



MIAMI BEACH

**OFFICE OF THE CITY ATTORNEY**

**JOSE SMITH, CITY ATTORNEY**

**COMMISSION MEMORANDUM**

**TO: MAYOR MATTI HERRERA BOWER  
MEMBERS OF THE CITY COMMISSION  
INTERIM CITY MANAGER KATHIE BROOKS**

**FROM: JOSE SMITH  
CITY ATTORNEY**

**DATE: DECEMBER 12, 2012**

**SUBJECT: Proposed Amendments to City Code Chapter 38 Regarding "Elections"**

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Based upon amendments to the Florida Election Code, revised County Elections Department procedures regarding the issuance of final election returns, and recommended housekeeping policy amendments to the City's election procedures, I am requesting that the attached proposed amendments to Chapter 38 of the City Code regarding "Elections" be referred to the Neighborhoods and Community Affairs Committee for its input and consideration.

Agenda Item C4J

Date 12-12-12



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In addition to those provisions of the City Charter relating to City elections<sup>1</sup>, there are City Ordinances codified in Chapter 38 of the City Code dealing with the process of conducting City elections. The majority of the provisions in Chapter 38 were originally enacted in 1964. In order to ensure compliance with applicable statutory and County Code provisions, periodic review of these Code provisions is required. Accordingly, the City Attorney's Office has reviewed and analyzed Chapter 38, resulting in the attached Ordinance containing the following City Code amendments:

I. Amendments required by Florida law:

Prior to the 2011 statutory amendments to the State's Early Voting Law (Fla. Stat. section 101.657), municipalities had the power to opt out the State's law and could thus self-regulate Early Voting for its elections. This ability to opt out was exercised by the City Commission in 2005, resulting in City Code section 38-6 which provides, in part, for a total of 7 days of Early Voting preceding every General Election.

As a result of last year's statutory amendments to the State's Early Voting law, municipalities are no longer able to completely opt out of the State's law. Municipalities must now adhere to the statutory Early Voting schedule for those City elections held in conjunction with County or State elections; for those City elections not held in conjunction with County or State elections, however, cities such as Miami Beach may opt out of the statutory provisions and thus may regulate the number of days and sites for such Early Voting.

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<sup>1</sup> See, Miami Beach Charter, Articles VI "Elections" and VII "Initiative and Referendum."

Accordingly, the City Code amendments herein establish the City's policy decision to self-regulate its Early Voting relating to City elections not held in conjunction with County or State elections. The amendments propose a 14-day Early Voting period<sup>2</sup>, with Early Voting sites at City Hall and the North Shore Branch Library.

## II. Amendments required due to County Elections Department Process:

In order to reflect the County Elections Department's procedure regarding the timing of its issuance of Final Election Returns, the Code amendments herein include changing the date on which the City Commission accepts/canvasses election returns from the day after the election date to the first business day immediately following the County Supervisor of Election's issuance of final election returns.

## III. Miscellaneous Amendments:

Although not mandated by State or County law, I further recommend as a housekeeping matter that the Code amendments include language:

- Confirming the City Commission's power to take emergency action at any Commission meeting occurring between a General election date and the date on which it accepts final Run-Off election returns; and
- Including specific statutory citations to applicable provisions of the Florida Election Code, as well as corrections to non-substantive typographical errors.

## **FINAL: ECONOMIC IMPACT ANALYSIS**

Pursuant to City Charter Section 5.02 the City is required to consider the long-term economic impact (at least 5 years) of proposed legislative actions.

The following figures reflect City of Miami Beach costs estimated by the Miami-Dade County Elections Department for future City elections<sup>3</sup>:

- \$3,200: Per day/per location for Early Voting;
- \$197,945.49: Cost estimate for 2013 General Election (estimate based upon City's cost for November 11, 2011 General Election). Cost for 2013 General Election subject to change based on the proportion of the cost City of Miami Beach will share with other municipalities holding elections on same date, any special requests such as number of early voting days and locations, business reply mail option for absentee ballots, etc).

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<sup>2</sup> Per Florida Statute 101.657, the County Supervisor has the discretion to regulate the hours of Early Voting in the event the County conducts such Early Voting.

<sup>3</sup> See correspondence dated November 30, 2012 from County Elections Department to City Clerk, attached as Exhibit "A" hereto.

- \$154,992.01: Cost estimate for 2013 Run-Off Election/stand-alone elections.

The proposed Ordinance does not change the existing schedule of future City General and Run-Off Elections. The cost to the City of these elections will be dependent upon whether they will be stand-alone or held in conjunction with County elections (thus allowing the City to piggyback onto the County ballot at a lesser cost than a stand-alone election) and is thus dependent upon future action of the Miami-Dade County Commission.

