

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, July 15, 2013 at 4:30 p.m.
City Manager's Large Conference Room, Fourth 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 July 1, 2013 Charter Review & Revision Board Meeting.** (See Item 1)
2. **Discuss scheduling of additional Charter Review & Revision Board meetings.**
3. **Discussion of Proposed Charter Amendments** – Debora Turner, First Assistant City Attorney to present. Continued from June 24, 2013; Discussed at the July 1, 2013.
 - a. Compensation For Mayor And City Commissioners To Include Salary And Benefits.
 - b. Election Versus Appointments When Vacancies Occur.
 - c. Term limits, and removing the word "consecutive."
4. **Discussion of Section 2.04 – Induction And Meetings** - Donald Papy, Chief Deputy City Attorney, to present.
 - a. Continued Discussion of the following clause: "No member of the City Commission shall, during the time for which he/she was elected, be appointed or elected to any City office that has been created or the emoluments thereof shall have been increased during such time."

5. Discussion of the Citizens' Bill of Rights –

- a. Miami Beach United – Proposed Charter amendment to the Miami Beach Citizens' Bill of Rights (including definition of HOA), Mark Needle and Christine Florez, Miami Beach United, to present. (See item 2)
- b. Proposed Ballot Question(s) For July 17, 2013 – Requested by Commissioner Góngora – Amending Charter Adding A(17) and A(18). (See item 3)

A(16). *Nondiscrimination.* No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, gender identity, disability, marital status, familial status or age.

A(17). Reserved. Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach shall discriminate in employment practices and benefits offered based upon an employee or applicant's gender identity, race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.

A(18). The City of Miami Beach shall make reasonable or best efforts to recruit applicants for employment or contracts with the City from people of color, women, lesbian, gay, bisexual, or transgender, and the disabled.

A(18). **19.**

The underlined is new proposed text to an existing section. **Bold underlined** represents a new Charter section rather than an amendment to an existing section.

- c. Preservation Of Beaches – Proponent Rick Preira

6. Discussion regarding report to Commission by LTC from the City Clerk.

PENDING ITEMS

- Discussion of Charter provisions – one by one.
- Mandate That Employees Should Be Courteous To Citizens In The Bill Of Rights - Proponent Stephen Zack, Chair
- Ethics In Government / Code Of Conduct - Proponent Stephen Zack, Chair
- Over Scale Development In Residential Areas – Proponent Stephen Zack, Chair
- Preserving The Historical Value Of Miami Beach - Proponent Terry Bienstock
- Electing Officials By Open Seats - Proponent Scott Diffenderfer

MIAMI BEACH

CITY OF MIAMI BEACH PUBLIC NOTICE CHARTER REVIEW BOARD

NOTICE IS HEREBY given that a meeting of the Miami Beach Charter Review Board will be held in the City Manager's Large Conference Room, Fourth Floor, City Hall, Miami Beach, Florida, on **July 15, 2013 at 4:30 p.m.**

Pursuant to Section 8.01 of the Miami Beach City Charter, review of the Charter shall occur every ten years. The Charter Review Board (CRB) has been formed for the purpose of reviewing the City Charter, seeking public input thereon, and eventually presenting its recommendation to the Miami Beach City Commission.

TOPICS FOR DISCUSSION:

1. Citizens' Bill of Rights
2. Miami Beach United - Proposed Charter Amendments
3. Preservation Of Beaches
4. Nondiscrimination provision of the Citizens' Bill of Rights
5. Section 2.04 – Induction And Meetings
6. Review of Proposed Ballot Title and Ballot Summary
 - a. Compensation For Mayor And City Commissioners To Include Salary And Benefits
 - b. Election Versus Appointments When Vacancies Occur

INQUIRIES may be directed to the City Clerk at 305.673.7411. 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. This meeting or any of the items herein may be continued, and under such circumstances additional legal notice will not be provided.

Members of the City Commission may be in attendance.

Rafael E. Granado, Esq., City Clerk
City of Miami Beach

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 its meeting or its hearing, 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 #792)

MIAMIBEACH

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

POR ESTE MEDIO invitamos al público a la próxima reunión de la Junta de Revisión de la Carta Constitucional de Miami Beach (CRB), el **15 de Julio del 2013**, en el Cuarto de Conferencias Grandés del Administrador de la Ciudad, Cuarto Piso en el Ayuntamiento. El Ayuntamiento Municipal esta localizado en el 1700 Convention Center Drive, Miami Beach, Florida, 33139.

