

# MIAMIBEACH

## Charter Review & Revision Board

### Members:

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

### Appointed by:

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

### Staff:

Jose Smith, City Attorney  
Debora Turner, First Assistant City Attorney  
Gary M. Held, First Assistant City Attorney  
Donald Papy, Chief Deputy City Attorney  
Rafael E. Granado, City Clerk  
Liliam Hatfield, OAV, City Clerk's Office

### Minutes

Monday, October 21, 2013 at 4:30 p.m.  
Commission Chambers, 3<sup>rd</sup> Floor, City Hall  
Email: [CharterReview@miamibeachfl.gov](mailto: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 October 2, 2013 Charter Review & Revision Board Meeting.**  
Motion to accept the minutes made by Member Fernandez; seconded by Member Kendle; 5-0; Absent: Member Lalonde. Chair Zack is present via telephone but unable to vote.
- 2. Discussion of Miami Beach United's proposed Amendment to the Bill of Rights.** Mark Needle to present.

Vice-Chair Perry introduced the item.

Debora Turner, First Assistant City Attorney, clarified, for the record that Chair Zack is appearing via telephone, but does not count for determining a quorum and is not voting.

Mark Needle spoke on behalf of Miami Beach United regarding a group of amendments to the Citizens' Bill of Rights. He last met with the CRB and they are focused on drafting proposed language to add to (A)2 Truth in government, (A)5; Right to be heard, and (A)6 Right to notice. They listened to the City's concerns and they plan to propose language that will address the residents' interests and are practical to administer. He requested direction from the CRB on the issues.

Discussion held.

Joe Jimenez, Assistant City Manager, explained that progress has been made. Gary Held, First Assistant City Attorney, has been the primary drafter of the proposed language. He agrees with the proposal, but suggested further discussion, as he would like to identify the problems before they find solutions. The language is clear, aspirational, and easy to follow.

Member Kendle thinks they need to address the enforcement clauses in the future.

Mr. Jimenez explained that the solution is basically to give a Charter remedy to a violation of the Florida law as it already exists, to avoid going to Court, but instead dealing with City staff. The Charter does not demand anyone be fired, and the Manager's or designee's, interpretation would carry the stronger weight, as it is at the discretion of the Manager with regard to the employees that report to him. They are happy to work with the group, but they need to make sure those things can be done as defined.

Member Fernandez, regarding language (A)5 which reads: "City Commissioners, board and committee members, and staff, who meet outside of a publicly noticed meeting with persons associated with one side of a legislative issue or agenda item should provide a reasonable opportunity to meet with persons associated with the other side of an issue." asked if the word "reasonable" should be defined better, as it seems subjective rather than objective. Discussion held. Also, regarding (A)6, "material change to an application not presented in advance of a hearing may be grounds for a request for continuance by a resident, and if not granted may be a basis for appeal to the City Commission." he asked if "presented" means advertised or made available online.

Mr. Jimenez explained that regarding the word "reasonable," in (A)5, it is aspirational language and provides a reasonable opportunity to meet with both sides in front of the boards or Commission. On the proposed language for (A) 6, Right to Notice, he explained that applications are due 45 to 50 days before the day of the hearing on some of the land use boards, and architectural changes can be made the day of the hearing, and if it presents a material change, what MBU wants is to know in advance.

Gary Held, First Assistant City Attorney, clarified that the language that reads "material change" can be fine-tuned to ensure that it is appropriate. In the first sentence of (A)2, the word "courteous" is very subjective, although it is a fine aspirational goal. This is language that was discussed and agreed to present to the CRB for today.

Rafael E. Granado, City Clerk, stated that in reference to Chapter 119, (A)2 reads "employees shall respond to all residents non-privileged questions..." He added that public record Statutes do not require employees to answer questions; instead, employees respond to public records requests by providing records. Mr. Granado asked if the intent is to additional rights, not presently granted by the public records law, Chapter 119.

Mr. Jimenez explained that he believes MBU members are looking for answers to questions and they should get answers. He does not believe staff is to be giving opinions.

Mr. Needle stated that they are keeping in the requirements regarding the "timing" of responses; which does not mean on the spot, but it may mean that a staff member needs to go back and find the answer to a question which may take time; some of this is providing answers regarding the process and is loosely designed to allow for flexibility.

Mr. Kendle asked what it is that they are trying to correct. Mr. Needle answered that they cannot evaluate the impact of the proposed language, unless they talk about the enforcement piece. MBU is talking procedurally about the idea of changing the institutional culture to be responsive to the residents. Discussion continued.

Chair Zack asked how a group qualifies under this clause. What are the requirements applicable to associations?

Terry Bienstock, Esq., explained that the proposed language is intended to address only individual rights when they participate in the governmental process, and they are not ready to present on the associations issue. He explained that one of the biggest complaints they have with Design Review Board meetings is that some plans change at the last minute without giving residents the chance to look at the modifications. These are aspirational guidelines that tell the board members what they can and cannot do, and that the developers and architects should provide documents in advance so that the Boards can make the best decision possible. It is the practical thing to do. They want to come up with guidelines for all boards to follow.

