

MIAMIBEACH

AD HOC CHARTER REVIEW BOARD

Members:

Stephen Zack, Esq., Chair
Jonathan Beloff, Vice-Chair
Richard Alhadeff
Sherry Kaplan Roberts
Rick Kendle
Sarah Johnston
Vacant

Appointed by:

Mayor Philip Levine
Commissioner Joy Malakoff
Commissioner Micky Steinberg
Commissioner Michael Grieco
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
Lilium Hatfield, OAV, City Clerk's Office

Supplement Agenda to Item 3

Monday, March 17, 2014 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.

- 3. LAND USE BOARDS – SIMPLE MAJORITY WHEN ONLY FIVE MEMBERS ARE PRESENT AND BOARD MEMBERS APPEARING BEFORE OTHER CITY BOARDS. –** Proponent Commissioner Joy Malakoff. Gary Held, First Assistant City Attorney to present proposed language.

Attachment:

Amending City Code Section 2-459 - Proposed Ballot Question And Amended Text*

Board of Adjustment - City Of Miami Beach's Special Related Acts, Section 2 Proposed Ballot Question And Amended Text*

**AMENDING CITY CODE SECTION 2-459:
PROPOSED BALLOT QUESTION AND AMENDED TEXT*.**

I. PROPOSED BALLOT QUESTION:

CITY CODE SECTION 2-459:
ESTABLISH LIMITED EXCEPTION TO
PROHIBITION ON LOBBYING BY CITY BOARD MEMBERS

CITY CODE SECTION 2-459 PROHIBITS CITY BOARD MEMBERS AND THEIR ASSOCIATES FROM LOBBYING CITY PERSONNEL AND AGENCIES, WITH LIMITED EXCEPTIONS REGARDING LOBBYING FOR NON-PROFIT ENTITIES.

SHALL CODE SECTION 2-459 BE AMENDED TO PROVIDE FURTHER LIMITED EXEMPTION TO ALLOW HISTORIC PRESERVATION BOARD AND DESIGN REVIEW BOARD MEMBERS WHO ARE ARCHITECTS OR LANDSCAPE ARCHITECTS TO LOBBY CITY PERSONNEL AND AGENCIES EXCEPT THE BOARD ON WHICH THEY SERVE AND RELATED CITY STAFF, REGARDING APPLICATIONS FOR DEVELOPMENT APPROVAL?

II. PROPOSED AMENDED TEXT:

CMB Code Sec. 2-459. Certain appearances prohibited.

(a) No member of a city board, agency or committee or a member of any board, agency or committee created hereafter which is designated as a board, agency or committee subject to the purview of this section shall:

(1) Either directly or through an associate, appear, represent or act on behalf of a third person before the city commission or any city agency with respect to any agency action sought by the third person.

(2) Either directly or through an associate be engaged as a lobbyist for and on behalf of a third person with respect to any official action by any public officer sought by such third person.

(b) Definitions. As used in this section, the following definitions shall apply:

Agency means any board, commission, committee or authority of the city, whether advisory, ad hoc or standing in nature.

Associate means any person or entity engaged in or carrying on a business enterprise with a city agency member as a partner, joint venturer, or co-corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange or co-owner of property. Associate shall further include a

business affiliation with a city agency member where an "employee" or "of counsel" relationship exists.

Lobbyist means all persons, firms, or corporations employed or retained, whether paid or not, by a principal who seeks to encourage the passage, defeat, or modification(s) of any of the following: (1) ordinance, resolution, action or decision of any commissioner; (2) any action, decision, or recommendation of any city board or committee; or (3) any action, decision or recommendation of the city manager, deputy city manager, assistant city managers, all department heads, all division heads, city attorney, chief deputy city attorney, deputy city attorneys, and/or all assistant city attorneys (except when such personnel are acting in connection with administrative hearings) during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the city commission or a city agency. "Lobbyist," as defined above, specifically includes the principal, as described above, as well as any agent, attorney, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, attorney, officer or employee.

(1) For purposes of this section, and with limited applicability to those agencies that are not standing in nature, "lobbyist" shall exclude any person who only appears as a representative of a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union) without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.