**The predominant economic impact of the proposed Ordinance** concerns the proposed increase in the number of Early Voting days from City stand-alone General elections (not held in conjunction with County or State elections) from 7 to 14, with a daily Early Voting cost of \$6,400 ( $\$3,200 \times 2 \text{ sites} = \$6,400$ ). **Therefore, the projected economic impact of this Ordinance over a period of 5 years is \$224,000, reflecting an increased annual cost to the City of \$44,800 (\$6,400 Early Voting cost for 2 sites x 7 days).**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 38 ENTITLED "ELECTIONS," BY INCLUDING REFERENCE TO APPLICABLE STATUTORY PROVISIONS OF FLORIDA ELECTION CODE; CORRECTING TYPOGRAPHICAL ERRORS; AMENDING CITY CODE SECTION 38-4 TO PROVIDE FOR COMMISSION CANVASSING OF ELECTION RETURNS ON THE FIRST BUSINESS DAY IMMEDIATELY FOLLOWING THE COUNTY SUPERVISOR OF ELECTION'S ISSUANCE OF FINAL ELECTION RETURNS AND CONFIRMING AUTHORIZATION OF EMERGENCY COMMISSION ACTION TAKEN AT ANY COMMISSION MEETING OCCURRING BETWEEN GENERAL ELECTION DATE AND ACCEPTANCE OF FINAL RUN-OFF ELECTION RETURNS; AND AMENDING CITY CODE SECTION 38-6 BY ESTABLISHING THE NUMBER OF DAYS FOR EARLY VOTING RELATIVE TO CITY GENERAL, RUN-OFF AND SPECIAL ELECTIONS UPON CITY COMMISSION AUTHORIZATION OF EARLY VOTING, AND AUTHORIZING CITY COMMISSION TO CHANGE EARLY VOTING SCHEDULE FOR ELECTIONS NOT HELD IN CONJUNCTION WITH COUNTY OR STATE ELECTIONS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH AS FOLLOWS:

SECTION 1. That Chapter 38 of the Miami Beach City Code entitled "Elections" is hereby amended as follows:

**Chapter 38 – ELECTIONS.<sup>1</sup>**

**Sec. 38-1. State law adopted.**

Subject to provisions of Florida Statute §100.3605, All general laws of the sState relating to elections which are not inconsistent or in conflict with the provisions of the Charter or this chapter are hereby adopted as part of this chapter.

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<sup>1</sup> Charter reference— Elections, Art. VI; Initiative and Referendum Elections, Art. VII.  
Cross reference— Any ordinance calling elections or prescribing the manner of conducting the election in accordance with State law saved from repeal, § 1-10(a)(16); Administration, Ch. 2; City Commission, § 2-31 et seq.; election signs, § 138-134.  
State Law reference— Florida Election Code, Fla. Stat. Chs. 97—106.

**Sec. 38-2. City Commission to perform duties of County Board of Commissioners.**

Subject to provisions of Florida Statute §100.3605, ¶the eCity eCommission shall perform all acts in relation to general eCity elections which, by the eState law, are made the duty of the bBoard of eCounty eCommissioners.

**Sec. 38-3. Resolution by City Commission setting forth date and purpose of election, deadline for registration, polling places, change of polling places.**

(a) For the purpose of making proper provision for each municipal election held in the eCity, the eCity eCommission shall, not less than 30 days prior to the proposed date of such election, adopt a resolution setting forth the following:

- (1) The date upon which such election is to be held.
- (2) The purpose of such election.
- (3) The days and hours, prior to the date of such election, during which persons qualified to vote therein may register for the election.
- (4) The list of polling places in the several precincts provided for by resolution.
- (5) The form of ballot to be used in such elections, prepared in compliance with all statutory requirements relating to the use of mechanical or other approved voting machines or devices.

(b) The eCity eCommission shall further authorize and direct the eCity eClerk to give notice of the adoption of such resolution and of the provisions thereof prescribed in subsection (a), by and through the publication of an appropriate advertisement in a newspaper meeting the requirements set forth in F.S. Florida Statute § 50.031 once a week for four consecutive weeks next preceding the day upon which such municipal election is to be held. If any polling place designated in such resolution shall become unavailable for use as such, the eCounty eSupervisor of eElections shall designate another polling place in the manner provided by eState law.

