

MIAMI BEACH

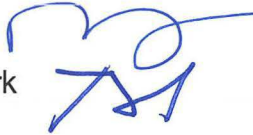
City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
www.miamibeachfl.gov

076-2022

LETTER TO COMMISSION

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

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



DATE: February 28, 2022

SUBJECT: Anticipated Vacancy on City Commission--City Commissioner David Richardson Running for State Representative, District 106 at time of November 8, 2022 General Election

On February 15, 2022, City Commissioner David Richardson announced that he intends to run in the 2022 General Election for the Florida House of Representatives, District 106. If elected to the Florida House of Representatives, Commissioner Richardson's term of office would commence on November 8, 2022 (the date of the General Election). See, Fla. Const. Art. III, sec. 15(d) (providing that Florida legislators assume office on the day they are elected in the general election). As Commissioner Richardson's term of office as Commissioner does not expire until November 2023, his anticipated candidacy will result in a vacancy on the City Commission.

This memorandum addresses the statutory and City Charter requirements regarding the anticipated vacancy, as well as information recently received from the Miami-Dade County Elections Department with respect to the City Commission's option of filling the anticipated vacancy via a special election.

I. Resign-to-Run Law: Commissioner Must Submit Timely Resignation.

Florida Statutes Section 99.012, the State's "Resign-to-Run" Law, prohibits an elected local officer from qualifying to run for another office if the terms of office or any part thereof overlap, unless the officer irrevocably resigns from the subject local office (e.g., City Commissioner) at least 10 days before the beginning of the qualifying period for the office sought (e.g., State Representative).

Both terms of office run concurrently: the term as State Representative would commence on November 8, 2022, one year before Commissioner Richardson's term as City Commissioner ends in November 2023. Therefore, under the Resign-to-Run Law, the Commissioner must submit his irrevocable letter of resignation no later than 10 days before the first day of qualifying for the office of State Representative. The first day of

qualifying for election to the Office of State Representative is June 13, 2022, commencing at noon. See, <https://dos.myflorida.com/elections/candidates-committees/qualifying/>

As such, for Commissioner Richardson to pursue the Florida House seat, under the Resign-to-Run Law, he must submit his letter of resignation to the City Clerk, with a copy to the Governor and Department of State, by June 3, 2022.

Under the Resign-to-Run Law, the irrevocable letter of resignation must be effective no later than the earlier of the date the Commissioner would take office (if elected), or the date Commissioner Richardson's successor (on the City Commission) is required to take office. Accordingly, the effective date of Commissioner Richardson's resignation could be no later than November 8, 2022, the date Commissioner Richardson would take office as State Representative (if elected).

Importantly, Commissioner Richardson's Group VI seat on the City Commission technically does not become "vacant" until the resignation's effective date. See Section 99.012(3), Fla. Stat. Moreover, until Commissioner Richardson submits his letter of resignation (which is due by June 3, 2022), he could change his mind and withdraw his candidacy for the State House seat at any time, and continue to serve as Commissioner for the remainder of his Commission term.

Under the City Charter, there is no action for the City Commission to take concerning any vacancy until a letter of resignation is submitted. However, pursuant to a Charter amendment approved by the City's voters in 2019, the City Commission may initiate steps to fill the vacancy before Commissioner Richardson leaves office. As explained more fully below, the procedure for filling vacancies on the Miami Beach City Commission begins on the day immediately following the submittal of the Commissioner's resignation letter.

II. City Charter Section 2.07: City Commission Fills Vacancy by Appointment or Election.

Section 2.07 of the City Charter, entitled "Vacancies in City Commission," was amended in 2019 to address and resolve numerous issues that for years had complicated the process for filling vacancies on the City Commission. The City Commission retains the power to either appoint an individual to fill the vacancy or call an election. However, as a result of the 2019 Charter Amendment, the Commission now has the option to schedule the election at the same time as a regularly-scheduled County/City election, saving the expense of conducting an otherwise stand-alone Special Election.

