

MIAMIBEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Jose Smith, City Attorney
Debora Turner, First Assistant City Attorney
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Meeting Agenda

Monday, June 24, 2013 at 4:30 p.m.
Commission Chambers, Third Floor, City Hall
Email: CharterReview@miamibeachfl.gov

Special Note: In order to ensure adequate consideration, if necessary, the members of the Charter Review & Revision Board may move any agenda item to another meeting date. In addition, the members of the Charter Review & Revision Board may, at their discretion, adjourn the Charter Review & Revision Board meeting without reaching all agenda items.

1. Accept Minutes Of The June 10, 2013 Charter Review & Revision Board Meeting. (See Attached Item 1.)
2. Report by Ms. Sylvia Crespo-Tabak of any and all types of compensation that are received by executive staff and Charter Officials.
3. Presentation by the City Attorney's Office regarding the role and power of an Inspector General and the Independent Auditor. (Note, at the request of Aleksandr Boksner, Senior Assistant City Attorney, this item is being requested to be deferred to July 1, 2013, due to Mr. Boksner's unavailability.)
4. Discussion of term limits – Section 2.02.
5. Discussion of the term of Office for the Mayor – Section 2.02.

PENDING ITEMS

List Of Proposed Charter Amendments Brought Forth For Discussion During Previous Charter Review & Revision Board Committee Meetings, Which Have Yet To Be Fully Discussed:

- a. Election Versus Appointment When Commission Vacancies Occur. (Referred At The May 19, 2012 Commission Retreat)
- b. Commission Salary (Referred At The May 19, 2012 Commission Retreat)
- c. Citizens' Bill Of Rights:
 - i. Article XV - To Include Traffic - Proponent Stephen Zack, Chair
 - ii. Ethics In Government / Code Of Conduct - Proponent Stephen Zack, Chair
 - iii. Over Scale Development In Residential Areas – Proponent Stephen Zack, Chair
 - iv. Preservation Of Beaches - Proponent Rick Preira
 - v. Mandate That Employees Should Be Courteous To Citizens In The Bill Of Rights - Proponent Stephen Zack, Chair
 - vi. Preserving The Historical Value Of Miami Beach - Proponent Terry Bienstock
 - vii. Whistle Blowing Protection For Employees - Proponent Frank Del Vecchio
- d. Electing Officials By Open Seats - Proponent Scott Diffenderfer
- e. Subpoena Powers - Proponent Alex Fernandez
- f. Requirement That All City Employees Be Evaluated On Recurring Basis – Proponent Stephen Zack, Chair

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MIAMIBEACH

CHARTER REVIEW AND REVISION BOARD MEETING NOTICE

NOTICE IS HEREBY given that the Miami Beach Charter Review and Revision Board will meet as follows:

| DATE | TIME | LOCATION |
|-----------------------|---------|--|
| Monday, June 24, 2013 | 4:30 PM | Commission Chambers, 3rd Floor, City Hall |
| Monday, July 1, 2013 | 4:30 PM | Commission Chambers, 3rd Floor, City Hall |
| Monday, July 15, 2013 | 4:30 PM | City Manager's Large Conference Room, 4th Floor, City Hall |

City Hall is located at 1700 Convention Center Drive, Miami Beach, Florida, 33139.

Meeting dates, times and locations are subject to change. Please visit the Charter Review Board's website at <http://www.miamibeachfl.gov/scroll.aspx?id=72572> for the latest meeting information and agendas.

INTERESTED PARTIES are invited to appear at these meetings, or be represented by an agent, or to express their views in writing addressed to CharterReview@miamibeachfl.gov, or by mail to Charter Review Board, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Inquiries may also be directed to the City Clerk at 305.673.7411.

For any and/or all of the above meetings, one or more members of the Miami Beach City Commission may be in attendance and participate in discussions.

Rafael E. Granado, Esq., City Clerk

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: If a person decides to appeal any decision made by this Board with respect to any matter considered at these meetings or its hearings, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact us five days in advance at 305.673.7411 (voice) or TTY users may also call the Florida Relay Service at 711.

Ad #785

MIAMIBEACH

HORARIOS DE LA JUNTA DE REVISION DE LA CARTA CONSTITUCIONAL DE LA CIUDAD DE MIAMI BEACH

POR ESTE MEDIO invitamos al público a las próximas reuniones de la Junta de Revisión de la Carta Constitucional de Miami Beach:

| DIA | HORA | LOCALIDAD |
|-----------------------------|-----------|---|
| Lunes, 24 de junio del 2013 | 4:30 P.M. | Cámara de la Comisión, 3er Piso, Ayuntamiento |
| Lunes, 1º de julio del 2013 | 4:30 P.M. | Cámara de la Comisión, 3er Piso, Ayuntamiento |
| Lunes, 18 de julio del 2013 | 4:30 P.M. | Sala de Conferencias Grande del Administrador de la Ciudad, 4º Piso, Ayuntamiento |

El Ayuntamiento Municipal esta localizado en el 1700 Convention Center Drive, Miami Beach, Florida, 33139.

Los días, fechas y localidades pueden ser sujetos a cambios. Para la más reciente información en relación con las reuniones y agendas, favor de visitar la página electrónica de la Junta de Revisión de la Carta Constitucional de Miami Beach: <http://www.miamibeachfl.gov/cityclerk/scroll.aspx?id=72572>.

