

RESOLUTION NO. 2019 - 063

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA REQUESTING THE TOWN ATTORNEY TO SEEK A FORMAL OPINION FROM THE FLORIDA ATTORNEY GENERAL TO DETERMINE WHETHER OR NOT THE BROWARD COUNTY SUPERVISOR OF ELECTIONS MAY VIOLATE THE TOWN'S CHARTER BY REFUSING TO HOLD A SPECIAL ELECTION UNTIL MARCH 17, 2020 TO FILL THE UNEXPIRED TERM OF A COUNCIL MEMBER; REQUESTING THE FLORIDA ATTORNEY GENERAL TO OPINE AS TO WHETHER THE TOWN COUNCIL MAY FILL THE VACANCY, EARLIER THAN THE TOWN'S CHARTER PROVIDES, BY APPOINTMENT; REQUESTING THAT SUCH OPINION BE ISSUED PRIOR TO NOVEMBER 4, 2019, OR THE TOWN COUNCIL WILL BE FORCED TO FILL THE VACANCY BY APPOINTMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 6, 2019, Council Member Freddy Fisikelli resigned from office; and

WHEREAS, as a result of Council Member Fisikelli's resignation, the Town has a vacancy in the District 3 Seat; and

WHEREAS, in accordance with Section 2.06 (c) of the Town Charter when more than one (1) year remains of the unexpired term a special election must be held not sooner than 60 days and no more than 120 days following the occurrence of the vacancy; and

WHEREAS, on August 28, 2019, the Town contacted the Broward County Supervisor of Elections ("SOE") in anticipation of the need to conduct a special election in the Town; and

WHEREAS, the SOE has informed the Town that it is unable to accommodate any requests for Special Elections before March 17, 2020 as they are statutorily required to perform voter maintenance in every odd number year; and

WHEREAS, if a Special Election is not conducted within 120 days, it will violate the Town's Charter; and

WHEREAS, if the resignation had occurred after November 3, 2019, the Town Council could have appointed the District 3 Council Member as of right; and

WHEREAS, the Town Council wishes to seek a formal opinion from the Florida Attorney General to determine whether or not the Broward County SOE may violate the Town's Charter by refusing to hold a Special Election, within the requisite timeframe; and

WHEREAS, if the SOE can refuse the Town's request, the Town wishes the Florida Attorney General to confirm that the Town Council may fill the vacancy, earlier than the Town's Charter provides, by appointment; and

WHEREAS, if the Florida Attorney General does not render an opinion prior to November 4th the Town Council will be forced to fill the vacancy by appointment.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

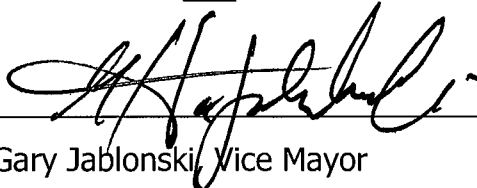
Section 1: Recitals. The above recitals are true and correct and are incorporated herein by reference.

Section 2: The Town Council of the Town of Southwest Ranches hereby authorizes its Town Attorney to seek an opinion from the Florida Attorney General to determine whether or not the Broward County SOE may violate the Town's Charter by refusing to hold a Special Election, within the requisite timeframe. If the SOE can refuse the Town's request, the Town would like the Florida Attorney General to confirm that the Town Council may fill the vacancy, by appointment.

Section 3: Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 12th day of September, 2019 on a motion by Council Member Hartmann and seconded by Council Member Schroeder.

McKay	<u>Yes</u>	Ayes	<u>4</u>
Jablonski	<u>Yes</u>	Nays	<u>0</u>
Hartmann	<u>Yes</u>	Absent	<u>0</u>
Schroeder	<u>Yes</u>		
District 3	<u>Vacant</u>		



Gary Jablonski, Vice Mayor

ATTEST:



Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:



Keith M. Poliakoff, J.D., Town Attorney

**SAUL EWING
ARNSTEIN
& LEHR^{LLP}**

Keith M. Poliakoff
Phone: 954.713.7644
Fax: 954.208.8204
keith.poliakoff@saul.com
www.saul.com

September 18, 2019

VIA FACSIMILE AND REGULAR MAIL

Attorney General Ashley Moody
Attn: Department of Legal Affairs
The Capitol PL01
Tallahassee, FL 32399-1050

RE: Town of Southwest Ranches Request for AGO Relating to
Council Member Vacancy

Dear Attorney General Moody:

The Town of Southwest Ranches (the "Town") is a rural municipality in Broward County, Florida. The undersigned serves as the Town Attorney. This letter is being sent in accordance with Resolution No. 2019-063, which was adopted by the Town Council on September 12, 2019. A copy of Resolution No. 2019-063, is attached hereto as Exhibit "A".

