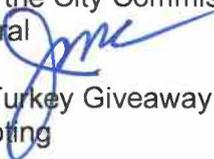




Joseph M. Centorino, Inspector General

June 16, 2020

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph Centorino, Inspector General 
RE: Investigatory Report: Farm Share Turkey Giveaway and November, 2019 Run-off
Election; Additional Day of Early Voting
OIG No. 20-12

Referral by Commissioner Gongora re: whether (1) the amending of the election process to add an additional day of early voting during the November 2019 run-off was an illegal use of the Mayor's emergency powers; 2) the additional day of voting scheduled on the same day as a Farm Share turkey giveaway gave the appearance of impropriety; (3) the Farm Share turkey giveaway was inappropriately held at a location that was within two blocks of a polling site.

Executive Summary

Attached is the Office of the Inspector General's review of allegations arising out of the run-off election held in November 2019, which added an extra day of voting on the same day as a previously scheduled Farm Share food giveaway. The review concluded that adding the additional day of voting was a lawful expansion of the right to vote, and did not involve any abuse of power by the Mayor or any Commissioner. Additionally, the review recognized that participation by elected officials in such events during political campaigns can be problematic, and concluded that the City has begun the process of putting safeguards in place to protect against political activity at food distribution events, and that passage of the proposed Resolution would help to achieve this end.



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Allegations:

The Office of Inspector General (OIG) received a referral from Commissioner Michael Gongora requesting the OIG investigate three matters related to the municipal run-off election on November 19, 2019. Specifically, Commissioner Gongora asserted the following: (1) the amending of the election process to add an additional day of early voting was an illegal use of the Mayor's emergency powers; (2) the additional day of voting scheduled on the same day as a Farm Share turkey giveaway gave the appearance of impropriety; (3) the Farm Share turkey giveaway was inappropriately held at a location that was within two blocks of a polling site.

Background:

The City of Miami Beach held a General Election on November 5, 2019 to elect a Mayor and City Commissioners in Groups 4, 5 and 6; the City also held on November 5, 2019 a Special Election to present ballot questions to voters. The Elections were conducted pursuant to Resolution 2019-30895 which was passed and adopted by the City Commission on July 17, 2019. Pursuant to requirements of the City Code, a City Commission meeting was held on November 12, 2019 for the purpose of accepting the certified final results from the November 5th General and Special Elections.

On July 17, 2019, the Commission also passed and adopted Resolution 2019-30896, which authorized 14 days of early voting to begin on Monday, October 21, 2019 and end on Sunday, November 3, 2019. Additionally, Resolution 2019-30896 provided for two days of early voting in the case of a run-off election to begin on November 16, 2019 and end on November 17, 2019, a Saturday and Sunday, respectively. The run-off election was scheduled for November 19, 2019. Miami Beach City Code, Section 38-6, designates Miami Beach City Hall and the North Shore Branch Library, located at 7501 Collins Avenue, as early voting locations.

On November 12, 2019, the Commission convened for the scheduled election-related meeting. The regular agenda had two items concerning acceptance of final election results from the City's November 5, 2019 General Election and from the City's November 5, 2019 Special Election, both of which matters were unanimously approved via Resolution of the City Commission. The agenda

also included an addendum sponsored by Mayor Gelber. The addendum sought to authorize Friday, November 15, 2019, as an additional day of early voting for the November 19, 2019 run-off election.

As previously stated, one location for the additional day of early voting was the North Shore Library. This site is approximately two blocks away from the North Shore Bandshell, located at 7275 Collins Avenue. On the same day as the early voting, there was scheduled to be a Farm Share Thanksgiving Turkey Giveaway in conjunction with South Florida Seniors in Action, a local not-for-profit that serves the elderly in Miami Beach. That event was being sponsored by the Mayor and Commissioners. Resolution 2019-31075, approving the 3rd day of early voting, was passed and adopted by the Commission, with one dissenting vote by Commissioner Gongora. This referral followed and was assigned to Special Agent Jani Singer to conduct interviews and research the issues.

Investigation:

Issue One: Whether the Mayor illegally used his emergency powers to add an additional day of early voting during the run-off election?

