

MEMORANDUM TO CHARTER REVIEW COMMITTEE

DATE: January 7, 2020, Revised January 14, 2020
FROM: Jennifer Merino, City Attorney
RE: Filling of Vacancies

RELEVANT CHARTER PROVISIONS:

Sec. 3.09: - Vacancies; forfeiture of office; filling of vacancies.

(3) *Filling of vacancies.* A vacancy or vacancies in the city commission shall be filled as provided in the following.

- (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. If a majority vote cannot be reached within thirty (30) days of the creation of the vacancy, then the vacancy shall be decided by lot.
- (b) *Special elections.* If no regular city or general election is scheduled within twelve (12) months, the commission shall schedule a special election to fill the unexpired term held not sooner than sixty (60) days, nor more than ninety (90) days following the occurrence of the vacancy or vacancies. In any special election held for the purposes of this section, the provisions for nominations and elections contained in article IV of this Charter shall apply.
- (c) *Term.* The term of office for vacancies filled by 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.
- (e) *Quorum requirement.* Notwithstanding any quorum requirement established herein, if at any time the membership of the commission is reduced to less than a quorum, the remaining members may, by majority vote, appoint additional members under [subsection] (a) above.

(4) *Extraordinary vacancies.* In the event that all members of the commission are removed by death, disability, or forfeiture of office, the governor shall appoint an interim commission that

shall call a special election as provided in [subsection] (3)(b) above and such election shall be conducted to fill the specific vacancies in the manner provided for under the regular election procedures of this city.

ISSUE OR QUESTION:

Revising the filling of vacancies to eliminate unnecessary special elections, which come at a significant cost to the City and result in limited voter turnout and provide a more transparent process for the appointment of members of the commission.

A few things to note:

- If an office is not being elected for a full term, the election would still be considered a special election, even if done in conjunction with the general election.
- Whether or not its a special election, the Supervisor of Elections would require the City to conduct qualifying periods in accordance with the General Election Qualifying period. Thus, a vacancy occurring in July 2020 would not be able to be filled by special election during general election in November 2020. It would only be on the ballot if its regular term ended in Nov 2020. If it were a seat with a term until 2022 it would be filled by regular election in Nov 2022. There is potential, depending on timing, for an appointed commissioner to serve for over two years, but no more than 29 months (minus the time required to appoint).

DRAFT PROPOSED AMENDMENT:

Sec. 3.09: - Vacancies; forfeiture of office; filling of vacancies.

(3) Filling of vacancies. A vacancy or vacancies in the city commission shall be filled as provided in the following.

(a) Appointment. The City Commission shall fill a vacancy by appointment in accordance with this section until such time as (1) the vacated seat may qualify to be set for special election during the next general election to fill the remainder of the vacated term, or (2) the seat is scheduled for regular election pursuant to this Charter, whichever occurs first. Appointments will be made as follows:

(i) The vacancy will be announced at a public meeting within fifteen (15) days of its occurrence. At that meeting, the City will announce that it is accepting applications for appointment to fill the vacancy, outline the application process and publicly state the application period.

(ii) The time for accepting applications will be no less than 15 days. The City shall advertise the vacancy and application period, in a newspaper of general circulation, no less than fifteen (15) days prior to the close of the application period.

(iii) At the close of the application period the City shall post, physically and on its website, the names of all those who have submitted applications. Within ten (10) days of the

close of the application period, at a public meeting and after public comment, the City Commission will make nominations from those individuals that have submitted applications. Each member of the Commission shall nominate one person. If only one person is nominated by all Commissioners present, that person shall take office at the next regular City Commission meeting. If quorum cannot be obtained for the execution of this meeting within the aforementioned (10) days, nominations shall be made at the next regular commission meeting by those commissioners present, regardless of quorum.

(iv) No sooner than ten (10) days after the nominations are made, but not later than twenty (20) days after the nominations are made, the City Commission will, at a public meeting and after public comment, appoint a person to fill the vacancy from those that were previously nominated. The meeting shall not be continued to another day nor adjourned until an appointment is made to fill the vacancy. If a majority of the Commissioners present cannot agree on an appointment, then the appointment shall be decided by lot from among those nominated. If quorum cannot be obtained for the execution of this meeting within the aforementioned time period, the appointment shall be made at the next regular commission meeting by a majority of those commissioners present, regardless of quorum.

(v) The person appointed to fill the vacancy shall take office at the next regular City Commission meeting.

(vi) 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.

(b) Special elections. If the vacated term is not scheduled for regular election at the next general election, the commission shall schedule a special election to fill the remainder of the vacated term. The special election will be held concurrent with the next general election for which the vacated seat may qualify to be set for special election. In any special election held for the purposes of this section, the provisions for nominations and elections contained in article IV of this Charter shall apply.

(c) Term. The term of office for vacancies filled by appointment pursuant to this section shall be until such time as the vacated term ends or is filled by special election, whichever occurs first. The term for seats subsequently filled by special election shall be for the remainder of the unexpired term of the office in which the vacancy exists. In the case of suspension by the Governor of Florida, all terms are subject to the reinstatement of the suspended official.

(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.

(e) Quorum requirement. Notwithstanding any quorum requirement established herein, if at any time the membership of the commission is reduced to less than a quorum, the remaining members will constitute a quorum for the purpose of appointment of additional members under (a) above until there are at least three members of the commission.