

## ORDINANCE 2021-50

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE V, LEGISLATIVE, CHAPTER 50, ELECTIONS, BY REMOVING LANGUAGE PREEMPTED BY THE FLORIDA ELECTION CODE OR CITY CHARTER; AND UPDATING PROVISIONS CONTAINED THEREIN; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1.** The City of Palm Bay Code of Ordinances, Title V, Legislative, Chapter 50, Elections, is hereby amended and shall henceforth read as follows:

### ***General Provisions***

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#### **§ 50.04 ELECTION DATE.**

(A) ~~Regular municipal elections shall be held on the first Tuesday after the first Monday in November.~~ >>The election date is set by the Florida Constitution and Section 100.031, Florida Statutes.<<

~~(B) There shall be no municipal primary elections held in the city.~~

#### **§ 50.05 CHIEF ELECTIONS OFFICER.**

The City Clerk is designated as the Chief Elections Officer of the city and shall see that all municipal elections are conducted in a proper and legal manner >>pursuant to law<<. ~~The City Clerk may delegate any or all of the responsibilities for administering the election to the supervisor of elections, when deemed appropriate by the City Clerk.~~

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#### **§ 50.07 REGULAR MUNICIPAL ELECTION AND NOTICES.**

~~(A) The City Clerk shall publish in a newspaper of general circulation in the city a notice of the election. If there is no newspaper of general circulation within the city the advertisement may be made by posting three (3) copies of the notice~~

~~in three (3) different places within the city, one (1) of which will be at the front door of the city hall. Such notice shall be published at least thirty (30) days prior to the date set for qualification, and again at least thirty (30) days prior to the election date. Such notice shall state the date, time, place and office or offices to be filled, and/or any question at issue to be voted upon.~~

~~(B) The Mayor may issue a proclamation announcing the election at least thirty (30) days prior to the election. Such proclamation shall state the date, time, place and office or offices to be filled, and any question at issue.~~

>>Pursuant to Section 100.021, Florida Statutes, the Florida Department of State shall publish such notifications.<<

#### **§ 50.08 MUNICIPAL QUALIFYING PERIOD.**

(A) >>Primary and<< regular municipal election>>s<<. ~~No person may qualify as a candidate in accordance with § 50.10 prior to the 78th day preceding the next municipal election nor later than 5:00 p.m., local time, on the 74th day preceding the election date.~~

>>Section 101.75, Florida Statutes, delegates authority to the city to move the date and qualifying period of any municipal election to a date concurrent with other state and countywide elections.<<

(B) Special municipal election. The qualifying dates for candidates shall be coordinated with the supervisor of elections' schedule and the election date to provide as much time as possible for notice to the public and out-of-state electors and for the mailing of absentee ballots. At no time shall the qualifying period be less than three (3) working days.

\* \* \*

#### **§ 50.10 QUALIFICATIONS OF CANDIDATES.**

~~(A) Any elector qualified under the laws of the state, having been a resident of the city for two (2) years and a registered elector in the city, residing at a city address, and who is otherwise qualified to be a member of the City Council may be a candidate for any vacancy.~~ >>Candidates for the office of city council shall be qualified pursuant to Section 5.02 of the City Charter.<<

~~(B) A candidate, if elected, shall continue to be a resident and an elector of the city during the term of the office.~~

(C)>>B<< Each candidate shall pay a filing fee of fifty dollars (\$50.00).

\* \* \*

#### **§ 50.13 PREPARATION OF BALLOT.**

~~(A) Immediately following the closing of the qualifying period for any municipal election, the City Clerk shall prepare the ballot in accordance with state law and this code of ordinances and any other applicable ordinance of the city.~~

~~(B) The names of all duly qualified candidates shall be grouped in alphabetical order by the particular office being sought. Any question or issue shall be printed below the last group of candidates' names.~~

~~(C) In addition to the names printed on the ballot, a blank space shall be provided under each group for an office for which a write-in candidate has qualified.~~

>>Pursuant to Section 100.051, Florida Statutes, the county supervisor of elections shall create and print the ballots.<<

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#### **§ 50.16 METHOD OF ELECTING COUNCILMEMBERS.**

(A) The City Council shall consist of five (5) members, each of whom shall have the same legislative power and authority although their titles may be different.