On January 29, 2020, Commissioner Gongora was interviewed to discuss his allegations and concerns. At the outset, he stated that the issues related to the Farm Share Turkey Giveaway falling on the same day as early voting were not paramount for him. He was most concerned with the Mayor's exercising his emergency powers to add an additional day of voting in the middle of an election cycle. He explained that after the election on November 5, and before the Commission hearing on November 12, Mayor Gelber was contacted by several Rabbis from the Jewish community who requested an additional day for early voting. Religious Jews who observe the Sabbath on Saturdays would not be able to vote on Saturday. Based upon this observance, they would only have one day of early voting for the run-off election, rather than the two afforded by the existing Resolution. If an additional day were scheduled, they would be better able to fully participate in the election. An additional day of early voting would eliminate the hardship for those voters in exercising their right to vote. (Copies of letters received by the Mayor and Commission are part of the file.)

Commissioner Gongora stated that the Mayor had five opportunities prior to the election to extend early voting, but he did not do that. According to Commissioner Gongora, it was not until being approached by members of the Jewish community that he became concerned with residents not having enough opportunity to vote. Commissioner Gongora stated that the Mayor then used his emergency powers to hold a hearing on this issue on November 12. Commissioner Gongora objected to the Mayor's use of his emergency powers for this purpose. Commissioner Gongora stated that, like the Mayor, he favored expanding voter participation, but he believed it should have been done prospectively and not in the middle of an election cycle. According to Commissioner Gongora, he believed that this was an illegal act, although he could not identify a law that had been violated. He alleged that the Mayor changed the rules in the middle of the election cycle because he supported the candidate who would benefit the most from having the religious Jewish community vote. Commissioner Gongora said that the Mayor's explanation did not "pass the smell test." Commissioner Gongora was equally concerned with the City's inability to notify voters in a timely manner of the additional day and the cost associated with adding another day of voting. Commissioner Gongora voiced his concern that there is a public perception that behind the scenes things happen that affect citizens, which cause them to distrust government. He pursued this issue because he wants government to be more transparent.

During the Commission hearing on November 12, Mayor Gelber acknowledged that he had been approached by members of the Orthodox Jewish community a few days earlier and that they had asked for an additional day of early voting. They were concerned that, while other voters would have two days to vote early, the Orthodox would be restricted to one day because of their religious observances, which could be an obstacle to their full participation in the election. Mayor Gelber saw this as an opportunity to expand voting rights and noted that adding the extra day would give all citizens more opportunity. According to Mayor Gelber, he contacted the City Attorney, who concurred that this was a legally permissible act. During the Commission meeting on November 12, Mayor Gelber and Commissioner Arriola moved to amend Resolution 2019-30896 (which originally scheduled 2 days of early voting for the City's runoff election), thereby adding November 15 as an additional day of early voting for the runoff election. The amendment passed. Commissioner Gongora was the sole dissenting vote. At the meeting, the Mayor also asked the organizers of the food distribution event to consider moving their event to a different site.

City Clerk Rafael Granado was interviewed. Mr. Granado stated that he was contacted by the Mayor's Chief of Staff on or about November 9, 2019, and advised that the Mayor wanted to put an additional item on the agenda for the November 12 Commission meeting. That item was the extension of early voting by one day. Mr. Granado contacted Jean Olin, Special Outside Counsel to the City of Miami Beach, for a legal opinion. He also spoke with Miriam Rivero and Christina White from the County Department of Elections to confirm that it would be permissible to extend early voting in Miami Beach if the Commission voted on November 12 to add the additional day. According to Mr. Granado, Ms. Olin opined that there was authority in the Miami Beach Code for adding the additional day and that the Resolution passed in July 2019 (2019-30896) would have to be amended to add it. Ms. Olin further advised Mr. Granado that this was not an improper use of the Mayor's emergency powers. Mr. Granado added the item as an addendum to the agenda.

