MEMORANDUM

Agenda Item No. 11(A)(7)

TO:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners	**DATE:**	July 1, 2008
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution approving proposed amendment to Charter of Town of Cutler Bay

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Katy Sorenson.

R. A. Cuevas, Jr.
County Attorney

RAC/bw

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: July 1, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 11(A)(7)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(7)
7-1-08

RESOLUTION NO. _____

RESOLUTION APPROVING A PROPOSED AMENDMENT TO THE TOWN OF CUTLER BAY'S CHARTER CHANGING QUALIFYING DATES FOR CANDIDATES RUNNING FOR THE OFFICE OF MAYOR, VICE-MAYOR OR COUNCIL MEMBER OF THE TOWN AND CHANGING THE DATES ON WHICH SUCH ELECTIONS SHALL BE HELD

WHEREAS, the Code of Miami-Dade County requires that as a condition of incorporation, each new municipality shall conduct its regular election(s) to fill municipal elective offices, in a manner prescribed by the Code; and

WHEREAS, the Code generally requires new municipalities to fill elective offices in March and provides for qualifications for candidates for such offices to occur in January; and

WHEREAS, the Miami-Dade County Home Rule Charter requires that "with regard to any municipality created after September 1, 2000, the pre-agreed conditions between the County and the prospective municipality which are included in the municipal charter can only be changed if approved by an affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors; and

WHEREAS, the Town Council, in accordance with the recommendations of its Charter Review Task Force, adopted Town Resolution No. 08-25 (a copy of which is attached hereto), proposed certain changes to the Town Charter, including changing the election date for municipal elective office to occur in even numbered years on the first Tuesday following the first Monday in November in order to coincide with a Countywide election and modifying the qualifying dates and other related provisions for such offices accordingly; and

WHEREAS, the Town Council has requested that the County Commission approve such proposed changes by two-thirds vote of the Board of County Commissioners, so that the

electorate of the Town of Cutler Bay may vote on this proposed amendment at the November 4, 2008 election,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board of County Commissioners, by an affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners presently in office, hereby approves the proposed Town of Cutler Bay amendment and ballot question contained in Town Resolution No. 08-25, which is attached hereto and incorporated herein by reference.

The Prime Sponsor of the foregoing resolution is Commissioner Katy Sorenson. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairman thereupon declared the resolution duly passed and adopted this 1st day of July, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency.

By:_____
Deputy Clerk

Oren Rosenthal

RESOLUTION NO. 08-25

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CONCERNING CERTAIN CHARTER AMENDMENTS PROPOSED PURSUANT TO THE COMPREHENSIVE REVIEW AND RECOMMENDATIONS OF THE CHARTER REVISION COMMISSION, AS SUBSEQUENTLY REVIEWED, REVISED AND APPROVED FOR SUBMITTAL BY THE TOWN COUNCIL, PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF A PROPOSED AMENDMENT TO THE TOWN CHARTER IN ACCORDANCE WITH SECTION 6.1 AND 6.2 OF THE TOWN CHARTER AND SECTION 6.03 OF THE HOME RULE CHARTER OF MIAMI-DADE COUNTY; SUBMITTING PROPOSED CHARTER AMENDMENTS, INCLUDING AMENDMENTS PERTAINING TO: SECTION 2.4 "QUALIFICATIONS" CONCERNING TIME PERIODS FOR QUALIFYING FOR ELECTED TOWN OFFICE AND MAKING PROVISIONS FOR CONTINGENCIES WHICH MAY ARISE SHOULD A CANDIDATE DIE, WITHDRAW, OR BE REMOVED; A PROPOSED CHARTER AMENDMENT CONCERNING SECTION 5.1 "ELECTIONS"; PROVIDING FOR AN AMENDMENT OF SECTION 5.1 TO MOVE THE ELECTION DATE FROM MARCH TO NOVEMBER TO CORRESPOND WITH THE COUNTY-WIDE ELECTIONS AND ALLOWING FOR THE AUTOMATIC CHANGE OF THE ELECTION DATE PROSPECTIVELY IF THE COUNTY-WIDE ELECTION DATE CHANGES; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO THE ELECTORATE; CALLING A SPECIAL ELECTION ON THE PROPOSED AMENDMENTS TO THE TOWN CHARTER TO BE HELD IN CONJUNCTION WITH THE GENERAL ELECTION ON TUESDAY, THE 4TH DAY OF NOVEMBER, 2008; PROVIDING NOTICE OF ELECTION; PROVIDING FOR APPROVAL BY A TWO-THIRDS VOTE OF THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY; PROVIDING FOR BALLOTING AND ELECTION PROCEDURES; PROVIDING FOR INCLUSION IN THE CHARTER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, when the Town of Cutler Bay (the "Town") was incorporated in 2005, the Town adopted certain Charter provisions with the expectation that they would be revisited shortly

