

City of Palm Coast, Florida Agenda Item

Agenda Date : 07/14/2020

Department	CITY CLERK	Amount
Item Key	8388	Account
		#
Subject	DISCUSSION ON COUNCIL VACANCY PROCEDURE	
Presenter :	VIRGINIA SMITH, CITY CLERK	
Background :	<p>The City Clerk received the resignation of CM Howell effective July 9, 2020. The City Charter states that the remaining Council Members are to fill the vacancy within 30 days of vacancy with a majority vote of the remaining Council.</p> <p>The proposed timeline for the procedure of filling Seat 2 is proposed as follows:</p> <ul style="list-style-type: none">▪ July 15, 2020 Send out letters to former Council Members, Board/Committee Members, and Citizen Academy graduates residing in District 2.▪ Advertise for applications on the city website, in the News Tribune and utilize the communications team to assist in providing the information to our residents▪ July 24, 2020 @ noon- applications due▪ July 28, 2020 Special workshop following the “Special Budget Workshop” to review and shortlist applications and direct the Clerk to invite the top 3 applicants to be interviewed.▪ July 29, 2020-July 31, 2020 one on one interviews▪ August 4, 2020 City Council Business Meeting @ 6:00 pm Appointment to Seat 2. <p>OR</p> <p>Skip one on one interviews and proceed to the business meeting as follows:</p> <ul style="list-style-type: none">▪ August 4, 2020 City Council Business Meeting @ 6:00 pm interview and select candidate to appoint	
Recommended Action :	For discussion and direction.	



APPLICATION

Thank you for your interest in serving the City of Palm Coast. This is for the remainder of Council Member Jack D. Howell's term, which will end after the November 3, 2020 special election. This is a limited appointment. **Applications are due on July 24, 2020 @ noon.**

Your completion of this application is necessary so that the members of the City Council can thoroughly review each application as part of their consideration for the appointment of District 2.

Please be advised that background screening of all applicants is required.

PLEASE ATTACHED RÉSUMÉ

- * **Applicants must reside in District 2, maintain residency in District 2 for duration of appointment, and must reside in District 2 for at least 45 weeks in the year.**
- * **Council Members are required to file a Financial Disclosure Form 1 with the City Clerk at time of appointment and ANNUALLY thereafter with the Flagler County Supervisor of Elections.**

CITY COUNCIL MEMBERS ARE SUBJECT TO THE SUNSHINE LAW AND PUBLIC RECORDS LAW.

1. PERSONAL

Name: _____ E-mail address _____

Residence Address: _____ District # _____

City: _____ State: _____ Zip: _____

Mailing Address (If Different from Residence): _____

Home Phone _____ Business Phone: _____

Date of Birth: _____ Place of Birth: _____

How long have you been a permanent resident of Palm Coast? _____

Do you reside in District 2 for at least 45 weeks in the year? ____ Yes ____ No

What year did you become a continuous resident of the City of Palm Coast? _____

List all places of residence for the last five years.

Address	City & State	From	To

Are you a registered voter in Flagler County? ☐ Yes ☐ No

Have you ever used or been known by any other legal name? ☐ Yes ☐ No

If yes, explain: _____

Are you a citizen of the United States? ☐ Yes ☐ No

If no, explain: _____

If you are a naturalized citizen of the United States, date of naturalization: _____

2. EMPLOYMENT HISTORY (A résumé may be attached at the option of the applicant) (If retired, please still list your previous occupation and employment history.)

If retired, please list your occupation before retirement: _____

Occupation: _____ Current Employer: _____

Current Business Address: _____

City _____ State _____ Zip _____ Phone # _____

List all of your employment history during the last five years. Include employers' name, business address, type of business, occupation, or job title and period(s) of employment.

Employer & Address	Type of Business	Occupational Title	Period of Employment

Have you ever been employed by any state, district, or local governmental agency in Florida? ☐ Yes ☐ No
If yes, identify the position(s), the name(s) of the employing agency and the period of employment.

Position	Employee Agency	Period of Employment

3. EDUCATION

High School: _____ Year Graduated: _____
Name & Location

List postsecondary educational institutions or programs attended:
Name & Location Dates Attended Certificate/Degrees Received

4. MILITARY SERVICE

Are you or have you ever been a member of the Armed Forces? ☐ Yes ☐ No

Date of Service: _____

Branch or Component: _____

Date and Type of Discharge: _____

5. INTEREST/ACTIVITIES/COMMUNITY AND/OR CIVIC INVOLVEMENT?

Are you currently or have you ever served on any City Volunteer Board or Committee? ☐ Yes ☐ No
If yes, which Board or Committee? _____

List any business, professional, occupational, civic, or fraternal organizations or community groups of which you have been a member during the past five (5) years.