Mr. Granado stated that the Mayor acted in conformity with Miami Beach Code Section 2-12 which codifies meeting procedures and agendas. According to Mr. Granado, the Mayor has the right to add to the agenda as do 5/7 of the Commissioners. City Code Section 2-12 authorizes the Mayor to determine whether an item not originally included in an agenda is to be placed on the agenda as an addendum item. It is only when the Mayor has declined to do so that the Commission may take such action upon compliance with stated criteria and 5/7 vote. In this case, the Mayor did not call a special meeting of the City Commission, but instead chose to add the subject Resolution as an addendum item pursuant to authorization in Code Section 2-12. As the Mayor pointed out during the November 12 meeting, the Commission meeting for that date had been scheduled since July, but in light of recently-expressed citizen concerns regarding restrictions on voters' rights due to the two-day early voting, the November 12th meeting was the only opportunity he had to put the matter on an agenda before the run-off.

Special Agent Singer spoke with Attorney Olin during the investigation and provided her a draft of this report for review. Her suggestions have been incorporated into this final report. Ms. Olin stated that Miami Beach Code Section 38-6(e) was the relevant Code section concerning the amount of days for early voting in CMB elections. That provision states: "The city commission may, by resolution, adopted in advance of a general, run-off or special election that is not held in conjunction with a county or state election per subsection (a), alter the sites and/or schedule of days....for early voting..." Moreover, Section 2-12 (c)(3), which codifies meeting procedures and agendas, gives the Mayor the right to decline putting items on the agenda and, therefore, implicitly gives him the right to add them. Ms. Olin noted that since the November 12th Commission meeting was (pursuant to the City Code) the Commission's final meeting preceding the City's runoff election, if the Commission had not acted on November 12, they would have lost the opportunity to expand voting for the runoff election.

In light of the above and the legal authority cited, the Inspector General has concluded that the Mayor did not illegally use his emergency powers.

Issues Two and Three: Whether the additional day of voting, scheduled on the same day as a Farm Share turkey giveaway gave the appearance of impropriety and whether the Farm Share turkey giveaway was inappropriately held at a location that was within two blocks of a polling site?

Special Agent Singer spoke with Mr. Stephen Shelly, the current CEO of Farm Share. He stated that he learned of the November 15 event a few days before it was to take place. He received a complaint from candidate and former Miami Beach Commissioner Kristen Rosen Gonzalez, who said that the event was being politicized. At the time, Ms. Rosen Gonzalez was a candidate in Group 4 and in a run-off election against now Commissioner Steven Meiner. According to Mr. Shelly, Ms. Rosen Gonzalez informed him that the Farm Share event was being sponsored by the Office of the Mayor and Commissioners and held within two blocks of a polling site. Commissioner Ricky Arriola, the only incumbent candidate, was in the run-off election for Group 5. Ms. Rosen Gonzalez alleged that Commissioner Arriola was using City resources to influence the election and giving away turkeys in an effort to sway voters.

Mr. Shelly stated that it is crucial that these events do not become politicized because it can lead to the not-for-profit losing its Section 501(c)(3) status. He explained that Farm Share allows elected local officials to host a Farm Share event in their official individual capacities. Farm Share also has a steadfast rule that candidates, if they come to an event to campaign, must remain at least 250 feet away so as not to mix campaigning with the food distribution. (This policy changed after this controversy and will be discussed below.) In an effort to keep the event on the calendar and at the location previously chosen, Mr. Shelly received a promise from Commissioner Arriola that he would not attend the turkey giveaway. Additionally, the flyer for the event was changed to reflect that The City of Miami Beach, not the Office of the Mayor and Commissioners, was sponsoring the event. Finally, Mr. Shelly was guaranteed by City personnel a sufficient police presence so that the event could unfold as planned and without incident. Mr. Shelly also wanted a commitment that the police on site would clearly designate a line of demarcation across which no candidate or campaign materials could cross. With these safeguards in place, the turkey giveaway moved forward on November 15.

