

**ORDINANCE NO. 2019-062**

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 AUTHORIZING MAYOR TO DECLARE AN EMERGENCY AND TEMPORARY SUSPENSION OF SPENDING LIMITS**

**SHALL THE CITY AMEND THE HIALEAH CHARTER TO AUTHORIZE THE MAYOR TO DECLARE A STATE OF EMERGENCY AND UNDERTAKE ALL EMERGENCY MANAGEMENT POWERS IN TIME OF PUBLIC DANGER OR EMERGENCY; AND TO SUSPEND SPENDING LIMITS DURING THE EMERGENCY THAT WOULD NORMALLY REQUIRE CITY COUNCIL APPROVAL FOR NO MORE THAN 90 DAYS, UNLESS EXTENDED FOR GOOD CAUSE BY THE CITY COUNCIL?**

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 I. Corporate Existence, Form of Government, Boundary and Power and to Article II. Mayor and City Council of the Hialeah Charter provides as follows:

### **Revision of Section 1.04(c)**

Since the adoption of the Hialeah Charter in 1998, the Florida Legislature has revised and reinforced the emergency management powers of municipalities. State law provides each municipality with the authority to establish an emergency management program. Recently, the City of Hialeah adopted the City of Hialeah Comprehensive Emergency Management Plan and Hialeah Emergency Operations Plan 2019. See Hialeah, Fl., Resolution 2019-080. State law defines an emergency to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. See Florida Statutes §252.34(4).

Recognizing the responsibility of each municipality to safeguard the life and property of its citizens, the State of Florida provides for declarations of local emergencies in addition to the declaration of a state emergency. In order to provide for the health and safety of people and property, including emergency assistance to victims of any emergency, and to direct and coordinate emergency management plans, Florida law provides municipalities during and as a result of a declared emergency with the power and authority to waive procedures and formalities relating to the appropriation and expenditure of public funds, performance of public work, the entering contracts, incurring obligations, etc. See Florida Statutes § 252.38(3)(a)5.

The proposed Charter Amendment temporarily suspends the requirement to obtain City Council approval for the appropriation and expenditure of municipal funds exceeding \$15,000.00 for emergency purposes as provided by state law, for no more than 90 days, unless extended for good cause. The change will conform to state law that allows for such waivers.

### **Revision of Section 2.01**

In practice, prior Mayors have declared a state of emergency during a hurricane event in compliance with state law. Pursuant to Florida Statutes § 252.32(b), the State of Florida confers emergency powers to the Governor and the governing body of municipalities. In a strong mayor form of government, the mayor has authority to declare an emergency. State law also provides for extensive emergency management powers to municipalities and counties.

This Charter amendment specifically authorizes the mayor to declare a state of emergency to maintain order and enforce the laws and further provides the mayor with the authority and power to undertake all emergency management powers. This specific authorization is needed to fully comply with Federal Emergency Management Agency (“FEMA”) rules, regulations and guidelines including, but not limited to, reimbursement for municipal funds expended and recovery of disaster-related damages resulting from the event or circumstances that give rise to the declared state of emergency. If the emergency is only local, the duration of

each state of emergency declared locally is limited to 7 days; it may be extended, as necessary, in 7-day increments. Florida Statutes § 252.38(3)(a)5.

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 I entitled “Corporate Existence, Form of Government, Boundary and Power” and specifically, §1.04(c), and particularly, Article II entitled “Mayor and City Council” and specifically, §2.01, are hereby amended to read, if approved by voter referendum, as follows:

**CHARTER**

**ARTICLE 1. CORPORATE EXISTENCE, FORM OF GOVERNMENT, BOUNDARY AND POWER**

\* \* \*

**Section 1.04. Powers of the city.**

\* \* \*

*(c) Limitations*

- (1) *Spending limitations.* No contract, purchase, agreement, purchase order, requisition or other transaction involving the expenditure of more than \$25,000.00 shall be valid without city council approval. The city council, by ordinance, shall set spending limits within the range of \$15,000.00 and \$25,000.00 for a contract, purchase, agreement, purchase order, requisition or other transaction, involving the expenditure of municipal funds, that does not require city council approval. In time of public danger or emergency, the mayor may declare a state of emergency and the spending limitations shall be suspended during the emergency for no more than 90 days, unless extended by the city council, for good cause. The city administration may not divide orders or enter into multiple contracts or agreements to circumvent the monetary limit for city council approval.

\* \* \*

**ARTICLE II. MAYOR AND CITY COUNCIL**

**Section 2.01. Mayor.**

(a) *Powers and duties.* The mayor, who shall exemplify good citizenship and exhibit a cooperative spirit, shall have the following powers and duties.

(1) To exercise the executive powers of the city and supervise all departments.

\* \* \*

(10) In time of public danger or emergency, the mayor may declare a state of emergency to maintain order and enforce the laws and the mayor may undertake all emergency management powers and executive authority.

\* \* \*

**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 authorizing Mayor to declare an emergency and temporary suspension of spending limits**

**Shall the City Amend the Hialeah Charter to authorize the Mayor to declare a State of Emergency and undertake all Emergency Management Powers in time of Public Danger or Emergency; and to suspend spending limits during the Emergency that would normally require City Council approval for no more than 90 days, unless extended for good cause by the City Council?**

**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

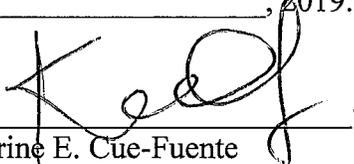
invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**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.

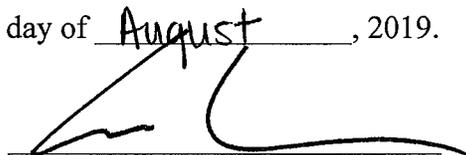
THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
\_\_\_\_\_  
Katharine E. Cue-Fuente  
Councilwoman

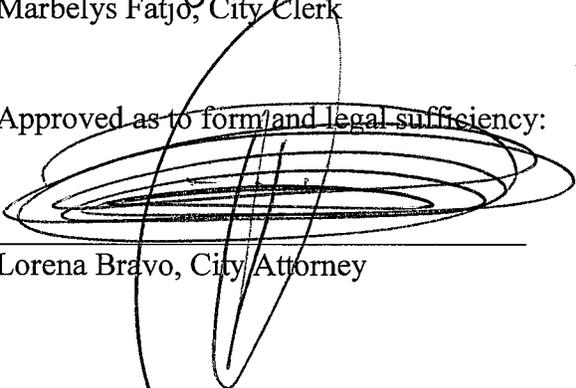
Attest:

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

Ordinance was adopted by a 5-0-2 vote with Councilmembers, Cue-Fuente, Lozano, Caragol, Hernandez and Zogby voting "Yes" and with Councilmembers Casáls-Muñoz and Garcia-Martinez absent.

~~Strikethrough~~ indicates deletion. Underline indicates addition.