




OFFICE OF THE CITY ATTORNEY
CITY OF PORT ST. LUCIE

MEMORANDUM

TO: Honorable Mayor & Members of the City Council
FROM: James Stokes, City Attorney 
COPY TO: Russ Blackburn, City Manager
Sally Walsh, City Clerk
SUBJECT: Requirements for Special Election
DATE: June 10, 2021

The Memorandum is intended to address the vacancy being created by the resignation of Mayor Gregory Oravec as the Mayor of the City of Port St. Lucie, as well as the potential for an additional vacancy on the Council in the event a Council Member chooses to seek election to the Mayor's Seat. The City's Charter has a codified provision for filling of vacancies. Specifically, it is contained within Section 3.09 of the City's Charter. That provision states as follows:

A vacancy of the council shall be filled in one of the following ways:

- (2) If there are more than six (6) months remaining in the unexpired term or more than six (6) months remain before the next regularly scheduled election, the city council will schedule a special election to be held no earlier than thirty (30) days and not later than ninety (90) days following the date the vacancy occurred. Should a primary election become necessary, it shall be scheduled not fewer than fifteen (15) nor more than forty (40) days before the special election. Should at any time the council membership be reduced to less than a quorum, the remaining council members will appoint additional members to serve, subject to filling the vacancies as described above.

While this language appears clear on its face, the reality is that the timeframes provided for in the Charter conflict with the ever-changing requirements of the Florida Elections Code. With the advent of expanded Vote-By-Mail, Early Voting, drop-box provisions, and the protracted canvassing which has been required in many circumstances, the Legislature has seen, not only to amend and expand many areas of the Florida Elections Code, but to usurp local government from relying upon conflicting provisions which already exist, and completely preempt prospective local provisions.

Specifically, the Florida Elections Code provides:

All matters set forth in chapters 97-105 are preempted to the state, except as otherwise specifically authorized by state or federal law. The conduct of municipal elections shall be governed by s. 100.3605.

Section 97.0115, Florida Statutes [underscore added].

Regarding the administration of municipal elections, the Florida Elections Code provides:

- (1) The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.
- (2) The governing body of a municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality and provide for the orderly transition of office resulting from such date changes.

Section 100.3605, Florida Statutes [underscore added].

While this statute gives safehaven for previously existing local provisions, it requires that those provisions be "applicable". Supervisor Walker has indicated in her letter of June 7, 2021, that the Division of Elections has indicated that, because our Charter provision conflicts with the time requirements of state law, that our Charter provision is not applicable. Thus, pursuant to Section 100.3605, Florida Statutes, the Florida Elections Code will control.

MAYOR'S SEAT

The Resolution presented to the City Council on June 14, 2021, is a necessary action to formally call for the Supervisor of Elections to administer a Special Election for the vacant Mayor's Seat. Based upon the required, as well as the recommended, functions and time periods, it is recommended that the Qualify Period for the Mayor's Seat be from **Monday, July 12, 2021 at noon through Friday, July 16, 2021 at noon**. The Special Election will take place on **Tuesday, September 21, 2021** or **Tuesday, December 7, 2021**, dependent on whether a primary election is required for this seat or any other Council seat up for election.

These dates have been coordinated with Supervisor Walker who concurs with the scheduling. The cost of the special election is listed below.

RESIGN-TO-RUN: COUNCIL MEMBER

In the event any current Council member wishes to run for the Mayor's Seat, that Council member must submit an irrevocable resignation ten (10) days prior to the first day of the qualifying period; in this case, on or before Friday, July 2, 2021. [Section 99.012(1)(c), Florida Statutes] Pursuant to our City Charter, as well as the Florida Elections Code, any vacant Council seat will then need to be filled by a Special Election as well.

It is in the City's best interest to anticipate a Council Seat vacancy in order to proceed as efficiently as possible. A Special Election for any vacant Council Seat can be called upon the receipt of a Resign-to-Run letter. Because it will not be possible for the provisions of City Charter 3.09 to be applied in such a case, the provisions of the Florida Elections Code will apply.

The City Council will be asked to call for the Special Election of any prospectively vacant Council Seat by Ordinance, as opposed to the current Resolution. The reason is because this second-called Special Election will need to be moved for the purpose of running concurrently with the Mayor's Seat, as allowed by Section 100.3605(2), Florida Statutes ("*The governing body of a municipality may,*

by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality and provide for the orderly transition of office resulting from such date changes”).

