

RESOLUTION NO. 09-26

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CALLING A SPECIAL ELECTION ON THE PROPOSED AMENDMENTS TO THE TOWN CHARTER TO BE HELD ON THURSDAY, JUNE 25, 2009, PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL OF TWO PROPOSED CHARTER AMENDMENTS; PROVIDING FOR REQUISITE BALLOT LANGUAGE; PROVIDING FOR MAIL BALLOT ELECTION; PROVIDING FOR NOTICE; PROVIDING FOR RELATED MATTERS; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, when the Town of Cutler Bay (the "Town") was incorporated in 2005, the Town adopted certain Charter provisions to ensure a smooth transition from unincorporated area to incorporated municipality; and

WHEREAS, as a consequence of legislative changes made by the Miami-Dade County Commission and the Florida Legislature, the Town Council has determined that certain amendments (the "Charter Amendments") are needed to the Town Charter in order to remove the requirement that the Town contract for and pay for specialized police services from the county and to permit the Town Council to change the candidate qualifying dates for Town elections by ordinance when necessary in order to accommodate requests from the Miami Dade County Supervisor of Elections or to comply with requirements of state law; 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.

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 by amending Section 2.4 "Qualifications, Fees", Section 9.3 "Specialized Law Enforcement Services", Section 9.7 "Favored Nation Status"; to read as follows:¹

¹ / Proposed additions to existing Town Charter text are indicated by underline; proposed deletions from existing Town Charter text are indicated by ~~strikethrough~~. Proposed additions approved by the Town Council as Resolution 08-25 are *italicized and underlined*, proposed deletions already approved are ~~*italicized/strikethrough*~~.

The Town Charter is amended to read as follows:

**TOWN OF CUTLER BAY
TOWN CHARTER**

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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 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 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 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).

This section complies with the conditions of incorporation approval detailed in Section 20-27(B) 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 section 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.

Notwithstanding any of the other provisions of this Section, the Town may modify any aspect of the qualifying period for an election or run-off election by ordinance if such modification is necessary in order to accommodate a request by the Miami-Dade County Supervisor of Elections office or a successor entity or to comply with state or Federal law.

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Section 9.3 Specialized Law Enforcement Services.

~~The town shall pay from its municipal funds, for specialized law enforcement services to be exclusively provided by the Miami-Dade Police Department in perpetuity. Payment amounts and other pertinent terms relating to the provision of specialized police services shall be set forth in a contract between the town and Miami Dade County. These specialized police services include, but are not limited to, tactical services, such as special response team, canine, helicopter, bomb squad investigations and central investigations, such as narcotics, criminal intelligence, economic crimes, homicide, robbery, sexual crimes, domestic violence, crime scene investigations and property and evidence. Specialized law enforcement services do not include police activities of a countywide nature such as warrants, crime lab, public corruption unit, communications, jail, court services, and all sheriff's services as defined by state law. For as long as Miami Dade County continues to fund specialized police services from the countywide budget, the town shall receive a credit equivalent to the payment made by town property owners through the countywide millage.~~

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Section 9.7 Favored Nation Status

If a subsequent incorporation is approved without the newly incorporated area being required to remain in the Miami-Dade Fire Rescue District, Miami-Dade Library System, Miami-Dade Solid Waste collection service area, or without contracting with the Miami-Dade Police Department for local patrol and specialized police services, the Town will be entitled to modify its relationship with the County, so that the Town will not be required to receive that particular service from the County. The provisions of this section, only apply to the service or services modified, and in no way alter the agreement regarding the remaining services.

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Section 3. Election Called.

A. That a special election is hereby called, to be held on Thursday, the 25th day of June, 2009, to present to the qualified electors of the Town of Cutler Bay, the ballot question provided in Section 4 of this Resolution.

B. That the Town Council may by Resolution alter the date of the special election in the event that the Council finds that unforeseen circumstances require it to do so.

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. Compliance with Future Elections Laws and Policies

The Town Charter currently provides for qualification periods for candidates for Town elections that may only be altered by amending the Charter. It is proposed that the Charter be amended to allow the Town to alter those qualifying periods by ordinance if necessary to comply with changes to state or federal law or to the policies of the Miami-Dade County Supervisor of Elections office.

Shall the above-described Charter Amendment be adopted?