(B) Three (3) Councilmembers shall be elected in the same year; namely, the position of Mayor and two (2) Council seats. Such Council seats shall be designated as the Mayor and seat 2 and seat 3. The other two (2) Councilmembers shall be elected separately and shall be designated as seat 4 and seat 5.

(C) >>A primary election and a general election are to be held pursuant to law and the City Charter.<< The election for the Mayor and seat 2 and seat 3 shall be held in November and every four (4) years thereafter, excluding those elections held to fill early vacancies.

~~(D) The election for seat 4 and seat 5 shall be held in November in a year separate from the Mayor, seat 2, and seat 3, and every four (4) years thereafter, excluding those elections held to fill early vacancies.~~

~~(E) In the event of a tie vote in a special or regular election in which two (2) or more candidates are seeking the same designated seat on the Council, a run-off election, to be held as specified § 50.17, will only be held if breaking the tie would determine the successful candidate. Each elective officer shall hold such office until a successor is elected and qualified.~~

#### **§ 50.17 RUN-OFF ELECTIONS.**

>>The general and run-off elections shall be considered as one election and shall be conducted in accordance with general law.<< Run-off elections shall be called by the City Clerk and shall be held twenty-one (21) days after the municipal

~~or special election. The City Clerk shall cause to be published in a newspaper of general circulation in the city notice of the run-off election at least three (3) days prior to the run-off election. If there is no newspaper of general circulation within the city, the advertisement may be made by posting three (3) copies thereof in three (3) different places in the city, one (1) of which shall be at the front door of the city hall. The notice of the run-off election shall state the date, time, place and office or offices to be filled.~~

~~\* \* \*~~

#### **§ 50.19 ABSENTEE VOTING.**

~~Absentee voting shall be permitted in all elections as provided by law.~~  
>>Pursuant to Section 101.655, Florida Statutes, the county supervisor of elections makes provisions for the use of absentee ballots.<<

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#### **§ 50.21 CERTIFYING THE ELECTION RESULTS.**

(A) A special or regular meeting shall be held within three (3) working days following the receipt by the City Clerk of the official election results from the supervisor of elections to certify the election results.

~~(B) Absentee ballots shall be opened after the closing of the polls on election day to allow for the canvassing of the absentee ballots by the county at the same time as the other ballots.~~

(C) Those Councilmembers present at the above-mentioned meeting shall be given a copy of the official canvass of the election and the ~~presiding officer~~  
>>City Clerk or designee<< shall announce the election results. The newly elected official(s) shall be administered the oath of office immediately thereafter and a certificate of election issued to each successful candidate.

~~\* \* \*~~

#### **§ 50.31 ESTABLISHMENT OF PRECINCTS AND POLLING PLACES.**

~~(A) Precincts.~~

~~(1) Those precincts established, created, and approved by the board of county commissioners pursuant to Fla. Stat. Ch. 101, situated within the corporate limits of the city are designated as the city precincts to be used in any and all municipal elections.~~

~~(2) The City Clerk shall send a certified copy of any annexation ordinance approved by the City Council to the supervisor of elections. Precinct~~

~~boundaries may be altered to conform to the municipal boundaries as changed due to annexation.~~

~~(3) In the event a precinct boundary is unable to be altered to conform to annexation by the date of a city election, any qualified elector residing within the area annexed shall be eligible to vote in the city election.~~

~~(B) Polling places and hours open.~~

~~(1) There shall be a polling place for each precinct within the city. Those polling places designated and used by the supervisor of elections shall be used for municipal elections.~~

~~(2) Electors shall vote, at all elections, at the polling place designated for the precinct in which they reside.~~

~~(3) Whenever necessary, polling place locations may be changed in the manner provided in Fla. Stat. Ch. 101. The City Clerk shall consult with the supervisor of elections prior to relocating any polling place in a municipal election.~~