after incorporation by the Town of Cutler Bay Charter Revision Commission (the "Charter Revision Commission"); and

WHEREAS, pursuant to the comprehensive review and recommendations of the Charter Revision Commission and subsequent Town Council review, the Town Council has determined that certain amendments (the "Charter Amendments") are needed to the Town Charter in order to create a new and up to date Town Charter document and to provide for certain additional amendments as provided herein; and

WHEREAS, pursuant to Sections 6.1 and 6.2 of the Town Charter and Section 6.03 of the Home Rule Charter of Miami-Dade, as applicable, the Town Council is required to submit the Charter Amendments to the electors of the Town for approval or rejection; and

WHEREAS, pursuant to the Town Charter., these amendments require approval by a two-thirds vote of the Board of County Commissioners of Miami-Dade County prior to being submitted to the electors of the Town of Cutler Bay for approval.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That each of the recitals stated above is hereby adopted and confirmed.

Section 2. **Charter Amendments.** That pursuant to Section 6.1 of the Town Charter and Section 6.03 of the Home Rule Charter of Miami-Dade County, the Town Charter of the Town of Cutler Bay, Florida, is hereby amended as described below in Part A, and B to read as follows:[1]

Part A. That Section 2.4 "Qualifications" of the Town Charter is amended to read as follows:

Section 2.4 Qualifications

Candidates for Mayor, Vice-Mayor or Council member shall qualify for election by the filing of a written notice of candidacy with the Town Clerk no earlier than ~~noon on the first workday in January and no later than noon on the 14th day following the first weekday in January of the calendar year in which the election is to be held or if said 14th day is a holiday then by noon of the last workday prior to the said 14th day ("Qualifying Date")~~75 days prior to the election date scheduled by the Miami-Dade County Supervisor of Elections for the first Tuesday following the First Monday in November (the "Election Date"), and no later than 60 days prior to the Election Date (the "Qualifying Date"), and paying to the Town Clerk a qualifying fee of $100.00, in addition to any fees required by Florida Statutes. In the event the election date is changed to a

[1] / Proposed additions to existing Town Charter text are indicated by underline; proposed deletions from existing Town Charter text are indicated by ~~strikethrough~~.

date other than the first Tuesday following the first Monday in November pursuant to section 5.1C of this Charter, then the qualifying period shall also be adjusted and shall commence no more than 75 days before the election date and end 14 days thereafter. Provided however, that the qualifying period shall always begin and end on a weekday that is not a legal holiday. A person may not be a candidate for more than one office in the same election. Only electors of the Town, as defined by Section 5.1(a), who have resided continuously in the Town for at least two years preceding their Qualifying Date shall be eligible to hold the Office of Mayor, Vice-Mayor or District Council member. In addition, a person may not be a candidate for a Residential Council member Seat unless that person has resided in the Residential Area s/he seeks to represent continuously for a period of one year preceding his/her Qualifying Date. If at the conclusion of the qualifying period no elector has filed or qualified for a Seat, then the qualifying period for that Seat shall be reopened for a period of five business days and any qualified elector who resides in the relevant Residential Area and has resided continuously in the Town for at least two years may file a written notice of candidacy for the Seat in accordance with the provisions of this Section.