(2) For purposes of this section, and with limited applicability to those agencies that are standing in nature:

a. Lobbying by a board, agency or committee member shall be permitted when such person is affiliated with a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union) in a capacity other than as a managerial employee and appears as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.

b. Lobbying by the associate of a board, agency or committee member shall be permitted:

(i) When a board, agency or committee member is affiliated with a not for profit corporation or entity in a capacity other than as a managerial employee, and the subject associate is appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.

(ii) When a board, agency or committee member is a managerial employee of a not for profit corporation or entity, and the subject associate is appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item and is affiliated with said not for profit corporation or entity in a capacity other than as a managerial employee.

c. The term "managerial employee" shall mean any employee of a nonprofit corporation or entity who has supervision and operational responsibilities/control of all or some departments of said entity.

(3) For purposes of this section, and with limited applicability to Historic Preservation Board and/or Design Review Board members who are architects or landscape architects, lobbying activities set forth in (a) 1 and 2 above shall be permitted with regard to requests for Development Review Board and other land development applications, insofar as said activities are restricted to City personnel and City agencies other than the agency (i.e., Historic Preservation Board or Design Review Board) on which the subject Board member serves and related City personnel serving in their capacity as staff to such agency; this subsection shall not prohibit such architects or landscape architects serving on the Historic Preservation Board and/or Design Review Board from submitting plans to their board on behalf of a client so long as such member also makes known at meetings of their board his or her representation of the applicant and disqualifies himself or herself from speaking or voting or otherwise participating on such application.

Public officer means any person elected or appointed to hold office in the city, as a member of an agency which shall include an advisory body.

*Requested by City Commissioner Joy Malakoff.

**BOARD OF ADJUSTMENT:
CITY OF MIAMI BEACH'S SPECIAL RELATED ACTS, SECTION 2
PROPOSED BALLOT QUESTION AND AMENDED TEXT*.**

I. PROPOSED BALLOT QUESTION:

AMENDING BOARD OF ADJUSTMENT JURISDICTION REGARDING VARIANCES
AND NUMBER OF VOTES REQUIRED FOR BOARD ACTION

SHALL THE CITY OF MIAMI BEACH'S RELATED SPECIAL ACTS SECTION 2 REGARDING THE CITY'S BOARD OF ADJUSTMENT BE AMENDED TO EXCEPT FROM THE BOARD'S JURISDICTION THOSE VARIANCE REQUESTS MADE AS PART OF APPLICATIONS FOR DEVELOPMENT APPROVAL WITHIN THE JURISDICTION OF THE DESIGN REVIEW BOARD OR HISTORIC PRESERVATION BOARD, AND TO CHANGE THE NUMBER OF AFFIRMATIVE VOTES REQUIRED FOR BOARD OF ADJUSTMENT ACTION FROM FIVE-SEVENTHS TO FOUR-SEVENTHS?

II. PROPOSED AMENDED TEXT:

Related Special Acts, Sec. 2: "Appointment, composition and duties of board of adjustment."

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Such board of adjustment shall hear and decide appeals from, and review, any order, requirements, decision or determination made by an administrative official charged with the enforcement of the Zoning Ordinance of the City of Miami Beach. Except for those variance requests included as part of applications for development approval within the jurisdiction of the Design Review Board or Historic Preservation Board, ~~Where~~ where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of said Zoning Ordinance, the board of adjustment shall have the power in passing upon appeals, to vary or modify any regulations or provisions of such ordinance relating to the use, construction, or alteration of buildings or structures, or the use of land, so that the spirit of the Zoning Ordinance shall be observed, public safety and welfare secured, and substantial justice done. In no case shall the board have any power to amend the Zoning Ordinance with reference to the use of land, or jurisdiction over any request for variance which shall constitute an amendment to the Zoning Ordinance as to the use of land, nor shall the board have power to grant a height

variance greater than 3 feet or any variance from a property's allowable number of stories (floors). The board shall fix a reasonable time for the hearing of any matter before it and shall give due notice thereof to the parties.

Upon the hearing, any person may appear in person or by agent or by attorney. The board may require that all testimony given before it shall be under oath. Any order or decision of the board of adjustment shall require an affirmative ~~five~~four-sevenths vote of the board. The decision of the board of adjustment shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

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*Requested by City Commissioner Joy Malakoff.