

# **Ad Hoc Charter Review Board (CRB)**

## Members: Appointed by:

Stephen Zack, Esq., Chair Mayor Philip Levine

Richard Alhadeff
Sherry Kaplan Roberts
Jonathan Beloff
Rick Kendle
Sarah Johnston
Richard "Rick" J. Preira

Commissioner Micky Steinberg
Commissioner Joy Malakoff
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, February 3, 2014 at 4:30 p.m.
City Manager's Large Conference Room, 4th Floor, City Hall
Email: CharterReview@miamibeachfl.gov

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

1. Swearing-in of board members.

**ACTION:** New members of the board were sworn in by Liliam Hatfield.

Roll call taken by Rafael E. Granado. Absent: Richard Preira.

2. Welcome remarks by Stephen Zack, Esq., Chair.

Chair Stephen Zack welcomed and congratulated the members of the Board and gave a brief background on the City Charter review process. He explained the intent of the Citizens' Bill of Rights and added that this Board was created for a period of 120 days, commencing on January 2, 2014 and expiring on May 2, 2014 (subject to earlier or later sunset by the City Commission). He introduced City Attorney Jose Smith.

3. Introduction of Administrative and Legal Department support team.

**ACTION:** See Item 6.

Board member orientation – Debora Turner, First Assistant City Attorney.
 ACTION: Item not reached. To be rescheduled for Friday, February 21, 2014.

5. Selection of a vice-chairperson.

ACTION: Item not reached. To be rescheduled for Friday, February 21, 2014.

6. Discuss Report To City Commission At December 11, 2013 Commission Meeting, Regarding Recommended Charter Amendments – Discussion led by Stephen Zack, Esq., Chair.

**ACTION:** Jose Smith, City Attorney, gave background information on the Charter Review process. He explained that the City Commission's priorities were identified at a recent Retreat, which are relevant to the task of reviewing the Charter. Many initiatives discussed will take place by way of Code amendments, resolutions; or direction to the Administration, but he itemized the following:

## Proposed amendment to the Bill of Rights

Page 6 –(A)18 Ethics in Government "No City of Miami Beach elected or appointed official or employee shall use or attempt to use his or her official position to corruptly or unlawfully secure special privileges, benefits, or exemptions for himself, herself, or others." This language exists in City Code, Section 2-451, and he agrees that this is acceptable to have in the City Charter.

Board Member Alhadeff stated that, at the last meeting he watched, there was a suggestion of adding the words "corrupt" and "unlawful" to this section, and he thinks it creates ambiguity and is not appropriate.

Chair Zack stated that he chaired the State Ethics Commission, and the State of Florida Code covers the language thoroughly, so he does not know why they would want to have any more language than what is there now. Discussion held. **Rafael E. Granado to place item** (A)18 for discussion on the next agenda.

Discussion held.

Member Alhadeff suggested changing the title from "Bill of Rights" to "Declaration of Rights."

#### **II. Proposed Charter Section Amendments**

Jose Smith, City Attorney, explained that Item II. Proposed Charter Section Amendments, Page 7 of the Agenda, has to do with compensation. In an effort to avoid ambiguity, this language was cleaned up as to the definition of salary. He also added that raising the salary for the City Commission has not been received well by the electorate. Discussion continued.

#### B. Section 2.02 – Term (Term Limits)

Mr. Smith explained that when elected officials choose to run for another office, for the State Legislature for example, the City faces the problem of whether the vacancy takes place in November, when the candidates assumes the new position, or at the time when the irrevocable letter of resignation is presented. It is a complicated issue, but this new language presented is acceptable. The purpose of the new language is to try to avoid the need of having a Special Election, which has an approximate cost of a quarter million dollars. Instead, it would be preferable to have the Election at the same time the County/State or even the City is having its normal election. This will be good for the City as it would save a great deal of money. Discussion continued regarding term limits. He explained that the word "consecutive" was eliminated from the language that is being suggested.