A vacancy in a candidacy for the office of Mayor, Vice Mayor or District Council member shall occur upon the death, withdrawal or removal of a candidate. If any qualified candidate dies, withdraws or is removed from the ballot following the end of the qualifying period, and in the event such action leaves fewer than two (2) candidates for that office, then the qualifying period for that particular office shall commence at noon on the day following the day that the vacancy in candidacy occurred, and additional qualification papers shall be available for that particular office in the office of the Town Clerk until noon, fourteen (14) days subsequent to the death, withdrawal or removal from the ballot of the original candidate. A candidate who was a qualifying candidate at the beginning of the supplemental qualified period shall not be required to re-qualify during such period. The Town Council shall hold a special meeting within seven (7) days of such additional qualifying period for the purpose of announcing a vacancy in the candidacy, announcing the additional qualifying period, and taking any action that may be necessary to reschedule the election for that particular office.

Should the additional qualifying period be necessitated, the Town Council shall schedule a special election for that particular office, which election shall be held at least sixty (60) days, but no more than seventy-five (75) days subsequent to the last day of the additional qualifying period. This procedure shall apply only in the event of the death, withdrawal or removal from the ballot of any candidate who qualified during the original qualifying period for such office and any subsequent deaths, withdrawals or removal from the ballot of a candidate's name, which provides for fewer than two (2) candidates for an office, shall result in the remaining candidate being duly elected pursuant to Section 5.1(h).

Part B. That Section 5.1 "Elections" of the Town Charter is amended to read as follows:

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(C) *Election Dates.* A general election shall be held ~~on the second Tuesday in March of even-numbered years. A runoff election, if necessary, shall be held on the second Tuesday in April of even-numbered years.~~in even numbered years on the first Tuesday following the first Monday in November, provided however that it is the intent of this Charter that the Town election always be scheduled to coincide with a Countywide election. Accordingly, if the date of the Countywide general election changes for any reason, either permanently or temporarily, the date of the Town election shall automatically be changed to the same date as the County-wide election and all dates in this Charter that are dependent on the date of the Town election, including but not limited to the lengths of the terms of office for the Mayor, Vice Mayor and Council Members in section 2.3 and the qualifying dates for candidates in section 2.4, shall also be automatically amended and adjusted to coincide with the change of election date. In the case of the terms of office in section 2.3, such change may result in the shortening or lengthening of the terms of office of the elected officials. This paragraph complies with the conditions of incorporation approval detailed in Section 20- 27(A) of the Miami-Dade County Code, which may be amended from time to time. Pursuant to Article V of the Miami-Dade County Home Rule Charter, any modifications to this paragraph will require all approvals normally required by the municipal charter, and approval by an affirmative vote of 2/3rds of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

Section 3. **Election Called.** That a special election is hereby called, to be held on Tuesday, the 4th day of November, 2008, to present to the qualified electors of the Town of Cutler Bay, the ballot questions provided in Section 4 of this Resolution.

Section 4. **Form of Ballot.**

A. That the form of ballot for the Charter Amendments provided for in Section 2 of this Resolution shall be substantially, as follows:

1. **Candidate Qualifying and Replacing Candidates**

   The Town Charter does not provide for qualifying candidates for a November election rather than January, nor allow qualifying to change when Town elections are changed, nor give provisions to extend qualifying if a candidate dies, withdraws, or is removed. It is proposed that the Charter be amended to tie qualifying to the proposed new election in November and future election dates, and create guidelines for candidate replacement.

   Shall the above-described Charter Amendment be adopted?

   [ ] Yes

   [ ] No

2. **Moving the Town Elections to Coincide with County-Wide Elections**

The Town Charter currently provides for Town elections to be held in March rather than November, separate from county-wide elections. It is proposed that the Charter be amended to move the Town elections from March to November to coincide with county-wide elections, and that Town elections be tied to any future date changes to the county-wide elections.

Shall the above-described Charter Amendment be adopted?

[ ] Yes

[ ] No

B. That the Town Council may revise the ballot form which is set forth above by Resolution.

Section 5. Balloting.

A. That balloting shall be conducted on Tuesday, November 4, 2008, between the hours of 7:00A.M. and 7:00 P.M. at the regular polling places provided for Town elections. Absentee balloting shall be available as authorized by law. Early voting pursuant to Sec. 101.657, F.S. shall be provided. All qualified Town electors who are timely registered in accordance with law shall be entitled to vote.