Name of Organization(s)

6. QUALIFICATIONS FOR APPOINTMENT

State your experiences and interests or elements of your personal history that qualify you for this appointment.

Have you received any degree(s), professional certification(s), or designation(s) related to the subject matter of this appointment? If yes, list below: ☐ Yes ☐ No

Do you currently hold any office or position (appointive, civil service, or other) with any government entity? If yes, list below: ☐ Yes ☐ No

Have you ever been elected or appointed to any public office? If yes, list below: ☐ Yes ☐ No

<u>Office Title</u>	<u>Date of Election or Appointment</u>	<u>Term of Office</u>	<u>Level of Government</u>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>

Have you or a business of which you have been an owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with City government, including the City of Palm Coast to which you have been appointed or are seeking appointment? ☐ Yes ☐ No If yes, explain below:

<u>Name of Business</u>	<u>Relationship to the Business</u>	<u>Business Relationship to Agency</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

Have you held or do you hold any occupational or professional licenses(s) in the State of Florida? ☐ Yes ☐ No
If yes, provide the information below. If any disciplinary action (fine, probation, suspension, revocation, disbarment, etc.) has been taken against you by the issuing authority, state the type and date of this action.

<u>License/certificate Title & No.</u>	<u>Original Date of Issuance</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>

How do you believe that your education, experience, talents and skills will benefit the work of the City Council and are you willing to act as a decision maker and not as an advocate, as required by law?

7. REFERENCES – Please list three references (business and/or personal)

Name, Address & Telephone Number

Name, Address & Telephone Number

Name, Address & Telephone Number

8. ACKNOWLEDGMENT

If required by law, will you file a financial disclosure statement? ☐ Yes ☐ No

I understand the responsibilities associated with being a member of the City Council and that I am subject to financial disclosure laws and ex parte communications rules and that I will be subject to the Code of Ethics for Public Officers and Employees and City rules of conduct.

I certify that I have adequate time to serve if appointed and that I will serve in accordance with the requirements of the City Council to which I am appointed.

Further, by executing this application below, I am authorizing City staff to perform a personal background screening, which shall include a general criminal records check and other checks relative to City Council for which I am applying.

Signature	Date
RETURN TO: City Clerk's Office City of Palm Coast 160 Lake Avenue Palm Coast, Florida 32164	PHONE: 386-986-3713 FAX: 386-986-3714 EMAIL: vsmith@palmcoastgov.com WEBSITE: www.palmcoastgov.com

ALL CITY COUNCIL MEMBERS ARE SUBJECT TO THE SUNSHINE LAW AND PUBLIC RECORDS LAW.

***SUNSHINE LAW:** The primary purpose of Government in the Sunshine Law is to assure public access to the decision-making processes of public boards and commissions. The Sunshine Law extends to discussions and deliberations as well as to formal actions taken by boards and commissions.



CITY OF PALM COAST

CITY ACCEPTS APPLICATIONS FOR DISTRICT #2 COUNCIL SEAT LIMITED APPOINTMENT

The City of Palm Coast is accepting applications from citizens residing in District #2 who are interested in appointment to the upcoming vacant City Council seat.

Applicants must be registered voters of Flagler County and qualified electors of the City of Palm Coast who not only reside within District #2, but maintain a residency within the District for at least 45 weeks of each year.

Applicants must be available to attend regular City Council meetings on the first Tuesday at 6:00 p.m. and the third Tuesday at 9:00 a.m. of each month. They also must be available for City Council Workshops on the second Tuesday of each month at 9:00 a.m.

Applications are available on the City's website www.palmcoastgov.com/council or by contacting the City Clerk at ysmith@palmcoastgov.com

Interested citizens must submit an application, letter-of-interest, and a resume, to the Palm Coast City Clerk's Office no later than noon on Friday, July 24. This is a limited appointment for the remainder of Council Member Jack D. Howell's term, which will end November 16, 2020. City Council does not intend to appoint anyone that is running for City Council in the upcoming election.

If you are unsure of the District in which you reside or have any other questions relating to this appointment, please contact the City Clerk's Office, City of Palm Coast, 160 Lake Avenue, Palm Coast 32164; phone - 386-986-3713; fax – 386-986-3714; email to ysmith@palmcoastgov.com.

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city of PALM COAST

Administrative Services & Economic Development
Office of the City Clerk

160 Lake Avenue
Palm Coast, FL 32164
386-986-3713

July 15, 2020

To Our Dedicated Board/Committee and Citizens Academy Members:

The City of Palm Coast would like to invite you to consider taking on a more dynamic leadership role in your City government. You have already shown your genuine support for Palm Coast, via Board/Committee or Citizens Academy participation. With the resignation of Council Member Jack D. Howell, the City Council is now accepting applications to fill Mr. Howell's District 2 vacant Council seat for August 2020 through November 16, 2020. This is a limited appointment.