Member Kaplan Roberts asked why this is not effective immediately rather than as proposed in 2015. **Rafael E. Granado to place on the next agenda for discussion.** 

Mr. Smith explained the remaining Charter issues. He added that the right to notice is now required under State Law, and there is a new Statute that provides for the reasonable opportunity for the public to be heard. Ms. Turner is working on a draft ordinance. Ethics in Government and Remedies is now addressed by a County law, which passed about a year ago, where exclusive jurisdiction to deal with Code of Ethics violations are within the jurisdiction of the Commission on Ethics and Public Trust. In fact, they recently investigated a complaint that the City was not providing public records timely, and there was a legal opinion by the Commission on Ethics stating that there was no basis for the complaint. The issues of over scale development are probably better left to the Code. Pension and benefit issues dealing with the Pension Ordinance may not be a productive area to discuss. At the January 31 Commission Retreat, the City Commission identified priorities such as the financial strength of the City, dealing with the Unions and collective bargaining and financial sustainability of the City, and that is one of the priorities this Commission wants to address in moving forward. Some of the most important issues discussed at present involve flooding and sea level rise, building codes, zoning and planning codes, and how those codes need to be changed to provide for better construction means and methods.

He explained that the City Commission is reforming the land use boards in an effort to bring in more professionals to sit on the board, and that will require a Charter amendment. **Gary Held and Debora Turner to handle.** 

Discussion held regarding land use boards reform.

#### REDUCTION OF COMMITTEES

Chair Zack stated that Commissioner Malakoff wants to reduce the number of committees in existence, and this is being reviewed. Secondly, there is a question as far as who can sit on the boards, such as architects that have ongoing projects in the City. This is an issue they have to deal with. He explained that some organizations have what is called a "Scope" committee, and every year they evaluate a certain number of committees to find out if they should be combined with others, or cease to exist. He asked Mayor Levine and the Administration to see if there is an interest for the CRB to review these committees. Discussion held.

Jose Smith, City Attorney, clarified that an ordinance has travelled through the Neighborhood Committee, was approved on first reading and is coming back for second reading at the February meeting. Discussion continued regarding land use boards.

Board Member Kaplan Roberts stated that when making a presentation to the City, the individual should come prepared for every land use board, so there is no waiting between time to get approval and the process can move forward. She feels strongly that these boards should not be taken away from residents.

Mr. Smith explained that the intent is to move things along efficiently, promptly, and consistent with that priority.

Member Aldaheff added that Design Review Board and Historic Preservation Board should be one and the same. Mr. Smith clarified the reasons why they need to go to each board. Discussion continued.

Commissioner Malakoff came in at 5:20 p.m. She explained that the feeling is that Miami Beach would be better served if they had a Design Review Board (DRB) and Historic Preservation Board (HPB) made of top professionals in the field. The City is now unable to attract top professionals because under the current Charter recusals are not acceptable. She added that there are a lot of top professionals that are willing to give their time, but need to have recusals over the years, in order to take an occasional job in Miami Beach. The other part is that if there is an all professional DRB and HPB, she would like to give them the authority and responsibility to hear requests for variances. This would not apply to a single family home.

Jose Smith, City Attorney, explained that former Mayor Dermer sponsored an ordinance and that Code section 2-459 reads: "a board member may not lobby another board, the City, or the City Commission, on any project that individual is involved with." A few years ago, a referendum approved a Charter amendment stating that any watering down or lessening of ethics legislation will require a referendum. In order to do what Commissioner Malakoff wishes to do, it requires a Charter amendment, and they are working on proposed language. This is allowed in the County. Discussion held regarding recusals.

Chair Zack suggested creating a Scope of Correlation Committee to review every committee to see if they should continue in existence or cease to exist. He asked if that is something that the Commission would want the CRB to do. He asked for guidance.

Commissioner Malakoff explained the consolidation of board and committees, excluding the land use boards, as proposed. She explained that some changes were made, and those individuals that have already been appointed to committees, they will be allowed to serve three months after the February 12 meeting, as recommended by NCAC, and the parking decals will remain valid until the end of the year. It would be helpful to have an independent group, whether CRB or another group, review the boards to see if they are fulfilling the mission that the City Commission believes they should fulfill. Discussion held.

