

ORDINANCE NO. 2022-010

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 8, "ELECTIONS," ARTICLE V, "ELECTIONS ADMINISTRATION," BY AMENDING SECTION 8-104, "VACANCIES; GENERALLY AND IN CANDIDACY," TO PROVIDE FOR CLARIFICATION REGARDING THE PROCESS FOR FILLING VACANCIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION INTO THE CITY'S CODE OF ORDINANCES UPON APPROVAL BY THE MAJORITY OF ELECTORS VOTING IN THE MARCH 14, 2023 MUNICIPAL ELECTION OF THE BALLOT ITEM SUBMITTED AS PART OF THE REFERENDUM ORDINANCE NO. 2022-011; AND PROVIDING AN EFFECTIVE DATE ONLY UPON THE COMPLETION OF CERTAIN CONDITIONS PRECEDENT.

WHEREAS, the City Commission is desirous of amending portions of the Charter of the City of Coconut Creek (hereinafter "City Charter") and the City's Code of Ordinances in order to clarify the process for filling vacancies on the City Commission; and

WHEREAS, pursuant to Section 166.031, Fla. Stat., and Ordinance Number 2022-011 (hereinafter the "Referendum Ordinance"), a proposed Charter amendment will be submitted to the electors of the City of Coconut Creek at the March 14, 2023 municipal election; and

WHEREAS, specifically Section 166.031(6), Fla. Stat., states, "Each municipality shall, by ordinance or charter provision, provide procedures for filling a vacancy in office caused by death, resignation, or removal from office. Such ordinance or charter provision shall also provide procedures for filling a vacancy in candidacy caused by death, withdrawal, or removal from the ballot of a qualified candidate following the end of the qualifying period which leaves fewer than two candidates for an office;" and

WHEREAS, the Referendum Ordinance seeks to clarify the Charter and make it consistent with state law by combining Charter Sections 305 and 713 together, and require that vacancies in the office of Commissioner be filled by vote of the electors, with the procedures for such elections codified within the City’s Code of Ordinances; and

WHEREAS, this ordinance amends Section 8-104 within the City’s Code of Ordinances to clarify those election procedures, as proposed herein, and such amendments will be codified effective only upon a majority of electors voting in the March 14, 2023 election approving the ballot item set forth in the Referendum Ordinance; and

WHEREAS, the City Commission finds and determines that this legislative referendum is in the best interests of the electors within the City of Coconut Creek.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF COCONUT CREEK HEREBY ORDAINS:

Section 1: Ratification. That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance.

Section 2: Code Amendment. That the Code of Ordinances of the City of Coconut Creek, Florida, is hereby amended by amending Chapter 8, “Elections,” Article V, “Elections Administration,” Section 8-104, “Vacancies; generally and in candidacy,” to read and provide as follows:

Sec. 8-104. Vacancies; generally and in candidacy.

Consistent with Section 100.3605, Fla. Stat., elections called under this section must be done by ordinance setting forth the new date of the election, the specific dates for qualifying, and that the purpose of the election is to elect member(s) of the City Commission of the City of Coconut Creek to provide for the orderly transition of office resulting from such vacancy. For purposes of this section, the “qualifying period” shall be interpreted as the context dictates herein. The qualifying period for a primary or general election shall refer to those dates formally established for qualifying pursuant to Florida law and promulgated by the Broward County Supervisor of Elections. Alternatively, the qualifying period for a regular city election shall be as provided in Section 8-52, “Time for Qualifying,” within this Chapter 8, “Elections,” of the City’s Code of Ordinances. The qualifying period for any special election called pursuant to this section shall start no later than 7:00am on the City-business day that is the seventy-first

(71st) calendar day prior to the special election, and last for four (4) City-business days, ending at 6:00pm on the fourth (4th) day. Should the 71st calendar day prior to the special election not fall on a City-business day, then the qualifying period may be held no earlier than 7:00am on the City-business day that is the seventy-fourth (74th) calendar day prior to the special election. The intent of the City is to provide a qualifying period that includes four (4) City-business days and commences at least seventy (70) calendar days before the special election. Elections to fill vacancies shall be held in conjunction with county or state elections, to the extent possible, to save expenses.

(a) Any vacancy in the office of Commissioner must be filled by election. The successful candidate who fills the vacancy shall serve for the unexpired term of office and must be a qualified voter of and primarily domiciled in the same district in which the vacancy has occurred. Vacancies in the city commission shall be filled in one of the following ways: pursuant to the provisions set forth in section 3045, "Vacancies; Forfeiture of Office; Filling of Vacancies," of the City Charter, as amended from time to time.