Section 2.06 (c) of the Town's Charter states as follows:

(c) Filling of vacancies. A vacancy on the Council shall be filled as follows:

(1) If less than 1 year remains in the unexpired term, the vacancy shall be filled by the Council within 30 days.

(2) If 1 year or more remains in the unexpired term, the vacancy shall be filled by a special election to be held not sooner than 60 or more than 120 days following the occurrence of the vacancy.

A copy of Section 2.06 of the Town's Charter is attached hereto as Exhibit "B".

On September 6, 2019, Council Member Freddy Fisikelli resigned from office. A copy of Council Member Fisikelli's resignation letter is attached hereto as Exhibit "C". Since Council Member Fisikelli resigned with more than 1 year left in office, in accordance with Section 2.06(c) of the Town's Charter, the Town reached out to the Broward County Supervisor of

200 E. Las Olas Blvd. • Suite 1000 • Fort Lauderdale, FL 33301
Phone: (954) 713-7600 • Fax: (954) 713-7700

DELAWARE FLORIDA ILLINOIS MARYLAND MASSACHUSETTS MINNESOTA NEW JERSEY NEW YORK PENNSYLVANIA WASHINGTON, DC

A DELAWARE LIMITED LIABILITY PARTNERSHIP

September 18, 2019

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Elections (Broward County "SOE") to initiate a special election. To the Town's surprise, the Broward County SOE advised that as a result of "Voter Maintenance", that it could not conduct a Special Election before March 17, 2020. A copy of the SOE's response is attached hereto as Exhibit "D".

The March 17, 2020, date poses numerous problems for the Town:

1. The Town is required by its Charter to conduct the special election within 120 days following the vacancy. The Broward County SOE's special election date would violate the Town's Charter.
2. By March 17, 2020, the Town Council would be able to fill the vacancy by appoint, since it would be less than eight months until the next election.
3. The Town's Charter requires five affirmative votes of the Town Council to approve land use and zoning items, and if this vacancy is left unfilled, the most important matters brought before the Town Council cannot be reviewed until the Council Seat is filled.

As a result of the Broward County SOE's refusal to conduct a special election within the Town's mandated timeframe, the Town respectfully requests a formal Attorney General Opinion to answer the following questions:

1. Is the Broward County SOE required to hold a special election for the Town in accordance with the Town's Charter provisions?
2. If the Broward County SOE is not required to hold a special election for the Town in accordance with the Town's Charter provisions, or if the Broward County SOE refuses to hold a special election in accordance with the Town's Charter provisions, may the Town Council fill the vacancy by appointment earlier than the Town's Charter provides?
3. If the Broward County SOE is not required to hold a special election for the Town in accordance with the Town's Charter provisions, or if the Broward County SOE refuses to hold a special election in accordance with the Town's Charter provisions, may the Town conduct its own special election, utilizing the Broward County SOE's voter registration for the Town?
4. If the Town is not allowed to fill the vacancy by appointment earlier than the Town's Charter provides, may the Town fill the vacancy on or after November 3, 2019, in accordance with the Town's Charter provision that allows vacancies to be filled by the Council if less than 1 year remains in the unexpired term?

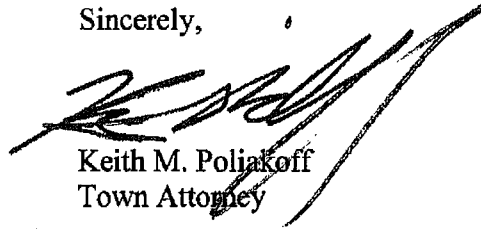
September 18, 2019

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Since the Town is virtually on hold until this vacancy is filled, this matter is of the utmost importance to the Town. As a result, the Town Council respectfully requests a response no later than November 3, 2019, or it will be forced to appoint a replacement in the best interest of the health, safety, and welfare of its residents.

Thank you, in advance, for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith M. Poliakoff", written over a printed name and title.

