

ORDINANCE NO. 2019-060

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA SUBMITTING TO THE ELECTORATE AT A SPECIAL ELECTION CONDUCTED DURING THE PRIMARY ELECTION OF THE CITY OF HIALEAH OCCURRING IN THE CITY OF HIALEAH, FLORIDA ON TUESDAY, NOVEMBER 5, 2019, WHEREIN THE ELECTORS OF THE CITY OF HIALEAH, FLORIDA SHALL BE PRIVILEGED TO VOTE ON THE FOLLOWING QUESTION:

TITLE: CHARTER CHANGES TO ARTICLE IV OF THE HIALEAH CHARTER ENTITLED "ADMINISTRATIVE"

SHALL THE CITY AMEND THE HIALEAH CHARTER TO HEAR ZONING AND LAND USE MATTERS AT THE FIRST AVAILABLE REGULAR CITY COUNCIL MEETING AFTER NOTICE OF THE HEARING IS PROVIDED ACCORDING TO STATE LAW; AND TO CHANGE THE RESIDENCY ELECTOR REQUIREMENT FOR BOARD MEMBERS TO ALLOW NON-RESIDENT TRUSTEES OF THE EMPLOYEE RETIREMENT SYSTEM; AND TO ALLOW NON-RESIDENT MEMBERS OF THE OVERSIGHT COMMITTEE FOR THE ELECTED OFFICIALS RETIREMENT SYSTEM?

REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CHARTER; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Charter Review Committee recommended approval of the Charter Amendments provided in this ordinance; and

WHEREAS, the City Council and the Mayor present for referendum proposed changes to the Hialeah Charter, upon public comment at the public meeting before the City Council; and

WHEREAS, the reasoning and rationale of the proposed changes to Article IV. Administrative of the Hialeah Charter provides as follows:

Revision of Section 4.07(a)(3)

The existing Charter provides for the City Council to hear all zoning petitions at the first meeting after the Planning and Zoning Board makes its recommendation. This requirement has created administrative problems in months that the Planning and Zoning Board meets on a different week than the City Council. During those months, there is only six calendar days between the Planning and Zoning Board and the following City Council meeting, which is insufficient time to advertise the first reading of certain category of zoning ordinances. State law generally provides that notice of the zoning hearing must be published in a newspaper of general circulation at least 10 days prior to final adoption of a proposed zoning ordinance. In addition, state law also provides additional notice requirements for proposed ordinance changes involving a zoning change of land involving 10 contiguous acres or more or a change in the actual list of permitted, conditional or prohibited uses within a zoning category. In such cases, published notice in a newspaper must occur at least 7 days prior to the first hearing and the second hearing must be held at least 10 days after the first hearing and the hearing shall be advertised at least 5 days prior to the public hearing. See Florida Statutes §166.041(c)2a. Accordingly, the proposed Charter change would allow for the City Council to hear those zoning petitions at the next available City Council meeting after the notice of the hearing is published in a newspaper at least 7 days prior to the meeting in compliance with state law. In these circumstances, the next available hearing will not be the first meeting after the Planning and Zoning Board makes its recommendation.

Revision of Section 4.07(d)

The existing language of the Hialeah Charter requires that all elective and appointive members to various boards of the City be resident electors of the City of Hialeah. This language conflicts with other provisions of the Hialeah Code that allows for non-residents to be members of the Retirement Board and the Oversight Committee of the Elected Officials Retirement System. In particular, Hialeah Code § 70-131(a)(3) allows for each of the three unions and management employees to have one trustee from each respective group so long as such trustee or board member is an active member of the retirement system, without regard to residency within the city and without regard to city voter status. Also, Hialeah Code § 70-131(a)(4) provides for the majority of the trustees to elect the seventh trustee, without regard to city residency or elector status. In addition, Hialeah Code § 70-529(a) requires that the city clerk and the finance director be members of the oversight committee of the Elected Officials Retirement System, whether or not each officer is a Hialeah resident. This Charter change correctly states residency requirements for board appointments in order to be in compliance with other Code provisions on the same subject.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The Charter of the City of Hialeah, Florida, particularly, Article IV entitled "Administrative" and specifically, §§4.07(a)(3) and 4.07(d), is hereby amended to read, if approved by voter referendum, as follows:

CHARTER

* * *

ARTICLE IV. ADMINISTRATIVE

* * *

Section 4.07. City Boards.

(a) *Planning and Zoning Board*

* * *

(3) *Adoption by ordinance, exceptions.*

a. Petitions for zoning changes, use variances, conditional use permits, special use permits, zoning changes, final plats, comprehensive plan amendments, and such other zoning and land use matters and development orders that require recommendation by the planning and zoning board to the city council shall be approved by ordinance. The city council shall hear the petition at the first available regular meeting of the city council upon statutory notice after the planning and zoning board makes its recommendation.

* * *

(d) *Membership; removal of board members.* All members of appointive or elective boards of the city shall be resident electors, with the exception of the board of trustees for the employee retirement system and the oversight committee of the elected officials retirement system as provided in the city code. A boardmember may be removed for just cause, after notice and public hearing, upon an affirmative vote of at least 5 councilmembers. Membership on a board is automatically forfeited if the boardmember is absent 3 times during a calendar year, if the board regularly meets no more frequently than once monthly, or 6 times during a calendar year, if the board regularly meets twice monthly.

