

MIAMIBEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair	-	(Via telephone at 4:50 p.m.)
Aaron Perry, Vice Chair	-	Present
Scott Diffenderfer	-	Absent
Jacqueline Lalonde	-	Present
Rick Kendle	-	Present
Alex Fernandez	-	Present
Richard "Rick" J. Preira	-	Present

Staff:

Donald Papy, Chief Deputy City Attorney	-	Present
Debora Turner, First Assistant City Attorney	-	Present
Gary Held, First Assistant City Attorney	-	Present
Robert Rosenwald, Esq., First Assistant Attorney	-	Present
Joe Jimenez, Assistant City Manager	-	Present
Rafael E. Granado, City Clerk	-	Present
Liliam Hatfield, OAV, City Clerk's Office	-	Present

PUBLIC

Terry Bienstock, MB United	(Via telephone)
Dr. Morris Sunshine	
Mark Needle, MB United	
Christine Florez, MB United	

MINUTES

Monday, July 15, 2013 at 4:38:07 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.

Meeting called to order at 4:41 p.m., by Vice-Chair Perry in the absence of Chair Zack, who was present via telephone.

Roll call taken by Rafael E. Granado, City Clerk; Absent: Member Diffenderfer.

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

Motion by Member Fernandez to approve the minutes; seconded by Member Lalonde; Voice-vote: 5-0. Absent: Member Diffenderfer.

Discussion of the Citizens' Bill of Rights – Ballot Question(s) Proposed by Commissioner Góngora for July 17, 2013.

Vice-Chair Perry explained that this meeting will be dedicated in its entirety to discuss the Citizens' Bill of Rights, but asked if they could discuss the language in Commissioner

Góngora's Charter submission regarding the GLBT committee. He introduced Rob Rosenwald, Esq. (See attached Exhibit "A" distributed.)

Rob Rosenwald, Esq., Senior Assistant City Attorney, explained that Commissioner Góngora met with the Gay, Lesbian, Bisexual and Transgender (GLBT) Committee to discuss adding people in protective categories; the first provision amending A(16) adds gender identity to the categories. The additional proposed change to A(17) adds to the Charter language regarding non-discrimination in employment contracting practices. The City's ordinances do not currently require contractors to have a non-discrimination policy; only to offer domestic partner benefits. The Procurement Department normally includes in the contracts that a contractor must agree not to discriminate based on the respective categories, at least with the people they are using to perform the duties for a Miami Beach contract, but it is not in any ordinance, it is just a practice; this codifies it at the Charter level. The proposed ballot question A(18) concerns recruitment and lists the categories. He understood from prior meetings that there was concern from this Board that no one was excluded, and this has been re-written taking that into account. Commissioner Góngora suggested that at an appropriate place in the Charter, any revisions of Section 62 of the City Code, Human Relations, must be approved by a majority of the voters in a Citywide election.

Dr. Morris Sunshine, resident, agreed with the moral thrust behind the statement, and agreed that Section 62-31 should be as inclusive as possible. He submitted a short statement urging the Board to include homelessness to the class of protected citizens. (See Exhibit B).

Member Fernandez stated that this is all about offering opportunity, not taking away opportunity, so it takes it to the next level, and he is in favor of the proposed language as is.

Board Member Lalonde stated that this is a noble discussion regarding the homelessness, but Commissioner Góngora's submission should not be amended to include the homeless issue at this time, but at some point the Board should discuss it, and asked that they reach out to Committees dealing with the issue.

4:51 p.m.

Vice-Chair Perry gave a brief overview of the discussion up to this point to Chair Zack who became available over the telephone.

Member Lalonde made a motion not to include homelessness as a protective class at this time, but requested to have Committees present to the Board. **Rafael E. Granado to handle.**

Member Kendle stated that adding gender identity to the Charter in that paragraph is good, but he reminded that the Charter is to be kept as clear and concise as possible, and he is concerned that religious groups that discriminate may put the City at risk, when this can be included in an ordinance. There are many protective classes including veterans and homelessness, but other cities do not have this language in the Charter.

Chair Zack stated that there are specific laws on this. There is a wealth of law regarding homelessness. He agrees that everyone should have the right to be protected and they should not start naming people in the Bill of Rights.

Discussion continued regarding diversity inclusion and contracting policies.

Member Fernandez shared a working experience when he engaged in business with an entity, and they decided to terminate their business with him because he is homosexual. He does not believe that a government agency should contract or give money to people and companies that engage in these practices.