Chair Zack asked what constitutes reasonable or adequate notice. Mr. Held explained that oftentimes material changes are made upon staff's recommendations; they are suggesting that the board be fair and provide reasonable notice of chances. Discussion held.

Member Fernandez suggested adding language to (A)6 regarding "reasonable time" in "may be grounds for a request for continuance..." Mr. Held gave preliminary language that reads after **material change**...."as ascertained by the board or committee with jurisdiction over the application."

Chair Zack explained that this is too arbitrary and it should be consistent between all committees. Discussion continued.

Gary Held, First Assistant City Attorney, explained that often, even if a continuance is granted, they encourage the board to have a discussion about the application, since there are many other points that can be solved between applicants and citizens. The specificity Chair Zack is looking for, could be put in an ordinance rather than the Bill of Rights.

Dr. Morris Sunshine stated that he has appeared in front of many boards and is annoyed to discover that the boards have materials that he has never seen before. He agrees in amending the City Charter as MBU has suggested. He had requested police information about Memorial Day, but as of this date, he has not been able to get a response from the PIO (Public Information Officer). He added that the Planning Department serves all land use boards, and people submit information using DVD's, so everything is electronic, but yet he is unable to get an expert's report. He urged the CRB to consider these amendments.

Mr. Needle summarized that this is the first Truth in Government provision to comply with requests from residents and requests pursuant to law; also the Right to be Heard adds parity for residents and clarifies time certain provisions. He suggested adding the time certain to a more reasonable schedule than what is now in the Charter. It is unfair to residents. The Right to Notice adds parity to residents and is supportive of language proposals from City staff. He thanked City staff for their support and efforts.

Discussion held regarding process and amount of time to make public records available.  
Discussion continued.

Enforcement item to come back to the November 20, 2013 CRB Meeting. Mark Needle to provide one week before the meeting.

3. **Section 2.02 – Compensation** a) Review the amendments to the Compensation Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner/Donald Papy to present.

**ACTION:**

Motion by Member Kendle to recommend Version 3 of proposed Charter; seconded by Member Fernandez; Voice-vote: 5-0; Absent: Member Lalonde. Chair Zack is unable to vote since he is participating via the telephone.

Debora Turner, First Assistant City Attorney, introduced the item and explained the definition of benefits (Proposed Charter Text – Revised Version #3):

Compensation shall include salary and benefits. Benefits are defined as anything of value received by the Mayor or a Commissioner from the City including, but not limited to, expense allowances, vehicle allowances, travel, medical and life insurance, leave days as provided in the Unclassified Employees Leave Ordinance, and pension benefits as provided in the Miami Beach Employees' Retirement Plan. All benefits for the Mayor and City Commissioners shall be approved by the City Commission by ordinance or resolution.

The annual compensation salary for the Office of Commissioner shall be six thousand dollars (\$6,000.00) and shall be adjusted retroactively from 1966 to October 1<sup>st</sup> of each annual fiscal year using the Consumer Price Index – All Urban Consumers (Miami-Fort Lauderdale, FL Area) (CPI) rate (approximately \$43,900.00 as of October 1, 2013). and The compensation annual salary for the Office of Mayor shall be ten thousand dollars (\$10,000.00); and shall be adjusted retroactively from 1966 to October 1<sup>st</sup> of each annual fiscal year using the CPI rate (approximately \$73,200.00 as of October 1, 2013) any increase in salary for Mayor and/or Commissioner shall require approval of a majority of the electorate voting at a City election.

Ms. Turner recommended that the benefits be approved by the City Commission by ordinance or resolution and to add the word "or resolution" to the proposed language. She also explained the language amendment for salary for the Mayor and City Commissioners to be adjusted in the future using the same CPI rate.

Member Kendle explained that people do not like to vote for salary increases, and if it is increased for inflation, they have a better chance to get it approved.

Discussion continued.

Ms. Turner explained that voters will not see the actual text changes in the ballot question, which is limited to 75 words. The ballot question will summarize the proposed text amendments.

Discussion continued regarding keeping the Mayor's salary (Version 3) in the Charter and keeping the historical perspective. There was agreement from members to reference the original salaries in the proposed Charter language.

**ACTION:**

Motion made by Member Kendle to recommend Version 3 of the proposed Charter; seconded by Member Fernandez; Voice-vote: 5-0; Absent: Member Lalonde. Chair Zack is unable to vote since he is participating via the telephone.

**b. Discussion Of Pensionable Benefits – Don Papy, Chief Deputy City Attorney, to present**

Don Papy, Chief Deputy City Attorney, explained that pension benefits are determined by the pension ordinance adopted in 2006, which applies to non-police and non-fire employees, but there are special provisions that deal with elected officials. He read the language into the record. Earnings (this applies to elected officials, the city manager and city attorney), shall include total W2 compensation plus any other payments or allowances. This should be interpreted by the Pension Office.