Qualifications are as follows:

- Applicants must be registered voters of Flagler County and qualified electors of the City of Palm Coast who reside within District 2 and maintain a residency within the District for at least 45 weeks of each year.
- Applicants must be available to attend regular City Council meetings on the first Tuesday of each month at 6:00 p.m. and the third Tuesday of the month at 9:00 a.m. They also must be available on the second Tuesday of the month at 9:00 a.m. for City Council Workshops.

If you are interested in making a difference for your fellow citizens and applying for City Council, please send a letter of interest and your resume to Virginia Smith, City Clerk, no later than July 24 at noon. You may email your application or you may send it by mail or fax.

Please consider this opportunity to serve your community further by applying for the open City Council seat. I look forward to hearing from you.

Sincerely,

Virginia A. Smith, MMC, CP
City Clerk/Paralegal
vsmith@palmcoastgov.com

City of Palm Coast, Florida Agenda Item

Agenda Date : 07/14/2020

Department	CITY CLERK	Amount
Item Key	8389	Account #
Subject	RESOLUTION 2020-XX CALLING FOR A SPECIAL ELECTION FOR VACANT DISTRICT 2 SEAT AND SETTING THE PROCEDURES FOR THE SPECIAL ELECTION	
Presenter : Virginia Smith, City Clerk		
Background : On July 9, 2020, Council Member Howell resigned from District 2 Council Seat, which will expire in November 2022. This vacancy triggers the application of Article IV (7)(e) of the City Charter, which addresses the procedures for filling vacancies on the City Council. An appointment to the vacant seat is required to be filled until the next regular election on November 3, 2020. Legal staff have been reviewing the charter and state laws regarding the calling of a special election for this vacant seat. It is necessary due to the timing of the resignation to call a Special Election and outline the processes for the Special Election. It is the duty of the City Council to establish the Special Election date and qualification dates for the voters to elect the Council Member for vacant District 2 seat. All City of Palm Coast registered voters shall be eligible to elect a council member at-large for the vacant seat. The City has given notice to the Flagler County Supervisor of Elections (SOE), of the proposed date for a Special election, as November 3, 2020 and the SOE has approved the proposed special election dates. This item is to determine the process and to set forth the procedures for calling the Special Election. The attached proposed Resolution sets out the calling of the Special Election, the qualifying period, determination of office and authorization and direction for the City Clerk to proceed with a Special Election, in accordance with the City Charter and all applicable laws.		
Recommended Action : ADOPT RESOLUTION 2020-XX CALLING FOR A SPECIAL ELECTION FOR VACANT DISTRICT 2 SEAT AND SETTING THE PROCEDURES FOR THE SPECIAL ELECTION		

RESOLUTION 2020-_____
SPECIAL ELECTION 2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, CALLING FOR A SPECIAL ELECTION FOR VACANT DISTRICT 2 SEAT; PROVIDING FOR SPECIAL ELECTION PROCESSES AND PROCEDURES; PROVIDING FOR IMPLEMENTING ACTIONS; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on July 9, 2020, Council Member Howell resigned from District 2 Council Seat, which was set to expire November 2022; and

WHEREAS, the vacancy triggers the application of Article IV (7)(e) of the City Charter, which addresses the procedures for filling vacancies on the City Council; and

WHEREAS, this vacancy requires an appointment to the vacant seat until the next regular election, November 3, 2020; and

WHEREAS, it is necessary due to the timing of the resignation to call a Special Election and outline the processes for the Special Election; and

WHEREAS, the City Council desires to establish the Special Election date and qualification dates for the voters to elect the Council Member for District 2; and

WHEREAS, all City of Palm Coast registered voters shall be eligible to elect a council member at-large for District 2; and

WHEREAS, the City has given notice to the Flagler County Supervisor of Elections, who has approved the special election dates as set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Palm Coast, Flagler County, Florida, that:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS OF CITY COUNCIL. The above recitals (whereas clauses) are hereby adopted as the Legislative and Administrative Findings of the City Council of the City of Palm Coast.

SECTION 2. CALL OF SPECIAL ELECTION.

The City Council of the City of Palm Coast hereby calls a Special Election to be held Tuesday, November 3, 2020 in conjunction with the City's 2020 General Election.

SECTION 3. SPECIAL ELECTION QUALIFYING PERIOD.

