

ORDINANCE NO. 2019-061

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 III OF THE HIALEAH CHARTER ENTITLED "LEGISLATIVE"

SHALL THE CITY AMEND THE HIALEAH CHARTER TO INCLUDE THE ADOPTION OF ZONING AND LAND USE DECISIONS BY ORDINANCE AND NONUSE ADJUSTMENTS AND LAND USE TRANSMITTALS TO THE STATE OF FLORIDA FOR COMMENT BY RESOLUTION; AND TO APPROVE ALL TYPES OF BUDGET TRANSFERS BY RESOLUTION DURING THE FISCAL YEAR AND APPROVE APPROPRIATION AMENDMENTS TO THE BUDGET AFTER THE CLOSE OF THE FISCAL YEAR BY ORDINANCE?

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 III. Legislative of the Hialeah Charter provides as follows:

Revision of Section 3.03

This revision is intended to clarify existing language in order to more accurately describe current practice and provide consistency with other provisions of the Hialeah Code. The existing language provides that an ordinance is necessary for approval of land use and zoning regulation. However, the Hialeah Charter should provide those exceptions where zoning and land use matters are approved by resolution. In two circumstances, the City Council makes a decision or recommendation that is approved by resolution: (1) In the land use amendment process, the City Council may recommend a land use amendment for transmittal to the Florida Department of Economic Opportunity, for further comment, by resolution, see Hialeah Code § 98-102(7). The City Council reviews and approves, modifies or denies final decisions of the Planning and Zoning Board on non-use adjustments, through de novo review, by resolution, see Hialeah Code § 98-36. Accordingly, the revised language more precisely describes the current practice and procedure of the city relating to zoning and land use matters as provided in the Hialeah Code.

Moreover, the provision that requires ordinance approval for land use and zoning regulation should also be expanded to include zoning and land use decisions affecting individual property. This conforms to the existing practice and procedure of the City.

Revision of Section 3.08

This Charter Amendment provides language in order to conform to existing practice in the form and procedure of revising the annual budget during the fiscal year and after the close of the fiscal year. The annual budget is a blueprint or estimate for the anticipated revenue and expenditures that are projected for the coming fiscal year. During the fiscal year, while the revenues are generated and the expenditures are made, revisions to the annual budget likewise are required. This Amendment provides for three revisions, which conform to existing practices and procedures and which were not specifically included in the charter provisions.

The first revision provides for City Council ratification by resolution for transfer of a part or all unencumbered appropriation balances within an office or department.

The second revision provides for City Council approval by resolution of the payment of encumbrances of the prior fiscal year. This approval is needed when an invoice requires payment for an expense that occurred in the preceding fiscal year and a supplemental appropriation is required to reflect the payment.

The third provision provides for revisions to the annual budget after the close of the fiscal year to reconcile the annual budget estimate with the actual performance of the last quarter of the fiscal year. City Council approval by ordinance is required since the annual budget was originally adopted by ordinance and Council action is the final revision to the annual budget adopted in the preceding year.

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 III. entitled "Legislative" and specifically, §§ 3.03 and 3.08, is hereby amended to read, if approved by voter referendum, as follows:

CHARTER

* * *

ARTICLE III. LEGISLATIVE.

* * *

Section 3.03. Action requiring an ordinance

In addition to other acts that are required by law or this charter to be authorized by ordinance, the following actions shall also require adoption by ordinance:

- (a) Establish, alter or abolish any city office, department, board or agency.
- (b) Establish a rule or regulation that carries a penalty if violated.
- (c) Levy taxes or appropriate funds.
- (d) Grant, renew or extend a franchise.
- (e) Set service or user charges for municipal services or grant administrative authority to set service or user charges.
- (f) Authorize the borrowing of money.
- (g) Convey, sell, lease, mortgage or grant an easement or other interest in real property.
- (h) Amend or repeal any ordinance previously adopted.
- (i) Zoning and land use regulation and decisions, with the exception of de novo consideration of nonuse adjustments and land use transmittals for comments.
- (j) Acceptance and confirmation of dedicated streets, roads, alleys or other rights-of-way for public use; or conversion of private streets, roads, or alleys to public rights-of-way.

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Section 3.08. Annual budget.

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(d) *Specific appropriation.* The budget shall be specific as to the nature of each category of appropriations. Reasonable appropriations shall be made for contingencies. At any time, the mayor may transfer any unencumbered appropriation balance or portion thereof between classifications of expenditures within an office or department subject to ratification by the city council by resolution. At the request of the mayor and within the last 6 months of the fiscal year, the city council may transfer, by resolution, any unencumbered appropriation balance or portion thereof from one office or department to another.

(e) *Appropriation amendments during the fiscal year.*

(1) *Supplemental appropriations.* If, during any fiscal year, revenues in excess of those estimated in the annual budget are available for appropriation, upon request of the mayor, the city council may make supplemental appropriations, by resolution, for the fiscal year up to the amount of such excess.

(2) *Reduction of appropriations.* If, at any time during the fiscal year, it appears probable to the mayor that the revenues available will be insufficient to meet the amount appropriated, the mayor shall report to the city council without delay, indicate the estimated amount of the deficit, and recommend remedial measures to be taken. The city council shall then take appropriate action to prevent any deficit spending not covered by adequate contingencies.

(3) *Payment of encumbrances of the prior fiscal year.* If, during the fiscal year, it is determined that the operating budget should be increased to pay for line item budgetary expenses of the prior fiscal year that were not concluded in the prior fiscal year but became due in the current fiscal year, upon request of the mayor, the city council may make supplemental appropriations, by resolution, to pay for such encumbrances.

(f) *Appropriation amendments after the close of the fiscal year.*

(1) If, after the close of the fiscal year, the actual budgetary figures reveal budgetary expenses that require budget authorization, upon request of the mayor, the city council, may make supplemental appropriations, by ordinance, to reconcile the budget based on the actual performance of the last quarter of the fiscal year.

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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 III of the Hialeah Charter entitled "Legislative"

Shall the City amend the Hialeah Charter to include the adoption of Zoning and Land Use Decisions by Ordinance and Nonuse Adjustments and Land Use Transmittals to the State of Florida for comment by Resolution; and to approve all types of Budget Transfers by Resolution during the fiscal year and approve Appropriation Amendments to the Budget after the close of the fiscal year by Ordinance?

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.

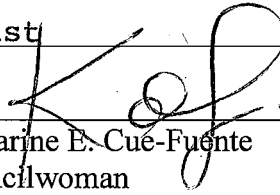
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or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

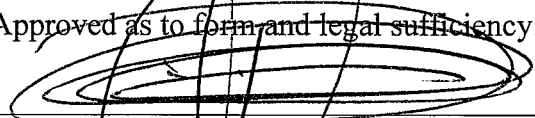
Attest:

Approved on this 29 day of August, 2019.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


Lorena E. Bravo, City Attorney

Strikethrough indicates deletion. Underline indicates addition.
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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.