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Agenda 2

Filling the vacant Mayor-Commissioner seat.

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COMMISSION SPECIAL MEETING CITY OF ST. PETE BEACH

155 Corey Avenue
St. Pete Beach, FL 33706

Thursday, July 07, 2016

6:00 PM

Call to Order
Pledge of Allegiance
Invocation
Roll Call

- 1. Action Items**
 - a. Filling the vacant Mayor-Commissioner seat.**
- 2. Adjournment**

APPEAL: If a person decides to appeal any decision made at this meeting, he/she will need a record of the proceeding and, for such purpose, will need to ensure that a verbatim recording of the meeting is made that includes the testimony and evidence on which to base the appeal. (Florida Statute 286.0105) The City does not furnish verbatim transcripts. Interested parties should make the necessary arrangements for verbatim transcripts.

AMERICANS WITH DISABILITIES ACT: In accordance with the Americans with Disabilities Act and Florida Statutes, Chapter 286.26, persons needing special accommodations to participate in a meeting should contact City Hall at (727) 367-2735 no later than four (4) days prior to the meeting for assistance.

**The public is cordially invited to attend this meeting.
All agenda material is available for review at City Hall.**

MEMORANDUM

TO: St. Pete Beach City Commission

FROM: Andrew Dickman, City Attorney

COPY: Wayne Saunders, City Manager
Rebecca Haynes, City Clerk

DATE: June 28, 2016

RE: Vacancies; forfeiture of office; filling of vacancies. (City Charter Sec. 3.06)

The purpose of this memorandum is to outline the charter requirements for filling the vacancy created by Mayor Lowe's resignation.

Effective Date and Vice Mayor's Role.

The office of a commissioner shall become vacant upon resignation of his or her office. Sec. 3.06(a). Mayor Lowe's resignation is effective midnight, June 30, 2016. On that date, the vice mayor "shall act as mayor during the absence or disability of the mayor-commissioner." City Charter Sec. 3.05. The vice mayor DOES NOT become mayor or interim mayor.

This section of the Charter is silent on the vice mayor's role when the mayor-commissioner's seat is vacated. I do not interpret "absence" with "vacancy."

Charter section Sec. 3.03(c) outlines the powers of the mayor-commissioner as:

...preside at meetings of the commission, shall be recognized as head of city government for all ceremonial purposes, by the governor for purposes of military law, for service of process, execution of contracts, deeds and other documents, and as the city official designated to represent the city in all agreements with other governmental entities or certifications to other governmental entities, but shall have no administrative duties except as required to carry out the responsibilities herein. The mayor-commissioner shall have equal power with other commissioners to make a motion, second a motion, discuss a question, and cast a vote.

Since these powers are necessary to conduct city business, it is my interpretation that the vice mayor will have the authority cited above; however, complications are foreseeable where another entity may not be willing to accept a vice mayor signature. Therefore, the selection of an interim mayor – commissioner as soon as possible is in the best interest of the city.

Selecting a successor interim mayor – commissioner.

Mayor Lowe's term ends nine (9) months from her resignation. The next regular election of a new mayor for a 3-year term is March 2017. Because more than six (6) months remain in Mayor Lowe's term "and no regular city election is scheduled within six (6) months, the commission shall fill the vacancy on an interim basis ... and shall schedule a special election to be held not sooner than sixty (60) days, nor more than one (1) year following the occurrence of the vacancy." Sec. 3.06(c)(2).

Selecting an interim "successor" mayor – commissioner requires a majority vote of the remaining members of the commission. The interim mayor shall "...serve until the newly elected commissioner is qualified." Sec. 3.06(c)(1).

The City has three options to elect a new mayor-commissioner:

- 1) Appoint a successor interim mayor - commissioner to serve out Mayor Lowe's remaining term until the regular March 2017 election;
- 2) Hold a special election at the November 2016 general election for a mayor - commissioner to serve until the March 2017 regular election; or
- 3) Hold a costly special election no sooner than sixty days for a mayor - commissioner to serve until the March 2017 regular election.

If no currently seated commissioner vacates their seat to seek the interim mayor – commissioner seat, option number one is the least complicated and safest legal process.

What are the consequences of two or more vacancies?

When "two (2) or more vacancies occur simultaneously," the remaining members of the commission shall call a special election within 15 days in accordance with State election laws. Sec. 3.06(c).

It is my opinion that under this situation, the remaining three commissioners are obligated to fill vacancies only by special election; neither of the seats can be filled by appointment. The winning candidates would serve only until the end of the term associated with the vacated seat.

In this event, at least three commissioners would be conducting city business until the special election. The special election would have to be coordinated with the supervisor of elections and all state election laws would apply. It is possible that any decision by a 3-member commission could be questioned. The commission would be crippled should two commissioners vacated their seat to seek the interim mayor seat.

Potential voting conflicts.

Neither the current mayor – commissioner nor any interested commissioner should participate in commission decisions related to filling the vacant seat(s). This, in my opinion, could constitute a voting conflict or at least have that appearance. An interested commissioner should declare their

intention to vacate their seat before the commission decides on how the commission will schedule a special election (no selection of interims are permitted by the Charter in this situation).

Even if an interested commissioner uses the “resign to run” statute and dates their resignation the same day they would be seated as interim mayor, there would still be a short gap of time of two vacancies.

The process of selecting an interim mayor – commissioner.

The Charter is silent on the “qualifying” process for selecting a successor interim mayor - commissioner, so I suggest 1) deciding if there will be a special election or if the successor interim mayor – commissioner will be seated until the March 2017 election, 2) set a deadline for submission of candidates, and 3) interview and/or select the interim mayor as quickly as possible. Again, this would not apply if one or more seated commissioners seek the interim Mayor seat.