Discussion continued.

Vice-Chair Perry asked if a company had other companies underneath it, and one of the companies did not comply, but the City wanted to do business with one of the companies, how would that work?

Rob Rosenwald, Esq., explained that staff in Procurement ensures compliance.

Board Member Lalonde asked what are the benefits of having the language in an ordinance rather than in the Charter?

Rob Rosenwald, Esq., explained that the reason the proposed ballot questions were given by the GLBT members was that this could be changed by future Commissions or challenged, and raised to the Charter level increases its effectiveness.

Discussion continued.

Board Member Fernandez stated that in this day and age, are they going to allow a Commission, on a 4-person vote, to change basic human rights. Discussion continued.

Don Papy, Chief Deputy City Attorney, stated that A(17) and A(18) are general statement of aspiration. It could theoretically present issues because of the enforcement arm in the Bill of Rights that would not take into account exemptions and specific ordinances. There are exceptions for religious institutions.

Board Member Fernandez asked that if language was added to the Citizens' Bill of Rights, can this be cured in Court? He read Miami-Dade County's "Remedy for Violations," and explained that if there is an issue of an executed Bill of Rights, it can be corrected by taking it to Court.

Don Papy, Chief Deputy City Attorney, explained that there is an existing ordinance, specific and narrow with certain qualifications, whereas this is a general statement, and theoretically, there can be issues with enforcing this, as it does not have the status the ordinance has.

Discussion continued.

Member Kendle explained that it is unlikely that someone will take this to Court, and his other issue is with groups not covered such as the veterans, but they have State law rights, and he thinks they are taking an aspirational type of document and the language belongs somewhere else in the Code. Discussion continued.

Board Member Lalonde asked Mr. Papy if these protective clauses can be quickly overturned with a majority vote; and if this is included in the Charter, will it prohibit that from happening?

Don Papy, Chief Deputy City Attorney, explained that, as a Charter provision, they cannot be overturned by a Commission vote.

Board Member Preira is concerned about addressing these; he has a concern with A(18) on a couple of levels: 1) categories identified are different from A(16) and A(17) and he is concerned with language uniformity; 2) he is not aware of any historical practice in the parts of the City of Miami Beach not to engage in reasonable efforts to recruit the categories listed in A(18) but on the contrary, Miami Beach is at the forefront. He has a problem with segregating out classes against whom there is no historical pattern of discrimination by the City with respect to recruiting applicants and then granting them special status. How do we comply with A(18)?

Rob Rosenwald, Esq., explained that during his research in the Human Resources Department, the answer was that they do not recruit any minority groups including GLBT. The way it is written, the City would comply if they do recruit, for example, if they retain a recruiter and there are job-listing sites that are aimed at these protective classes, and they should engage in a gay newspaper, and on disabled websites, and all others.

Discussion held regarding recruitment process.

Board Member Fernandez stated that these categories and protective classes are not part of the diverse community, and they need to make sure when recruiting that they reach all-inclusive categories for all to have an equal opportunity.

Chair Zack, stated as a point of information, that this issue was not taken in an orderly fashion, and asked if the other issues had been discussed, as he did not understand the procedure followed.

Member Lalonde explained that they did a bit of both; this issue came up out of order, which they all agreed, but he missed that part of the meeting.

Vice-Chair Perry stated that he understands his point and asked that they move forward and discuss the Citizens' Bill of Rights.

Discussion continued regarding procurement procedures on contracting and discrimination on Miami Beach.

Board Member Kendle suggested that A(17) and A(18) be included in an ordinance. Discussion continued.

Board Member Lalonde stated that if the members wanted to revise the language to include A(17) in its entirety, the paragraph below, and exclude A(18) at this time, they can compromise on this. Discussion continued regarding religious groups. Member Kendle stated that this is a "feel good" thing to have in the Charter.

Don Papy, Chief Deputy City Attorney, clarified that A(17) addresses contracting, and he is not familiar with contracting provisions. At this time, the City has a practice, but this is not codified.

Member Lalonde suggested revised language as follows:

A(17) ~~Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach shall~~ not 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; and removing A(18) in its entirety.

MOTION 1 REINSTATED

Motion made by Member Lalonde to add A(16) as is, A(17) to the Charter, as amended, and amendment shall be: *The City of Miami Beach shall not 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;* and including A(18); seconded by Member Fernandez; No voice vote taken.

Motion by Member Kendle to remove A(18); no second offered. Motion dies.