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.

TOPICOS DE DISCUSION:

1. Declaración de Derechos de los Ciudadanos (Citizens' Bill of Rights)
2. Enmiendas propuestas por Miami Beach United
3. Preservación de las playas
4. Sección de No Discriminación de Derechos de los Ciudadanos
5. Sec. 2.04 - Inducción y Reuniones
6. Discusión del lenguaje propuesto relacionados con:
 - a. Compensación a Alcalde y Comisionados de la Ciudad Para incluir Salario y Beneficios
 - b. Elección versus nombramiento cuando ocurre vacantes.

Para reciente información de juntas y agendas, favor de visitar la página cibernetica de la Junta de Revisión de la Carta Constitucional de Miami Beach al <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 de Miami Beach, Florida 33139. Para más información, llamar al 305.673.7411. Cualquiera de los temas que se debatirán en la reunión pueden ser continuado a una próxima reunión sin ningún aviso legal adicional.

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

Rafael E. Granado, Esq.
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 con respecto a cualquier asunto considerado en estas reunion o de sus audiencias, dicha persona debe asegurarse de que el textual expediente, del proceso sea grabado, el cual debe incluir el testimonio y la evidencia sobre la que el recurso de casación se basa. 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 autorize a los retos o apelaciones no permitidas por la ley.

De acuerdo con la Ley de Americanos con Limitaciones del 1990, las personas que necesiten acomodamiento especial para participar en estas audiencias deben ponerse en contacto con la Oficina del Secretario del Municipio al teléfono (305) 673-7411, para recibir asistencia. Si tiene limitaciones en la audición, llame al número del servicio Relav de la Florida 711 o (305) 673-7411 (voz).

Ad #793

21A

ITEM 1

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Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair	-	Absent	
Aaron Perry, Vice Chair	-	Present	
Scott Diffenderfer	-	Absent	
Jacqueline Lalonde	-	Present	
Rick Kendle	-	Present	Came in at 4:39 p.m.
Alex Fernandez	-	Present	
Richard "Rick" J. Preira	-	Present	

Staff:

Donald Papy, Chief Deputy 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, July 1, 2013 at 4:38:07 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 at 4:38 p.m., by Vice-Chair Perry in the absence of Chair Zack. Several attempts were made by Chair Zack and City Clerk staff to establish communication by telephone, as he was out of the Country, but a connection could not be established despite various attempts.

Roll call taken by Rafael E. Granado, City Clerk; Absent: Member Diffenderfer and Chair Zack. Member Kendle came in at 4:39 p.m.

Vice-Chair Perry informed the Board that an Amended Agenda was distributed.

1. **Accept Minutes Of The June 24, 2013 Charter Review & Revision Board Meeting.**

Motion by Member Fernandez to approve the minutes; seconded by Member Lalonde, with the amendments as submitted by the Legal Department; Voice-vote: 4-0. Absent: Chair Zack and Members Diffenderfer and Kendle.

Member Fernandez made a recommendation in the past that future agendas be discussed in order by Charter section. He asked if there was consensus. Member Lalonde added that today they should focus on the Citizens Bill of Rights, but she agrees that going forward discussion items should be by Charter section.

Discussion held regarding public participation. Member Lalonde asked the City Clerk if there are time sensitive items due to deadlines, in order to adopt changes to the Charter at the November election. City Clerk Granado explained that the actual deadline, as far as the Miami-Dade County Department of Elections to put an item on the November 5, 2013 ballot is September 6; however, the last City Commission meeting scheduled before that is the July 17, 2013 Commission meeting deadline, and that any proposed questions would need to be submitted to the City Commission for the July 17, 2013 agenda as that is the last regularly scheduled Commission meeting for submission of proposed ballot questions for the November 5, 2013 ballot. Discussion continued. The Board discussed that it did not recommend any ballot questions at this time.

Mark Needle, Miami Beach United Board Member, stated that the proposed Charter amendments for the Miami Beach Citizens Bill of Rights has been discussed and they have received input from the Commissioners, the public and neighborhood associations, and he agrees that other residents would like to see the proposed ideas and comments on them.