The qualifying period of the above described Special Election for the city of Palm Coast are hereby ratified and shall begin at noon, Monday, August 31, 2020 through noon, September 4, 2020. No petitions to qualify will be accepted by the City Clerk nor the Flagler County Supervisor of Elections after noon, September 4, 2020.

SECTION 4. DETERMINATION OF OFFICE.

In the event not more than one person qualifies as a candidate for this Special Election, District 2 Seat, that seat shall not be listed on the Special Election ballot and shall be deemed to be the winner of the seat. In the event there is more than 1 candidate for this seat, the candidate receiving the highest number of votes cast for the office in the City's general election shall be elected to such office. If the vote at the general City election results in a tie, the outcome shall be determined by lot as follows:

1. At the first regularly scheduled council meeting after the election, the Supervisor of Elections of Flagler County shall toss a coin. In alphabetic order, the two candidates shall call the coin.
2. The candidate whose call matches the coin toss shall be declared the winner.

SECTION 5. AUTHORIZATION AND DIRECTION TO PROCEED. The City Clerk is hereby authorized and directed to proceed with all Special Election arrangements required for the above-described election, in accordance with the Charter of the City of Palm Coast and applicable law.

SECTION 6. IMPLEMENTING ACTIONS.

The City Manager, or designee, is hereby authorized to take any action necessary to implement the action taken in this Resolution.

SECTION 7. SEVERABILITY.

If any section or portions of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 8. CONFLICTS.

All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 9. EFFECTIVE DATE.

This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED and **ADOPTED** at by the City Council of the City of Palm Coast, Florida, passed this 14th day of July 2020.

CITY OF PALM COAST, FLORIDA

MILISSA HOLLAND, MAYOR

ATTEST:

VIRGINIA A. SMITH, CITY CLERK

Approved as to form and legality

William E. Reischmann, Jr., Esq.

GARGANESE, WEISS, D'AGRESTA & SALZMAN, P.A.

Attorneys at Law

111 N. Orange Ave., Suite 2000
P.O. Box 2873
Orlando, Florida 32802-2873
Phone (407) 425-9566
Fax (407) 425-9596

William E. Reischmann, Jr.

wreischmann@orlandolaw.net

July 10, 2020

VIA EMAIL

Mr. Matthew Morton, City Manager
CITY OF PALM COAST
106 Lake Avenue
Palm Coast, Florida 32164

Re: Recent Resignation submitted by Councilmember Howell.

Dear Mr. Morton:

This letter follows your and the City Clerk's request for guidance regarding the recent resignation from the City Council filed by Councilmember Howell.

As you are aware, Councilmember Howell has submitted a resignation letter with the City Clerk dated July 9, 2020. His term ends in November of 2022. He has more than two years left in his term. The City Charter requires the City Council to address filling the vacancy. The purpose of this letter is to advise you and the City Council regarding the procedure for filling the vacancy.

The vacancy triggers the application of Article IV (7)(e) of the City Charter which addresses the procedure for filling vacancies on the City Council:

(e) Filling of vacancies.

1. If, for any reason other than recall, a vacancy occurs in the office of Mayor, the Vice Mayor shall assume the position of Mayor, and within 30 days following the occurrence of such vacancy, a Special Election shall be called as outlined in Art. VII. The Special Election for Mayor shall be for the remainder of the unfilled term.
2. **If, for any reason other than recall, a vacancy occurs in the office of any Council seat within the first two years of a term, the office shall be filled by appointment within 30 days following the occurrence of such vacancy**

by majority vote of the remaining Council members. Such appointments shall last until the next regularly scheduled election, at which time the seat shall be declared open and an election held for the remaining two years of the original term, thus continuing the original staggering of district seats.

5. Any person appointed to fill a vacant seat on the Council is required to meet all the qualifications for office except the petition requirement.

(bold emphasis added).

Based on a literal reading of section 7(e), the City Charter provides that at such time a councilmember seat becomes vacant, the City Council is required to appoint a qualified candidate to serve in the seat within 30 days of the vacancy until the next election. At the "next regularly scheduled election", the electors shall elect a person to serve the remainder of the original term.

The councilmember seat is deemed vacant on July 9th because that is the effective date stated in the letter of resignation. The City Council must appoint someone to fill the seat within 30 days, and that appointee will serve until the "next regularly scheduled election", which is August 18, 2020. The next election after that is the general election on November 3, 2020. The problem is that the qualifying period for this election has expired.