LAS PERSONAS INTERESADAS pueden participar de esta reunión, o ser representados por un agente; o pueden expresar sus puntos de vista por escrito a CharterReview@miamibeachfl.gov, o por correo a la Junta de Revisión de la Carta Constitucional, c/o Secretario Municipal, 1700 Convention Center Drive, Primer Piso, Ayuntamiento Municipal, Miami Beach, Florida 33139. Para más información, llamar al 305.673.7411.

Uno o más miembros de la Comisión de la Ciudad de Miami Beach puede estar presente y participar en las discusiones.

Rafael E. Granado, City Clerk

Conforme a la Sección 286.0105, Estatutos de la Florida, la Ciudad por la presente informa al público que si una persona decide apelar cualquier decisión tomada por la Junta de Revisión de la Carta Constitucional con respecto a cualquier asunto considerado en estas reuniones o de sus audiencias, dicha persona debe asegurarse de que se haga un acta literal de los procedimientos, registro que incluye los testimonios y pruebas que la apelación debe basarse. Este aviso no constituye el consentimiento de la Ciudad para la introducción o la admisión de pruebas de lo contrario inadmisibles o irrelevantes, o que autorizo a los retos o apelaciones no permitidas por la ley.

Para solicitar este material en formato accesible, intérpretes de lenguaje de señas, información sobre el acceso para personas con discapacidades o cualquier alojamiento para revisar cualquier documento o participar en cualquier proceso patrocinados por la ciudad, póngase en contacto con nosotros con cinco días de anticipación al 305.673.7411; o los usuarios de TTY también puede llamar al servicio de retransmisión de Florida al 711.

MIAMIBEACH

HORARIOS DE LA JUNTA DE REVISION DE LA CARTA CONSTITUCIONAL DE LA CIUDAD DE MIAMI BEACH

Conforme a la Sección 8.01 de la Carta Constitucional de la Ciudad de Miami Beach, la revisión de la Carta Constitucional tendrá lugar cada diez años. La Junta de Revisión de la Carta Constitucional, se ha formado con el propósito de revisar la Carta Constitucional de la Ciudad, en busca de sugerencias del público; y finalmente, presentar sus recomendaciones a la Comisión de la Ciudad de Miami Beach.

POR ESTE MEDIO invitamos al público a las próximas reuniones de la Junta de Revisión de la Carta Constitucional de Miami Beach:

| DIA | HORA | LOCALIDAD |
|-----------------------------|-------------|--|
| Lunes, 3 de junio del 2013 | 4:30 P.M. | 1755 Meridian Avenue, 5º Piso, Sala de Conferencia |
| Lunes, 10 de junio del 2013 | 4:30 P.M. | Cámara de la Comisión, 3er Piso, Ayuntamiento |
| Lunes, 24 de junio del 2013 | 4:30 P.M. | Cámara de la Comisión, 3er Piso, Ayuntamiento |
| Lunes, 1º de julio del 2013 | 4:30 P.M. | Cámara de la Comisión, 3er Piso, Ayuntamiento |
| Lunes, 15 de julio del 2013 | 4:30 P.M. | 4º Piso, Ayuntamiento |

El Ayuntamiento Municipal esta localizado en el 1700 Convention Center Drive, Miami Beach, Florida, 33139.

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Conforme a la Sección 286.0106, Estatutos de la Florida, la Ciudad por la presente informa al público que si una persona decide apelar cualquier decisión tomada por la Junta de Revisión de la Carta Constitucional con respecto a cualquier asunto considerado en estas reuniones o de sus audiencias, dicha persona debe asegurarse de que se haga un acta literal de los procedimientos, registro que incluye los testimonios y pruebas que la apelación debe basarse. Este aviso no constituye el consentimiento de la Ciudad para la introducción o la admisión de pruebas de lo contrario inadmisibles o irrelevantes, o que autoriza a los retos o apelaciones no permitidas por la ley.

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ITEM 1

MINUTES

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MIAMIBEACH

Charter Review & Revision Board (the Board)

Members:

| | | |
|---------------------------|---|--------------------------------|
| Stephen Zack, Esq., Chair | - | Present |
| Aaron Perry, Vice Chair | - | Present |
| Scott Diffenderfer | - | Absent |
| Jacqueline Lalonde | - | Present |
| Rick Kendle | - | Present |
| Alex Fernandez | - | Present |
| Richard "Rick" J. Preira | - | Present (Arrived at 5:07 p.m.) |

Staff:

| | | |
|--|---|---------|
| Jose Smith, City Attorney | - | Present |
| Debora Turner, First Assistant City Attorney | - | Present |
| Rafael E. Granado, City Clerk | - | Present |
| Liliam Hatfield, OAV, City Clerk's Office | - | Present |

MINUTES

Monday, June 10, 2013 at 4:30 p.m.
Commission Chambers, Third Floor, City Hall
Email: CharterReview@miamibeachfl.gov

Special Note: In order to ensure adequate consideration, if necessary, the members of the Charter Review & Revision Board may move any agenda item to another meeting date. In addition, the members of the Charter Review & Revision Board may, at their discretion, adjourn the Charter Review & Revision Board meeting without reaching all agenda items.

