

ORDINANCE NO. 2019-064

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: CHANGES TO ARTICLE V OF THE HIALEAH CHARTER ENTITLED "ELECTIONS"

SHALL THE CITY AMEND THE HIALEAH CHARTER TO EXTEND THE GENERAL ELECTION DATE TO THE THIRD TUESDAY AFTER NOVEMBER 1, TWO WEEKS FROM THE PRIMARY ELECTION; PROVIDING ONE SWEARING-IN DATE FOR EACH ELECTION CYCLE; PROVIDING THAT CANDIDATES FOR ELECTIVE OFFICE PAY FILING FEES AND ASSESSMENTS CONSISTENT WITH STATE LAW; AND TO CLARIFY THAT SUCH CANDIDATES MUST BE A RESIDENT ELECTOR FOR MINIMUM OF ONE YEAR IMMEDIATELY PRECEDING THE PRIMARY OR SPECIAL ELECTION?

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 V. Elections of the Hialeah Charter provides as follows:

Revision of Section 5.03. Primary elections.

The existing Charter language provides for a primary election to precede the general election by one week. The proposed language provides for the primary election to precede the general election by two weeks. The purpose of this change is to establish a time frame that reflects the practical reality of conducting elections in Miami-Dade County. Due to the programming of optical scan voting machines and the preparation and mailing of absentee ballots, the County Supervisor of Elections requires a minimum of 2 weeks between the dates of the primary election and the general election for municipalities. Accordingly, this revision will accomplish the goal of coordinating the date of the general election with the Miami-Dade County Supervisor of Elections, which is responsible for conducting the elections within Miami-Dade County.

Revision of Section 5.04. General elections.

The existing Charter language provides that the date of the general election is one week after the date of the primary. Thus, the existing Charter provides for a general election on the second Tuesday of November since the primary date is the first Tuesday of November after November 1. The proposed charter change provides that the date of the general election will be two weeks after the primary election, which is the third Tuesday of November after November 1. In addition, the proposed language allows for additional flexibility by ordinance or state law to set a date exceeding two weeks, as in the example of the Order of the Governor in 2005 extending the date of the general election because of damage to voting precincts and disruptions to the voting process caused by Hurricane Wilma.

Revision of Section 5.05. Qualifications.

The existing Charter language provides for candidates for public office to pay a \$100.00 filing fee. The proposed Charter change provides that candidates for public office pay not only the \$100.00 filing fee but also the assessment of an amount equal to 1 percent of the annual salary of the office sought as required by section 99.093(1), Florida Statutes. The proposed language also provides that a candidate may be excused from payment according to state law. Section 99.093(2), Florida Statutes provides that a candidate is exempt from payment of the election assessment if unable to pay the election assessment without imposing an undue burden on personal resources or on resources otherwise available to the candidate. After adoption of the Charter, the City of Hialeah amended its Code of Ordinances to provide for the filing fee and the assessment for candidates for office. See Hialeah Code §34-2. The purpose of this revision is to accurately reflect all fees and assessments that are due from a candidate who seeks to qualify for election to a municipal office, in conformity with state law and the Hialeah Code.

In addition, the proposed Charter change highlights that the candidate eligibility requirement shall be a minimum of one-year residency in the city and one-year city elector status, for the time period immediately prior to the primary or special election.

Revision of Section 5.10. Commencement of term of office.

The existing Charter is silent on whether a candidate who is deemed elected after a primary election can be sworn in to office within 3 days of the election and commence serving in office or whether such candidate must wait until the general election if there remain contested elections to be decided during the general election. The proposed Charter change makes it clear that the term of office will commence at the same time for all candidates elected during the municipal election cycle. The proposed language also provides for the installation date to be extended if that date falls on a legal or city holiday. In 2007, the installation date was extended to Monday, November 26 because the installation date would have fallen on Friday after the Thanksgiving holiday, when city offices were closed.

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 V. entitled "Elections" and specifically, §§ 5.03, 5.04, 5.05 and 5.10, is hereby amended to read, if approved by voter referendum, as follows:

CHARTER

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ARTICLE V. ELECTIONS.

* * *

Section 5.03. Primary elections.

(a) A primary election shall be held ~~1 week~~ 2 weeks prior to each general election, provided that 2 or more people are seeking the office of mayor or that 2 or more people are seeking the office of councilmember in any particular group.

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Section 5.04. General elections.

General elections shall be held on the ~~second~~third Tuesday ~~after~~ November 1 of each odd numbered year or as otherwise extended by state law or ordinance.

Section 5.05. Qualifications.

Candidates for mayor or for any particular councilmember group seat shall be residents and electors of the city for a minimum of 1 year immediately prior to the primary or election to which that person intends to seek election and shall qualify for election by filing a notice of written candidacy with the city clerk at such time and in such manner as shall be prescribed by ordinance and by payment of a \$100.00 filing fee and by payment of an assessment according to state law, unless exempted from payment, to the city clerk. No person may be a candidate for more than one city office at any one election.

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Section 5.10. Commencement of term of office.

The term of office of any elected official will commence on the third day after his or her election at 12 o'clock noon, at which time the newly elected official shall be given an oath of office and installed in office, or as provided by state law. The commencement date for all offices in the city municipal election shall be the same date whether the candidate is elected during the primary or general election. However, the term of office shall commence on the third day at 12 o'clock noon after the last candidate in the city municipal election is elected, unless the commencement date falls on a legal or city holiday in which case the term of office will commence on the next business day that is not a legal or city holiday.

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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 V of the Hialeah Charter entitled "Elections"

Shall the City amend the Hialeah Charter to extend the General Election Date to the third Tuesday after November 1, two weeks from the Primary Election; providing one Swearing-

In Date for each Election Cycle; providing that candidates for Elective Office pay filing fees and assessments consistent with State Law; and to clarify that such candidates must be a Resident Elector For Minimum of one year immediate preceding the Primary or Special Election?

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.

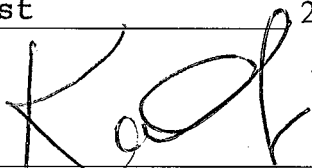
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or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

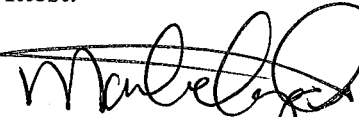
THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.



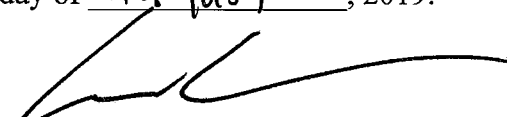
Katharine E. Cue-Fuente
Councilwoman

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

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

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