

# MIAMIBEACH

## AD HOC CHARTER REVIEW BOARD

### Members:

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

### Appointed by:

Mayor Philip Levine  
Commissioner Joy Malakoff  
Commissioner Micky Steinberg  
Commissioner Michael Grieco  
Commissioner Edward L. Tobin  
Commissioner Deede Weithorn  
Commissioner Jonah Wolfson

Resigned March 10, 2014

### 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

### Meeting Minutes

Monday, March 10, 2014 at 4:30 p.m.  
Commission Chambers, Third 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 Ad Hoc Charter Review 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 4:40 p.m. by Chair Zack.

Roll call taken. All Board members are present with the exception of Member Preira who resigned on March 10, 2014.

**Announcement:** Chair Zack announced that he received an email from Richard Preira, who stated that due to family and business matters was going to have to resign. Mr. Preira was informed by the City Clerk that this email was accepted as a letter of resignation. The Board thanked Mr. Preira for his service.

#### 1. APPROVE THE FEBRUARY 21, 2014 CRB MINUTES.

**ACTION:** Motion made by Member Alhadeff to approve the minutes; seconded by Vice-Chair Beloff; Voice-vote: 6-0.

#### 2. VOTER REFORM

**ACTION:** Member Kaplan has sent publications for distribution regarding voter reform. Ms. Kaplan has called Victor Diaz to speak at the March 17, 2014 CRB Meeting on the subject and to allow the public to be educated. **Item to be placed at the March 17, 2014 CRB Agenda. Invite Victor Diaz to speak on the item.**

Chair Zack explained that there was some confusion about the time of the meeting and he clarified that the meetings are 4:30 to 6:00 p.m. as advertised.

- a. Section 2.02 – *Term (Term Limits)* – Consider proposed amendment to clarify that at no time, under no circumstance, shall any individual serve more than 14 years total – a maximum of six (6) years as Mayor and a maximum of eight (8) years as a Commissioner. **Debora Turner to present.**

Ms. Turner distributed proposed charter text language on term limits, and provided a copy of the Miami-Dade County term limit provision, amended recently in 2012 pursuant to a ballot question in the County, for information. Ms. Turner explained that the provision she distributed clarifies that Commissioners could service only for two-four year terms, and the term for Mayor would be for three-two year terms. The proposed provision also includes the following language: “If a member serves a partial term as Mayor or Commissioner in excess of 50% of the subject term of office, that partial term shall be considered a full term for purposes of the term limit provisions in this section.”

**ACTION:** Chair Zack explained that this language clarifies the misinterpretation and it makes it clear. Motion made by Chair Zack to approve Section 2.02 (Term Limits); seconded by Vice-Chair Beloff; Voice-vote: 6-0.

3. **CASINO GAMBLING ON MIAMI BEACH** – Consider a proposed amendment to the Bill of Rights that allows gambling in Miami Beach, only if a certain percentage of voters approve it via Referendum.

**ACTION:** Chair Zack disclosed that he will not participate in this discussion as his firm represents Wynn Hotels. Item deferred for discussion.

Member Kendle asked if the City Commission had discussed gambling at the last Commission. Ms. Turner explained that the Commission reaffirmed their position against it. Discussion held. Member Kendle suggested deferring this item to the next meeting.

Commissioner Malakoff clarified that the City Commission confirmed the Resolution against casino gambling in the City, but did not direct the Charter Review to add to the agenda or make it part of the Charter. Chair Zack tabled the item to the next meeting. Approved by acclamation; 5-1; Opposed: Member Kaplan Roberts. **Item to be placed on the next agenda for discussion.**

4. **REVIEW REVISIONS TO CITIZENS’ BILL OF RIGHTS/DECLARATION OF RIGHTS AS SUGGESTED BY PROPONENT R. ALHADEFF.**

**ACTION:** Discussion held regarding changes to the Bill of Rights. See Miami Beach United item discussion.

5. **TRAFFIC PLAN CONCERNS** – Proponent Chair Zack

**ACTION:** Not reached.

6. **PROTECT U.S. COAST GUARD FROM ENCROACHMENTS** – Proponent Rick Kendle.

**ACTION:** To place on the March 17, 2014 CRB Agenda.

**7. ESTABLISH FUTURE MEETING DATES AND TIMES.**

**ACTION:** The CRB will meet from 4:00 to 7:00 p.m. on March 24 and April 10, 2014.

**8. LAND USE BOARDS – SIMPLE MAJORITY WHEN ONLY FIVE MEMBERS PRESENT OR APPOINTMENT OF ALTERNATES TO THE LAND USE BOARDS.** Gary Held, First Assistant City Attorney to present.