Meeting Called to Order: 4:40:06 p.m.

1. Accept Minutes Of The June 3, 2013 Charter Review & Revision Board Meeting.

Mr. Rafael E. Granado announced changes to the minutes requested by Jorge Gomez, Assistant City Manager, and Debora Turner, First Assistant City Attorney. The proposed changes were submitted in writing to the Committee.

ACTION: Minutes accepted as corrected by acclamation.

2. List Of Charter Provisions Identified By The City Attorney For Review.

- *Section 2.02 – Term and Compensation*

Mr. Zack suggested commencing the discussion by defining the term "compensation." Mr. Zack asked Ms. Turner if there was a generally accepted definition in a government context of the term "compensation." Ms. Turner replied that there was, and provided a copy of Ordinance 2013-3788, which was adopted this year, that codifies in the City Code the compensation referred to in the Charter related to the City Manager and the City Attorney. The Ordinance sets the different categories.

Mr. Smith provided background on the enactment of the Ordinance. The Charter provides that the compensation of the City Manager, City Attorney and City Clerk shall be set by Ordinance. Commissioner Wolfson had a concern that the Ordinance that was in place prior to this Ordinance being enacted merely stated that the compensation of the City Manager and City attorney would be set by the Commission. He felt that: 1) the Ordinance should not delegate the responsibility to the Commission to set the compensation of those two officials, but rather it should be done through a specific Ordinance stating what the compensation is for those two officers. Not just salary, but also benefits. Mr. Smith's original research going back to the 1960's revealed that back in the 60's the word "salary" and "compensation" meant the same thing. Over the years, the word "compensation" began to take a different meaning such as health insurance, stipends, sick leave, vacation, etc. So Commissioner Wolfson said that we are in the year 2012, it is time for us to have a specific Ordinance setting forth not just the salary but also the benefits of the office.

Mr. Fernandez asked if the base salary for the City Manager, which is listed as \$162,916 per year to \$263,126 per year, includes the insurance and the deferred compensation. Mr. Smith stated that the number referenced is only salary. The other categories are additional to salary or "other compensation."

Ms. Lalonde inquired if it was term life insurance or whole. Mr. Smith stated that it was term. Ms. Lalonde asked if the 457 deferred compensation given to the City Attorney and the City Manager was made by the City. Mr. Smith confirmed that the City contributed on behalf of the employees. Ms. Lalonde asked if the amount was predefined. Mr. Smith stated that it was up to the maximum authorized by the IRS. Ms. Lalonde thereafter asked what was the actual 457 given to the City Attorney and the City Manager. About \$23,500.00 was Mr. Smith's response.

Thereafter discussion was had regarding how the IRS calculates the maximum compensation that may be given to an employee. Ms. Sylvia Crespo-Tabak, Human Resources Director, stated that the minimum authorized by the IRS is \$7,000. Ms. Crespo-Tabak explained how the 457 program worked, and that it was not taxable income, and cannot be withdrawn until retirement or the employee leaves the organization.

Mr. Smith explained that the City Manager's salary is in the neighborhood of \$240,000 plus. This City Manager, based on his negotiations with the City Commission, is not receiving deferred compensation. If he wanted a deferred compensation plan, he would have to fund it himself.

Ms. Lalonde explained that in City government type plans, just like a 401K, you have an equivalent called a 457 deferred compensation plan. Employees can self-contribute to the maximum limits authorized by the IRS, which is based on age. What is traditionally different in government is that the City is contributing on behalf of the employee. In a 401K plan, it would be the employee who would be making the contribution of his or her own salary.

Mr. Smith explained that both the City Attorney and the City Manager are classified at level 26 salary. Level 26 provides for compensation between \$162,916 and \$263,126. So the Commission is authorized by Code to negotiate a contract with the City Manager somewhere in that range.

Mr. Kendle asked if the City Commission has to approve the base salary and all additional compensation for the City Manager and the City Attorney. Mr. Smith responded in the affirmative, that an Ordinance has to be entered approving the benefits.

Mr. Kendle asked about trips and expenses, if they too had to be approved by the City Commission via Ordinance. Mr. Smith stated that if it is a reimbursable, as when attending a conference or continuing education, is not considered compensation.

Mr. Kendle stated that the Miami Herald a few weeks ago stated that the Mayor was paid an extra \$20,000 that was not pensionable. Mr. Smith stated that the Charter stated that the salary for Commissioners is \$6,000 per year and the Mayor receives a salary of \$10,000 per year. Mr. Smith added that since the 1990's, as part of the budget process, the elected officials have received a stipend, which when he served as the Commission was about \$600 a month, which is supposed to go towards public policy/benefit types of issues. Over the years that stipend, which is part of the budget approved in October, is currently \$1,500 a month and the Mayor is \$2,000 a month. The Elected officials receive a stipend in addition to salary. Mr. Smith stated that the stipend is part of the Mayor and Commission's budget, which is approved annually.

Mr. Kendle inquired as to how the expenses for the Commissioners and the Mayor, when they travel are done. Mr. Smith explained that travel is a line item in their budget, which is ultimately approved by the director of the department, which in this case it is the Mayor.

Mr. Fernandez explained that it is not an individual amount for each Commissioner for travel; it is one sum for the office.