Yes

No

2. Eliminating Requirement that Town Contract and Pay Separately for Specialized Police Services with Miami-Dade County

The Town Charter currently provides that the Town is required to contract with and pay for specialized police services from Miami-Dade County. It is proposed that the Charter be amended to eliminate the requirement to pay additional fees for the services and to eliminate the "favored nation" status for specialized police services.

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. That mail ballots, as prescribed by Section 101.6101-101.6107, Florida Statutes, shall be used in this special election. All qualified Town electors who are timely registered in accordance with law shall be entitled to vote. 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 May 27, 2009, at which date the registration books shall close in accordance with the provisions of the general election laws. The Town Clerk and the Miami-Dade 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. 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 Monday, May 18, 2009), and the second publication to be in the third week prior to the election (to-wit: during the week commencing Monday, June 1, 2008), and shall be in substantially the following form:

"NOTICE OF SPECIAL ELECTION

PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO RESOLUTION NO. 09-26 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 THURSDAY, THE 25TH DAY OF JUNE, 2009, BY MAIL BALLOT, AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSALS SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE CITY FOR APPROVAL OR REJECTION.

1. **Compliance with Future Elections Laws and Policies**

The Town Charter currently provides for qualification periods for candidates for Town elections that may only be altered by amending the Charter. It is proposed that the Charter be amended to allow the Town to alter those qualifying periods by ordinance if necessary to comply with changes to state or federal law or to the policies of the Miami-Dade County Supervisor of Elections office.

Shall the above-described Charter Amendment be adopted?

Yes

No

2. **Eliminating Requirement that Town Contract and Pay Separately for Specialized Police Services with Miami-Dade County**

The Town Charter currently provides that the Town is required to contract with and pay for specialized police services from Miami-Dade County. It is proposed that the Charter be amended to eliminate the requirement to pay additional fees for the services and to eliminate the “favored nation” status for specialized police services.

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. 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 8. Effectiveness.

A. That each of the Charter amendments which are provided for in Sections 2 and 4 above shall become effective only if the majority of the qualified electors voting on the specific Charter amendment vote for its adoption, and it shall be considered adopted and effective upon certification of election results.

B. That the Town Attorney is authorized to revise the Charter to the extent necessary to assure that any amendments adopted conform to one another and are properly included in the publication of the revised Town Charter. Further, that in the event that some, but not all, of the Charter amendments are approved by the electors, conforming amendments shall be deemed to be adopted and the Town Attorney is authorized to reflect and implement such revisions of the Charter, including the revision of transitional provisions, to the extent necessary to assure that all amendments adopted conform to one another and to all remaining Charter provisions. If conflicting Charter amendments are adopted at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

C. That following the adoption of the Charter amendments, the Town Clerk shall file the adopted Charter amendments with the Clerk of the Circuit Court of Miami-Dade County, Florida.

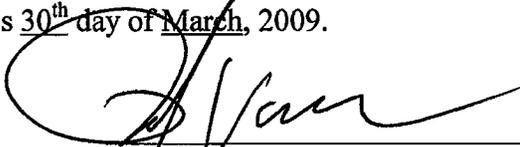
Section 9. Inclusion In The Charter. Subject to the requirements of Section 8 above, it is the intention of the Town Council and it is hereby provided that the Charter amendments shall become and be made a part of the Charter of the Town of Cutler Bay; that the Sections of this Resolution may be renumbered or re-lettered to accomplish such intention.

Section 10. 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.

Section 11. Conflicts . That in the event that the provisions of this Resolution conflict with any other Town Resolution, the provisions of this Resolution shall prevail to the extent of any such conflict.

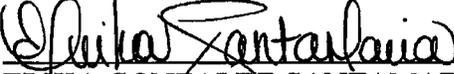
Section 12. Effective Date. That this Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 30th day of March, 2009.



PAUL S. VROOMAN, Mayor

Attest:



ERIKA GONZALEX-SANTAMARIA, CMC
Town Clerk



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:



WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By: Councilmember Meerbott
Seconded By: Councilmember Sochin

FINAL VOTE AT ADOPTION:

- Mayor Paul S. Vrooman YES
- Vice Mayor Edward P. MacDougall YES
- Councilmember Peggy R. Bell YES
- Councilmember Timothy J. Meerbott YES
- Councilmember Ernest N. Sochin YES