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INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2019-108

TO: Marlene Graham, City Clerk

CC: Mayor Frank C. Ortis
Members of the City Commission
Charles F. Dodge, City Manager

FROM: Samuel S. Goren, City Attorney *SSG*
Michael D. Cirullo, Jr., Assistant City Attorney *MDC*
Jacob G. Horowitz, Assistant City Attorney *JGH*

DATE: May 29, 2019

RE: City of Pembroke Pines ("City") / 2020 Election Matters

Pursuant to your request, the City Attorney's Office has examined the operative dates and legal implications associated with the March 2020 general municipal election. It is our understanding that Commissioner Castillo has formally declared his intentions to run for mayor in this election.

I. OPERATIVE DATES

March 10, 2020	General municipal election
January 2 – 9, 2020	Qualifying period
December 23, 2019	Deadline to file irrevocable resignation

Please be advised that **all** operative dates set forth in this memorandum are **subject to change**, depending on future action of the city commission and/or the Broward County Supervisor of Elections ("SOE"). The 2020 presidential preference primary is currently scheduled for **March 17, 2020**.

Section 101.75, F.S., authorizes the city commission, by ordinance, to move the date of a municipal election to a date concurrent with any statewide or countywide election. As you may recall, in previous years the SOE has compelled the city to change its election dates to coincide with the presidential primary even when the city commission had affirmatively opted not to do so. We anticipate that should the city commission choose not to

implement Section 101.75, F.S., and change its election date to March 17, 2020, the SOE will again compel the city to do so. Section 101.75, F.S., further requires the city commission to, by the same ordinance, establish a qualifying period for the changed election date. As detailed herein, the deadline to file an irrevocable resignation may change, depending on when the qualifying period for the March 2020 election begins.

As you may recall, the City Attorney's Office examined a similar issue in 2003 when Sue Katz resigned the District 4 commission seat to run for mayor in March 2004. At that time, we opined in our Legal Memorandum No. 2003-185, dated June 30, 2003, that the prospective District 4 vacancy created by her resignation could be filled at the same March 2004 election. Please note that since 2003, the Florida Elections Commission ("FEC") has offered several interpretations of Section 99.12, F.S. For instance, in DEO 17-01, the FEC affirmed that statutory language stating that an office is "deemed vacant" upon the effective date of the resignation, and that the vacancy is to be filled in accordance with the municipal charter. This conclusion has since been further confirmed through our direct conversations with the FEC's general counsel's office.

In light of these recent interpretations from the FEC, our legal opinion, which may differ from the conclusion reached in 2003, is set forth herein.

II. LEGAL ANALYSIS

a. Resign-to-Run

Section 99.012, F.S., the "resign-to-run law," states that "no officer may qualify as a candidate for another state, district, county or municipal public office if the terms or any part thereof run concurrently with each other without resigning from the office that he or she presently holds."

Commissioner Castillo's current term as the commissioner from District 4 runs from March 2018 through March 2022. The next term of the mayor runs from March 2020 through March 2024. Since these terms have two (2) years which run concurrently, Commissioner Castillo is **legally required to resign** from the District 4 commission seat in order to qualify to run for mayor in March 2020.

In accordance with Section 99.012, F.S., an **irrevocable written resignation** must be submitted to the city clerk **at least ten (10) days** prior to the first day of qualifying for the office one intends to seek. Since the **current** qualifying

period for the March 10, 2020 election begins on January 2, 2020, Commissioner Castillo's irrevocable resignation must be submitted **no later than December 23, 2019**, subject to Section 101.75, F.S. (This date is subject to change should the election date and associated qualifying period be changed to coincide with the March 17, 2020, presidential primary)

Commissioner Castillo has the prerogative to determine the effective date of his resignation; however, in accordance with Section 99.012, F.S., his resignation must be **effective** no later than the earlier of the following dates:

- 1) The date he would take office, if elected; or
- 2) The date his successor is required to take office.

As noted, the vacancy in the District 4 commission seat will not occur until Commissioner Castillo's resignation becomes effective. Section 3.07(a) of the City Charter provides, as follows:

- (a) *Organizational.* At the first regular Commission meeting **following the certification of the election results** pursuant to the Florida Election Code, as may be amended from time to time, the Commission shall meet in the City Hall to hold an organizational meeting, at which time and place all newly elected officials shall take an oath of office and assume the duties of their office.

The first regular city commission meeting following the March 10, 2020 election is scheduled to occur on March 18, 2020¹. Assuming that the election results have been certified by that date, the individual elected as mayor will be sworn in at that time. The date Commissioner Castillo's successor is required to take office would be at some later date, as a result of the process to fill the vacancy created by this resignation. Therefore, the commissioner's resignation from the District 4 commission seat must be effective **no later than March 18, 2020**.