Jose Smith, City Attorney, spoke of the priorities identified at the Commission Retreat, and that the Commission spoke about flooding, sea level rise, the fiscal strength of the City, and collective bargaining. They also spoke about the changing culture in the City, accountability, and running more like a public company, as well as providing customer service and making sure that the City runs efficiently. The Convention Center issue was addressed, but the CRB has already discussed the issue.

Commissioner Malakoff stated that on February 12, 2014 they will address the base flood elevation being the minimum from grade and she thinks this is very sensible. She asked why commercial buildings were not included. Discussion continued.

Gary Held, First Assistant City Attorney, explained that staff realized that changes were needed to measure height from the base flood elevation. The ordinance that presented the opportunity to start the discussion was the oversize home ordinance. That is the only reason it started there. He suggested that it be part of a separate ordinance. Discussion continued. **Gary Held to handle.** 

Discussion was held regarding traffic and other issues for discussion.

Commissioner Malakoff stated that she met with a State Representative regarding FDOT's lack of sensitivity, and unfortunately, they cannot control what the State and federal government do. Discussion continued.

Chair Zack introduced the idea of having a traffic plan for every event in the City. Discussion continued.

Board Member Kaplan Roberts asked to include voter reform in the City Charter, and suggested doing away with the groups; it limits people's rights and it is costly to the City. Rafael E. Granado to add to list of issues for discussion.

Board Member Kendle wants to address the issue of casinos and he thinks it should be in the Charter. He supports gaming events to bring visitors to the City.

Commissioner Malakoff stated that this is a strong City Manager form of government, and she thinks the City has a wonderful City Manager, with a very creative Mayor, and things will get improved and efficient, including getting building permits expedited. She added, in answering Board Member Kendle's question, that the increase for Commissioners' salary is not palatable to voters.

Discussion continued regarding an Inspector General with subpoena powers. Board Member Kendle explained that the reason he joined the group was to discuss the issue of the Inspector General.

Board Member Kaplan Roberts stated that a board and committee member can miss 33% of the yearly attendance, and she believes this is too high. Members that do not attend should not be members.

Commissioner Malakoff suggested discussing the issue of land use boards, should they have 5/7 majority rather than a simple majority when there are only five members. Or, alternatively, are they better off having the Mayor and City Commission appoint alternates to the land use boards, and if there are not enough members, if there is not a quorum, they can call on the alternates, and that way enable the alternates to train on what to do. There was consensus that this was a great idea.

Chair Zack also recommended attending meetings via telephone. Mr. Smith will provide the CRB members with a legal memo on that issue. **City Attorney's Office to handle.** 

Discussion held.

Commissioner Malakoff asked if the neighborhood rights had been discussed, and added that in her opinion, this did not belong in the Charter. Chair Zack explained that language was ambiguous and he believed that language did not belong in the Charter. Discussion continued.

Board Member Kaplan Roberts asked if they can add in the City Charter that no casinos will be permitted in the City of Miami Beach. **Item to be added for future discussion.** 

Jose Smith, City Attorney, explained that there was a lot of discussion at the Retreat about what to do with North Beach and how to incentivize and create the catalyst that will help businesses and residents. One of the ideas floating around is the notion of transfer

development rights, from areas that have excess FAR, to areas of the City that may have the need for additional development. There are some in favor and some against the idea.

7. Discussion regarding procedures.

Item not reached. To be rescheduled for Friday, February 21, 2014.

### 8. Timeframe:

- **9** Committee's final recommendation to the City Commission;
- Commission meeting no later than June 6, 2014 for passage of Resolution(s) calling for an August 26,2014 Special Election; and
- Commission meeting no later than August 5, 2014 for passage of Resolution(s) calling for a November 4, 2014 Election.
- 9. Establish future meeting dates and times.

The City Clerk to email all members and determined dates.

Meeting adjourned at 6:00 p.m.

#### LIST OF ITEMS FOR FUTURE DISCUSSION:

(A)18 for discussion on the next agenda.

Change title from Bill of Rights to Declaration of Rights.

B. Section 2.02 – Term (Term Limits) – effective immediately rather than as proposed in 2015 Traffic plan for every event in the City

Voter reform - doing away with the Election Groups

No casinos will be permitted in the City of Miami Beach