~~(4) All polling places within the city shall be open for voting from 7:00 a.m. to 7:00 p.m. on election day, and any elector who is in line waiting to vote at 7:00 p.m. shall be permitted to vote in such election.~~

>>Pursuant to Section 101.001, Florida Statutes, the county supervisor of elections is responsible for the creation of voting precincts.<<

#### **§ 50.32 POLL WORKERS.**

~~(A) At each polling place there shall be a sufficient number of poll workers to handle the anticipated number of voters. The supervisor of elections and City Clerk shall determine the necessary number prior to the date of the election. The City Clerk shall appoint the poll workers for any municipal election; provided, however, when a municipal election is held in conjunction with an election conducted by the supervisor of elections, the poll workers shall be those appointed by the supervisor of elections. Poll workers shall receive wages comparable to those paid by the county, unless otherwise approved by the City Council.~~

~~(B) All persons who shall serve as poll workers for any city election shall have the status of casual and temporary employees not entitled to the status or to any of the rights or benefits of regular or permanent municipal employees.~~

~~(C) In the event any poll worker so appointed refuses the appointment or is unable to serve in the election, the City Clerk shall name a successor to serve in the place and stead of such worker.~~

>>Poll workers are selected and appointed by the county supervisor of elections.<<

#### **§ 50.33 CLOSING OF VOTER REGISTRATION.**

(A) ~~Individuals residing within the corporate limits of the city who register to vote less than thirty (30) days prior to any municipal election shall not be permitted to vote in that election.~~

(B) ~~In the event of a run-off election, the registration books shall close thirty (30) days prior to the election date. Individuals who register to vote within this thirty (30) day time period shall not be permitted to vote in the run-off election.~~

>>Pursuant to Section 97.053, Florida Statutes, the county supervisor of elections is responsible for voter registration.<<

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#### ***Filling of Vacancies***

#### **§ 50.50 MAYOR — PERMANENT VACANCY.**

(A) When a permanent vacancy occurs in the office of mayor as a result of death, resignation, illness, disability, forfeiture of office, written court order, or other lawful written order or action, such vacancy shall be filled in accordance with the following procedures:

(1) When there is one (1) year or less remaining in the term of said office, the deputy mayor shall assume the responsibilities of that office until the remainder of the term, or

(2) When more than one (1) year is left remaining in the term of said office and no general municipal election is scheduled within one (1) year, a special election shall be scheduled to be held no sooner than ~~ninety (90)~~ >>seventy-five (75)<< days or more than one hundred eighty (180) days following the date of the vacancy. The deputy mayor shall act as the mayor until a new mayor is elected. The individual elected shall serve the remainder of the unexpired term. The acting mayor will then resume the position of deputy mayor for the remaining balance of his/her appointment and remain on the city council to complete his/her elected term.

#### **§ 50.51 MAYOR — TEMPORARY VACANCY — COURT ORDER, OTHER LAWFUL ORDER OR ACTION.**

(A) When a temporary vacancy occurs in the office of mayor as a result of a written suspension by court order or other written lawful order or action, such vacancy shall be filled in accordance with the following procedures:

(1) The deputy mayor shall assume the responsibilities of the office until the suspension by court order or other lawful order or action becomes final, the mayor is returned to office, or the term of office expires, whichever occurs first.

(2) If the mayor is not reinstated, the position shall be filled in accordance with § 50.50(A)(1) or (2), whichever is applicable.

**§ 50.52 MAYOR — TEMPORARY VACANCY — ILLNESS OR DISABILITY.**

(A) When a temporary vacancy occurs in the office of mayor as a result of an illness or mental or physical disability, such vacancy shall be filled in accordance with the following procedures:

(1) The mayor is required to notify the city council of such illness or disability pursuant to section 3.063 of the city charter. The determination of such illness or disability shall be made by an affirmative vote of at least three (3) councilmembers.

(2) After the determination of such illness or disability by the city council, should the mayor be absent from twelve (12) consecutive regular council meetings, the office shall be deemed vacated.

(3) The deputy mayor shall assume the responsibilities of the office until the mayor is able to return to office, the term of office expires, or the office is filled in accordance with § 50.50(A)(1) or (2), whichever occurs first.