Special Agent Singer met with Mr. Eddie Sierra, the Director of Seniors in Action, who helped plan the turkey giveaway in partnership with Farm Share, to address the decision not to move the event in light of its being held concurrently with the extra voting day. Mr. Sierra said that the turkey giveaway started four years ago and has become a City tradition. North Beach, where the event took place, has a large elderly immigrant and low-income population. Seniors in Action serves that community and needs a large venue to host the turkey giveaway since 300-600 food insecure people typically show up. The USDA must approve of the facility before the event can take place. He explained that the planning for the turkey giveaway started in May 2019. FPL Connect and Baptist Health donated 700 turkeys, and the USDA and Farm Share donated 48,000 pounds of other food items. Putting together the logistics takes months of work. Some of the logistics include adequate seating and shade, multiple bathrooms, access for loading and unloading and space for line maintenance. Moreover, 98 individual eligible households, 14 senior buildings, two youth centers and all City youth programs had been notified. The November 15 date was specifically chosen because it was after the general election and prior to Thanksgiving. The date allowed the organizers to accommodate volunteers' holiday plans, as well as other Farm Share events scheduled for November. This date was confirmed with Mayor Gelber's Office in

August, 2019. Mr. Sierra asserted that this was the only food distribution scheduled for the North Beach area and had the date been changed it was likely that Farm Share would have to re-route the food to another community or the food would spoil. It was simply impossible to move the event on such short notice.

Mr. Sierra stated that he is well aware of the rules prohibiting any campaigning within 250 feet of a Farm Share event and added that the USDA guidelines regarding political activity at Farm Share events are in alignment. Mr. Sierra proactively acted to depoliticize the event by contacting the City Manager and requesting that Seniors in Action work with City administration rather than the Mayor and Commission Office. He also reached out to the six candidates asking them not to attend and provided the USDA guidelines for their consideration. Nevertheless, on the day of the turkey giveaway, Mr. Sierra advised that Ms. Rosen Gonzalez came to the event and passed out campaign literature, soda, and water which clearly violated Farm Share's policies regarding campaigning at food distributions. (Pictures from the event are part of the file.) No other candidates appeared.

Mr. Sierra has an assistant, Carolina Cuadros, who was working at the event. Special Agent Singer interviewed Ms. Cuadros at her office. She advised that Ms. Rosen Gonzalez and her assistant, Monica Salinas Matteo, were passing out campaign flyers to the folks in line waiting for food. Ms. Cuadros stated that Ms. Rosen Gonzalez told many of the people at the event that if they showed the flyer they could bypass the waiting line. In one instance, an older woman tried to cut in front of others and gain early access to the food by showing the flyer, creating a disturbance. Police moved in to calm the situation. Ms. Cuadros recalled that Ms. Rosen-Gonzalez, who was standing near the entrance to the bandshell, said to her, "I am Kristen Rosen Gonzalez. I am your next Commissioner. You work for me." Farm Share representatives told Ms. Rosen Gonzalez to leave the area. Ms. Cuadros said she then left but accused them of plotting against her.

Miami Beach Police Officer Julio Blanco was interviewed regarding the day of the Farm Share turkey giveaway. He was assigned for crowd control, to keep the peace and handle medical emergencies. He had eight Community Resource Officers with him due to the size of the crowd. Officer Blanco has worked the turkey giveaway many times and said that it can get unruly. The wait for food is long and difficult for many of the seniors who show up hours before the event begins so they can secure a place in front of the line. According to Officer Blanco, many seniors are desperate for food and are afraid it may run out before their turn to enter the bandshell area and receive their items.

Officer Blanco explained that on this particular day, the registration table was set up and Farm Share workers greeted each senior, located their names on a list, and gave them a number that they would write on their hands. After receiving their numbers, the seniors lined up in numerical order to wait for the turkey distribution to start. The entrance to the event was on 73rd Street just north of the bandshell and the line continued down Ocean Terrace. The north entrance to the bandshell was blocked off and he used a rope system to control the crowd.

Officer Blanco stated that many of the people in the line had a flyer that Ms. Rosen Gonzalez had apparently given to them. Officer Blanco believed it was an invitation to the event, although this could not be corroborated. According to Officer Blanco, one woman tried to cut in front of the line saying that she had a flyer and claimed that she was told she would not have to wait in line if she showed it. She was persistent and argued with Officer Blanco for nearly an hour. His main concern was crowd control because tensions were running high among the seniors who had come early and been waiting to get their food.

