

# Issues Overview

April 30, 2018

# Suspension / Removal / Reinstatement

## Authority of the Governor – Statutory Provisions

### Suspension

- The Governor has the authority to suspend a municipal official charged with a felony or misdemeanor related to the duties of office. *Fla. Stat. § 112.51(2)*.
- Upon suspension, a municipal officer may not perform any official act, duty or function during the suspension. *Fla. Stat. § 112.51(4)*.

# Suspension / Removal / Reinstatement

## Authority of the Governor – Statutory Provisions

### Removal

- If the official is convicted, the Governor must remove the official from office. *Fla. Stat. § 112.51(5)*.
- A guilty plea or plea of *nolo contendere* is deemed a conviction. *Fla. Stat. § 112.51(5)*.
- A withholding of adjudication or suspension of a sentence is deemed a conviction. *Fla. Stat. § 112.51(5)*.

# Suspension / Removal / Reinstatement

## Authority of the Governor – Statutory Provisions

### Reinstatement

- If acquitted and/or cleared of the charges, the Governor must revoke the suspension and reinstate the suspended official (to resume any remaining term of their office). *Fla. Stat. § 112.51(6)*.

# Filling of Temporary Vacancy

## Authority of the Governor – Statutory Provisions

### Temporary vacancy

- Suspension of an official by the Governor “creates a temporary vacancy in such office during the suspension.” *Fla. Stat. § 112.51(3)*.
- A temporary vacancy created by suspension “shall be filled by a temporary appointment.” “Such temporary appointment shall be made in the same manner and by the same authority by which a permanent vacancy ... is filled as provided by law. If no provision for filling a permanent vacancy ... is provided by law, the temporary appointment shall be made by the Governor.” *Fla. Stat. § 112.51(3)*.

# Filling of Temporary Vacancy

## City Charter Provisions

### Deputy Mayor --> Mayor

- “If a vacancy occurs in the office of Mayor for any reason whatsoever, a special election shall be held to fill the vacancy ...”  
*City Charter § 3.08(d).*
- “For the period prior to the special election, the Deputy Mayor shall succeed to the office of Mayor and shall serve until the office of Mayor is filled by election ...” (i.e., from the vacancy through the conduct of a special election). *City Charter § 3.08(d).*

# Special Election

## City Charter Provisions

### Special election

- “[A] special election shall be held to fill the vacancy for the remainder of the unexpired term.” *City Charter § 3.08(d)*.
- “[I]f the vacancy occurs within [150] days of a previously scheduled ... election, the special election may be held concurrently with such election, if practicable. *City Charter § 3.08(d)*.

# Special Election

## City Charter and Statutory Provisions

### Term

- An individual elected to fill a vacancy in the office of Mayor at a special election would serve for the remainder of the suspended Mayor's term; however, such term remains subject to the suspended Mayor's right of reinstatement. *City Charter § 3.08(d); Fla. Stat. § 112.51(3) & (6).*



# Temporary Appointment

## City Charter Provisions

### Appointment to City Council

- “The succession to the office of Mayor by the Deputy Mayor shall create a vacancy in the council ...” (in the seat held by the Deputy Mayor). *City Charter § 3.08(d)*.
- “[T]he council ... by majority vote of the remaining members ... may appoint a qualified person to temporarily fill such vacancy on the city council and serve until the office of mayor is filled by election.” *City Charter § 3.08(d)*.
- The “qualified,” appointed individual must be a City resident for at least 30 days, and a registered voter. *City Charter § 3.02, 5.01*.

# Temporary Appointment

## City Charter Provisions

### Temporary service of appointed individual

- After the special election, the Deputy Mayor “shall then complete the remainder of his/her unexpired term if any part of such term remains unexpired.” *City Charter § 3.08(d)*.
- The service of any individual appointed to the seat temporarily vacated by the Deputy Mayor, if applicable, terminates. *City Charter § 3.08(d)*.

# Resolution Calling Special Election

## Resolution required

- A resolution is required to call a special election. *City Charter § 3.16(a)(1); City Code § 6-5.*
- The resolution identifies: the date of the election, the qualification period, and the office/term available (which is the remainder of the suspended Mayor's term, subject to earlier termination in the event of reinstatement of the suspended Mayor). *City Code §§ 6-4(1) and 6-5.*

# Resolution Calling Special Election

City Charter/City Code/State Statutes

## Qualification period

- The qualification period must be at least 7 business days.  
*City Code § 6-4(1).*
- The qualification period must be scheduled to allow for at least 2 business days for candidates to comply with resign-to-run requirements (a resignation must be submitted at least 10 calendar days prior to the first day of the qualification period).  
*City Code § 6-4(1); Fla. Stat. § 99.012(3)(c).*

## Potential Special Election (Applicable Dates / Deadlines)

**August 28, 2018** is the next, scheduled election and, as a practical matter, is the earliest date a special election can be conducted to fill a vacancy in the office of Mayor (subject to the suspended Mayor's right to reinstatement).

# Potential Special Election

(Applicable Dates / Deadlines)

To achieve a special election date of August 28, 2018:

**June 15, 2018** is the date by which notification of a special election must be provided to the Supervisor of Elections.