Mr. Kendle stated that his reading of the Charter is that the intent is that salaries and expenses should be approved by Ordinance. Everything should be approved by Ordinance. Therefore, the perception is not that they are gaining a benefit that is not approved by Ordinance. This way everyone can see what the expense is.

Mr. Zack inquired if there is a policy as to how the Commission travels, i.e. business or coach; how is that determined? Mr. Smith replied that the standard is that used in the County and approved by the Miami-Dade County Ethics Commission. It is coach, and there are guidelines as to mileage and how much you can spend per day. **TO DO: City Attorney's Office to obtain Guidelines.**

Mr. Fernandez explained that each department gets a lump sum for travel allocation, which is approved during the budget hearings, which are held in public; and the public is invited to participate and discuss the number.

In response to Mr. Zack's question, the City Attorney explained that it is easy to ascertain the amount incurred by each Commissioner or the Mayor for travel during any given period. Mr. Smith added that this is something that is frequently requested via public records requests by the media.

Mr. Zack stated that there is no annual report as to how much the Commission spends on travel. Mr. Smith agreed that such a report is not done.

Mr. Fernandez stated that the transparency and accountability committee suggested having the check registry for the City on the website. Thereby giving everyone access to view every

check. He does not believe that is occurring. That is something we could discuss when we discuss the Citizen's Bill of Rights. Because that transparency is important, especially given the technology we have today people should be allowed to see where their money is going. Mr. Zack and Ms. Lalonde cautioned as to how that might affect privacy and fraud.

Mr. Kendle stated that Ordinance 2013-3788 is not a definition of salary that can be used. Because some things are salary and other are benefits. In the existing Charter, in section 2.04, it says, "No member of the City Commission shall, during the time for which he/she is elected, be appointed or elected to any City office that has been created or the emoluments thereof shall have been increased during such time." Does that mean that if you voted, or someone has increased your benefits, you cannot run for office? Mr. Smith stated that there has not been any pension increase recently. Mr. Kendle stated that if emoluments are any benefits, 2.04 does that mean that some of the candidate currently running should not be?

Ms. Lalonde stated that it seemed out of context the way it was written.

Mr. Smith stated that this provision means that they cannot increase their salaries while they sit. Emoluments do not include travel expenses, those are reimbursements.

Mr. Zack stated that to him it means that they should not create a position that pays more than their current salary, and then be allowed to run for that position. Mr. Zack stated that the sentence as written is not clear, and it should be changed to "plain English" to avoid a problem in the future. **TO DO: Mr. Zack suggested that the City Attorney's Office provide sample language that is clearer.**

Mr. Zack inquired if the stipend is accounted for via receipts. Mr. Smith stated they have tried to get the Miami-Dade County Ethics to opine as to how to do it right, as there has been situations in the past where there was no accounting – people getting checks and spent it, and did not account for it. The better approach, which is one that has been endorsed by the Miami-Dade Ethics Commission, is that you have to account for every dollar spend and it must be spent for a public purpose.

Mr. Kendle stated that every penny the Commission gets should be approved by Ordinance. That the public should get an opportunity to discuss it. During the budget, there are much bigger things. If there is a perception that there is hidden money going to Commissioners it is bad and creates mistrust in government.

Ms. Lalonde stated that she does not believe it is hidden. She wants to be careful that we do not create a situation where every single penny is spent via Ordinance. There must be leeway for budgetary items. She cited the example of reimbursements for normal expenses that do not have to be approved via Ordinance, as it is part of an executive budget.

Mr. Kendle inquired as to the multiplier for the pension for the Mayor and Commissioner.

Mr. Kendle stated that expenditures for elected officials should be approved by Ordinance.

Mr. Fernandez stated that the Salary of the Mayor and Commissioner should not be approved by Ordinance, but instead approved by the voters of Miami Beach. Mr. Fernandez stated that Miami Beach voters, when voting for County elected officials voted in favor of Commissioner for Miami-Dade County obtaining salary increases. He does not feel comfortable taking this privilege out of the hands of the voters.

Ms. Lalonde stated that we should not approve every single line item via Ordinance.

Mr. Fernandez commented that the travel allowance for the office of the Mayor and Commission is \$23,000, to be split among seven people. Ms. Lalonde stated that there is nothing-egregious going on, so she is dismayed at this conversation.

Mr. Fernandez stated that the public does come and participate in the budget process, and many meetings are held.

Ms. Lalonde stated that the stipend is not going into the elected officials' pocket as compensation; it is for a public purpose that is part of their expenses that are incurred as a result of doing their work.

Mr. Fernandez stated that the \$1,500 is going for food for the elderly, purchasing children's school backpacks, etc. They are going to programmable activities.

Mr. Kendle stated that the Charter should state that a stipend is issued to elected officials, as set in the budget, so the public knows about it.

Ms. Lalonde just wants to make sure that the public understands that they are not getting an additional compensation of \$1,500. We need to clear the perception. Ms. Lalonde is not opposed to require that the elected officials submit receipts for these expenditures for public purposes.