Although he did not see her personally passing out the flyers, Officer Blanco recalled that Ms. Rosen Gonzalez was next to the registration table interacting with seniors. He was certain other people who supported Ms. Rosen Gonzalez were present at the event and passing out flyers and pamphlets. Many of the attendees were in t-shirts and/or holding signs that read "Kristen Rosen Gonzalez for City Commissioner." Officer Blanco did not know if they were there campaigning or legitimately there for the food distribution. Office Blanco suggested that some of the seniors in shirts may have come from the polling location a few blocks away to wait in line for food. He did not see any other candidates at the event. (Pictures obtained from social media and Ms. Rosen Gonzalez appear to corroborate these facts and are part of the file.)

Ms. Rosen Gonzalez voluntarily met with Special Agent Singer to discuss the events surrounding the turkey giveaway. The interview first addressed Commissioner Gongora's allegation that the Mayor used his emergency powers to add an additional day of voting. Ms. Rosen Gonzalez suggested it may have been then candidate Steven Meiner who first approached Mayor Gelber with the idea of an extra day for early voting to make sure his community got the chance to vote. Special Agent Singer spoke with Commissioner Meiner, who denied speaking to the Mayor, and further stated that he did not know who may have contacted him regarding early voting. Special Agent Singer shared the names of the Rabbis who had written letters of support for the extra voting days and Commissioner Meiner stated that he never asked any one of them to speak to the Mayor.

Ms. Rosen Gonzalez also alleged that the Mayor improperly used his position to influence the election. She stated that he openly supported Commissioner Ricky Arriola and candidates David Richardson and Steven Meiner. She believes that Arriola and Richardson did not have the Orthodox vote and would have lost in the run-off without the extra day. Ms. Rosen Gonzalez alleged that the Mayor traded an extra day of voting for the Orthodox community's endorsement of his candidates. She claims that on November 15 she saw an Orthodox person at a polling site with a piece of paper and the names of those candidates written on it. There is no other evidence to support this allegation. Special Agent Singer discussed the allegation with Mayor Gelber who steadfastly denied it.

Ms. Rosen Gonzalez stated that she agreed with the City's expanding early voting, but, like Commissioner Gongora, believed the rule change in the middle of the election cycle was suspicious. Ms. Rosen Gonzalez learned of the extra day of voting on the day it was added to the November 12 agenda. She stated that she started to receive phone calls from persons concerned about the proposed rule change. In an effort to reach her constituents, she immediately drafted an email alerting them to the change. Her email stated, in part, "This agenda item, added on a Sunday, with no notice, no community input, no warning, changes the rules in the middle of this election cycle and happens to fall on the same day Mayor Gelber and Ricky Arriola are giving away 700 turkeys within walking distance of the polling site...Rumor has it that the turkey giveaway, normally done one week before Thanksgiving, was "moved up" to this date, although city officials deny this." She also alleged "...Co-sponsor Ricky Arriola, who happens to be on a "newly-formed slate" with my opponent, is using city resources to influence the election." (A copy of the email is included in this file.)

With respect to the turkey giveaway and her conduct on the day of the event, she said that she arrived shortly before mid-day. She walked into the bandshell to make sure nobody was campaigning and that the event was running smoothly. She left the bandshell and went to shake hands with constituents. She was in a campaign shirt and had potato chips to give out as well as a flyer which invited the seniors to join her at El Palacio de Jugos for an election night watch party

on November 19. Although Ms. Rosen Gonzalez says she attended the event on her own, she said that many of the seniors used to be her constituents and knew her, so they helped her pass out chips and flyers. She said that this is her regular practice at public events. Her strategy is to show up when there is a large gathering to maximize the number of people she can connect with. She regularly passes out food, shakes hands and leaves. According to Rosen Gonzalez, on this particular day, she was there for 30 minutes and left.

Ms. Rosen Gonzalez cited a number of concerns about Mr. Sierra and the Seniors in Action program. She acknowledged that she had contacted the prior CEO of Farm Share in 2018, while she was a sitting Commissioner, to complain about Mr. Sierra. Her allegation was that he only allowed certain Commissioners to host Farm Share events and she was not one of them. She also stated that Mr. Sierra's assistant is in a relationship with an employee in the Mayor's Office who does a lot of community outreach. She believes that the community outreach person schedules events with Mr. Sierra then actively campaigns for the Mayor and the Mayor's preferred Commissioners. It is her recommendation that an apolitical entity, such as a church or synagogue, should distribute food. The City should not be involved at all.

