

# MIAMI BEACH

OFFICE OF THE CITY ATTORNEY  
RAUL J. AGUILA, CITY ATTORNEY

## COMMISSION MEMORANDUM

**TO:** MAYOR PHILIP LEVINE  
MEMBERS OF THE CITY COMMISSION  
CITY MANAGER JIMMY MORALES

**FROM:** RAUL J. AGUILA   
CITY ATTORNEY

RAFAEL E. GRANADO   
CITY CLERK

Second Reading Public Hearing

**DATE:** MARCH 1, 2017

**SUBJECT:** AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 38 ENTITLED "ELECTIONS": SECTION 38-3 REGARDING NOTICE OF RESOLUTION, CALLING ELECTIONS AND POLLING PLACES; SECTION 38-4 CLARIFYING APPLICABILITY OF CODE PROVISIONS GOVERNING INSTALLATION OF OFFICERS TO SPECIAL ELECTIONS AS WELL AS GENERAL ELECTIONS; AND CREATING SECTION 38-8 "CANVASSING BOARD"; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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In addition to those provisions of the City Charter relating to City elections<sup>1</sup>, Chapter 38 of the City Code deals with the related process of conducting City elections. As part of the City Attorney and City Clerk's periodic review of the City Code, Chapter 38 has been reviewed and analyzed, resulting in the attached Ordinance (as amended on first reading), containing the following proposed amendments:

- Amending City Code section 38-3 regarding noticing of the City Resolution calling elections and notice of polling places.
- Amending City Code section 38-4 clarifying that City Code provisions governing the installation of newly-elected City officers applies to both General Elections as well as to Special Elections held for election of candidates.

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<sup>1</sup> See, Miami Beach Charter, Articles VI "Elections" and VII "Initiative and Referendum."

- Creating City Code section 38-8 entitled: “Canvassing Board”, for the purpose of opting out of statutory provisions pertaining to composition of the City’s Canvassing Board, which statutory provisions have proven to be complicated and time-consuming. This amendment will provide a simpler, streamlined approach for designating members of the City’s Canvassing Board.

The attached Ordinance, sponsored by City Commissioner Joy Malakoff, is thus ready for City Commission review and deliberation.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 38 ENTITLED "ELECTIONS": SECTION 38-3 REGARDING NOTICE OF RESOLUTION, CALLING ELECTIONS AND POLLING PLACES; SECTION 38-4 CLARIFYING APPLICABILITY OF CODE PROVISIONS GOVERNING INSTALLATION OF OFFICERS TO SPECIAL ELECTIONS AS WELL AS GENERAL ELECTIONS; AND CREATING SECTION 38-8 "CANVASSING BOARD"; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH AS FOLLOWS:

SECTION 1. That Chapter 38 of the Miami Beach City Code entitled "Elections", is hereby amended to reflect the following amendments thereto relating to Section 38-3 entitled "Resolution by City Commission setting forth date and purpose of election, deadline for registration, polling places, change of polling places", Section 38-4 entitled "Canvass of returns; installation of new officers", and creation of Section 38-8 entitled "Canvassing Board", such amendments reading as follows:

**Chapter 38 – ELECTIONS.<sup>2</sup>**

**Sec. 38-3. - Resolution by City Commission ~~setting forth date and purpose of election, deadline for registration, polling places, change of polling places~~ Calling Election and Noticing Thereof.**

(a) For the purpose of making proper provision for each municipal election held in the City, the City Commission shall, not less than 30 days prior to the proposed date of such election, adopt a resolution setting forth the following:

(1) The date upon which such election is to be held.

(2) The purpose of such election.

(3) The days and hours, prior to the date of such election during which persons qualified to vote therein may register for the election.

(4) ~~The list of polling places in the several precincts provided for by resolution.~~

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<sup>2</sup> Charter reference— Elections, Art. VI; Initiative and Referendum Elections, Art. VII.

Cross reference— Any ordinance calling elections or prescribing the manner of conducting the election in accordance with State law saved from repeal, § 1-10(a)(16); Administration, Ch. 2; City Commission, § 2-31 et seq.; election signs, § 138-134. State Law reference— Florida Election Code, Fla. Stat. Chs. 97—106.

