



CITY OF HALLANDALE BEACH, FLORIDA

MEMORANDUM

DATE: February 6, 2018
TO: Honorable Mayor and City Commission
FROM: Jennifer Merino, City Attorney *JM*
SUBJECT: Filling Temporary Vacancy of Mayor Cooper

On January 26, 2018, the Governor issued an executive order suspending Mayor Joy Cooper pending the resolution of criminal charges. Currently, the city has a special election set for March 2018 to fill commission seat #1, a vacancy created by the resignation of former Commissioner Anthony Sanders. This memo address the legal requirements for filling the temporary vacancy created by the suspension of Mayor Cooper.

Answer

The commission must appoint an individual to temporarily fill the vacancy until November 2018. At the general election in November, in addition to the scheduled open seats of #1 and #2, the ballot will include an election to fill the vacancy of the Mayor until the earlier of (1) the end of Mayor Cooper's term in November 2020 or (2) she is reinstated by the Governor.

Analysis

Pursuant to the authority granted by the Florida Constitution the Governor suspended Mayor Cooper on January 26, 2018. Florida Statutes Sec. 112.51(3) states,

“[t]he suspension of such official by the Governor creates a *temporary* vacancy in such office during the suspension. Any temporary vacancy in office created by suspension of an official under the provisions of this section shall be filled by a temporary appointment to such office for the period of the suspension. **Such temporary appointment shall be made in the same manner and by the same authority by which a permanent vacancy in such office is filled as provided by law.**” (emphasis added)

Unlike the situation the City faced in attempting to fill the vacancy of seat #1, wherein the Charter did not contemplate the delay caused by the Supervisor of Elections, the City Charter is clear in its requirements for filling the vacancy of the Mayor. The pertinent provisions in Section 3.09(3) of the Charter are as follows:

(a) *Appointment.* Whenever there is a vacancy in the commission and there are less than twelve (12) months remaining before the next regular city or general election the commission, by **a majority vote of the remaining members, shall choose a successor to serve *until* that election.** In the event of a vacancy in the office of mayor, the vice mayor shall serve as the acting mayor until the mayor's seat is filled.... (emphasis added)

(c) *Term.* The term of office for vacancies filled b this section shall be for the remainder of the unexpired term of the office in which the vacancy exists.

(d) *Regular city election.* When, at a regular city election in addition to regular commission offices, it becomes necessary to fill a commission vacancy or vacancies which have occurred under the provisions of section 3.09(1), candidates shall be elected according to the provisions of article IV of this Charter.

The vacancy of the Mayor occurred upon the issuance of the executive order on January 26, 2018 and is less than twelve (12) months from the next general election in November 2018. Therefore, a majority of the commission will appoint an individual to serve as Mayor until the general election. The Vice Mayor serves as acting Mayor until the individual is appointed. The individual elected in November will only serve until the end of the current Mayor's term or until Mayor Cooper is reinstated to her seat, whichever is earlier.

The appointment of an individual to serve until the election is subject only to a vote by the majority of the remaining members. However, the person selected should qualify as an "[elector] in the City who [has] resided continuously within the City for at least one (1) year preceding the date of the [appointment]," as required by Charter Sec. 3.01 for candidates for election.

Cc: Roger Carlton, City Manager