Mark Needle spoke.

Discussion was held regarding A(18) and the reasons Member Kendle opposes adding A(18). He stated that this should be in an ordinance and not in the Charter. Discussion continued.

Chair Zack stated there is no need for the last paragraph that proposes an amendment to the Charter because that is in the City Code, and he cannot imagine someone trying to change it.

Rob Rosenwald, Esq., explained that the proposed amendment to the Charter (unnumbered) is to prevent a diminution in rights or duties established in City Code Chapter 62 unless done so by referendum.

Discussion continued.

Chair Zack explained that there are certain basic principles, such as non-discrimination, in the Charter, and if anyone tried to do that or if someone is discriminated again, they can bring action against the City.

Rob Rosenwald, Esq., explained that the language is general and requires some interpretation. Commissioners have carved specific rights and responsibilities towards employees and public accommodations and have created committees and have given these committees tasks to protect people; the ordinance gives specific things that the Charter does not, to people that have fought to get them. The last paragraph says that the things that people have fought for and won cannot be taken away by the Commission.

Chair Zack is all for nondiscrimination but still believes that it does not belong in the Charter. Discussion continued regarding domestic partners benefits.

Member Kendle expressed his opposition. Discussion continued.

Final Motion 1:

Motion made by Member Lalonde to add A(16) and A(17) to the Bill of Rights and the unnumbered proposed Charter amendment regarding changes to Chapter 62 requiring referendum, as amended; seconded seconded by Member Fernandez; Voice-vote: 4-1; Opposed: Member Kendle. **Debbie Turner and Rob Rosenwald, Jr. to handle.**

Debora Turner, First Assistant City Attorney, explained that in order for this item to get to the Agenda at this time, it would be as an addendum item. Discussion held.

Rafael E. Granado, City Clerk, stated that perhaps Rob Rosenwald can verbally communicate to the City Commission the recommendations of the Charter Review Board and its proposed language. **Rob Rosenwald to handle.**

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.

Terry Bienstock, via the telephone, introduced himself.

Mark Needle, Miami Beach United Board Member, distributed a sample ordinance from St. Johns County (Exhibit C) and introduced the item. He is here with Christine Florez and Terry Bienstock. He suggested that they discuss the remedies, how they function and what the focus is. He explained that the idea is to provide more enforcement before going to Court and provide a mechanism for citizens to bring those violations to the attention of the City, so that practices can be modified and strengthened over time or air them at Commission level.

Vice-Chair Perry asked about the status of a neighborhood association.

Member Kendle explained that the enforcement is the most important issue.

Discussion continued regarding definition.

Christine Florez spoke and discussion continued.

Joe Jimenez, Assistant City Manager, agreed that the remedies are important, but should be left to the end, since until they know what the duties are, this could cause someone to be fired.

Member Fernandez stated that associations are seeking rights given to residents, but in a different way; through the Code, not the Charter, and that is where he sees some of these things might fit better in the Code.

Gary Held, First Assistant City Attorney, stated he is concerned with ambiguity and vagueness, which would create unintended or unexpected consequences for many people. As this language is aspirational, greater writing precision is required.

Mark Needle stated that comments from the Board were that the pieces coming from the neighborhood rights should be for every citizen, and those points that were in the initial association rights have been added to the other part of the Charter where they fit. What is left of the neighborhood piece, is that if one is registered with the City, then you get benefits; the City can defined how that happens and boundaries are defined. The remedy is to start providing notices to an association and there is no real consequence any longer. There are two things left: under Section 17, courtesy notice, and under Section 17 hearing notices, where there is an affected neighborhood association, or one that meets the City standards, and requires advanced notification and invitations to participate in the process. He read the definition (Exhibit C): "Neighborhood Association" or "Association" shall be any formal or informal association of persons that voluntarily join to register as a Neighborhood Association with the Administration, using a form for purpose of acquiring the benefits of this ordinance

under the Charter. Such registrations must include a geographic Neighborhood Association boundary reasonably described in the registration by the Neighborhood Association. The area must be limited to an area within the City that is characterized by a substantial commonality of interest and a history of identification as a neighborhood separate from others.” He stated that the intent is not to create something that privileges neighborhood association over individuals, but gives them equal rights when qualified. This is an issue for the Charter Review Board to decide.

Board Member Fernandez explained that this is for the City Commission to approve.

Discussion continued.

Chair Zack stated that there are two different things; one is the ability to exercise certain rights and the other one is to notice. What rights does the notice give you?