**ACTION:** The Board unanimously agreed to take this item out of order as courtesy to Commissioner Malakoff and Gary Held in the audience.

Vice-Chair Beloff explained that at the next Planning Board meeting, there will be only 5 out of seven members, and when that happens many of the items require 5/7 vote and that would mean that the applicant would need unanimous vote and it is not fair to the applicant. Discussion held.

Commissioner Malakoff stated that they are trying to get land use boards filled with professionals, top architects, urban planners and landscape architects, but they have been unable to serve in previous years because there was legislation stating that there could be no recusals. If a top architect in Miami serves on another board, as soon as he/she has any project in Miami Beach, they are off the board. Part of the process in obtaining professionals also includes, not only the recusals, but the possibility of having an alternate on those boards, or if there are short boards (not all members are present), the ability to go instead of 5/7, with a simple majority.

Commissioner Malakoff suggested two options:

- 1) Have an alternate (another architect, urban planner or attorney) depending on category
- 2) Allow those boards to go with a simple majority when a full board is not present

Gary Held, First Assistant City Attorney, explained that conflicts only require a board member to permanently resign if the conflict is recurring such that it interferes with his or her serving on the board. Otherwise, the recusal is for the one item for which there is a conflict.

Discussion held regarding simple majority for land use boards. Member Kaplan Roberts is in favor of going with alternates.

Vice-Chair Beloff explained that it is a good idea but too cumbersome to do, and perhaps they could consider another formula. Discussion continued.

Gary Held explained that the way the boards are set up, is if an item goes to the City Commission, the Code reads that only four members are needed for a recommendation or vote. Appeals for Design Review Board go to the Commission (4/7); the Planning Board on recommendation for legislation needs 4/7; Board of Adjustment (5/7); Historic Preservation Board Certificate of Appropriateness 5/7, and the Planning Board on conditional use permits 5/7. The Board of Adjustment is the only one in the Charter; the rest are by ordinance. The Commission by ordinance could implement this with respect to the other boards. The Board of Adjustment (Related Special Acts) would need a

referendum to amend this. He agrees with Vice-Chair Beloff that having an alternate in the wings does not make sense. There are variations on how to deal with this, and he suggested have a simple majority with a 4/7 instead of 5/7, when only five board members are present.

Discussion continued regarding conflict.

Mr. Held explained that for the most part, recusals are in order only if there is a relationship by the architect with the presenter that is a business relationship, or that the application is on the architect's project or a family member is involved; it is from the Commission on Ethics regarding special private gain or loss with respect to family member or business associate.

Discussion continued regarding recusals, reducing the number of conflicts and reducing number of absences.

Member Johnston explained that it is her understanding that the Code of Ethics has a provision that one is unable to recuse himself/herself from a project if they sit on that board. The board member is obligated to remove himself from the board. Ms. Johnston will forward this legal opinion. **TO DO: Rafael E. Granado will distribute the legal opinion upon receipt from Ms. Johnston.**

Discussion continued.

**MOTION 1:**

Motion made by Member Kaplan Roberts to recommend language for Charter Amendment Referendum allowing a 4/7 majority vote if there are five members of the board present where a 5/7 vote is required; seconded by Vice-Chair Beloff; Voice-vote: 6-0.

**MOTION 2: WITHDRAWN**

Motion made by Member Kaplan Roberts to allow three recusals for a one-year period; seconded by Member Johnston; Voice-vote: 5-1: Opposed; Vice-Chair Beloff. Discussion continued regarding recusals and Member Kaplan withdrew her motion with the agreement of Member Johnston. **Motion Withdrawn.**

**MOTION 3:**

Motion made by Member Kaplan Roberts to reduce absences to three for a one-year period; seconded by Vice-Chair Beloff; Voice-vote: 6-0.

Discussion continued.

**MOTION 4:**

Motion made by Member Kaplan Roberts to allow a board member to appear in front of other boards representing a third party; seconded by Vice-Chair Beloff; Voice-vote: 6-0.