Mr. Fernandez reiterated that the Commissioners receive \$6,000 in salary and the Mayor \$10,000 in salary. Each Commissioner gets a \$1,500 monthly allowance and the Mayor gets \$2,000 monthly allowance, which are used mostly for activities for seniors, children, or of need in the community. There is one travel allowance for the entire office of the Mayor and Commission for the entire budget year, which is \$23,000. The Mayor and Commissioners also get their insurance, their pension and a car allowance. To say that they get insurance, pension and car allowance on top of a \$6,000 salary, he does not think it is unreasonable. Mr. Fernandez agreed that there should be accountability as to what is done with the monthly allowance. Perhaps that is a direction that this Board should be giving. Mr. Lalonde agreed.

Mr. Zack's inquired as to the pension received by the City Commission. Mr. Smith stated that it was minimal due to the low salary. Mr. Smith added that the multiplier is established by Ordinance, and it has not been modified over the last ten years.

Ms. Crespo-Tabak explained pension vesting and the current multiplier, and the nominal amount received by the Commissioner as a pension benefit.

Mr. Fernandez inquired of the City Attorney what clarification was his office seeking of the Board as to the term "compensation and salary"? Ms. Turner referred to Section 2.02, which refers to in the title "term and compensation." If you were only referring to the salary provision, you would want to change the word compensation to the term "salary." In addition, the last sentence refers to annual compensation, but really, the numbers there are reflective of salary. Therefore, you can change the term "compensation" to "salary" in that sentence as well.

Mr. Fernandez stated that perhaps what it should state that the annual compensation for the office of Commission shall include a salary of \$6,000 in addition to other compensation in the form of insurance, pension and car allowance to be determined. Therefore, it is in the Charter and the public knows that it will be approved via the budget process.

Mr. Zack stated that he had a different viewpoint as to the \$1,500 monthly stipend, as this is public money. He is not reimbursed for his expenditures unless he provides every receipt, and explains the purposes. It is his opinion that the elected officials should get more money to go to the community and develop the personal relationships that are essential in the community, but he believes that every such penny spent should be accounted for. The stipend should be fully accounted for and verified. They should require, via Ordinance, that the stipend should be \$1,500 a month and appropriate backup should be provided to draw that stipend down.

Ms. Lalonde agreed that appropriate documentation should be attached.

Mr. Fernandez stated that Miami-Dade County requires that their Commissioners publish in their website how they utilize their discretionary and office budgets. They must disclose how that money is being spent. Mr. Fernandez stated that in the spirit of transparency he backs Mr. Zack's recommendation.

Mr. Zack stated that it is the public's perception that unless the money is accounted for, then it is not going where is supposed to go.

MOTION:

Motion by Rick Kendle that as a principle the Board agrees that stipends received by Elected Official need to have appropriate documentation to indicate how it is being spent. At a subsequent time, the Board can determine if this is an item that should be included in the Charter. Seconded by Mr. Fernandez. Voice Vote: Approved 6-0 (Mr. Diffenderfer absent.)

Mr. Smith suggested that this may be accomplished by the Commission via resolution, and does not have to be via Ordinance, as they both have the same force of law.

Discussion continued as to who receives a stipend.

Mr. Zack requested that quantify the value of these "other benefits." **Sylvia Crespo-Tabak to handle.**

Mr. Fernandez requested a breakdown of the value of these items. Mr. Fernandez commended Mr. Smith for foregoing the planning days when he negotiated his latest contract.

Mr. Smith explained planning days. Planning Days was intended as an additional incentive to provide to City employees in managerial positions who are not subject to the collective bargaining process, and it is based on the number of hours each managerial employee receives. In his particular situation, and in the Manager's situation, it was 144 hours of planning days per year, which came to about \$15,000 of additional compensation for both the former City Manager and himself. Mr. Jorge Gonzalez had a separate bank of additional planning days, in addition to that. This was eliminated when the City Manager and City

Attorney's contracts were recently negotiated; there are no longer planning days. Other Department heads do receive some limited number of planning days.

Mr. Zack stated that this is additional compensation. Ms. Lalonde agreed that it was a euphemism for additional compensation.

Mr. Smith explained that planning days are approved via line item during the budget.

Mr. Zack inquired as to the number of sick days, vacations and floating days received by the City Attorney, City Clerk and the City Manager. **Sylvia Crespo-Tabak to handle.**

Mr. Smith stated that such leave is not applicable to City Commissioners or the Mayor.

Mr. Zack stated that he does not have a problem with such compensation being paid, but it should be fully disclosed.

Ms. Lalonde stated that we should define and stipulate that salary and/or compensation needs to be delineated exactly as it occurs. In other words, perhaps we need to understand from some of these folks how this compensation plays a role in their employment. For example, an Assistant City Manager makes \$175,000 (an arbitrary number), but in reality their real compensation is \$200,000, she would be in favor of getting rid of all the euphemisms and having them declare their actual salary. The Board should call for those actions.

Mr. Fernandez stated that perhaps the Board needs to define what "salary" is.

Ms. Lalonde stated that if someone is getting a total compensation of \$200,000 and that is well deserved, and she believes many Assistant City Managers are definitely underpaid, it is not about the level of compensation is about the description of the compensation. It should be transparent and easily understood. Mr. Zack agreed.

Mr. Zack suggested that the Board state, "Compensation shall include the salary and the value of all benefits received." That does not limit what they get in benefits; it just discloses them. City Manager's work very hard, and could make more money in the private sector. If we quantify the value of all benefits, then we can define the word benefit to include whatever we decide.