Member Fernandez suggested that to do it right they need a representation of the public; he is hesitant to take the Bill of Rights piece meal. Other people may have some good input to contribute to this. Member Lalonde asked if they could delay the Bill of Rights meeting, in order to notify the public. Discussion continued regarding the definition of Neighborhood Association.

Vice-Chair Perry stated that the Citizens' Bill of Rights is a priority and the Board is motivated, but the public needs to weigh in.

Member Kendle requested the latest proposal of the Miami Beach United. Mark Needle distributed copies to the Board.

MOTION REGARDING CITIZENS' BILL OF RIGHTS:

Motion made by Member Lalonde to discuss this item at the July 15, 2013 CRB Meeting; seconded by Member Fernandez; Voice-vote: 5-0; Absent: Chair Zack and Member Diffenderfer.

Motion by Member Fernandez to discuss the Charter section by section for organizational purposes. Member Preira stated that since the Chair is absent today, he suggested deferring the item and Vice-Chair Perry agreed. Motion died for lack of second. Discussion continued.

Member Lalonde thanked Mr. Needle for attending the meeting and suggested notifying other neighbors to attend the July 15 meeting.

2. Report by Ms. Sylvia Crespo-Tabak of all types of compensation that are received by executive staff and Charter Officials.

Sec. 2.02. - Term and compensation

Vice-Chair Perry introduced the continuation of the item from June 24, 2013.

Sylvia Crespo-Tabak, Human Resources Director, referred to Page 3 of the minutes, she was asked to find out about the Golf Membership, and she found Resolution 2005-26016, in which the issuance of an annual resident single membership to the City's Golf Course is for sitting members of the City Commission. No hard costs are associated with this. The car

allowances are part of the budget process, which is where they are entered and accounted for; it is a line item in the budget. Discussion held regarding transparency of public process.

Ms. Crespo-Tabak, Human Resources Director, also added that the only mandatory coverage today is basic life insurance; there is no mandate regarding health care coverage until January 1, 2014, when the Affordable Health Care Act goes into effect. In regards to salary being adjusted for the CPI to the present date, she explained that May 24, 1966 is when the current salaries became effective. Until 1981, the Bureau of Labor was keeping the CPI according to larger regions, such as the Southern Region, and it was not as specific as today. The numbers between 1967 and 1981 are a bit off, as they are based on the Southern Region. Subsequent numbers are based on the CPI for the Miami-Fort Lauderdale area. If Commissioners' salary were to be adjusted for CPI, today's earnings would be \$43,863 and the Mayor's salary would be \$73,105.

There was discussion between Members Fernandez and Lalonde regarding changes in CPI and its calculation.

Motion by Member Lalonde to accept the CPI methodology as suggested by Ms. Crespo-Tabak. Discussion continued.

Member Fernandez suggested ballot question language: Shall the salary of the Mayor and Commissioners of the City of Miami Beach be based on the Consumer Price Index?

Member Lalonde added language including: The salary of Mayor and Commissioners was established in May 1966. Shall the salary be based on the CPI?

Member Fernandez suggested providing direction to the City Attorney's Office to draft proposed language regarding CPI, and for the Board to review before it is presented to the City Commission.

Member Kendle is in favor of this item, as he is the one that brought up the CPI.

Donald Papy, Chief Deputy City Attorney, clarified that legally Chapter 145 of the Florida Statutes concerns County Commissioners and does not directly apply to the City. In answering Member Lalonde, Mr. Papy stated that using the State formula, the salary would be \$92,000.

Motion made by Member Lalonde to accept the CPI adjusted number as provided by Human Resources, including specific language with reference as when it was established in May 1966, and including adjustments and calculations going forward.

Vice-Chair Perry asked if going in the future this would cause any problems with the salary provisions found in the labor contracts. Donald Papy, Chief Deputy City Attorney, stated that the City traditionally has addressed the issue with five collective bargaining units in addition to unclassified employees on an individualized basis and an annual basis. It does not directly affect what the City does.

Discussion held regarding drafting proposed ballot.

Debora Turner, First Assistant City Attorney, in answering Member Kendle's question, stated that she drafted ballot questions in response to direction at the last meeting. Proposed Ballot Title and Ballot Summary were distributed.

Discussion held regarding two ballot questions combined into one. Member Lalonde asked that this item be deferred until the new language regarding CPI is added.

For clarification, Vice-Chair Perry stated that the Board is requesting one question with both adjustment in salary and terminology regarding compensation.