It is clear that the objective of section 7(e) of the City Charter is to permit the City Council to make temporary interim appointments to the City Council until the municipal election, when the electors will decide who should serve the remainder of the unexpired term of the seat previously vacated. See State v. Gamble, 13 Fla. 9 (1869) (construing the power of the Governor to fill a vacancy until "the next election" to mean that the appointment power to fill the office is not for the remainder of the unexpired term and that the power remains with the people); See also, Model City Charter 8th Edition, Section 2.06 Commentary (interpreting similar language to mean "the council shall *temporarily* fill vacancies until the next general election, when the voters will fill such vacancies for the remainder of the term. The model charter commentary also provides that if the election occurs within sixty days of the vacancy, the candidates would have insufficient time to file. Our Charter does not contain this provision).

The Florida Supreme Court has emphasized that there is a strong preference for elections:

We feel that it necessarily follows from this consistent view and steadfast public policy of this State as expressed above, that if the elective process is available, and if it is not expressly precluded by the applicable language, it should be utilized to fill any available office by vote of the people at the earliest possible date. Thus the elective process retains that primacy which has historically been accorded to it consistent with the retention of all powers in the people, either directly or through their elected representatives in their

Legislature, which are not delegated, and also consistent with the priority of the elective process over appointive powers except where explicitly otherwise provided. We thereby continue the basic premise of our democratic form of government, that it is a 'government of the people, by the people and for the people.

Spector v. Glisson, 305 So. 2d 777, 782 (Fla. 1974).

In this case, Councilmember Howell submitted his letter of resignation after the qualifying period of the next City general election. The City Clerk has informed me that the Supervisor of Elections has advised her that all candidate names for the upcoming August election must have been submitted to the Supervisor by June 12, 2020, so it is not possible to hold an election for the seat at the August election. All names for the November election must be submitted to the Supervisor no later than September 4, 2020 in order to be placed on the ballot, although the Supervisor would like the names sooner, if possible. As such, given the timing of the letter of resignation submitted to the City by Col. Howell, the August election is the "next regularly scheduled election", but the vacancy could not be filled then, only the November election is still available. Assuming the City is able to comply with applicable election laws¹, there is no reason why the vacated councilmember seat could not be filled at the election on November 3, 2020. This election would be considered a "special election", since it would be filling a vacancy.

Section 2.06 of the City Charter does not expressly address this situation involving a resignation occurring after the City's standard qualifying period but before the next regular election. In addition, after an exhaustive search of Florida case law, research did not yield any cases on-point related to filling a vacancy on a city council by city charter. However, there are several important cases in the context of filling judicial vacancies by gubernatorial appointment or special election that provide guidance in this situation because they express fundamental principles that a court could find equally persuasive in the context of filling city council vacancies.² These cases favor creating a new qualifying period for this vacancy, and holding a "special election" for just this seat in November.

For example, in Spector v. Glisson, 305 So. 2d 777 (Fla. 1974), the Florida Supreme Court held that if a judicial vacancy is known reasonably in advance of an intervening primary and general election, the vacancy must be filled by election. In support of its holding, the Court cited to Weeks v. Gamble, supra, and stated that "We have historically since the earliest days of our statehood resolved as the public policy of this State that interpretations of the constitution, absent clear provision otherwise, should always be resolved in favor of retention in the people of the power and opportunity to select officials of the people's choice, and that vacancies in elective office should be filled by the people at the earliest practical date."

¹ This assumption and the applicable general election laws are addressed later in this letter.

² Clearly, the Governor's authority to appoint a person to fill a judicial vacancy or call for an election are governed by completely different constitutional and statutory provisions that are not applicable here.

Likewise, in Judicial Nominating Com'm, Ninth Cir. v. Graham, 424 So. 2d 10 (Fla. 1982), a judicial nominating commission sought a writ of mandamus directing the Governor to use the merit selection process to fill several judicial vacancies by appointment. However, the Governor called for a special election to fill the vacancies because there was an intervening primary and general election. Under these circumstances, the Court concluded that "the constitution mandates an election when there is sufficient time to afford the electorate an opportunity to fill a judicial vacancy." Id. The Court also summarized its conclusion as follows:

In summary, if the vacancy is known in enough time to schedule a special election during the already scheduled primary and general election dates, then a special election should be held. On the other hand, if an irrevocable communication of an impending vacancy is presented to the governor at the time of or after the first primary, then we have held there is insufficient time to use the primary and general election process during that year and the governor is authorized to use the merit selection process for a term ending in January following the general election two years later.

Graham, 424 So. 2d 10, 12 (Fla. 1982); See also, Padovano, J., dissenting, Trotti v. Detzner, 147 So. 3d 641, 645 (Fla. 1st DCA 2014) (concluding that the rationale of the Spector decision is as compelling today as it was over 40 years ago in that elective offices should be filled by elections whenever possible).