Keith M. Poliakoff
Town Attorney

Cc: Town of Southwest Ranches

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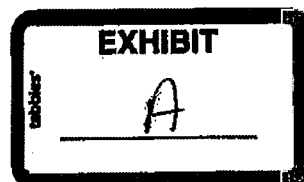
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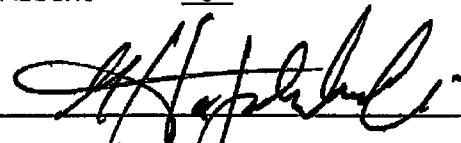
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Jablonski	<u>Yes</u>	Nays	<u>0</u>
Hartmann	<u>Yes</u>	Absent	<u>0</u>
Schroeder	<u>Yes</u>		
District 3	<u>Vacant</u>		



Gary Jablonski, Vice Mayor

ATTEST:



Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:



Keith M. Poliakoff, J.D., Town Attorney

Section 2.06. - Vacancies; forfeiture of office; filling of vacancies.

- (a) *Vacancies.* The office of a Council member shall become vacant upon his or her death, resignation, or removal from office in any manner authorized by law or by forfeiture of his or her office.
- (b) *Forfeiture of Office.*
 - (1) *Forfeiture by disqualification.* A Council member shall forfeit his or her office if at any time during his or her term he or she ceases to maintain his or her permanent residence in the Town or if he or she otherwise ceases to be a qualified elector of the Town.
 - (2) *Forfeiture by removal.* In the event that a Council member is removed from office by executive order pursuant to Article IV, Section 7, of the Florida Constitution, as may be amended from time to time, that Council member shall be prohibited from regaining office until cleared of the charges that lead to that Council Member's removal.
 - (3) *Forfeiture by absence.* A Council member shall be subject to forfeiture of his or her office, in the discretion of the remaining Council members, if he or she is absent without good cause from any three consecutive regular meetings of the Council during any calendar year or if he or she is absent without good cause from any four regular meetings of the Council within any 12-month period.
 - (4) *Procedures.* The Council shall be the sole judge of the qualifications of its members and shall hear all questions relating to forfeiture of a Council member's office, including whether or not good cause for absence has been or may be established. The burden of establishing good cause shall be on the Council member in question; however, any Council member may at any time during any duly held meeting move to establish good cause for his or her absence or the absence of any other Council member, from any past, present, or future meeting or meetings, which motion, if carried, shall be conclusive. A Council member whose qualifications are in question or who is otherwise subject to forfeiture of his or her office shall not vote on any such matters. The Council member in question shall be entitled to a public hearing on requests regarding an alleged forfeiture of office. If a public hearing is requested, notice thereof shall be published in one or more newspapers of general circulation in the Town at least 1 week in advance of the hearing. Any



final determination by the Council that a Council member has forfeited his or her office shall be made by resolution. All votes and other acts of the Council member in question prior to the effective date of such resolution shall be valid regardless of the grounds of forfeiture.

(c) *Filling of vacancies.* A vacancy on the Council shall be filled as follows:

- (1) If less than 1 year remains in the unexpired term, the vacancy shall be filled by the Council within 30 days.
- (2) If 1 year or more remains in the unexpired term, the vacancy shall be filled by a special election to be held not sooner than 60 days or more than 120 days following the occurrence of the vacancy.
- (3) Persons filling vacancies shall meet the qualifications specified in this Article.
- (4) If no candidate for a vacancy meets the qualifications under this Article for that vacancy, the Council shall appoint a person qualified under this Article to fill the vacancy.
- (5) Notwithstanding any quorum requirements established herein, if at any time the full membership of the Council is reduced to less than a quorum, the remaining members may, by majority vote, appoint additional members to the extent otherwise permitted or required under this subsection.
- (6) In the event that all the members of the Council are removed by death, disability, recall, forfeiture of office, or resignation, or any combination thereof, the Governor shall appoint interim Council members who shall call a special election within not less than 60 days or more than 120 days after such appointment. Such election shall be held in the same manner as the initial elections under this Charter. However, if there are less than 6 months remaining in the unexpired terms, the interim Council appointed by the Governor shall serve out the unexpired terms. Appointees must meet all requirements for candidates provided for in this Article.
- (7) In the event that the Council is required to fill the vacancy, within seven (7) days of the vacancy the Town shall publish notice to seek interested qualified candidates to fill the vacancy, who must respond to the notice within fifteen (15) days of publication. The Council shall select a candidate to fill the vacancy from the interested qualified candidate list within fifteen (15) days thereafter.