B. That the Town Clerk is authorized to obtain any necessary election administration services from the Miami-Dade County Supervisor of Elections. The County registration books shall remain open at the Office of the County Supervisor of Elections until October 6, 2008, at which date the registration books shall close in accordance with the provisions of the general election laws. The Town Clerk and the County Supervisor of Elections are hereby authorized to take all appropriate action necessary to carry into effect and accomplish the electoral provisions of this Resolution. This special election shall be canvassed pursuant to Town Charter Section 5.4.

C. That the Town Clerk is hereby authorized to take any action which is necessary or expedient to implement this section or to comply with any applicable law.

Section 6. Notice of Election. That notice of said election shall be published in accordance with Section 100.342, Fla. Stat., in a newspaper of general circulation within the Town at least 30 days prior to said election, the first publication to be in the fifth week prior to the election (to-wit: during the week commencing Sunday, September 28, 2008), and the second

publication to be in the third week prior to the election (to-wit: during the week commencing Sunday, October 12, 2008), and shall be in substantially the following form:

"NOTICE OF SPECIAL ELECTION

PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO RESOLUTION NO. 08-25 ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA (THE "TOWN") A SPECIAL ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE TOWN ON TUESDAY, THE 4TH DAY OF NOVEMBER, 2008, BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSALS SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE CITY FOR APPROVAL OR REJECTION.

1. **Candidate Qualifying and Replacing Candidates**

The Town Charter does not provide for qualifying candidates for a November election rather than January, nor allow qualifying to change when Town elections are changed, nor give provisions to extend qualifying if a candidate dies, withdraws, or is removed. It is proposed that the Charter be amended to tie qualifying to the proposed new election in November and future election dates, and create guidelines for candidate replacement.

Shall the above-described Charter Amendment be adopted?

[ ] Yes

[ ] No

2. **Moving the Town Elections to Coincide with County-Wide Elections**

The Town Charter currently provides for Town elections to be held in March rather than November, separate from county-wide elections. It is proposed that the Charter be amended to move the Town elections from March to November to coincide with county-wide elections, and that Town elections be tied to any future date changes to the county-wide elections.

Shall the above-described Charter Amendment be adopted?

[ ] Yes

[ ] No

The full text of the proposed Town Charter Amendment is available at the office of the Town Clerk located at 10720 Caribbean Blvd., Suite 105, Cutler Bay, FL 33189.

"

Town Clerk

Section 7. Miami-Dade County Commission Approval. That the Resolution must be approved by a two-thirds vote of the Board of County Commissioners of Miami-Dade County pursuant to the Town Charter. Accordingly, this Resolution shall authorize the Town Manager to request such approval and shall be conditioned on the Board of County Commissioners of Miami-Dade County granting such approval.

Section 8. Copies. That copies of this Resolution proposing the Charter Amendments are on file at the offices of the Town Clerk located at Town of Cutler Bay 10720 Caribbean Blvd., Suite 105, Cutler Bay, FL 33189, and are available for public inspection during regular business hours.

Section 9. Effectiveness. That the Charter Amendments provided for in Section 2 above shall become effective if the majority of the qualified electors voting on the Charter Amendments vote for its adoption, and they shall be considered adopted and effective upon certification of the election results. Following adoption of the Charter Amendments, the Town Clerk shall file the adopted Charter Amendment with the Clerk of the Circuit Court of Miami-Dade County, Florida.

Section 10. Inclusion In The Charter. Subject to the requirements of Section 8 above, it is the intention of the Town Council and it is hereby provided that the Charter Amendment shall become and be made a part of the Charter of the Town of Cutler Bay; that the Sections of this Resolution may be renumbered or relettered to accomplish such intention.

Section 11. Severability. That the provisions of this Resolution are declared to be severable, and if any section, sentence, clause or phrase of this Resolution shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Resolution but they shall remain in effect, it being the legislative intent that this Resolution shall stand notwithstanding the invalidity of any part.