Member Fernandez requested to make sure that none of the unused expense allowances or vehicles allowances unused were pensionable, and board members wanted to make sure that only salary is pensionable.

Discussion held.

Member Kendle suggested that the Commission review the ordinance, and if the salary is increased, to take into consideration all compensable benefits.

Member Fernandez requested information on criteria as to what qualifies as pension allowances. Discussion continued.

Member Kendle clarified that their objective is to increase the salary, make it reasonable and recommend this increase. Everything shall be transparent.

Rafael E. Granado, City Clerk, to notify the Pension Office to appear in front of the CRB at the November 20, 2013 CRB meeting. **Rick Rivera to handle.**

Member Fernandez clarified that they are proposing increasing the salaries of Mayor and Commissioners and therefore their pension; their compensation includes salary and benefits (which includes expense and vehicle allowances); although they cannot dictate if these allowances are pensionable or not, they can proposed that they be only entitled to non-pensionable benefits.

**4. Preservation of Beaches – Proponent Rick Preira**

Item deferred to the November 20, 2013 CRB meeting. **Rafael E. Granado to place on the board agenda.**

**a. Section 1.03 – Power of City – Proponent Rick Kendle**

Item deferred to the November 20, 2013 CRB meeting. Rafael E. Granado to place on the board agenda.

5. **Section 2.07 – Vacancies In City Commission** - Review the amendments to the Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.

Debora Turner, First Assistant City Attorney, introduced the item and explained the three scenarios. (See Proposed Charter Text: Sec. 2.07) which could occur if there is a current vacancy in the City Commission or a future vacancy due to an irrevocable written resignation.

No action taken on this. Item to be placed on the November 20, 2013 CRB agenda. **Rafael E. Granado to handle.**

6. **Discussion Of Section 2.02 – Term**

- a. Continued Discussion of the Term of Office for the Mayor (currently it is two years). To be discussed in November.

Vice-Chair Perry explained that this item was deferred from the last meeting to get Chair Zack's input. He introduced the item.

Discussion held regarding term limit of two years.

Member Fernandez stated that he has no problem with increasing to four-year term. Discussion held regarding deferring item.

Chair Zack stated that he prefers two-year terms. He requested to know how many two-year mayors have not been re-elected after two years. **Rafael E. Granado to provide information at the next meeting.**

- b. Continued Discussion of Term Limits – Review the amendments to Section 2.02 drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.

Ms. Turner introduced the item regarding the removal of the word "consecutive." (See Proposed Text).

Discussion held.

Member Fernandez asked if Mayor Bower presently runs for election, would this apply to her. Ms. Turner explained that this may prevent her from running again, as the proposed language has an effective date of 2015, and the Mayor would have served the amount of maximum years set forth in the proposed language.

7. **Discussion Of Section 6.03 – Qualifying**

- a. **Discussion of residency requirements** – Proponent Jacqueline Lalonde - Review the amendments to Section 6.03 drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.

Discussion held regarding residency requirement extension to two years. Member Kendle is opposed to it, but would prefer Member Lalonde to address the issue.

Item to be placed on the November 20, 2013 CRB agenda. Rafael E. Granado to handle.

- b. Discussion regarding adding a resign to run provision for Land Use Board Members who become candidates for elective office** – Proponent Alex Fernandez. Report by Debora Turner as to Opinions from the Commission on Ethics, if any, on this issue. To be discussed in November.

Item to be placed on the November 20, 2013 CRB agenda. Rafael E. Granado to handle.

- 8. Inspector General** – Joe Jimenez, Assistant City Manager, to present. To be discussed in November.

Item to be placed on the November 20, 2013 CRB agenda. Rafael E. Granado to handle.

- 9. Schedule additional meeting dates.**

November 20, 2013 at 4:30 p.m. in the Commission Chambers  
December 4, 2013 at 4:30 p.m. in the Commission Chambers.

- 10. New Item**

Rafael E. Granado, City Clerk, stated for the record, that he emailed a copy of the transparency issue regarding the Check Registry. This is available online and he invited the members to access the link, give feedback to Information Technology and let the Clerk's Office know.

Vice-Chair Perry encouraged everyone to review the website.

**6:13:51 p.m.**

Ms. Turner suggested discussing at the next meeting the preparation of a Report to the City Commission with all the CRB's recommended proposals, and present the recommendations at the December 11 Commission Meeting, as the terms for the CRB members expire at the end of the year.

**TO DO:** CRB members to present their proposals discussed to the City Commission at the December 11, 2013 meeting.

Mr. Granado added that, at that time, perhaps they can request an extension, of the term of the CRB if needed.

Meeting adjourned at 6:15:29 p.m.