MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Kathie G. Brooks, Interim City Manager for KGB

DATE: March 20, 2013

SUBJECT: **DISCUSSION CONCERNING A PROPOSED AMENDMENT OF THE CHARTER TO PROHIBIT THE INVOLUNTARY DESIGNATION OF SINGLE-FAMILY RESIDENCES AS INDIVIDUAL HISTORIC SITES, HEREINAFTER REFERRED TO AS THE MIAMI BEACH HOMEOWNER PROTECTION ACT.**

BACKGROUND

On January 16, 2013, at the request of Commissioner Wolfson, the City Commission referred a discussion item to the Land Use and Development Committee, pertaining to a Charter Amendment that would require owner consent for the designation of a single family home.

The matter was discussed at the February 13, 2013 Land Use Committee meeting, and continued to the March 20, 2013 meeting.

ANALYSIS

Under Article X of the City Code (Historic Preservation), a request for the designation of an individual historic site or historic district may be made to the Historic Preservation Board by:

1. A motion of the Historic Preservation Board
2. The City Manager
3. By resolution of the Planning Board
4. By resolution of the City Commission
5. By resolution of the County Historic Preservation Board
6. By resolution of any organization whose purpose is to promote the preservation of historic sites.
7. By any property owner in respect to his own property
8. By a majority of property owners of record within a proposed district

The current ordinance does not require a property owners consent for the designation of their property either as a single site, or as part of a larger district.

From a legal standpoint, it appears that adding an owner consent provision to the City Charter or the City Code is permitted. While there is a provision of the County Code that prohibits municipal owner consent provisions, a further provision exempts municipalities that are Certified Local Governments from this prohibition. Since the City of Miami Beach is a Certified Local Government ("CLG"), the exemption applies and nullifies the prohibition. This has been confirmed by conversations with the County's Historic

Preservation Officer, the Director of the State CLG program, and with the County Attorney's office.

At some point in time there was litigation between Miami-Dade County and the City of Miami Beach regarding an owner consent provision being a violation of the County's minimum standards. Although the City Attorneys office has been unable to document this litigation, they have reached the conclusion that the latest version of the County Code controls, and thus, owner consent is not prohibited by County law. The State CLG regulations do not prevent local governments from having owner consent provisions, and there does not appear to be any other provisions of state law to prevent it either.

On November 6, 2012, a Charter Amendment was approved by the electorate, which requires voter approval in order to reduce the Historic Preservation Board's powers and duties or Historic Preservation Standards. The present proposal would be consistent with this Charter provision.

RECOMMENDATION

The Administration recommends that the Land Use and Development Committee discuss the issue further and provide appropriate policy direction.

RL

KGB/JGG/RGL/TRM

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OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Kathy Brooks, Interim-City Manager

FROM: Jonah Wolfson, Commissioner

DATE: January 9th, 2013

SUBJECT: **Agenda Item**

Please place on the January 16th, 2013, Commission Meeting Agenda a referral to the Land Use and Development Committee for a discussion concerning a proposed amendment of the Charter to prohibit the involuntary designation of Single-Family Residences as individual historic sites, hereinafter referred to as the Miami Beach Homeowner Protection Act.

If you have any questions, please contact Leonor Hernandez at extension 6437.

JW/lh

Agenda Item C4I
Date 1-16-13