The 2019 Charter Amendment also expressly provided that the Commission's process for filling a vacancy commences as soon as the resignation is filed. The Commission is not required to wait until the vacancy occurs. Finally, for purposes of dispelling questions concerning the effective date of resignations filed under Florida Statute section 99.012, the revised Charter language established that the resignation's effective date is the date the person resigning would assume office if elected.

Charter section 2.07(b) thus now provides as follows:

Resignations from office shall be filed with the City Clerk and shall be irrevocable upon such filing, thus creating a vacancy in office. The Commission shall, within 30 days from submittal of a resignation to the City Clerk, decide whether to fill said vacancy by City election or by Commission appointment.

1. Should the Commission choose to appoint, said action shall be taken by vote of the majority of the remaining members of the Commission within 30 days after expiration of the subject 30-day period (referenced in (b) above), with the appointee serving the remainder of the unexpired term from the date the resigning official would take office, if elected (assuming the resignation was filed pursuant to Section 99.012, Florida Statutes) until the next succeeding General City Election, and with any further remainder of the unexpired term to be filled by a Commission member elected at said General Election. However, if the resignation was not filed pursuant to Section 99.012, Florida Statutes, then the appointee shall serve the remainder of the unexpired term from either the resignation's effective date or from the date the appointee is appointed, whichever occurs later, and shall serve until the next succeeding General City Election, and with any further remainder of the unexpired term to be filled by a Commission member elected at said General Election.
2. If the members of the City Commission choose instead to fill such vacancy by election, then a Special Election shall be called to be held within 120 days after expiration of the subject initial 30-day period (referenced in (b) above) to elect a Commission member to fill such vacancy for the remainder of the unexpired term; **but if a City or Countywide election is otherwise scheduled to be held during the intervening period from expiration of the subject initial 30-day period through and including the resignation's effective date, the Special Election to fill the vacancy for the unexpired term as provided above may occur at any such City or County-wide election.** Any person who has been elected to fill a vacancy due to resignation filed pursuant to Section 99.012, Florida Statutes, shall be installed and take office following the date the resigning official would take office, if elected; any person who has been elected to fill a vacancy due to resignation not filed pursuant to Section 99.012, Florida Statutes, shall be installed and take office following the effective date set forth in said resignation. (Emphasis added.)

Accordingly, the following is a summary of the process that would apply with respect to Commissioner Richardson's anticipated resignation:

- Commissioner Richardson files his resignation by June 3, 2022, and retains his Commission seat until the effective date of his resignation, which is no later than November 8, 2022.
- The City Commission has 30 days from the submittal of the resignation to decide whether to appoint or call an election to fill the vacancy. As the 30th day from June 3, 2022, falls on Sunday, July 3, 2022, I would recommend that the Commission take the matter up at the regular City Commission meeting scheduled for June 22, 2022.
- Should the City Commission choose to appoint, the vote on the appointee must occur within 30 days from July 3, 2022, or August 2, 2022.¹ The appointee would take office following resignation's effective date, serving the remainder of the term until November 2023.
- Should the City Commission choose instead to call an election to fill the vacancy, the election would occur on November 8, 2022.² The successful candidate would assume the Group VI Commission office following the resignation's effective date, serving the remainder of the term until November 2023.

III. Elections-Related Logistical and Timing Issues.

Finally, as the resignation is irrevocable, in the event a Runoff Election for the Group VI seat is required, there will be a period after the November 8, 2022 Election during which the subject Commission seat will remain unoccupied.

The County Elections Supervisor has indicated to the City Clerk that any Runoff Election following the November 8, 2022 General Election (on which ballot State, County, and local issues will be presented) will likely need to be scheduled four (4) weeks following the November 8, 2022 Election, subject to final confirmation of the Runoff Election date by the County Elections Supervisor.