(Laws of Fla., ch. 2000-475, § 1; Amend. of 11-4-2003; Ord. No. 2010-10, § 2(exh. A(2)), 6-17-2010,

ref. of 11-2-2010; Amend. of 10-21-2010, § 1; Res. No. 2011-015, § 3(2), 11-17-2010)

State Law reference— Mandate for procedure for filling vacancies, F.S. § 166.031(6).

September 6, 2019

Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, FL 33330
Attn: Andy Berns, Town Administrator

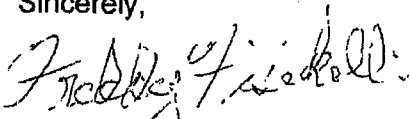
Re: Resignation

Dear Andy,

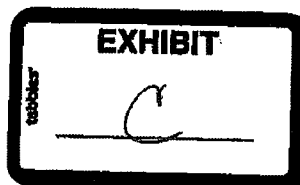
It has been my honor to serve the residents of Southwest Ranches as a member of the Town Council. The trust and faith they showed in me means a great deal to me, and I have always done my best to serve the community.

As a result of health-related challenges and with great regret, I hereby submit my resignation as a member of the Town Council, effective immediately. It is becoming increasingly difficult to fulfill my responsibilities, and I will need to concentrate on my health and well-being.

Sincerely,



Freddy Fisikelli
Council member



Poliakoff, Keith M.

To: Andy Berns; Russell Muniz
Subject: RE: [EXTERNAL] RE: Special Election Costs

From: John Way <jway@browardsoe.org>
Sent: Wednesday, August 28, 2019 10:04 AM
To: Russell Muniz <rmuniz@southwestranches.org>
Cc: Ivette Solera <isolera@southwestranches.org>; Andy Berns <aberns@southwestranches.org>; Mary Hall <mhall@browardsoe.org>; Claudette Hamilton <CHamilton@browardsoe.org>; Ivan Castro <ICastro@browardsoe.org>; Tiffany Bedran <TBedran@browardsoe.org>
Subject: [EXTERNAL] RE: Special Election Costs

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Good Morning Russell,

Unfortunately as I have stated in our previous conversations with other cities the Broward County Supervisor of Elections office is unable to accommodate any Special Elections before the March 17th, 2020 election. In odd number years each Supervisors Office **must** perform "Voter Maintenance", this is mandated by State statute and takes place May through October. As you can imagine after that it's a race against the clock to continue preparing the three county wide elections next year for the 1.1 million Broward Voters.

Having said that we can produce an estimate for a Special Election to be conducted March 17th, 2020

Hope this helps a bit with insight.

Respectfully,

John Way
Director of Public Services
Broward County Supervisor of Elections
115 South Andrews Avenue, Room 102 • Ft. Lauderdale, FL 33301
Office: 954-712-1960 • Mobile: 954-495-3284
www.browardsoe.org

Under Florida law, most e-mail messages to or from Broward County Supervisor of Elections Office are public records available to inspect or copy upon request. Therefore, any e-mail message made or received by the Supervisor's Office, inclusive of any e-mail address contained therein, may be subject to public disclosure.

From: Russell Muniz [<mailto:rmuniz@southwestranches.org>]
Sent: Wednesday, August 28, 2019 8:53 AM
To: John Way
Cc: Ivette Solera; Andy Berns
Subject: Special Election Costs

Good Morning John,



In an abundance of caution I'm being proactive in trying to ascertain the costs of a special election for the Town of Southwest Ranches. We have one Council Member that is battling some serious health issues and we are not sure whether they will be able to complete the remainder of their term. Their term is scheduled to be complete in November of 2020. Our Charter requires that if the remainder of the unexpired is greater than 1 year we have to have a special election.

At your earliest convenience please research what the proposed cost would be to hold a special election to fill the unexpired term for 1 Council Member position.

Let me know if you require any further information.

Regards,

Russell Muñiz, MBA, MPA, MMC
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, FL 33330
Phone: (954) 434-0008
Fax: (954) 434-1490
E-mail: rmuniz@southwestranches.org
Website: www.southwestranches.org



The Town of Southwest Ranches is proud to partner with the Military Heroes Support Foundation to send care packages to our military troops deployed in Afghanistan, Ukraine, and Africa or their families statewide. Your generous donation is greatly appreciated. Please call Town Hall at 954-434-0008 for a list of needed goods. Thank you!

Please note that Florida has a broad public records law. All correspondence via email may be subject to disclosure.

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