

Memorandum

City Attorney's Office

No. 12-0489

To: Honorable Mayor and Commissioners

From: Harry A. Stewart, City Attorney



Date: October 11, 2012

Re: District II – Special Election
Discussion – Commission Conference
Agenda – October 16, 2012

As you are aware, District II Commissioner Charlotte Rodstrom has resigned effective November 19, 2012, thereby creating a vacancy beginning November 20, 2012. Since there are more than 18 months left on her term of office, Section 7.08 of the Charter requires that a “. . . special municipal primary and election shall be called to fill such vacancy or vacancies.” The puzzle of filling the vacancy created by this resignation begins with the Charter requirements that the special municipal primary must be held within sixty (60) days after such vacancy occurs. Since the vacancy occurs on November 20, 2012, the special primary election could not be held in conjunction with the November 6, 2012 general election. The Charter dictates that the special municipal primary election be held no sooner than November 20, 2012, and no later than January 19, 2013.

The Commission, by resolution, must fix the time for qualifying and holding the special municipal primary election. Another piece of the puzzle is Section 7.09 of the Charter, which requires that the primary election shall not be less than 45 days after the adoption of the resolution calling for the election.

In consultation with the Office of the Supervisor of Elections to work around the constraints caused by the administration of the general election to be held on November 6, 2012, the election requirements contained in Florida Statutes, and the specific requirements of the Charter for filling vacancies, I would recommend the following schedule:

November 20, 2012

Adopt a resolution calling for a special municipal primary and election and setting a time for qualifying.

December 5-7, 2012	Time period to qualify for the special municipal primary elections between the hours of 9:00 a.m. and 3:00 p.m. each day.
January 15, 2013	Hold special municipal primary elections to fill the District II commission vacancy.
March 12, 2013	Hold general election to fill the District II commission vacancy, if necessary.

The schedule recommended above meets all the constraints placed on filling the District II commission vacancy by the administration of the general election, statutory election requirements, and the Charter, save one Charter requirement, i.e. Section 7.10 of the Charter, which requires that the general election be held two weeks after the special municipal primary. This requirement is made impossible by the statutory requirements for absentee ballots, which prevail over the Charter.

Upon approval of the proposed schedule, I will draft the appropriate resolution for approval by the City Commission to implement this recommendation.

HAS:mr

c: Lee R. Feldman, City Manager
Jonda K. Joseph, City Clerk
John Herbst, City Auditor