Conclusion:

Nothing in the record proves Mayor Gelber illegally used his emergency powers to add an additional day of voting. To the contrary, he acted in compliance with Miami Beach Code Sections 2-12 and 38-6. Moreover, while the additional day gave the Orthodox community another opportunity to vote, for a total of two days, it gave other voters in the larger community an opportunity to vote for a total of three days. The Inspector General believes that having a voice in the election of those who make the laws under which we must live is a right we all share. The right to vote is fundamental in a free and democratic society. To this end, the Commission passed Ordinance 2020-4326, which amended Miami Beach Code Section 38-6, to add an additional day of early voting in a run-off to avoid having a significant number of voters limited to only one day of early voting based upon their religious convictions. The measure provided greater access to the polls for all voters. The Ordinance took effect in January 2020. The Mayor and Commission should be commended for expanding rather than restricting this opportunity.

With respect to the remaining issues raised by scheduling the additional day of voting on the same day as the Farm Share event, the Inspector General advises that there should be a clear distinction between official functions and campaign activities, and there should be no visible campaign activity by an elected official at any government event in which he or she is involved in an official capacity. To avoid any appearance of impropriety, local officials should be consistent in scheduling official functions, avoiding an unusual flurry of government-sponsored events shortly before an election. In the instant matter, Commissioner Arriola was the only elected official in the run-off and he elected not to attend the turkey giveaway. And, as reported above, the Farm Share event was not the consequence of an unusual flurry of government events, but rather a methodically planned annual event that had been months in the making.

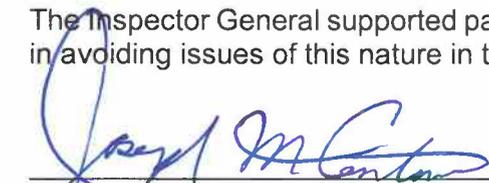
The matter has been further addressed by instructions to the City from Farm Share CEO Mr. Shelly. In a letter after the election he advised as follows:

"Due to a recent incident that occurred with an elected municipal official, I have re-evaluated the rules and regulations related to local elected officials (city councilpersons, city commissioners) hosting Farm Share Food Distribution Events. Presently, Farm Share allows an individual city councilperson or city commissioners to host a Farm Share event in their official individual capacities. Going forward this will no longer be allowed. Instead, if a request is made by an

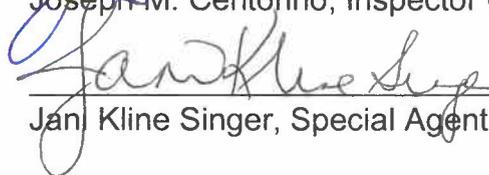
individual city councilperson or city commissioner, that request will need to be approved by the city as a whole and hosted by the city as a whole. Each councilperson, commissioner, mayor can then have their name and image on the flyer along with all other elected leaders from that city but no single elected local leader can have their own flyer or event.”

The Mayor’s Chief of Staff emailed the new policy direction to the Mayor, Commission and staff in December 2019. The issue was referred to the Neighborhoods and Quality of Life committee. The committee met on February 3, 2020 and by acclamation, the committee voted to send the following recommendations to the Commission: a) no candidate can host a food distribution event; b) food distribution events shall not be near voting sites; 3) candidates who are running should not be able to campaign at food distribution sites; and 4) food distribution events should not take place during early voting if at all possible. On May 13, 2020, Resolution 2020-31274 was adopted by acclamation. The Resolution states that the Mayor and City Commission “prohibit candidates for City elected office (including incumbents seeking reelection) from hosting or campaigning at any charitable or not for profit food distribution event in the City of Miami Beach, held during the period of time between the last day of the election qualifying period until the earlier date of when the candidate is elected, defeated, or becomes unopposed; and further prohibit charitable or not for profit food distribution events from taking place within 200 feet of any polling place located within the City during the voting period for any elections, including early voting period, beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later”.

The Inspector General supported passage of Resolution 2020-31274 and believes it will be helpful in avoiding issues of this nature in the future.



Joseph M. Centorino, Inspector General



Jan Kline Singer, Special Agent

06/16/2020
Date

06/16/2020
Date