Member Preira mentioned that before a remedy is devised, there has to be an injury, and he perceives that these associations are composed of residents, and residents already have the rights that we are trying to convey on the entity; and those associations come before a Commission or a Board in the City they have power; he does not understand the necessity of conveying legal identity.

Ms. Florez spoke and discussion continued regarding association standing.

Member Lalonde explained that Terry Beinstock and she live on Sunset Islands III and IV and they had a developer building a project out of scale, inconsistent in the neighborhood as it was adjacent to a single family home; they had no legal standing in the association, even though they were impacted, the only person with standing did not even live there, and that is what the concern is.

Discussion held.

Gary Held, First Assistant City Attorney, clarified that incorporated associations for appeal reasons cannot be represented by individuals that do not have standing in Court.

Mr. Bienstock explained that they are trying to accomplish having certain notification rights for neighborhood associations and a voice to participate in zoning, planning and land use issues as they come up, which directly affect the association or residents of that association. If an individual can stand and speak, a Neighborhood Association should be able to have the same right to stand up and speak, provide witnesses and cross-examine as individuals within the association. It is the practice of the City, but not a requirement, so there have been inconsistencies.

Chair Zack asked if there has been a legal determination by a Court that has been appealed that a Neighborhood Association has no standing to object to a building that would change the character of a neighborhood. He suggested finding out if the City has a problem or not with this situation.

Discussion continued.

Mr. Bienstock explained, that over time, there have been many problems, and they want to correct it in a uniform fashion once and for all. Discussion continued. There is much

misinformation and they want to provide a set of rules to ensure that the association has no more, but the same, rights that an individual has to participate.

Discussion continued.

Chair Zack asked if any association that qualifies under State law, does it not have to receive notice and have standing before the Commission, is that acceptable?

Mr. Held explained that they still need a registration process.

Mark Needle explained that not all associations are homeowners associations, the rules that need to be drafted need to account for that, and they should have a voice in the City process. Discussion continued. He urged the committee to adopt the basic principles for inclusion in the Charter and the definitions can be legislatively done subsequently. Discussion continued.

Member Fernandez suggested that they are giving rights and due process for people that may not need them.

Joe Jimenez, Assistant City Manager, explained that the problem is, if an ordinance is passed, he cannot interpret to staff what “approximate to the subject property is”, or “adequate time”, or “reasonably cross-examine”, “advance courtesy notification on matters having potential direct impact”, and “advance courtesy invitation to participate in planning and design”; if two associations come in with their points/views, and they do not agree, does he have to invite both? He has met with both individuals present on this issue separately many times in the few weeks he has been with the City, which shows that they have direct access to participate in the planning.

Member Kendle still believes this does not belong in the Charter; and they are going way beyond the aspirational Bill of Rights.

Gary Held, First Assistant City Attorney, stated that there is a difference between giving the opportunity for notice and the right to speak, but given the same rights as in any City law, that would require a review of the entire City Code to see the implications of that, and that may create complications that are unworkable.

Member Fernandez stated that the group is better served if this goes in front of the City Commission, to formalize the name of the association and codify. The proposed language does belong in the Charter, and they should discuss other ways of doing remedies, but he thinks the Association has to be an established entity. Discussion continued.

Member Kendle suggested they meet with the City Attorney’s Office to rewrite the definition of a Neighborhood Association.

Gary Held, First Assistant City Attorney, stated that he is able to work with after August.

Motion made by Member Lalonde to send back to the City Attorney’s Office to draft language; seconded by Member Kendle; Voice-vote: 5-0; **Gary Held to handle.**

Discuss scheduling of additional Charter Review & Revision Board meetings.

Vice-Chair Perry and Board members agreed to meet on the following days:

Monday August 5 and

Monday August 19

Meeting adjourned at 6:30 p.m.

TOPICS FOR DISCUSSION FOR THE JULY 15, 2013 AGENDA

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

- b. Section 2.04 – Induction And Meetings – Donald Papy to present
- c. Preservation Of Beaches – Proponent Rick Preira - Deferred 07/01/2013

Handouts or Reference Materials:

1. Memorandum from Robert Rosenwald, Esq, to Rafael Granado, City Clerk (Exhibit "A")
2. Proposal from Morris Sunshine, Ph.D., on homelessness as protected class (Exhibit "B")
3. Miami Beach UNITED Sample Ordinance from St. Johns County (Exhibit "C")