Ms. Lalonde wants a delineation of all compensation and benefits received.

Mr. Smith explained the sick leave buy back, which is subject to collective bargaining. Therefore, if the unions are getting it, by implication the unclassified employees also get it.

Jorge Gomez, Assistant City Manager, explained sick hours, which is all set by Ordinance. You accumulate certain of hours of sick leave for every paid period that you work. You can accumulate up to a certain limit. Then by Ordinance, when you leave your employment with the City and you have unused sick time, you get half of the hours up to a maximum limit. There are limits set by the Ordinance. The vacation days, that works the same, you accumulate certain hours per pay period; it is roughly two weeks on average a year. There are paid national holidays. Floating holidays were derived many years ago out of contract negotiations; you can take an additional 3 holidays, so you can take another vacation day

whenever they want it. They are not compensation, they are days off, if you do not use them you lose them, they are not paid.

Mr. Kendle asked if that applied to the City Manager also. Mr. Smith stated that the former City Manager received 50% of the accumulated sick days when he left employment.

Mr. Zack asked what would be the problem of saying, "compensation is salary and the value of all benefits." Mr. Gomez said that he did not see an issue, and it was the exact question that was asked of the Board.

Mr. Gomez stated that floating days, those extra days off, for the union contract is part of the collective bargaining.

Ms. Lalonde wants to know in addition to the basic salary, what other forms of compensations exists for managers or other various City employees. Ms. Lalonde asked Ms. Crespo-Tabak if she was familiar with how many planning days each person is entitled to. Ms. Crespo-Tabak stated that there are three or four levels of executive compensation and she does not remember off the top of her head how many planning days are assigned to each level. As of very recently though, the Commission took action that new employees, regardless of their level, no longer get planning days.

Mr. Fernandez asked for the definition of executive compensation. Mr. Smith stated that neither the City Manager nor the City Attorney will any longer receive planning days compensation. The Commission did not rule out continuing to pay executive management type employees whatever they are getting in their planning days; and that is an issue that is still open and it was referred to a Committee for further discussion, and it will likely be part of the budget process.

Ms. Crespo stated that those getting planning days did not lose them, but new employees do not get planning days.

In response to a question posed by Mr. Zack, City Attorney Smith stated that the Mayor and Commission do not have outside offices that are paid by the City, but they do have one Aide to assist them and work for them. Additional Aides are provided to the Mayor. The Aides are paid directly by the City, and are City employees.

Mr. Zack wants to know of any other benefit, aside from travel, that is not included in the ones they have talked about.

Mr. Kendle inquired about training, who approves it. Ms. Crespo explained the City has a tuition reimbursement program, which would not cover the cost of registration of a program of the nature as described Mr. Kendle.

Ms. Lalonde reiterated that they want all forms of compensations and/or benefits for the Commissioners and for executive staff, managers, etc.

Mr. Gomez, Assistant City Manager, inquired if they are proposing to add additional employees into the Charter, aside from the City Manager, City Attorney and City Clerk. The response was "No."

Mr. Fernandez stated that the public should know the actual total compensation, inclusive of benefits.

Mr. Gomez, Assistant City Manager, inquired if the Board wanted to have the salary for the Charter Officials in the Charter. The response was "No." Ms. Lalonde stated that they wanted to merely have in the Charter the ability of determining the total compensation.

Mr. Zack stated that the requirement would apply to the City Commissioners, the Mayor, the City Attorney, the City Manager and the City Clerk.

Mr. Zack requested that they take the new City Manager's contract, and present what it entails. For example, salary, benefits, vehicle value and let the Board see what the total compensation is in reality. They are not opining as to the money; they are talking about only transparency. **Sylvia Crespo-Tabak to handle.**

Mr. Kendle requested if the new City Manager left six months from now, what would the City Manager receive as severance? Ms. Lalonde stated that it would depend on when the City Manager leaves. Mr. Smith stated that it is in the contract, and it is six weeks of salary, not compensation. Mr. Smith explained that there is a State Statute that limits the weeks of severance to 24 weeks. So its 24 weeks of the Manager's salary. The new Manager's contract refers to salary, not compensation.

- *Section 4.02 – City Manager – Function and Powers*

Mr. Zack commented that Section 4.02, which provides that the City Manager appoints all Department Directors, subject to the consent of the City Commission. He inquired if Assistant City Managers also be subject to the consent of the City Commission?

He has a very strong feeling about it. However, he wants others to express their views.

Ms. Lalonde stated that she thinks the City Manager has always had the ability to appoint their Assistant City Managers. We need to give the Manager some flexibility. On the other hand, she would say, the City Commission has the ability to disapprove of an Assistant City Manager; or even fire an Assistant City Manager. She would not mind seeing it in the reverse.

Mr. Zack stated that he is worried about politics being played at the lower level by certain Assistant City Managers ingratiating themselves to certain Commissioners and undermining the actions of the City Manager.

Mr. Zack stated that if the Commission has an issue with the City Manager, they can simply get rid of the Manager.