Based on these cases, City Council should consider treating the November 3, 2020 general election as a "regularly scheduled election" under the Charter that will afford the electorate an opportunity to fill the City Council vacancy being created by the resignation of Councilmember Howell. The City Council must provide a qualifying period for that election so that the Supervisor has the names of the candidates no later than September 4th and the Council must announce a special election on November 3rd for Col. Howell's seat.

Due to the timing of this "special election", the candidate with the majority of the votes at the November election will become the councilmember. This is not in keeping with the Charter's scheme for council elections. Section 4 of the City Charter requires that the City hold both a primary and a general election "if there are more than two candidates who qualify for any office", but that is not possible due to the timing of the resignation. Section 6(d) of the City Charter does provide guidance for determining the winning candidate at the general election:

- (6) *Determination of election to office.*
- (d) **The candidate receiving the highest number of votes cast for the office in the City's general election shall be elected to such office.** If the vote at the general City election results in a tie, the outcome shall be determined by lot as follows:

1. At the first regularly scheduled council meeting after the election, the Supervisor of Elections of Flagler County shall toss a coin. In alphabetic order, the two candidates shall call the coin.
2. The candidate whose call matches the coin toss shall be declared the winner.

Turning to state law, Section 2-37 of the City Code provides that the City will follow the procedure of state law as the procedure for conducting municipal elections within the City. Relevant here are several sections of the Florida Statutes, which are set forth as follows:

Section 100.3605 Conduct of Municipal Elections.

(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.

100.151. Special elections called by local governing bodies, notice.

County commissioners or the governing authority of a municipality shall not call any special election until notice is given to the supervisor of elections and his or her consent obtained as to a date when the registration books can be available.

100.342. Notice of special election or referendum.

In any special election or referendum not otherwise provided for there shall be at least 30 days' notice of the election or referendum by publication in a newspaper of general circulation in the county, district, or municipality, as the case may be. The publication shall be made at least twice, once in the fifth week and once in the third week prior to the week in which the election or referendum is to be held. If there is no newspaper of general circulation in the county, district, or municipality, the notice shall be posted in no less than five places within the territorial limits of the county, district, or municipality.

First and foremost, pursuant to section 100.3605, Florida Statutes, chapters 97-106 of the Florida Statutes shall govern municipal elections in the absence of an applicable special act, charter, or ordinance that applies to the municipality. However, if a statute

“expressly applies to municipalities,” a municipal charter or ordinance cannot conflict or exempt the municipality from the express provision of the statute. In other words, with respect to conducting municipal elections, municipal charters and ordinances will govern the election process unless a section of the Florida Statutes expressly requires a municipality to conduct the election otherwise. Therefore, the City has significant leeway to adopt election procedures to conduct municipal elections including conducting a special election to fill a vacancy on the City Council. See Sarasota Alliance For Fair Elections, Inc. v. Browning, 28 So. 3d 880, 886-87 (Fla. 2010) (“while we agree that Florida's Election Code is a detailed and extensive statutory scheme, we conclude that the Legislature's grant of power to local authorities in regard to many aspects of the election process does not evince an intent to preempt the field of election laws.).

In this situation, the Supervisor of Elections has advised the City that the deadline to provide candidate names to the Supervisor for the upcoming November election is September 4.³ The City Council and staff will likely have to immediately take appropriate steps to duly qualify candidates for this special election.

In making this determination, the City Council should also consider a provision in Article VII of the Charter which provides that Council must fix the date of the special election to fill a vacancy by resolution:

- (b) All other special municipal elections shall be held in the same manner as regular elections, and the City Council shall, by resolution, fix the time for holding of such elections.

It is recommended that the Council adopt an emergency ordinance to set the special qualifying period for a special election to be held November 3rd. The ordinance should recite that this procedure will allow the electorate sufficient time to make an educated choice, and will be consistent with applicable law. The City should consider extending the qualifying period close to the deadline imposed by the Supervisor for receiving candidate names. (September 4, 2020). See §100.3605, Fla. Stat. (authorizing municipalities to change qualifying dates by ordinance).

Obviously, time is of the essence for the City Council to address this issue with the qualifying period having already expired, and the requirements of Article IV of the Charter:

- 2. Each individual seeking to qualify as a candidate for one of the four seats on the Council shall:
 - a. Submit a petition supporting his/her candidacy to the City Clerk containing the signatures of at least one percent of the electorate residing within the district (as identified in the most recent decennial census) which he/she seeks to run no later than noon on the 28th day preceding the first day of the qualifying period

³ For purposes of this letter, I am assuming that the Supervisor has agreed to conduct a special election on the City's behalf for the vacant council seat provided the City submits all qualified candidate names to the Supervisor by that date, and that there are no other Supervisor requirements that need to be satisfied related specifically to the special election because it would be held concurrent with the already scheduled general election for mayor.

