

MIAMIBEACH

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