Debora Turner, First Assistant City Attorney, stated that there is a 75-word limit to each ballot question. Discussion continued regarding drafting the proposed ballot.

Member Lalonde stated that there should be no reason, going forward, to have an increase other than what is required by CPI, and suggested rewriting the ballot questions in its entirety and incorporating the new language. Discussion continued.

MOTION REGARDING PROPOSED BALLOT QUESTION

Motion by Member Lalonde to direct Legal Department to draft a proposed ballot to include current recommendation for compensation, which will bring salary from 1966 at \$6,000 to current level of \$_____ for Commissioners, and \$10,000 to current level of \$_____ for Mayor, and include adjustments and calculations going forward; Legal to bring back to the Board for review; seconded by Member Fernandez. Voice-vote: 7-0. **Debora Turner, First Assistant City Attorney, to prepare and bring back to the July 15, 2013 Charter Review Board Meeting.**

Discussion continued.

Sylvia Crespo-Tabak, Human Resources Director, continued her presentation in reference to Page 28.

Vice-Chair Perry expressed their gratitude, on behalf of the Board, to Ms. Crespo-Tabak, for her thorough research on the subject.

3. City Auditor/Inspector General

Presentation made by Aleksandr Boksner, Senior Assistant City Attorney. Item deferred from June 24, 2013.

Mr. Boksner introduced the item and explained the authority of Inspector General to subpoena records. He explained that the previous Administration sought to make a contractual agreement with the Miami-Dade County Inspector General's Office; with that they sought to create a department by contract to have authority to take action on all things, important or not. The City Attorney's Office position was that it may be problematic to grant them such authority, as they would be perpetuating themselves and justify their own existence. The Miami-Dade County School Board has contracted with the Inspector General, but the City Attorney's position is that an Inspector General, who is in existence as a separate stand-alone department and would not fall under the City Manager's authority, is not a prudent course of action to follow. Mr. Boksner stated that the City Attorney's Office recommendation is to provide for a Special Investigator or Special Prosecutor, which would be approved by 5/7 vote of the City Commission. Subsequently, a resolution will be passed

identifying their authority, which may include subpoenaing records, documents and/or individuals.

Discussion held regarding process to get it to Commission, and regarding the 5/7 vote.

Mr. Boksner provided the example of the debarment procedure, in which the City Attorney's Office forwarded a Memorandum to the City Manager, and the City Manager forwarded the Memorandum to the City Commission, requesting the initiation of debarment proceedings.

Discussion continued regarding process.

Member Fernandez added that ten years ago the subpoena authority was removed from the Charter because it was a power that they could not do much with.

Mr. Boksner explained whether the information derived from that subpoena could ultimately be turned over to the US Attorney's Office, or the State Attorney's Office. Discussion continued.

Vice-Chair Perry is in agreement with the Legal Opinion and asked for further discussion regarding the 5/7 vote brought up by Member Lalonde.

Mr. Papy stated that this should be an extraordinary situation, where there is a wide degree of support, and that is the theory of it. That is the thinking and the logic of it.

Discussion continued regarding Inspector General.

Member Fernandez stated that the City needs a mechanism where they can ensure whether people are doing their job in an ethical, moral and legal manner, that they are not doing anything illegal during the performance of their duties. He referred to the incident of corruption in the City of April 11, 2012 that grabbed media attention.

Vice-Chair Perry agreed that there needs to be a checks and balance within the City.

Discussion held regarding majority vote. Member Lalonde discussed lobbying and her concern with the supermajority.

Member Kendle asked what is being done currently when employees come to work at 10 a.m. and leave at 2 pm. An Inspector General is there to do performance review and identify fraud. Discussion continued regarding appointment of Inspector Generals.

Member Fernandez suggested that an Inspector General should not be appointed by the City Commission, but instead by judges and other ethical professionals, to remove the political aspect from it.

Vice-Chair Perry stated that his concern is that they live in a unique City that they love, and that is why they are here volunteering their time. The City Manager is aggressively looking at each department and creating systems.

Joe Jimenez, Assistant City Manager, on behalf of Jimmy L. Morales, City Manager, informed the Board that since there is no Inspector General in the City, he was asked to take over the ethics and internal compliance if any issues arise. They discussed the idea, and perhaps, in

the future, bring it to the City Commission for the creation of a department. He agrees with the necessity due to the City's history, but he suggested not solidifying it in the Charter, but rather in the City Code.