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for the office sought or, Pay to the City Clerk a qualifying fee of ten percent of the salary of the office he/she seeks to run for.

I suggest this matter be taken up as soon as possible. Please advise if you have any further questions or concerns.

Sincerely,

GARGANESE, WEISS, D'AGRESTA,
& SALZMAN, P.A.

***/s/ Typed and forwarded in
absence of attorney***

William E. Reischmann, Jr.
City Attorney

City of Palm Coast, Florida Agenda Item

Agenda Date : 07/14/2020

Department	CITY CLERK	Amount
Item Key	8406	Account #
Subject	EMERGENCY ORDINANCE 2020- XX AMENDING ARTICLE IV, CITY COUNCIL OF THE CITY OF PALM COAST CHARTER REGARDING “QUALIFYING FOR OFFICE” AND ARTICLE VII, ELECTIONS, WITH LIMITED APPLICABILITY TO ESTABLISHMENT OF QUALIFYING DATES FOR THE CITY OF PALM COAST’S NOVEMBER 3, 2020 SPECIAL ELECTION ONLY	
Presenter : Virginia Smith, City Clerk		
Background : On July 9, 2020, Council Member Howell resigned from District 2 Council Seat, which will expire in November 2022. This agenda item is an emergency Ordinance allowing the City to set the dates and procedures for the Special Election for the vacant District 2 Council seat. This vacancy triggers the application of Article IV, City Council and Article VII, Elections, of the City Charter, which addresses the procedures for filling vacancies on the City Council. An appointment to the vacant seat is required to be filled until the next regular election on November 3, 2020. It is necessary due to the timing of the resignation to call a Special Election on November 3, 2020, and to establish special qualification dates for the voters to elect the Council Member for District 2, and to set the qualifying date by ordinance, as required by Fla. Stat. 100.3605 All City of Palm Coast registered voters shall be eligible to elect a council member at-large for the vacant seat. The City has given notice to the Flagler County Supervisor of Elections (SOE), of the proposed date for a Special election, as November 3, 2020 and the SOE has approved the proposed special election dates.		
Recommended Action : ADOPT EMERGENCY ORDINANCE 2020- XX AMENDING ARTICLE IV, CITY COUNCIL OF THE CITY OF PALM COAST CHARTER REGARDING “QUALIFYING FOR OFFICE” AND ARTICLE VII, ELECTIONS, WITH LIMITED APPLICABILITY TO ESTABLISHMENT OF QUALIFYING DATES FOR THE CITY OF PALM COAST’S NOVEMBER 3, 2020 SPECIAL ELECTION ONLY		

EMERGENCY ORDINANCE 2020-_____

**AN EMERGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF PALM COAST, FLORIDA, AMENDING
ARTICLE IV, CITY COUNCIL OF THE CITY OF PALM
COAST CHARTER REGARDING “QUALIFYING FOR
OFFICE” AND ARTICLE VII, ELECTIONS, WITH
LIMITED APPLICABILITY TO ESTABLISHMENT OF
QUALIFYING DATES FOR THE CITY OF PALM COAST’S
NOVEMBER 3, 2020 SPECIAL ELECTION ONLY,
PURSUANT TO FLORIDA STATUTE SECTIONS
100.3605(2) AND 166.021(4), PROVIDING FOR
SEVERABILITY, CODIFICATION, CONFLICTS AND
EFFECTIVE DATE**

WHEREAS, Fla. Stat. 166.041 allows for the adoption of an emergency ordinance to address an emergency; and

WHEREAS, Fla. Stat. 166.041 provides that an emergency ordinance may be adopted at the meeting at which it is introduced by an affirmative vote of at least four members of the Council; and

WHEREAS, an emergency exists in that Council Member Howell resigned from District 2 Council seat effective July 9, 2020, and his term is set to expire November 2022; and

WHEREAS, the vacancy triggers the application of Article IV (7)(e)(2) of the City Charter, which addresses the procedures for filling vacancies on the City Council when more than two years is left in the term of office; and

WHEREAS, this vacancy requires the City Council make an appointment to the vacant seat until the “next regularly scheduled election”, and the next available regularly scheduled election is November 3, 2020; and

WHEREAS, it is necessary due to the timing of the resignation to call a Special Election on November 3, 2020, and to establish special qualification dates for the voters to elect the Council Member for District 2, and to set the qualifying date by ordinance, as required by Fla. Stat. 100.3605; and

WHEREAS, the Supervisor of Elections has indicated that all candidates to appear on the ballot of the Special Election must provided to the Supervisor no later than September 4, 2020; and

WHEREAS, due to the Supervisor's deadline for the ballot, the Charter requirements, and other legal requirements favoring election over appointment to fill a vacancy in office, it is not possible for Council to hold two readings of this ordinance to set the qualifying dates, necessitating that this ordinance be adopted at one reading as an emergency ordinance.