Section 2: The Mayor and the City Council of the City of Hialeah, Florida hereby submit the following question to the electorate at a special election conducted during the primary election of the City of Hialeah occurring in the City of Hialeah, Florida on Tuesday, November 5, 2019, to which the electors of the City of Hialeah, Florida may vote "Yes" or "No":

Title: Charter Changes To Article IV of the Hialeah Charter Entitled "Administrative"

Shall the City amend the Hialeah Charter to hear Zoning And Land Use Matters at the first available regular City Council meeting after notice of the hearing is provided according to State Law; and to change the Residency Elector requirement for Board Members to allow Non-Resident Trustees of the Employee Retirement System; and to allow Non-Resident Members of the Oversight Committee for the Elected Officials Retirement System?

Section 3: Conduct of Election.

The Miami-Dade County Supervisor of Elections is requested and authorized to conduct this charter amendment question in accordance with the general election laws of the State of Florida and the Charter and Code of the City of Hialeah, Florida. The City will pay all expenses associated with these elections unless some of the expenses are shared with other governmental entities. The Miami-Dade County Supervisor of Elections shall appoint an Election Board to assist the Elections Department in conducting the elections. The Elections Department is authorized to conduct the pre-count Logic and Accuracy Test for the optical scan system for this Special Election. The City of Hialeah will make the final tabulation and certification of results.

Section 4. Form of Ballot.

The ballot form to be used shall be as provided by the Miami-Dade County Supervisor of Elections.

Section 5. Opening and Validating Absentee Ballots.

The criteria and requirements for opening and validating of absentee ballots and canvassing of ballots shall be same as followed by the Miami-Dade County Supervisor of Elections. All absentee ballots shall comply with the minimum requirements of state law.

Section 6. Canvassing Board.

The City Council members, whose terms expire in November 2021, shall serve as the Canvassing Board for this election. The members in attendance will be the Canvassing Board for the Logic and Accuracy Test and the canvass of ballots on Election Day. If no member of the Canvassing Board attends the Logic and Accuracy tests and/or the canvassing of ballots on Election Day, the City Clerk shall serve as the Canvassing Board designee for the City Council. The City of Hialeah hereby designates the Miami-Dade County Supervisor of Elections to conduct the Pre-count Logic & Accuracy Test of the Optical Scan System used for paper ballots; begin the processing and opening of absentee ballots and duplicate ballots as needed. The judges appointed to review and accept or reject absentee ballots in the primary election for the City of Hialeah shall be the same for the review and acceptance or rejection of absentee ballots regarding this Charter Amendment question.

Section 7. Certification of Results.

The Canvassing Board will make the official certification of the results of the charter amendment question at 10:00 a.m. on Friday, November 8, 2019 at a special meeting for all ballots cast in the election, including provisional ballots.

Section 8: Registration of Voters.

The Miami-Dade County Supervisor of Elections will register voters for the City of Hialeah Municipal Primary Election until 5:00 p.m., on Monday, October 7, 2019. All persons eligible to vote at these elections must be registered before the times stipulated above or have registered previously, as provided by law.

Section 9: Polling Places, Hours of Voting.

Polling places for these elections will be as designated by the Miami-Dade County Supervisor of Elections and will be open from 7:00 a.m. to 7:00 p.m. on Election Day. Early voting shall be at the same times, dates and locations of early voting as established by the Miami-Dade County Supervisor of Elections pursuant to state law.

Section 10: Notice.

Notice of these elections shall be according to state law

Section 11. Inclusion in Charter.

The Charter Amendment provided in this ordinance shall be included and incorporated in the Charter of the City of Hialeah, Florida if the question presented is answered in the affirmative by a referendum of the electors of the City of Hialeah, Florida and the results of the election are certified. The implementation of this Charter Amendment shall be January 1, 2020.

Section 12: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 13: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00

within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 14: Severability Clause.

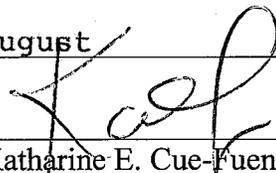
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 15: Effective Date.

This Ordinance shall become effective when passed by the City Council and when signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 27 day of August, 2019.

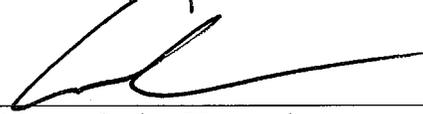
THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Katharine E. Cue-Fuente
Councilwoman

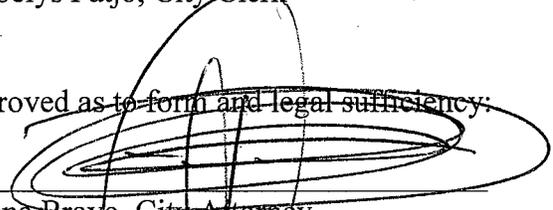
Attest:

Approved on this 29 day of August, 2019.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


Lorena Bravo, City Attorney

~~Strike through~~ indicates deletion. Underline indicates addition.