Chair Zack suggested drafting the language in the affirmative. It is the position of the CRB that a person serving on a board shall only be prohibited from appearing in front of that board and not be restricted from appearing in front of other boards. Discussion continued. **City Attorney's Office to draft language and bring language back at the next CRB meeting.**

#### **9. MIAMI BEACH UNITED'S (MBU) FIVE PRINCIPLES FOR RESIDENT CHARTER RIGHTS AND COMPANION LEGISLATION**

##### **ACTION: Item discussed in conjunction with Item 4**

Nancy Liebman explained that their discussion is appropriate to be included in Member Alhadeff's discussion with the Bill of Rights/Declaration of Rights. She gave background information on the work that has been done up until now. They asked to work with Member Alhadeff to include their proposal and incorporate into the revised Bill of Rights/Declaration of Rights.

Discussion held.

Chair Zack explained that he continues to find MBU's prior proposal ambiguous, and what is being presented it is still ambiguous, it is a "lawyer's relief act." He read MBU's new proposal and suggested that they make the language clear.

Member Kaplan Roberts stated that the language is redundant in terms of neighborhood associations and residents. She thinks the new proposal is a synopsis of what they want included in the Charter at some level, and she is asking the CRB to incorporate into the Charter, or at least the idea behind it. Discussion continued.

Ms. Liebman asked for authorization from the CRB to work with Member Alhadeff to include their proposal. Chair Zack clarified that the board does not authorize their meeting. He also stated that this issue would require an entire meeting. As a matter of principle, the Bill of Rights is something that should rarely be changed. They will read the document and bring feedback at future meetings.

Member Kendle suggested having very specific language for MBU into the Charter, but he doubts that they can change the entire Bill of Rights.

Mark Needle, MBU participant and board member, explained the process MBU has had with the Administration and City Attorney's Office.

Discussion continued regarding definition of homeowner association and vagueness of language. Chair Zack stated that they are there to help with anything, but he needs extreme specificity; aspirations are great but they do not translate into meaningful legislation.

Discussion held regarding the right to be heard. Member Kaplan Roberts asked if they would remove the word "association." Chair Zack stated that there would be a full discussion.

Gary Held, First Assistant City Attorney, stated that it was his understanding that the original draft was more specific to the Code than the Bill of Rights, and they are trying to change that to be more aspirational, and not with the great degree of technical specificity.

Mr. Needle asked for an opportunity to discuss further. Chair Zack does not understand the difference why an association needs rights other than the rights conferred to other citizens; if that can be explained to fix that, they can start there. Member Alhadeff agreed that the association should not have any rights.

Discussion continued regarding association rights as a principle.

Member Johnston stated that this item is broad, and the Board may not be able to accomplish or obtain a solution. She suggested selecting issues by subject to discuss as some of the items are not appropriate in the Bill of Rights, like neighborhood associations. This may be more effective if they tackle by subject.

Discussion continued.

Dr. Morris Sunshine spoke regarding expert reports not being available from the Planning Department and some Commission Committees to residents on a timely basis.

Chair Zack suggested him to come back and discuss at a meeting where this issue will be discussed at length. The right to reasonable notice is a right that all citizens have, not just for neighborhood associations. Mark Needle agreed to remove the neighborhood associations.

Gary Held, First Assistant City Attorney, informed that this problem from the Planning and other committees will be solved soon as the City is investing in a more technologically advanced system.

Meeting adjourned at 6:03 p.m. Chair Zack suggested holding longer meetings, from 4:00 to 7:00 p.m., in order to discuss issues at length. This was unanimously approved.

Ms. Turner stated, on behalf of the City Clerk, that there is an issue of staff receiving overtime paid and that is a budgetary concern.

Chair Zack stated that they want to meet from 4 to 7 pm, and if there is a problem, and if there is an overtime issue with that, they need the Board. The CRB members are spending more time and getting no compensation, but the work needs to be done in a short amount of time and the board will most probably not be extended.

**Time permitting, the following items may be discussed  
or carried over to the next meeting:**

- a. **Inspector General With Subpoena Power** – Discussion led by CRB Member Kendle. (Invite Joe Jimenez, Assistant City Manager, and Alek Boksner, First Assistant City Attorney) – Item deferred at the 2/21/14 CRB Meeting; Item not reached on 3/10/14.
- b. **Section 2.07 – Vacancies In The City Commission** – Item tabled at the 2/21/14 CRB meeting. Item not reached on 3/10/14.
- c. **Section 2.02 – Compensation** – Stipend and tax reporting for Mayor and Commissioners. Item not reached on 3/10/14.

Handouts or Reference Materials:

1. Copy of Mr. Preira's resignation e-mail.
2. Miami Beach United's Principle Amendments to the Miami Beach City Charter
3. Term Limits – Proposed Charter Text, Section 2.02 Term and Compensation
4. Section 3.01. Election and Commencement of Terms of County Commissioners

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