**§ 50.53 DEPUTY MAYOR.**

During any period the deputy mayor assumes the position of mayor, due to either a permanent or temporary vacancy, the city council shall select one of its members to serve as acting deputy mayor for the balance of the appointment of deputy mayor or until such time as the office of mayor is filled as provided in § 50.50(A)(1) or (2), whichever is applicable.

**§ 50.54 COUNCIL SEAT.**

The vacant council seat, created by the council action taken in § 50.53 above, shall be filled on an interim basis by a majority vote of the council. The individual chosen shall fill the position of councilmember and shall forfeit the seat of councilmember when the elected mayor resumes office or the newly elected mayor assumes the duties of the office of mayor.

**§ 50.55 COUNCILMEMBER — PERMANENT VACANCY.**

(A) When a permanent vacancy occurs in the office of councilmember as a result of death, resignation, illness, disability, forfeiture of office, written court

order, or other lawful written order or action, such vacancy shall be filled in accordance with the following procedures:

(1) When there is one (1) year or less remaining in the term of said office, the council shall, by a majority vote, choose a qualified successor to serve the remainder of the term.

(2) When more than one (1) year is left remaining in the term of said office and no general municipal election is scheduled within one (1) year, a special election shall be scheduled to be held no sooner than ~~ninety (90)~~ >>seventy-five (75)<< days or more than one hundred eighty (180) days following the date of the vacancy. The individual elected shall serve the remainder of the unexpired term.

>>(a) The council, by a majority vote of the remaining members, shall choose a successor to serve until a newly elected councilmember is qualified.<<

**§ 50.56 COUNCILMEMBER — TEMPORARY VACANCY — SUSPENSION BY COURT ORDER, OTHER LAWFUL ORDER OR ACTION.**

(A) When a temporary vacancy occurs in the office of councilmember as a result of a written suspension by court order or other lawful written order or action, such vacancy shall be filled in accordance with the following procedures:

(1) The council shall, by a majority vote, choose a qualified successor to assume the responsibilities of the office until the suspension by court order or other lawful order or action becomes final, the councilmember is returned to office, or the term of office expires, whichever occurs first.

(2) If the councilmember is not reinstated, the position shall be filled in accordance with § 50.55(A)(1) or (2), whichever is applicable.

**§ 50.57 COUNCILMEMBER— TEMPORARY VACANCY — ILLNESS OR DISABILITY.**

(A) When a temporary vacancy occurs in the office of councilmember as a result of an illness or mental or physical disability, such vacancy shall be filled in accordance with the following procedures:

(1) The councilmember is required to notify the city council of such illness or disability pursuant to section 3.063 of the city charter. The determination of such illness or disability shall be made by an affirmative vote of at least three (3) councilmembers.

(2) After the determination of such illness or disability by the city council, should the councilmember be absent from twelve (12) consecutive regular council meetings, the office shall be deemed vacated.

(3) The council shall, by a majority vote, choose a qualified successor to assume the responsibilities of the office until the councilmember returns to office, the term of office expires, or the office is filled in accordance with § 50.55(A)(1) or (2), whichever occurs first.

**§ 50.58 DISABILITY DEFINED.**

For purposes of this subchapter, a disability is defined as a physical or mental impairment that substantially limits the ability of the mayor or councilmember to perform the essential duties of their elected positions. A permanent disability means there is no expectation of recovery; a temporary disability means that after a period of time there is an expectation of recovery.

**§ 50.59 QUALIFIED SUCCESSOR.**

Individuals appointed by the city council to fill temporary vacancies shall meet the city's qualifications for candidates seeking public office."

**SECTION 2.** All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

**SECTION 3.** It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

**SECTION 4.** If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the

inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

**SECTION 5.** The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2021-XX, held on \_\_\_\_\_, 2021; and read in title only and duly enacted at Meeting 2021-XX, held on \_\_\_\_\_, 2021.

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Robert Medina, MAYOR

ATTEST:

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Terese M. Jones, CITY CLERK

Reviewed by CAO: \_\_\_\_\_

cc: ALP

**Strikethrough words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.**