


MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

LTC No. _ **240-2018**

LETTER TO COMMISSION

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Raul J. Aguila, City Attorney 

DATE: May 2, 2018

SUBJECT: Vacancy on City Commission--Resignation of City Commissioner Kristen Rosen Gonzalez.

On April 27, 2018, Miami Beach City Commissioner Kristen Rosen Gonzalez, whose term of office expires in November 2019, filed with the City Clerk her resignation from the City Commission, effective January 3, 2019. Commissioner Rosen Gonzalez's resignation was filed pursuant to dictates of the State's recently-amended Resign to Run law¹, which requires local elected officials seeking to qualify for federal office whose terms overlap to submit irrevocable resignations prior to qualifying for such federal office. Last spring, Commissioner Rosen Gonzalez announced her intention to run as a candidate for the Congressional seat representing Florida's 27th District², the term of which seat runs concurrently with her term as Miami Beach City Commissioner.³

This LTC has been prepared to explain the implications of Commissioner Rosen Gonzalez's resignation with regard to its creation of a vacancy on the City Commission, and to assess the related process for filling said vacancy in accordance with City Charter Section 2.07.

I. Resign to Run Law.

The Resign-to-Run law, as amended, prohibits an elected or appointed state or local officer (such as a City Commissioner) from qualifying to run for another state, district, county, municipal or (now) *federal*⁴ office if the terms or any part thereof overlap, unless the officer irrevocably resigns from the office that he or she currently holds, at least 10 days before the beginning of the qualifying period for the office sought. The resignation need not be effective until the earlier of the date the resigning officer would take office (if elected) or the date the resigning officer's successor is required to take office.

¹ Florida Statute Section 99.012.

² The Primary election for this Congressional seat is August 28, 2018 and the General election is November 6, 2018.

³ If elected, Commissioner Rosen Gonzalez would assume office on January 3, 2019.

⁴ See, Florida Statute Section 99.012(4), noting such particularities with regard to an incumbent's qualifying for federal office.

Any resignation of an elected officer results in the office held becoming “vacant” upon the effective date of the resignation.⁵ Accordingly, and consistent with the effective date specified in Commissioner Rosen Gonzalez’s resignation, City Commission Group 4 seat will become vacant on January 3, 2019, said vacancy to be filled in accordance with the City’s Charter.⁶

II. City Charter Section 2.07 “Vacancies in City Commission”.

Pursuant to the below Miami Beach City Charter Section 2.07, the City Commission must fill the vacancy by either appointment or election:

Any vacancy occurring in the City Commission shall be filled by the vote of the majority of the remaining members of said City Commission⁷ with the appointee serving the remainder of the unexpired term⁸ until the next succeeding general City election and with any further remainder of said unexpired term to be filled by a Commissioner elected at said general election; if the remaining members of the City Commission shall fail or refuse to fill such vacancy within 30 days after it occurs and if no general City election will be held within 90 days after the expiration of said 30 days, then a special election shall be called and held to elect a Commissioner to fill such vacancy for the remainder of the unexpired term.

Accordingly, if the Commission chooses to appoint an individual to fill the Group 4 vacancy, it must do so between January 3, 2019 and February 2, 2019, with the appointee serving the 10+/- month remainder of the Group 4 term⁹, expiring in November 2019.

If the Commission has not appointed by February 2, 2019, the Charter then requires the City Commission to schedule a special election to be held by May 3, 2019 (within 90 days from expiration of the subject February 2nd appointment deadline)¹⁰, for purposes of electing a

⁵ Florida Statute Section 99.012(3).

⁶ “...With regard to an elective charter county office or elective municipal office, the vacancy created by the officer’s resignation may be filled for that portion of the officer’s unexpired term in a manner provided by the respective charter. ...” *Id.* at (4)(g).

⁷ Per Charter Section 2.07, appointment shall be by the “remaining members” of City Commission, meaning that Commissioner Rosen Gonzalez may not participate or vote on the issue of appointment. See, City Code Section 2-458(a)(1).

⁸ “When a resignation is submitted [under Resign to Run law] which is effective at a future date, the unexpired term is the term of office remaining after the effective date of the resignation.” DE 90-11.

⁹ Note: Since the subject term remainder will be less than 50% of a Commissioner’s 4 year-term, the person filling the Group 4 vacancy will not have served a “term” for purposes of the City’s term limit. See, Charter Section 2.02: “...terms not including time served as a member of the City of Miami Beach Commission as a result of having filled a vacancy in the Commission pursuant to Section 2.07 of the City of Miami Beach Charter so long as such time served in filling a vacancy does not exceed 50 percent of that subject term. ...”

¹⁰ Although previous City Commissions have on occasion interpreted Charter Section 2.07 as permitting deviation from the above literal interpretation of Charter Section 2.07 (by scheduling earlier elections to fill Commission vacancies, occurring at the countywide election immediately following a resignation’s filing date), it is my recommendation that a strict construction of the Charter be adhered to with regard to the filling of vacancies.

candidate to fill the Group 4 seat for the subject term remainder. In this regard, it is worth noting that the County Elections Department has informed the City Clerk that (excluding advertising costs) the cost of a City stand-alone special election with early voting would be \$ 316,597.64 with an additional \$ 303,797.64 for a Run-off Election with early voting (if Run-Off is necessary).

III. Conclusion.

In light of the imminent vacancy on the City Commission due to Commissioner Rosen Gonzalez's resignation from her Group 4 Commission seat, the Commission is required to fill that vacancy by either appointment or, if no appointment, then by election. Should the Commission opt not to appoint, under Charter Section 2.07, the Commission must schedule a Special Election, to be held by May 3, 2019, for the purpose of filling the Group 4 seat for the remainder of that term.

RJA:JO/mmm

cc: City Manager Jimmy Morales
City Clerk Rafael Granado