Discussion held regarding Internal Auditor. Mr. Boksner explained that the City has a False Claims Act that has never been utilized.

Member Fernandez requested a Memorandum of recommendation from the City Attorney and the City Manager's Office with both suggestions; and to bring it back to this Board for review

Joe Jimenez, Assistant City Manager, reiterated that they do not recommend including it in the Charter, but rather try baby steps and do it by Code, via the City Manager.

Member Lalonde recommended a report as to how they are going to reorganize the division, including a whistle blower telephone line, online, and by telephone, visible to the public, so that they can incorporate the entire plan.

Mr. Jimenez stated that some of this action requires Commission approval, due to budget funding issues. Discussion continued regarding resources and funding.

Member Fernandez requested to bring back for Board's review the planning of the creation of the department, as well as the fiscal impact. **City Manager's Office to handle.**

4. Subpoena Powers

See Item 3. Proponent Alex Fernandez.

5. Election Versus Appointment When Commission Vacancies Occur – Referred at the May 19, 2012 Commission Retreat.

Member Fernandez stated that this section of the Charter might need to be bifurcated into two areas; what happens when someone resigns in the middle of their term for any reason, and what happens if someone resigns to run for another seat. They discussed the Resign to Run situation, but he would like to hear what they have in the Charter today, and what has been approved to date on this issue.

Debora Turner, First Assistant City Attorney, explained that she researched several Charters around the State and locally, and found one from North Miami Beach that she distributed to the Board.

Per Member Fernandez's request, Ms. Turner read Section 2.07 into the record:

Sec. 2.07. - Vacancies in city commission.

Any vacancy occurring in the City Commission shall be filled by the vote of the majority of the remaining members of said City Commission with the appointee serving the remainder of the unexpired term until the next succeeding general City election and with any further remainder of said unexpired term to be filled by a Commissioner elected at said general election; if the remaining members of the City Commission shall fail or refuse to fill such vacancy within 30 days after it occurs and if no general City election will be held within 90 days after the expiration of said 30 days, then a special election shall be called and held to elect a Commissioner to fill such vacancy for the remainder of the unexpired term.

She presented for consideration language from North Miami Beach, which reads as follows:

Sec. 19. - Vacancies.

Vacancies in elective offices of the City of North Miami Beach shall be filled by the city council pending the next general election, at which an election to fill the vacancy shall be held for the unexpired term. Provided, however, that should any vacancy occur more than one year prior to the next general election, the council shall have no power to fill the same; it shall be filled by a special election to fill the vacancy for the unexpired term, to be held not less than 35 days nor more than 60 days after such vacancy has occurred. When a vacancy is filled by the city council, it shall be done in such manner as shall be provided by the rules of the council, or as provided by separate ordinance.

Vice-Chair Perry asked about the fiscal impact of calling a Special Election, and the City Clerk stated that if it is a Special Election, not held in conjunction with a County Election, it would be approximately \$225,000; if it were an election held in conjunction with County or State Election it would be approximately \$25,000. Discussion held.

Member Kendle stated that in the League of Cities, when there is a vacancy, they are considering offering the seat to the person that had the third most vote in that election.

Member Lalonde stated that she is concerned about the cost of Special Election, but also is concerned about the free will of the people. Discussion continued regarding election cycles in any given year, and subsequently she proposed that elections be tied to the County or State.

Vice-Chair Perry asked what is the requirement for approving a temporary appointment. Discussion continued regarding what occurs if the Commission fails or refuses to fill a vacancy within 30 days after it occurs.

MOTION REGARDING ELECTION VERSUS APPOINTMENTS WHEN VACANCIES OCCUR

Member Lalonde made a motion to incorporate language in the City's Charter as follows:

- Vacancy to occur by appointment
- Appointee can serve until the next Election cycle (County, State or City)
- Extend period of time if failed to appoint to **60 days** instead of 30 days
- After 60 days, if failed to appoint, then a Special Election will be held
- There will be no prohibition on that person running

Motion seconded by Member Kendle. Voice-vote: 5-0; Absent: Chair Zack and Member Diffenderfer. Ms. Turner to bring back proposed language to Section 2.07, per Member Fernandez's request, regarding a Resign to Run situation being effective no later than the night before the election, so that the vacancy can be filled at the same election taking place the following day. **Debora Turner to draft proposal and bring back at the July 15, 2013 Meeting.**

City Clerk Granado reminded the Board members that July 15 is the last scheduled meeting, and he suggested scheduling more meetings.