(5) (4) The form of ballot to be used in such elections, prepared in compliance with all statutory requirements relating to the use of mechanical or other approved voting machines or devices.

(b) The City Commission shall further authorize and direct the City Clerk to give notice of the adoption of such resolution and of the provisions thereof prescribed in subsection (a), by and through the publication of an appropriate advertisement in a newspaper meeting the requirements set forth in Florida Statute § 50.031 once a week for four consecutive weeks next preceding the day upon which such municipal election is to be held. The City Clerk shall further publish, in a newspaper meeting the requirements set forth in Florida Statute § 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. ~~If any polling place designated in such resolution shall become unavailable for use as such, the County Supervisor of Elections shall designate another polling place in the manner provided by State law.~~

#### **Sec. 38-4. Canvass of Acceptance of Election returns; installation of new officers.**

On the first business day immediately following the County Elections Supervisor's issuance of final election results, the City Commission shall meet for the purpose of ~~canvassing~~ accepting the returns of such election(s) and ascertaining the results thereof.

(a) Should no Run-Off Election be necessary, new officers shall be declared elected subsequent to canvass the City Commission's acceptance of final General (or Special, as the case may be) Election returns at which time the new officers shall be installed and shall enter upon the discharge of their duties, except as otherwise provided by the City Charter; if a Run-Off Election is necessary, all new officers shall be declared elected subsequent to ~~canvass~~ the City Commission's acceptance of final Run-Off Election returns on the first business day immediately following the County Elections Supervisor's issuance of such final election results, at which time the new officers shall be installed and shall enter upon the discharge of their duties, except as otherwise provided by the City Charter.

(b) ~~Moreover, if~~ if a Run-Off Election is necessary, the Commission meeting(s) occurring between the date of General Election and the Commission's acceptance of final Run-Off Election returns shall occur for the limited purpose of ~~canvassing~~ accepting the returns of such general election, and/or to address any emergency matter, pursuant to Florida Statute § 952.38 ~~(as amended from time to time)~~ law and City Charter §2.05.

\* \* \*

#### **Sec. 38-8. Canvassing Board.**

All elections conducted pursuant to the City Charter shall be canvassed by the Canvassing Board as provided for herein, and under the election laws of this State.

(a) The canvassing board for City elections held on the same date as a Countywide election shall be the Miami-Dade County Canvassing Board.

(b) The Canvassing Board for City elections not held on the same date as a County-wide election

shall be comprised of a County Court Judge appointed by the Chief Judge of the Eleventh Judicial Circuit of Miami-Dade County, the City Clerk, and a member of the City Commission appointed by the City Commission. In the event the County Court Judge selected by the Chief Judge under this subsection is unable to serve on the Canvassing Board, such County Court Judge shall be replaced with another County Court Judge appointed by the Chief Judge to serve as substitute member; in the event any other member of the Canvassing Board under this subsection is unable to serve such member shall be replaced with a qualified elector of the City appointed by the **Mayor City Clerk**<sup>3</sup> to serve as a substitute member; the **Mayor City Clerk** shall also select a qualified elector of the City to serve as an alternate member who will serve as a member of the Canvassing Board in the event the substitute or other member (besides the County Court Judge) is unable to serve.

(c) No member of the canvassing board shall be a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed.

(d) The scheduling of Canvassing Board meetings, **powers** and duties of the Canvassing Board, **not otherwise inconsistent with the above**, shall be conducted in accordance with State law.

## SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

## SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

## SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

## SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect the \_\_\_\_ day of \_\_\_\_\_, 2017.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

**ATTEST:**

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RAFAEL E. GRANADO, CITY CLERK  
(Sponsored by City Commissioner Joy Malakoff)

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MAYOR PHILIP LEVINE  
**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

2-22-17  
2-22-17  
City Attorney Date

<sup>3</sup> Bolded font reflects amendments on first reading from City Commission's February 8, 2017 meeting.