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

SECTION 1. RECITALS. The above-referenced recitals are confirmed, adopted, and incorporated herein by reference.

SECTION 2. AMENDING ARTICLE IV, CITY COUNCIL. The City Council of the City of Palm Coast hereby amends Article IV, for purposes of the November 3, 2020 special election for Seat 2 only:

(b) Qualifications for office:

2. Each individual seeking to qualify as a candidate for one of the four seats on the Council shall:

a. Submit a petition supporting his/her candidacy to the City Clerk containing the signatures of at least one percent of the electorate residing within the district (as identified in the most recent decennial census) which he/she seeks to run no later than noon on the 7th day preceding the first day of the qualifying period for the office sought or, Pay to the City Clerk a qualifying fee of ten percent of the salary of the office he/she seeks to run for.

SECTION 3. AMENDING ARTICLE VII, ELECTIONS. The City Council of the City of Palm Coast hereby amends Article VII Elections, Subsection 3, Qualifying for Office, as follows, for purposes of the November 3, 2020 special election for Seat 2 only:

(3) *Qualifying for office.* Any person who wishes to become a candidate for a City elective office shall qualify with the City Clerk as provided below. In addition, candidates shall qualify as provided in paragraph (1)(b) of Article IV.

The qualifying dates for the District 2 Seat for the November 3, 2020 Special Election only is as follows:

Noon, August 31, 2020 through noon, September 4, 2020.

SECTION 4. ESTABLISHING END OF SPECIAL ELECTION QUALIFYING PERIOD. The qualifying period set forth in this ordinance is only for purposes of the

Special Election on November 3, 2020, and is not intended to permanently amend the City Charter.

SECTION 5. SEVERABILITY. If any section or portion of a section of this Ordinance proves to be invalid, unlawful or unconstitutional, it shall not be held to impair the validity, force or effect of any other section or part of this Ordinance.

SECTION 6. NON-CODIFICATION INTO THE CHARTER. The provisions of Sections 2 and 3 of this Ordinance deal with the limited change in qualifying date for the City's November 3, 2020 Special Election, and shall not become part of the City's Charter Articles IV and VII. All remaining language in the Charter dealing with qualifying for office and elections not otherwise in conflict with or expressly referred to in this Ordinance shall apply to said November 3, 2020 Special Election for vacant Seat District 2.

SECTION 7. NOTIFICATION TO FLAGLER COUNTY SUPERVISOR OF ELECTIONS. The City Clerk is hereby directed, upon adoption of this Ordinance, to notify the Flagler County Supervisor of Elections of the subject changes in qualifying dates, and transmit official copies of this Ordinance to the Flagler County Supervisor of Elections.

SECTION 8. CONFLICTS. All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

SECTION 9. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

Adopted at a special meeting by the City Council of the City of Palm Coast on this 14th day of July 2020.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Approved as to form and legality:

William Reischmann Jr., Esq.

SPECIAL ELECTION DATE: Tuesday November 3, 2020

BALLOT NAMES DUE: Friday, September 4, 2020 @ noon

QUALIFYING DATES: August 31, 2020 through September 4, 2020 @ noon

PETITION DUE DATE: August 24, 2020 @ noon (1 week prior to qualifying due date)

Standard petition due date would have been August 3, 2020 @ noon (28 days per Statute)

*Confirming with State if we can utilize electronic submission for petitions.

REPORTING DUE DATES:

Report #	Due Date	Coverage Dates
P4	7/11/2020-7/17/2020	July 24, 2020
P5	7/18/2020-7/24/2020	July 31, 2020
P6	7/25/2020-7/31/2020	August 7, 2020
P7	8/1/2020-8/13/2020	August 14, 2020
G1	8/14/2020-8/21/2020	August 28, 2020
G2	8/22/2020-9/4/2020	August 14, 2020
G3	9/5/2020-9/18/2020	September 25, 2020
G4	9/19/2020-10/2/2020	October 9, 2020
G5	10/3/2020-10/16/2020	October 23, 2020
G6	10/17/2020-10/29/2020	October 30, 2020

TR Report due within 90 days of after the election-November 3, 2020 for coverage dates of October 29, 2020 through date account closed.

NEWSPAPER ADVERTISEMENT NOTICE OF SPECIAL ELECTION (within 30 days prior to start of qualifying)- ASAP, and weekly, July 22, July 29, August 5 and August 12 to assist in getting the information to many residents.