The Mayor will convene the meeting. At the commencement of the meeting, and prior to the Presentations and Awards, the Mayor and each Commissioner may nominate up to three (3) applicants on a written form provided by the City Clerk. Nominations shall be based on the applications submitted for the Group IV seat.
- The written form from the Mayor and Commissioners will be submitted to the City Clerk, who shall publicly announce the names of each of the applicants nominated by the Mayor and each Commissioner.
- Following the Presentations and Awards portion of the City Commission Meeting, each nominated applicant will be given an opportunity to give up to a two-minute presentation before the City Commission.
- The Mayor and Commissioners will deliberate.
- The Mayor and each Commissioner will select their top applicant on a written form provided by the City Clerk.
- The written form from the Mayor and Commissioners will be submitted to the City Clerk, who shall publicly announce the name of the applicant selected by the Mayor and each Commissioner.
- Voting will continue until an applicant receives at least four (4) votes.
- If an applicant is appointed, the swearing-in will occur immediately.

Attached are the applications received as of Thursday, January 18, 2019, at 10:00 a.m.

Legislative Tracking

Office of the City Clerk/Office of the City Attorney

ESTIMATE

City of Miami Beach - Piggyback Election - November 8, 2022

Rafael E. Granado, City Clerk
City of Miami Beach
1700 Convention Center Dr., #200
Miami Beach, FL 33139

Estimate N°: MB-PB-11082022
Estimate Date: June 24, 2022

Registered Voters:	50,321	Early Voting Days:
Precincts:	29	Early Voting Sites:
Polling Places:	24	
Permanent Absentee Ballots:	14,935	

Personnel	\$	-
<i>Salaries & Fringe Benefits, Overtime, Poll Workers</i>		
Polling Places		-
<i>Security, Polling Place Rentals</i>		
Supplies and Services		-
<i>Election Supplies, Communication Charges, Absentee Ballots Set Up</i>		
Trucks and Vehicles		-
<i>Truck Rentals, GSA Vehicles</i>		
Printing and Advertising		21,638.03
<i>Absentee, Early Voting & Precinct Ballots, Temporary Polling Place Change Notices, Newspaper Ads</i>		
Postage		-
<i>Absentee Ballots Sent and Business Reply, Temporary Polling Place Change Notices, Letters</i>		
Ballot Creation		820.00
<i>In-House & Outside Contractual Services, Translations - Based on one question</i>		
Administrative Overhead		2,245.80
<i>Indirect Costs, Logic & Accuracy, Post-Election Audits</i>		
*TOTAL	\$	<u>24,703.83</u>

* Please note these costs are estimates and are subject to change. This estimate does include the cost of ballot printing; however, if your question(s)/race(s) creates an additional ballot page, the cost will be adjusted accordingly.

For more information, you may contact:

Raimundo Delgado
Manager, Budget and Finance
Miami-Dade Elections Department
2700 NW 87 Avenue
Miami, Florida 33172

Office: 305-499-8424 E-mail: raimundo.delgado@miamidade.gov

ESTIMATE

City of Miami Beach Run Off Election Dec. 6, 2022 - 0 EV Days, 0 EV Sites

Rafael E. Granado, City Clerk
City of Miami Beach
1700 Convention Center Dr., #200
Miami Beach, FL 33139

Estimate N°: MB-RO-12062022
Estimate Date: June 24, 2022

Registered Voters:	50,321	Early Voting Days:	0
Precincts:	29	Early Voting Sites:	0
Polling Places:	24		
Permanent Absentee Ballots:	14,935		

Personnel \$ 103,250.57
Salaries & Fringe Benefits, Overtime, Poll Workers

Polling Places 10,050.00
Security, Polling Place Rentals

Supplies and Services 7,228.00
Election Supplies, Communication Charges, Vote by Mail Ballots Set Up

Trucks and Vehicles 22,310.00
Delivery/Pickup of Voting Equipment, ISD Fleet Vehicles Rental

Printing and Advertising 23,776.61
Vote by Mail, Early Voting & Precinct Ballots, Consumables, Temporary Polling Place Change Notices

Postage 10,157.19
Vote by Mail Sent and Business Reply, Temporary Polling Place Change Notices, Letters

Ballot Creation 660.00
In-House & Outside Contractual Services, Translations - Based on one question

Administrative Overhead 17,743.24
Indirect Costs, Logic & Accuracy, Post-Election Audits

*TOTAL \$ 195,175.60

* Please note these costs are estimates and are subject to change. This estimate does include the cost of ballot printing; however, if your question(s)/race(s) creates an additional ballot page, the cost will be adjusted accordingly.