**Sec. 38-4. Canvass of Returns; Installation of New Officers.**

On the first business day immediately following the County Elections Supervisor's issuance of final election results, tThe eCity eCommission shall meet on the first Wednesday after a general election or as soon thereafter as practicable, and in the event a runoff election is necessary the eCity eCommission shall meet on the day after the runoff election, for the purpose of canvassing the returns of such election(s) and ascertaining the results thereof. Should no rRun-off eElection be necessary, new officers shall be declared elected subsequent to canvass of final General eElection returns ~~on the first~~

~~Wednesday after the general election (or as soon thereafter as practicable), at which time the new officers shall be installed and shall enter upon the discharge of their duties; if a Run-Off Election is necessary, all new officers shall be declared elected subsequent to canvass of final Run-Off Election returns on the first day after the runoff election, at which time the new officers shall be installed and shall enter upon the discharge of their duties. Moreover, if a Run-Off Election is necessary, the Commission meeting(s) occurring on the first Wednesday after the general election between the date of General Election and the Commission's acceptance of final Run-Off Election returns shall occur for the limited purpose of canvassing the returns of such general election, and/or to address any emergency matter, pursuant to Florida Statute §952.38 (as amended from time to time) and City Charter §2.05.~~

**Sec. 38-5. Appointment and Duties of City Clerk in Connection with Elections.**

The City Clerk is nominated and appointed as the responsible official of the City and is hereby empowered, authorized and directed to perform all duties and functions and to exercise all powers of the Supervisor of registration or Elections required to be performed under this Code, the City Charter, the County Charter or Code and the laws and constitution of the State in connection with municipal elections; however, whenever any act or duty with respect to an election has been, or may be, performed by the Supervisor of Elections of the County, it shall not be necessary for the City Clerk to duplicate that act, but the Clerk may rely upon the actions of the Supervisor of Elections of the County.

**Sec. 38-6. Early voting.**

~~(a) Pursuant to F.S. § 100.3605(1), it is hereby provided that commencing with the November 2005 municipal elections for mayoral and commission offices, all City of Miami Beach general, runoff and special elections are hereby exempted from the provisions of F.S. § 101.657(1)(d) (the "Early Voting Statute"). The early voting statute provides for early voting to begin on the 15th day before an election and end on the second day before an election and provides other operational restrictions.~~

~~(b) In lieu of the above described provisions of F.S. § 101.657(1)(d), it is hereby provided that early voting, if authorized by the city commission, shall commence at Miami Beach City Hall eight days prior to the general election, and shall occur for a total of seven consecutive days; with early voting to occur on the Saturday~~

~~and Sunday immediately preceding any run-off election.~~

(a) Pursuant to Florida Statute §101.657(1)(d) (e), (the "Early Voting Statute"), the City of Miami Beach may provide for early voting in City elections that are not held in conjunction with County or State elections, with the ability of the City to designate as many early voting sites as necessary and to conduct its activities in accordance with the provisions of Florida Statute §101.657(1)(a)-(c).

(b) If authorized by the City Commission per subsection (a) above, early voting shall occur at Miami Beach City Hall and the North Shore Branch Library in accordance with the following schedule:

1. General Election: Early voting shall commence fifteen days immediately preceding the General Election for a total of fourteen consecutive days.

2. Run-Off Election: Early voting shall occur on the Saturday and Sunday immediately preceding any Run-Off Election.

3. Special Election—stand alone (not otherwise held in conjunction with General or Run-Off Election)<sup>2</sup>: Early voting shall commence fifteen days immediately preceding such Special Election for a total of fourteen consecutive days.

(c) The hours of early voting shall be noticed in a newspaper(s) of general circulation within the City of Miami Beach.

(d) The remaining paragraphs of F.S. Florida Statute §101.657, exclusive of paragraph (1)(d) thereof, shall continue to apply to the ~~e~~City's ~~g~~General, ~~r~~Run-~~e~~Off and ~~s~~Special ~~e~~Elections as provided by law.

(e) The ~~e~~City ~~e~~Commission may, by resolution, adopted in advance of a ~~g~~General, ~~r~~Run-~~e~~Off or ~~s~~Special ~~e~~Election that is not held in conjunction with a County or State election per subsection (a) above, alter the sites and/or schedule of days (and times, when early voting is either not conducted by the County Supervisor of Elections, or when the Supervisor is conducting the early voting but has not exercised the discretion to determine the early voting hours) for early voting from that which is provided above.

(f) The ~~e~~City ~~e~~Clerk is hereby authorized to take any action not otherwise inconsistent with State or County law, which is necessary or expedient to implement early voting in accordance with this section.

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<sup>2</sup> The Early Voting time period for any Special Election held in conjunction with a General or Run-Off Election shall occur in accordance with the respective time periods set forth above in Code §38-6(b) 1 and 2.



SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

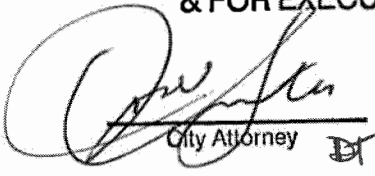
PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

\_\_\_\_\_  
MAYOR MATTI HERRERA  
BOWER

\_\_\_\_\_  
RAFAEL E. GRANADO, CITY CLERK

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney *BT* Date 12-5-12  
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