Ms. Lalonde stated that in the last go round, many Commissioners felt that they did not always have equal access to the same set of information. The issue of access to information has been a long-standing problem. She also recognizes what Mr. Zack is saying. Historically we have allowed the City Manager to make the choice as to his/her Assistant City Managers, and she proposes to continue this. If there was a supermajority that one Assistant City Manager should stay or go, she would be agreeable to that as well.

Mr. Zack stated that when you bring in a City Manager they need to have the ability to put together their own team. Ms. Lalonde agreed. Mr. Zack stated that if the Assistant City Manager does not do a good job, they should be fired.

Mr. Kendle added that the Commission always has the right to pass a resolution stating that they do not have confidence regarding a particular Assistant City Manager. Mr. Kendle stated that when we lost our last City Manager, he does not know why it was such a production to select an acting City Manager. Mr. Kendle suggests having a succession plan, until they found a replacement. No money should have been spent recruiting an acting City Manager.

Ms. Lalonde stated that the spending of the money was to find a new City Manager, not to recruit an Acting City Manager.

Mr. Zack stated that many City Managers do not want a succession plan. They need to be told to have such a plan in place.

Ms. Lalonde stated that at this moment in time, the City Manager should nominate a Deputy Assistant City Manager jump into that role if it was ever necessary. She would like to see that as the resolution.

MOTION:

Motion by Rick Kendle that they do not think that the City Commission should have power of appointment over Assistant City Managers. Seconded by Ms. Lalonde. Voice Vote: Approved 6-0 (Mr. Diffenderfer absent.)

Mr. Gomez stated that the Charter lists as an express power of the Commission that they get to appoint the City Manager, including an interim or acting City Manager. That is the power of the Commission. Mr. Gomez suggested that if there was an automatic replacement mandate, it would take some of that power away.

Ms. Lalonde expressed that she was in agreement with what Mr. Gomez stated, and the person who is selected as the automatic successor should be voted upon by the City Commission via appointment.

Mr. Zack believes that a succession plan must be very fluid. You do not want to have a "coach in waiting" who is constantly a problem. We need however to have succession planning.

Mr. Kendle stated that other Cities have term limits on City Managers. He is in favor of an eight-year term limit on all City Managers. He wants the Board to think about it. Mr. Fernandez stated that he agreed that the position of City Manager should have a term limit, but he does not necessarily think that eight years is the correct amount as the City may lose a great deal of institutional knowledge.

Mr. Zack explained that he originally was in favor of term limits, but has found them to be largely resulting in unintended consequences where you end up with lobbyist who are running the legislature. The worse thing is mandatory retirement. You have some very capable people today, who are able to continue on. When the City gets tired of the City Manager, it can simply get rid of him or her.

- *Section 2.03 – independent City Auditor*

Mr. Zack reported this section currently provides for an Independent City Auditor. There is a discussion if this should be an Inspector General type official. Will an Inspector General be a paper tiger, a meaningless position without subpoena powers? Many of the Board members felt that that an Attorney General should have subpoena powers. At the last Charter Review 10 years ago, they had the State Attorney's Office come in and explain the problems of giving subpoena powers to the Commission, the Manager or the Auditor. It seems to him that this is a reverse discussion. If we do not want to give subpoena powers to the Inspector General, then how is the Inspector General any different that the Independent City Auditor. How do you define those terms? He raises these questions for discussion purpose.

Mr. Kendle stated that the City Auditor and the Inspector General could do the same function if they were independent. Would it be reasonable to have an elected City Auditor? Someone who is only accountable to the people, so they could review all the documents and see what is going on.

Ms. Lalonde stated that she would like to get a presentation from Mr. Boksner. Mr. Smith explained that Mr. Boksner has been given the responsibility to deal with the Inspector General.

Mr. Smith stated that the current City Auditor is Jim Sutter. However, he does not serve the role that the City Charter provides. Mr. Sutter is an Internal Auditor. There are External Auditors that go through the books for financial scrutiny. What Mr. Smith believes the Board is interested in is someone who looks at other things, other than financial matters. The types of issues that are performed by the Inspector General in Miami-Dade County.

TO DO: Add the Inspector General to the Agenda, if Mr. Boksner is available. **Rafael E. Granado to handle.**

Mr. Fernandez asked do we want an elected Inspector General, or an appointed one. He is concerned about making it an elected position, which may then become politicized. He believes that an appointed Inspector General, with term limits, who has a non-interference clause, where the political body cannot interfere by law or Charter, so that the person is not thinking about a reappointment and does not need to worry about interference and political pressures from the elected body.

Ms. Lalonde wants to see additional presentation before the Board tackles the subject.

Mr. Zack wants to know what the City Auditor does and what an Inspector General would do that is different.

Mr. Smith stated that a presentation could be had at the next meeting.

MOTION:

Motion by Ms. Lalonde to have a presentation by the City Attorney's Office regarding the role and power of Inspector General. Seconded by Mr. Fernandez. Voice Vote: Approved 6-0 (Mr. Diffenderfer absent.) **Aleksandr Boksner, Senior Assistant City Attorney, to handle.**

- *Section 2.07 – Vacancies in City Commission*

Mr. Zack stated that when a vacancy is created the citizen ought to fill it as quickly and inexpensively as possible. Mr. Zack inquired as to what is being done today.