It is expected that this Ordinance can be submitted for First Reading on June 28, 2021, with Second Reading on July 12, 2021. The Qualifying Period for any vacant Council Seat will run concurrently with the Qualifying Period for the Mayor’s Seat: **Monday, July 12, 2021 at noon through Friday, July 16, 2021 at noon**. The Special Election will take place on **Tuesday, September 21, 2021** or **Tuesday, December 7, 2021**, dependent on whether a primary election is required for this seat or any other Council seat up for election.

For economy’s sake, if neither seat requires a Primary Election, both Seats will be determined on September 21, 2021. If either Seat requires a Primary Election, the December 7, 2021 election will be deemed the Special General Election.

PROPOSED TIMELINE:

June 14, 2021	Resolution calling for Special Election for Mayor.
June 15, 2021 - July 5, 2021	Petition Period for Mayor Seat & Council Seat.
June 28, 2021	Ordinance calling for Special Election for Council Seat (<i>First Reading</i>): (1) Required if Resign-to-Run received by any Council Member; (2) Acknowledging Resign-to-Run as irrevocable resignation; (3) Declaring prospective vacancy in Council Seat to be filled by Special Election; <i>and</i> (4) Establishing date of Special Election for Council Seat to run concurrent with Mayor election as allowed by Section 100.3605(2), Florida Statutes.
July 6, 2021 - July 9, 2021	Verification Period for Petitions by SoE
July 12, 2021	Ordinance calling for Special Election for Council Seat (<i>Second Reading</i>).
July 12, 2021 - July 16, 2021	Qualifying Period for Mayor’s Seat & Council Seat (<i>noon Monday to noon Friday</i>).
July 19, 2021 - July 23, 2021	Period to Set-up Ballot by SoE.
July 24, 2021 - August 12, 2021	Printing time required for Ballots.
August 13, 2021	Vote-By-Mail Ballots mailed (<i>at least 33 days required for return of ballots</i>).
September 21, 2021	Election Day
September 22, 2021 - October 3, 2021	Canvassing / Certification of Results by SoE.
October 4, 2021 - October 8, 2021	Period to Set-up Ballot by SoE.
October 9, 2021 - October 28, 2021	Printing time required for Ballots.
October 29, 2021	Vote-By-Mail Ballots mailed (<i>at least 33 days required for return of ballots</i>).
December 7, 2021	Election Day.
December 8, 2021 - December 19, 2021	Canvassing / Certification of Results by SoE.

OPTIONS TO BE SELECTED:

Pursuant to the cost estimate provided by the Supervisor of Elections, there are several items which are optional. As the City is paying for the entire election, any options included will increase the cost of the election. It is necessary that these optional items be either selected or rejected, and we will include a determination of those items on June 28, 2021, when the Ordinance is brought forward addressing election items.

However, in order for Council to have time to consider these items, they are listed below. The following are options (with estimated costs):

- ✓ Early Voting period (3 locations). Approximate cost for staffing: **\$45,000**
- ✓ Sample Ballots. Approximate cost for printing: **\$25,000**
- ✓ Sample Ballots. Approximate cost for postage: **\$15,000**
- ✓ VBM Drop Boxes. Approximate cost of staff monitoring: **\$6,000**
- ✓ Legal Services. Approximate cost if election is litigated: **\$7,000**

ESTIMATED COSTS:

Attached is correspondence from the Supervisor of Elections, which includes an estimate of costs, with or without the optional items listed above. The cost of an election will be approximately **\$220,000** to approximately **\$320,000** dollars for a single election. If the City requires a primary election followed by a general election, these costs will roughly double. If the City runs a subsequently vacated Council Seat separate from the election for the Mayor's Seat, the quoted price could potentially quadruple (primary/general; primary/general). This is why the more efficient path is running any potentially vacated Council Seats concurrent with the Mayor's Seat.

CONCLUSION:

It is recommended that the current Resolution be approved. The Ordinance for any prospectively vacated Council Seat will be brought on June 28, 2021. If there are any questions, my Office and the City Clerk's Office remains available at all times to provide assistance.