Member Kendle recommended removing from future Charters the last paragraph of Section 2.04 as follows:

Sec. 2.04. - Induction and meetings.

No member of the City Commission shall, during the time for which he/she was elected, be appointed or elected to any City office that has been created or the emoluments thereof shall have been increased during such time. (Res. No. 2012-27903, approved by electorate Aug. 14, 2012)

Discussion was held regarding the meaning of this paragraph.

Donald Papy, Chief Deputy City Attorney, stated that it is a very problematic paragraph. He researched the U.S. Constitution, and it seems to have developed from the notion of creating positions within the government by people who are in the position to create the position, it does not apply to anyone already in office, but he does not know exactly where it came from. Member Fernandez requested for Legal to research further. Discussion continued. **Donald Papy to look at this paragraph to see what the intention of the language was used for and bring back at the July 15, 2013 meeting.**

Member Lalonde explained that there are people that improperly use this paragraph for political purposes.

Member Kendle explained that in reading the paragraph, one can interpret that some of the people running for office will not qualify, and the City Clerk will have to make that decision.

MOTION REGARDING AMENDMENT OF SECTION 2.04

Motion by Member Lalonde to remove the last paragraph in its entirety, pending language review by Legal; seconded by Member Fernandez; Voice-vote: 4-1; Opposed: Member Preira.

6. Preservation of Beaches – Proponent Rick Preira

Item deferred to the July 15, 2013 meeting to be discussed with the Citizens' Bill of Rights.

7. Discussion regarding possible referral of proposed ballot question(s) to the City Commission for the July 17, 2013 City Commission Meeting.

Debora Turner, First Assistant City Attorney, introduced the item regarding term limits, and removing the word "consecutive." There was consensus to defer item to the July 15, 2013 meeting. **Debora Turner to bring back at the July 15, 2013 meeting.**

Discussion held.

Member Kendle explained that there is no rush to discuss this item, and if they were to do it now, it could look political, and everyone is excluded, because people in office are excluded. He suggested deferring it in order not to make it look "political."

Discussion continued.

Vice-Chair Perry stated that they had taken the "politics" out, by not having this apply to any current City officials.

Ms. Turner stated the proposed draft language would commence with the General Election of 2015. Discussion continued.

Member Kendle stated that there was discussion regarding term limits for the Mayor, and they try to keep that separate, because once it is put on the ballot, it may not look right; he suggested putting all items regarding commission salary and term limits all together.

Member Fernandez agreed that this Board should be above any politics and above individuals, they are looking at policies and government documents for the next ten years and perhaps surpass the services of individuals that are being spoken about. He does not see why this should be on this ballot. He thinks it may look as if “politically” induced, when it is not the nature or the spirit of this Board to put items like this before the voters as a “political” operative or agenda.

8. Handout

a. Florida League of Cities & FPPA 2011 Salary Survey Results (See Item 7a.) – Requested to be distributed by Jacqueline Lalonde

9. Issue Requested to be discussed on July 1, 2013, by Commissioner Michael Góngora.

Member Preira suggested that perhaps the language in A(17) should read: “there is no basis to justify discriminating against a person, on any basis whatsoever, and depriving them of the right conferred upon them by law.”

Member Fernandez is in support of the item.

Donald Papy, Chief Deputy City Attorney, understands what Member Preira is stating, and explained that the word discrimination is anchored by the categories included. Discussion continued.

Member Preira recommended including more inclusive categories in addition to what Commissioner Góngora proposed, and that the City of Miami Beach does not tolerate any discrimination on any basis whatsoever.

Mr. Papy stated that the key is to identify those categories that are improper or illegal in order to have meaning.

MOTION AMENDING BILL OF RIGHTS, A(16) - DISCRIMINATION – Requested by Commissioner Góngora

Motion made by Member Lalonde to approve the item A(17) and A(18) in the Bill of Rights; seconded by Member Fernandez. No vote taken and discussion continued.

Member Kendle stated that this item has not been discussed enough, and thinks language should be clarified.

Member Fernandez read existing Charter language A(16) into the record.