(1) If a vacancy occurs one hundred (180) or fewer calendar days before the start of the qualifying period for the immediately ~~following~~upcoming election, whether general, primary, or ~~municipal~~regular city election, the vacancy must be filled by the majority vote of the electors at that election. However, if the vacancy occurs too close in time to the immediately ~~following general or municipal~~upcoming election, and there is insufficient time to: i.) hold a qualifying period ~~as provided by law~~at least seventy (70) calendar days prior to the election, ii.) ~~to~~ provide all legally required notices, and iii.) ~~the~~obtain consent from the Broward County Supervisor of Elections for Broward County, Florida, acknowledges that the election cannot ~~the candidates to~~ be placed on the current ballot for that ~~general or municipal~~immediately upcoming election, then a special election to fill said vacancy shall be held no sooner than ninety (90) calendar days and no later than one hundred eighty (180) calendar days of said vacancy; or

(2) If a vacancy occurs more than one hundred eighty (180) calendar days before the start of the qualifying period for the immediately ~~following~~upcoming general or municipal election, then a special election to fill said vacancy shall be held no sooner than ~~sixty (60)~~seventy (70) calendar days and no later than one hundred eighty (180) calendar days of said vacancy.

(b) Any vacancy in the candidacy of Commissioner must be filled as provided herein; however, any candidate who fills a vacancy in candidacy of Commissioner must be a qualified voter of and primarily domiciled in the same district in which the vacancy has occurred. Vacancies in candidacy shall be processed as follows:

(1) If the death, withdrawal or removal from the ballot of a qualified candidate or a member of the governing body occurs after the close of ~~registration~~ and the qualifying period for candidates for this office, and if the death, withdrawal or removal leaves fewer than two (2) candidates for that office, and at least ~~fifty-five (55)~~forty-five (45) calendar days remain before the election, the qualifying

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period for that office shall be reopened for a period of ~~five (5)~~ four (4) City-business days or as soon as practicable following the date the vacancy occurs. All qualified candidates registered during that period shall be placed on the ballot at the general municipal election along with the remaining candidate. The city clerk shall promptly post notice at City Hall in a conspicuous place and on the City's website, and at the City Clerk's discretion, in a newspaper of general circulation in the city of the reopening of ~~registration~~ qualifying period. Only if absentee ballots have been distributed before the reopening of the qualifying period, ~~the~~ city clerk, shall, in conjunction with procedures established by the Broward County Supervisor of Elections of ~~Broward County~~, Florida, make a bona fide attempt to contact all persons requesting absentee ballots so as to advise such absentee voters of the death, withdrawal or removal from the ballot of a qualified candidate. ~~The procedures set forth in subsection (5) hereinafter, shall also apply.~~

- (2) If the death, withdrawal or removal from the ballot of a qualified candidate for city commissioner occurs leaving fewer than two (2) qualified candidates and there is less than ~~fifty-five (55)~~ forty five (45) calendar days before the election, then qualifying shall be ~~re-opened~~ reopened for a period of ~~five (5)~~ four (4) City-business days beginning the day after or as soon as practicable after the vacancy in candidacy occurs. The city clerk shall promptly advertise at least one (1) notice of the ~~rescheduled election and~~ reopening of registration and the qualifying period on the City's website, and at the City Clerk's discretion, in a newspaper of general circulation in the City. If at least one (1) additional candidate duly qualifies within the reopening period provided herein, then the special election for that specific office shall be rescheduled and held no sooner than ninety (90) calendar days and no later than one hundred eighty (180) calendar days of said vacancy in candidacy, ~~delayed by not less than forty five (45) nor more than sixty (60) days, at which time a special municipal election for that office only shall take place.~~ Qualifying shall be re-opened for a period of ~~five (5) days~~ beginning the day after the vacancy occurs. The city clerk shall promptly advertise at least one (1) notice of the ~~rescheduled election and reopening of registration~~ in a newspaper of general circulation in the city. The notice shall be at least a ~~quarter page display advertisement appearing at least ten (10) days prior to~~ All notice requirements as provided by law for holding a special election must be completed for the rescheduled special election date.
- (3) Any remaining candidate for that office shall not be required to re-qualify for an election or pay a second qualifying fee. Any remaining candidate shall not be declared an unopposed candidate under F.S. Ch. 106, ~~as amended from time to time~~, unless no additional candidate qualifies for election during the supplemental (*i.e.* reopened) qualifying period. Any remaining candidate may continue to accept contributions pursuant to F.S. Ch. 106, as amended from time to time, or until they are declared unopposed. If they are declared unopposed pursuant to this section, then within ten (10) calendar days after the close of the supplemental qualifying period the special election shall be canceled. The unopposed candidate shall be declared elected at an organizational meeting of

the city commission pursuant to the City Charter and Code of Ordinances and the oath of office shall be administered at that time.