Mr. Smith explained how the process has worked, and stated that there is an issues that must be addressed. There have been three instances where elected officials have resigned from office in order to run for a different office. Typically, it is a Commissioner that wants to run for State Representative. What occurs is that the Commissioner files a paper under the Resign to Run Law, which is a State Statute. It is a paper that must be filed ten days prior to qualifying, which says, "I resign effective, for example November 4th, which is the day of the election." Before he became City Attorney, the position of the City was that the Commission had a choice of either selecting someone for that vacancy, or scheduling an election for the next ensuing general election, which is typically November 4 or 5. However, there is a legal problem when you set an election before you have a vacancy because the vacancy does not really occur until the date of the election and by then it is not the appropriate way of filling the seat when the seat has not been vacant. If you decide that you want to hold a special election after the vacancy occurs in November, then you have to have a special election, which is very costly. They need to clarify when a vacancy occurs. What the Board must do is give the Commission the ability to appoint, if they want to appoint. If they do not want to appoint, then they must have the election when they normally have the election in November. That way you avoid calling for a special election.

Ms. Lalonde stated that there may be situation where items that come before the Commission results in a tie; or there is no super majority when necessary, and the City could stall for years if there is no appointment.

Ms. Lalonde recounted when Victor Diaz was appointed.

Mr. Zack asked why we could not have a Charter provision stating that "when a vacancy occurs due to a resignation, the vacancy occurs the night before the actual election," and therefore there is an actual vacancy for which the City can have an election on election day, and therefore avoid the cost of a new election; and not have the City Commissioner who fills that vacancy.

Ms. Lalonde stated that if someone resigns for health reasons two months after they are elected, this proposal could create a stall. It is her understanding that historically they have appointed someone. She does not know why they are visiting this issue, as the present system has worked.

Mr. Smith explained that when David Pearlson resigned to run office, he made his resignation effective the day of the election. This meant that the Commission scheduled an election, not an appointment, for November. There was no appointment during that process.

Ms. Lalonde inquired what the City Attorney's recommendation was. He stated that he did not have a recommendation today. He was only raising the problem. He believes the Chair's suggestion is a good one. The day that a resignation is filed, under the Resign to Run Law to run for another office, that should be the effective date. If someone resigns for another, reason other than the Resign to Run Law, then there is an immediate vacancy, and the Charter sets a window as to when a vacancy must be filled. Mr. Smith explained that they are not taking away the power of the Commission to appoint.

Alex Fernandez explained that this is elected official who resign under the Resign to Run Law. They need to give the Commission an opportunity to appoint. What the Board may want to do is make the person appointed agree not to run for the seat they are filling so the position does not become politicized and the person does not worry about reelection. We have a very vocal community, who make its thoughts known to the Commission and he would like to see when this occurs the Commission to make the determination of whether they appoint or whether the voters should be allowed to decide.

Mr. Smith explained that the Resign to Run Law allows a candidate to resign at a future date. Mr. Smith thinks this is phony. If they resign, they resign. Then the Commission has an opportunity either to appoint or to have an election. Mr. Smith stated that they must submit their resignation, pursuant to the Resign to Run Law, ten days before qualifying for the new office. They should be required to resign upon the filing of the notice of intention to run for another office, under the Resign to Run Law.

Mr. Zack explained that when judges are appointed, they must stand for election at the next regularly scheduled election. He suggested some similar provision for the City. Mr. Zack would not mandate a prohibition against the person appointed from running for the seat they have been appointed to, as that may be the best-qualified individual.

The Board was in agreement that a simple majority should be used when appointing an individual to fill a vacant Commission seat.

MOTION:

Motion by Mr. Fernandez that in the event of a resignation in the City Commission, the vacancy is immediate upon tendering the resignation, and the person who may be appointed will stand for election at the next regularly scheduled election. Seconded by Mr. Kendle. Voice Vote: Approved 6-0 (Mr. Diffenderfer absent.)

MOTION (No Second Offered):

Motion by Mr. Fernandez that when someone is appointed that they agree that they are not going to run to permanently fill that seat. They can still run in a future race; but not in the coming election. No second offered.

Ms. Lalonde stated that she did not agree with this proposal.

Mr. Zack stated that if a Commissioner did not want to give such an advantage, they would not vote to appoint the person.

Mr. Fernandez stated that the appointment gives the perception of incumbency; and make for political playing.

MOTION (No Second Offered):

Motion by Mr. Fernandez that when they fill a vacancy via appointment, the appointment must be via a supermajority of 5/7th vote. No second offered.

Mr. Smith reminded that when you have a resignation you only have 6 members on the Commission.

Mr. Kendle stated that there may be unintended consequences with this motion if more than one member of the Commission resigns to run.

Additional Directives:

- Ms. Lalonde requested that when the Board undertakes to review those items referred by the Mayor and Commissioners, that those items be reviewed in one meeting by topic.
- Mr. Fernandez suggested that the Charter be reviewed section by section, as to proceed in an orderly manner. **ACTION:** By acclamation, the Board agreed to proceed to review the Charter section by section.

MOTION:

Motion to adjourn made by acclamation.

By acclamation, the Clerk was instructed to add to the agenda, in addition to the two previous topics mentioned, discussion regarding Term Limits and the Mayor's Term.

Meeting concluded at 6:29 p.m.