“16. *Nondiscrimination*. No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status or age. “

New proposed language reads:

A(17). Reserved. Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach shall discriminate in employment practices and benefits offered

based upon an employee or applicant's gender identity, race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.

A(18). The City of Miami Beach shall make reasonable or best efforts to recruit applicants for employment or contracts with the City from people of color, women, lesbian, gay, bisexual, or transgender, and the disabled.

Discussion continued. Member Kendle stated that they should discuss the consequences of additional language, and since the Bill of Rights will be discussed at the next meeting, he suggested that this item be also included.

Member Lalonde, referring to Paragraph A(18), asked what the terms "reasonable or best efforts" mean or what legal requirement it contains.

Donald Papy, Chief Deputy City Attorney, stated that he does not know the legal intention, but he thinks it is appropriate to think about all the people who may be qualified, including all those covered in the categories. It is a nondiscrimination principle.

There was consensus to defer the item to the July 15, 2013 meeting and include within the Bill of Rights amendments.

Member Fernandez requested notifying United Coalition, Aqua Foundation and any other diverse organizations to participate.

Meeting adjourned at 6:35:21 p.m.

TOPICS FOR DISCUSSION FOR THE JULY 15, 2013 AGENDA

Citizens' Bill of Rights – Deferred from the July 1, 2013 CRB Meeting.

- a. Miami Beach United – Definition Of HOA – Terry Bienstock to present
- b. Section 2.04 – Induction And Meetings – Donald Papy to present
- c. Preservation Of Beaches – Proponent Rick Preira - Deferred 07/01/2013
- d. Proposed Ballot Question(S) For July 17, 2013 – Requested by Commissioner Góngora – Amending Charter Adding A(17) and A(18).

Proposed Ballot Title and Ballot Summary – Presentation by Debora Turner, First Assistant City Attorney. Continued from June 24, 2013; Discussed at the July 1, 2013.

- a. Compensation For Mayor And City Commissioners To Include Salary And Benefits
- b. Election Versus Appointments When Vacancies Occur

Meeting adjourned at 6:27:44 p.m.

Handouts or Reference Materials:

1. Miami Beach UNITED Proposed Charter Amendment for the Miami Beach Citizens' Bill of Rights
2. Sec. 19 – Vacancies – from the City of North Miami Beach
3. Proposed Ballot Title and Ballot Summary

ITEM 2

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Strengthening Resident Rights

Proposed charter amendment for the Miami Beach Citizens' Bill of Rights

Shall Sections (A) and (C) of the Miami Beach Charter, the Citizens' Bill of Rights, be amended to enhance truth and ethics in government; to enhance notice and hearing rights for all residents; to create a right of fair enforcement of city laws; to define rights and courtesies to be provided to neighborhood resident associations; and to create non-judicial remedies for violations of the Citizens' Bill of Rights?

Proposed new language indicated by underscore.

(A) 2. **Truth in government.** All residents shall have the right to expect and receive prompt, courteous, informed responses to all questions regarding city business, including timely access to requested documents. No municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.

(A) 5. **Right to be heard.** So far as the orderly conduct of public business permits, any interested person has the right to appear before the City Commission or any City agency, board or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the City. Matters shall be scheduled for the convenience of the public, and the agenda shall be divided into approximate time periods so that the public may know approximately when a matter will be heard. For matters affecting a substantial number of neighborhood residents, a reasonable and convenient time certain should be provided and reasonably adhered to or continued to a subsequent time certain. Nothing herein shall prohibit the City or any agency thereof from imposing reasonable time limits for the presentation of a matter. All residents shall have the right to fundamental fairness and due process in connection with any city hearing, board or committee meeting, or public workshop, or related non-public meetings with city staff and individual commissioners, board, or committee members. Residents shall not be required to secure counsel to exercise these rights.

(A) 6. **Right to notice.** Persons entitled to notice of a City hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing. Copies of proposed ordinances or resolutions shall be made available at a reasonable time prior to the hearing, unless the matter involves an emergency ordinance or resolution. Prior to any zoning or other quasi-judicial hearing, applicants shall make available to the public copies of presentation documents at least 15 days prior to the hearing (including plans, diagrams, renderings, or models, or written legal briefs in an appeal from a prior city hearing). Material changes shall cause the subject to be rescheduled to comply with this requirement unless waived in writing by affected parties.