In addition to waiting four weeks for any Runoff Election, the County will be unable to provide Early Voting for any Runoff Election.

¹ Commissioner Richardson may neither vote nor participate in Commission discussion re: matter of *who* to appoint to fill the vacancy. See, Charter 2.07 (b)1, and Code Sec. 2-485. However, Commissioner Richardson may vote and participate in all remaining Commission actions pertaining to the subject vacancy—including any discussion as to whether to fill the vacancy by appointment or by calling an election.

² Given the above presumed timelines, the City's Special Election could not be scheduled for the August 23, 2022 Primary because of the inability to meet certain elections-related deadlines (i.e., Miami-Dade County Elections Department's June 17, 2022 qualifying deadline for August 23rd Election; City Code Section 38-3 requiring Resolution calling Election be adopted at least 30 days before election, etc.).

The Office of the City Clerk has received the attached 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.

The estimated costs are:

GENERAL ELECTION

Miami-Dade County Election Cost:	\$55,783.20
Legally Mandated Advertisements for Special Elections for Referendum/Ballot Question:	\$37,345.00
Legally Mandated Advertisements for Filling of Vacancy Held in Conjunction with Special Elections with Referendum Ballot Questions:	\$18,810.00
Total General Election	\$111,938.20

RUN-OFF ELECTION (IF NECESSARY)

Miami-Dade County Election Cost:	\$177,135.27
Legally Mandated Advertisements	\$ 15,140.00
Total Run-Off Election	\$192,275.27

The foregoing excludes the costs of a Voter's Guide of approximately \$40,000 in connection with a Special Election (Referendum/Ballot Questions) if one is held in conjunction with the Special General Election to fill the vacancy.

Finally, it is important to note that the City expects that in the ordinary course it will have referendum questions for placement on the November 8, 2022 ballot. Therefore, filling the vacancy by election will not involve significant additional costs to the City, as the City will incur all of the foregoing General Election costs anyway, except for the \$18,810 additional advertisements. However, the filling of the vacancy by election may implicate the additional costs set forth above, should a Runoff election be required.

RAP/ag

ESTIMATE

City of Miami Beach - Piggyback Election - November 8, 2022 w/ additional page

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

Estimate N°: MB-(2)-PB-110822
Estimate Date: February 23, 2022

Registered Voters:	49,892	Early Voting Days:	0
Precincts:	-	Early Voting Sites:	0
Polling Places:	-		
Permanent Absentee Ballots:	14,908		

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		49,892.00
<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		5,071.20
<i>Indirect Costs, Logic & Accuracy, Post-Election Audits</i>		
	*TOTAL	\$ 55,783.20

* 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 - 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-02232022
Estimate Date: February 23, 2022

Registered Voters:	49,892	Early Voting Days:	0
Precincts:	25	Early Voting Sites:	0
Polling Places:	24		
Permanent Absentee Ballots:	14,908		

Personnel	\$ 89,250.57
<i>Salaries & Fringe Benefits, Overtime, Poll Workers</i>	
Polling Places	5,450.00
<i>Security, Polling Place Rentals</i>	
Supplies and Services	1,228.00
<i>Election Supplies, Communication Charges, Vote by Mail Ballots Set Up</i>	
Trucks and Vehicles	17,310.00
<i>Delivery/Pickup of Voting Equipment, ISD Fleet Vehicles Rental</i>	
Printing and Advertising	29,244.00
<i>Vote by Mail, Early Voting & Precinct Ballots, Consumables, Temporary Polling Place Change Notices</i>	
Postage	14,164.50
<i>Vote by Mail Sent and Business Reply, Temporary Polling Place Change Notices, Letters</i>	
Ballot Creation	4,385.00
<i>In-House & Outside Contractual Services, Translations - Based on one question</i>	
Administrative Overhead	16,103.21
<i>Indirect Costs, Logic & Accuracy, Post-Election Audits</i>	
*TOTAL	\$ 177,135.27

* 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.