While Commissioner Castillo's irrevocable resignation must **currently** be submitted no later than December 23, 2019, the vacancy in District 4 does not legally occur until the effective date of his resignation. Section 99.012(3)(f)(2), F.S., expressly provides, as follows:

¹ If the election occurs on March 17, 2020, it is likely that the city will not receive certified election results by March 18, 2020.

With regard to an elective charter county office or **elective municipal office**, the vacancy created by the officer's resignation may be filled for that portion of the officer's unexpired term in a manner provided by the respective charter. **The office is deemed vacant upon the effective date of the resignation** submitted by the official in his or her letter of resignation.

Therefore, assuming Commissioner Castillo identifies March 18, 2020 as the effective date of his resignation, a prospective vacancy in the District 4 city commission seat will occur on that date.

b. District 4 Vacancy

The District 4 vacancy will be filled in accordance with Section 3.11 of the City Charter. This section expressly provides, in relevant part, as follows:

d. *Filling of vacancies.* Unless otherwise provided by law, if a vacancy occurs on the City Commission, the remaining members of the City Commission **may**, by majority vote, **appoint** a qualified individual to fill the vacancy on an interim basis. The City Commission shall adopt a resolution setting forth the process of appointing an interim member of the City Commission pursuant to this section.

- (1) **Appointment.** If there are less than one hundred eighty (180) days before the next municipal election, then the interim Commission member appointed to fill the vacancy shall serve until the next municipal election. If there are more than one hundred eighty days before the next municipal election, then the City Commission shall conduct a special election to fill the vacancy. The special election shall take place as soon as practicable, but no more than one hundred eighty (180) days from the date that the vacancy occurred. The individual elected to fill the vacancy at either the next municipal election or a special election called for that purpose shall only serve the unexpired term of the City Commission member whose position became vacant.

The City Charter does not define "municipal election," as referenced in this section. Section 1.10(p) of the City Charter, however, defines "Municipal

General Election” as “the City Election held on the second Tuesday of March in every even numbered year.”

The following citywide elections are currently scheduled to occur in 2020:

- | | |
|---------------------|---|
| 1) March 10, 2020 | General municipal election ² |
| 2) August 25, 2020 | Statewide primary election |
| 3) November 3, 2020 | Statewide general election |

While the next “municipal general election” following the March 2020 election, as defined by Section 1.10(p) of the Charter, will occur on March 8, 2022, the next election taking place in the City will occur on August 25, 2020.

In accordance with Section 3.11 of the Charter, as referenced above, the City Commission has the option to appoint a qualified individual to fill the vacancy created by Commissioner Castillo’s resignation. It is our interpretation that the individual appointed to fill this vacancy is not intended to serve for a period longer than one hundred eighty (180) days. Since there are less than one hundred eighty (180) days between March 18, 2020 (assuming Commissioner Castillo identifies this date as the effective date of his resignation) and August 25, 2020 (the statewide primary election), the individual appointed to fill the District 4 vacancy may legally serve until that date.

Note, however, that any special election is subject to the coordination and concurrence of the SOE. The City would need the SOE to agree to permit it to conduct a special election for the remaining term for the District 4 seat on August 25, 2020, or at an earlier date determined by the City Commission. Given the demands of the 2020 election cycle, the SOE may choose not to conduct a special election for the City on any date other than the August 25, 2020 primary.

III. CONCLUSION

Commissioner Castillo is legally required to resign the District 4 commission seat in order to run for mayor in 2020. Currently, the deadline for submitting the resignation is December 23, 2019. However, this date will change should the SOE require the City to conduct its 2020 election on March 17, consistent with the SOE’s past practices and the presidential preference primary. This

² As noted, this election may be consolidated with the presidential preference primary currently scheduled for March 17, 2020.

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would, in turn, change the qualifying period for the mayoral election. An irrevocable resignation must be submitted to the city clerk no later than ten (10) days prior to the first day of qualifying.

The date of the District 4 vacancy will be contingent upon the effective date of Commissioner Castillo's resignation. The commissioner may determine this effective date, subject to the requirements of Section 99.012, F.S. If the effective date is after the March 2020 election date, the vacancy will not legally exist at that time. Therefore, a special election to fill the District 4 vacancy cannot legally occur in March 2020. Thus, this vacancy will be filled in accordance with the applicable provisions of the City Charter, which will require a special election to occur within one hundred and eighty (180) days after the vacancy. This election may occur on August 25, 2020.

Our office will continue to coordinate and advise as these dates approach and we have a more clear sense of the actual operative dates for the March 2020 election. Please let us know if there is any additional information that we can provide.