(A) 8. **Right to public hearing.** Upon a timely request of any interested party a public hearing shall be held by any City agency, board, department or authority upon any significant policy decision to be issued by it which is not subject to subsequent administrative or legislative review and hearing. This provision shall not apply to the law department of the City nor to any body whose duties and responsibilities are solely advisory.

At any zoning or other hearing in which review is exclusively by certiorari, a party or his counsel shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The decision of any such agency, board, department or authority must be based upon the facts in



the record. Procedural rules establishing reasonable time and other limitations may be promulgated and amended from time to time. In any zoning or other quasi-judicial hearing related to land use, affected parties and neighborhood resident associations proximate to the subject property shall have adequate time to address and present evidence and to reasonably cross-examine witnesses, and shall not be required to secure counsel to exercise these rights.

(A) 17. Neighborhood resident association rights. Every organized, inclusive, and officially recognized association of residents for a defined neighborhood, as further elaborated in city code, has the right to expect and receive the following from city officials, employees and agencies:

- All rights afforded to individual residents under the Citizens' Bill of Rights or any other city law;
- The same rights as affected residents for a matter having potential impact within or proximate to any part of the neighborhood;
- Advance courtesy notification, even when formal notice is not required, on matters having potential direct impact within or adjacent to any part of the neighborhood, including public works or utility projects, proposed land use or legislative actions, or similar matters where specific notice to affected neighborhood associations can effectively supplement general public notices.
- Advance courtesy invitation to participate in the planning and design of new or amended ordinances directly affecting any part of the neighborhood, or publicly funded projects within or adjacent to any part of the neighborhood, including review of detailed plans prior to implementation.

(A) 18. Right of fair enforcement. All residents have the right to expect and receive active, fair, and efficient enforcement of all city laws and regulations by city officials, employees, and agencies. Decisions to enforce or not to enforce shall be impartial, objective, and subject to public record review.

(A) 18 19. Ethics in Government. The public's confidence and trust in City of Miami Beach operations and government must meet the most demanding ethical standards and demonstrate the highest level of achievement in its adherence to ethics laws. City of Miami Beach officials and employees are agents of the people and hold their positions for the benefit of the public—as public servants, they are to observe in their official acts a high standard of conduct and to discharge faithfully the duties of their office regardless of personal considerations and interests, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern. In upholding the values of accountability and responsibility, all city officials and employees and board or committee members shall abide by applicable codes of ethical conduct, shall be provided this Citizens Bill of Rights in the official agenda for all public meetings, and shall sign to indicate compliance upon election, employment, or appointment and on an annual basis, and be subject to all penalties provided for in such regulations.

(C) Remedies for violations. Any resident alleging a violation of this Bill of Rights shall first pursue redress through non-judicial means by submitting the allegation in writing to the City Clerk, who may seek to resolve the matter administratively within a reasonable period of time and shall place unresolved violations on the City Commission agenda for public hearing, with further resident right of judicial appeal or the option of mediation and binding arbitration in lieu of court. In any suit by a citizen alleging a violation of this Bill of Rights filed in the Dade County circuit Court pursuant to its general equity jurisdiction, the plaintiff, if successful, shall be entitled to recover costs as fixed by the court. Any public official or employee who is found by the court to have willfully violated this article shall forthwith forfeit his office or employment.

ITEM 3

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TO: Rafael Granado, City Clerk
FROM: Robert Rosenwald, Sr. Asst. City Attorney
DATE: June 28, 2013
RE: Commissioner Gongora's Charter Review Proposed Submissions

Commissioner Gongora, after consultation with the LGBT Committee, suggests that the Charter Review and Revision Board consider the following suggested changes to the Citizen's Bill of Rights at its meeting on Monday, July 1, 2013. Commissioner Gongora would like the Board's input for a proposed ballot question to be considered at the July 17, 2013 City Commission meeting:

A(16). *Nondiscrimination*. No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, gender identity, disability, marital status, familial status, or age.

A(17). ~~Reserved~~. **Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach shall discriminate in employment practices and benefits offered based upon an employee or applicant's gender identity, race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.**

A(18). **The City of Miami Beach shall make reasonable or best efforts to recruit applicants for employment or contracts with the City from people of color, women, lesbian, gay, bisexual, or transgender, and the disabled.**

A(18). **19.**

The underlined is new proposed text to an existing section. **Bold underlined** represents a new charter section rather than an amendment to an existing section.

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