**June 22, 2018** is the date by which notification of names of qualified candidates must be provided to the Supervisor of Elections.

## Potential Special Election (Applicable Dates / Deadlines)

To achieve a special election date of August 28, 2018:

**May 30, 2018** is the latest date the City Council can act to call a special election for the August 28, 2018 primary election.

- City Council must adopt a resolution calling for a special election.
- The resign-to-run statute is applicable and may create an additional vacancy.

## **Potential Special Election** (Applicable Dates / Deadlines)

\* In the event a special election is not held on August 28, 2018, then the next available date for a special election is November 6, 2018. The deadline to notify the Supervisor of Election of the names of qualified candidates (and the calling of the special election) is August 29, 2018.



# Issues Overview

April 30, 2018

**Fla. Stat. § 112.51. Municipal officers; suspension; removal from office.**

- (1) By executive order stating the grounds for the suspension and filed with the Secretary of State, the Governor may suspend from office any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties.
- (2) Whenever any elected or appointed municipal official is arrested for a felony or for a misdemeanor related to the duties of office or is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor, the Governor has the power to suspend such municipal official from office.
- (3) The suspension of such official by the Governor creates a temporary vacancy in such office during the suspension. Any temporary vacancy in office created by suspension of an official under the provisions of this section shall be filled by a temporary appointment to such office for the period of the suspension. Such temporary appointment shall be made in the same manner and by the same authority by which a permanent vacancy in such office is filled as provided by law. If no provision for filling a permanent vacancy in such office is provided by law, the temporary appointment shall be made by the Governor.
- (4) No municipal official who has been suspended from office under this section may perform any official act, duty, or function during his or her suspension; receive any pay or allowance during his or her suspension; or be entitled to any of the emoluments or privileges of his or her office during suspension.
- (5) If the municipal official is convicted of any of the charges contained in the indictment or information by reason of which he or she was suspended under the provisions of this section, the Governor shall remove such municipal official from office. If a person was selected to fill the temporary vacancy pursuant to subsection (3), that person shall serve the remaining balance, if any, of the removed official's term of office. Otherwise, any vacancy created by the removal shall be filled as provided by law. For the purposes of this section, any person who pleads guilty or nolo contendere or who is found guilty shall be deemed to have been convicted, notwithstanding a suspension of sentence or a withholding of adjudication.
- (6) If the municipal official is acquitted or found not guilty or is otherwise cleared of the charges which were the basis of the arrest, indictment, or information by reason of which he or she was suspended under the provisions of this section, then the Governor shall forthwith revoke the suspension and restore such municipal official to office; and the official shall be entitled to and be paid full back pay and such other emoluments or allowances to which he or she would have been entitled for the full period of time of the suspension. If, during the suspension, the term of office of the municipal official expires and a successor is either appointed or elected, such back pay, emoluments, or allowances shall only be paid for the duration of the term of office during which the municipal official was suspended under the provisions of this section, and he or she shall not be reinstated.

**Fla. Stat. § 112.51. Municipal officers; suspension; removal from office.**

(3) The suspension of such official by the Governor creates a temporary vacancy in such office during the suspension. Any temporary vacancy in office created by suspension of an official under the provisions of this section shall be filled by a temporary appointment to such office for the period of the suspension. Such temporary appointment shall be made in the same manner and by the same authority by which a permanent vacancy in such office is filled as provided by law. If no provision for filling a permanent vacancy in such office is provided by law, the temporary appointment shall be made by the Governor.

**Fla. Stat. § 112.51. Municipal officers; suspension; removal from office.**

(4) No municipal official who has been suspended from office under this section may perform any official act, duty, or function during his or her suspension; receive any pay or allowance during his or her suspension; or be entitled to any of the emoluments or privileges of his or her office during suspension.

**Fla. Stat. § 112.51. Municipal officers; suspension; removal from office.**

(5) If the municipal official is convicted of any of the charges contained in the indictment or information by reason of which he or she was suspended under the provisions of this section, the Governor shall remove such municipal official from office. If a person was selected to fill the temporary vacancy pursuant to subsection (3), that person shall serve the remaining balance, if any, of the removed official's term of office. Otherwise, any vacancy created by the removal shall be filled as provided by law. For the purposes of this section, any person who pleads guilty or nolo contendere or who is found guilty shall be deemed to have been convicted, notwithstanding a suspension of sentence or a withholding of adjudication.

**Fla. Stat. § 112.51. Municipal officers; suspension; removal from office.**

(6) If the municipal official is acquitted or found not guilty or is otherwise cleared of the charges which were the basis of the arrest, indictment, or information by reason of which he or she was suspended under the provisions of this section, then the Governor shall forthwith revoke the suspension and restore such municipal official to office; and the official shall be entitled to and be paid full back pay and such other emoluments or allowances to which he or she would have been entitled for the full period of time of the suspension. If, during the suspension, the term of office of the municipal official expires and a successor is either appointed or elected, such back pay, emoluments, or allowances shall only be paid for the duration of the term of office during which the municipal official was suspended under the provisions of this section, and he or she shall not be reinstated.

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