(4) Notwithstanding Section 8-53, "Withdrawal of candidate," a candidate will be considered unopposed and declared elected only after the provisions of this section have been applied. For the City's purposes, an unopposed candidate means a candidate for election to the City Commission who, after the last day on which a person may qualify, is without opposition in the election at which that office is to be filled or who is without such opposition after the close of the reopened qualifying period specifically required due to the death, withdrawal, or removal of other candidates described herein. A candidate is not considered an unopposed candidate if there is a legal proceeding pending regarding the right to a ballot position for the office sought by any candidate.

(5)(4) The filing of campaign expense statements pursuant to F.S. Ch. 106, as amended from time to time, by candidates in a special election called hereunder subsection (2), including the remaining candidate, shall not be later than such dates as fixed by the city clerk or designee.

(6) Any person who, at the close of qualifying ~~pursuant to this Chapter 8, "Elections,"~~ was qualified for election to a public office to be filled at the ensuing election and thereafter withdraws pursuant to Section 8-53, "Withdrawal of candidate," or is removed from candidacy, leaving only one (1) candidate for the original office sought, is prohibited from re-qualifying as a candidate to fill a vacancy in candidacy during the reopening of the qualifying period.

(c)(5) If a special election is called pursuant to this subsection (2), and other candidates qualify for election during the supplemental qualifying period, supplemental absentee ballots for the special election shall be mailed to any absentee voter who was mailed an absentee ballot for the ~~regular~~initial or originally scheduled election as well as provided to other voters who properly request them. If an absentee voter returns the initial ballot, his/her vote for that office for which the ~~special~~subsequent election was called shall be null and void, but his/her vote on all other offices and issues shall be counted, when applicable.

(d)(6) Should vacancies in candidacy ~~that~~ leave no candidate remaining for the office of City Commission after the close of all qualifying periods described herein, a member of the governing body occur less than six (6) days before the election, a special municipal election shall be called by the governing body, which election shall be conducted in accordance with the procedures set forth in this section 8-104(a) for vacancies in the office of City Commissioner and article III of the Charter. The date that the City Clerk determines no candidate remains qualified for office hereunder, shall be the date of vacancy in office for purposes of the timeframes established in section 8-104(a), as may be amended.

(e(e) Vacancies resulting from the recall procedures provided in Section 100.361, "Municipal Recall," Fla. Stat., as may be amended, shall be filled by election according to this section.

(f) ~~In the event of unforeseeable circumstances not contemplated by this section and Chapter 8, "Elections," as may be amended from time to time, concerning the calling and holding administration of elections resulting from a vacancy or other unpredictable/unforeseen circumstances, the City Commission, through its motion or formal action, may request that the Broward County Supervisor of Elections, with the consent of the City Commission, shall have the authority to provide for the propose a timeline for the conduct of an orderly election/selection tailored to those unforeseeable/unforeseen circumstances. Upon receipt of such timeline, the City Commission may adopt it by ordinance setting forth the new date of the election, the specific dates for qualifying, and that the purpose of the election is to elect member(s) of the City Commission of the City of Coconut Creek to provide for the orderly transition of office resulting from such vacancy, consistent with Section 100.3605, Fla. Stat., as may be amended.~~

Section 3: Conflicts. That all ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 4: Severability. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, clause or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

Section 5: Codification. That the provisions of this ordinance shall be codified within the Code of Ordinances of the City of Coconut Creek, Florida, and any paragraph or section may be renumbered to conform with the Code of Ordinances; however, if the amendments to the City Charter as provided in the Referendum Ordinance are not incorporated into the Charter of the City of Coconut Creek pursuant to Section 166.031(2), Fla. Stat., then this ordinance shall not be codified.

Section 6: Effective Date. That this ordinance shall become effective upon its passage on second and final reading, and only if the proposed City Charter amendment, as stated in the Referendum Ordinance's ballot item is approved by a majority of the electors voting in the municipal election held in the City of Coconut Creek, Florida, on Tuesday, March 14, 2023 as demonstrated by the Broward County Supervisor of Elections' certified election results, then and only then shall this ordinance become effective. If the Charter Amendment is not approved by said voters, this ordinance shall not become effective.

PASSED FIRST READING THIS 25TH DAY OF AUGUST, 2022.

PASSED SECOND READING THIS _____ DAY OF _____, 2022.

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Joshua Rydell, Mayor

Attest:

Joseph J. Kavanagh, City Clerk

	<u>1st</u>	<u>2nd</u>
Rydell	<u>Aye</u>	_____
Welch	<u>Aye</u>	_____
Tooley	<u>Aye</u>	_____
Railey	<u>Aye</u>	_____
Brodie	<u>Aye</u>	_____

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