

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
Donald Papy, Chief Deputy City Attorney
Debora Turner, First Assistant City Attorney
Gary M. Held, First Assistant City Attorney
Jean Olin, CAO Outside Legal Counsel
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Also present:

City Commissioner Joy Malakoff
Guest Presenter Victor M. Diaz

Meeting Minutes

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 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.

1. APPROVE THE MARCH 10, 2014 CRB MINUTES.

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

2. VOTER REFORM

ACTION: Chair Zack asked Commissioner Malakoff, as a courtesy, if she wished to discuss Item No. 3, but she was agreeable to begin the discussion with Item 2.

Chair Zack introduced Victor Diaz, attorney, former City Commissioner, and former member of the 2003 City Charter Review Board, and former Chair of the County's Charter Review

Board, who will be discussing voter reform.

PRESENTATION BY VICTOR DIAZ

Victor Diaz gave a brief summary of his background and the voter reform issues that he has been advocating for over 20 years in Miami Beach, and what has legally transpired in the City, which led to the creation of the Mayor's Blue Ribbon Committees on diversity issues. He stated that there is no ideal system for voting. They all have advantages and disadvantages but there are ways to promote better government. He commended the group for taking up this difficult issue for discussion. He explained preferential voting, elimination of groups system and a strong mayor form of government.

The issue of voter reform has been discussed primarily due to the factors of diversity in the community; diverse socioeconomic, religious, sexual and geographical diversities. This has led to different reform movements with much discussion and advocacy for districts. He is in support of preferential voting.

He discussed the differences between preferential voting and pure preferential voting:

PREFERENTIAL VOTING is considered by most academics to be a most progressive system for ensuring representation in diverse communities. This is where a voter is asked to rank candidates in order of preference (proportional voting).

PURE PREFERENCE VOTING is a system in which votes are cast for as many seats as are available, and this can be combined with the instant runoff election. He explained that rather than running against a person, the candidate runs for office; candidates can be ranked in order of preference, and depending on the system that is adopted, you can have a requirement that the candidate needs to have a 50% voter approval or a lower quota to be elected to the first seat. Votes are recounted and the cycle continues for the No. 2 preference. This system ensures that the elected representatives have majority support. The one constitutional issue that needs to be studied is whether you can force someone to vote for No. 1, 2 and 3. In the absence of ranking candidate, voters could target their votes for one candidate and that could change the dynamic of the election. That does not happen when you have a 50% quota, only when you lower the quota to less than 50%. This is one of the disadvantages identified using this system. Most people are familiar with this voting in condominium elections. There are pros and cons to this system as well. Additionally the main advantage of this system is that it diminishes the power of incumbency. Candidates run for office, not against a candidate in general.

Discussion held regarding name recognition and election groups versus incumbents. The City should focus on the alarming trend in the country, the City and State, of the cost of elections. He continued discussing districting at the request of Board Member Alhadeff and explained that in Miami Beach there are very distinct personalities to the North Beach, Middle Beach and South Beach communities, and when districts have been proposed, they have been proposed along those lines. He also explained the concept of a combination of districts and at large candidates (a "hybrid" system).

He does not support districts, but suggested looking at the preferential voting with a quota and the Instant Runoff. The preferential voting system eliminates runoffs and diminishes the powers of special interests. The disadvantage is to diminish the power of incumbency by requiring all incumbents to run all the time. Most people that have studied the issue, indicate

some form of preferential voting is the best option, keeping in mind its disadvantages; it eliminates runoff, diminishes powers of incumbency, but has constitutional issues that Legal will address, In summary, people understand this type of voting, it does not lead to voting confusion. There are things that can be done to improve the way City Commission is elected, but proceed with caution because everything that is done may have unforeseeable consequences.

Discussion continued regarding elections by groups and what Commissioner Malakoff and Board Member Kaplan Roberts experienced during the recent 2013 General Election. Ms. Kaplan Roberts is in support of doing away with the groups and is not in favor of districts. Discussion continued.

Chair Zack stated that Miami Beach is only seven miles long and three miles wide, and he believes districts are not a good idea for the City. Intellectually, preferential voting is the way to go, but his concern is that the CRB ends their task in May. To tackle the voter reform issue, if the City Commission decides that the CRB should discuss, will take time and may not be practical. He suggested that once the CRB finds out if jurisdiction extension has been approved, then they can discuss voter reform.

Member Kaplan Roberts stated that this is critical and they should deal with it. This constitutes how the City is governed and how people are elected to make and enforce the laws. It is long overdue for a change.

Discussion held.

MOTION:

Motion by Member Alhadeff; seconded by Member Kendle, to table the voter reform item until a date certain as directed by the City Commission; Voice vote: 5-1; Opposed: Member Kaplan Roberts.

Reference Materials: Center for Voting and Democracy website accessible online at the following link [http://ballotpedia.org/Center for Voting and Democracy](http://ballotpedia.org/Center_for_Voting_and_Democracy).

3. 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.

Commissioner Malakoff introduced the item.

See Supplemental Material

Jean Olin, City Attorney's Office Outside Legal Counsel, explained that the proposal submitted by Commissioner Malakoff is somewhat different than the one presented at the last CRB meeting. The proposal at that time was done in recognition of the concern that when only five members of the Board of Adjustment (BOA) show up, the possibility exists that action will not be viable in light of the existing Related Special Acts requirement that BOA action occur upon 5/7th affirmative vote of the Board. The language proposed at the last CRB meeting considered that during those limited instances in which only 5 BOA members are present that the vote of the Board of Adjustment be 4/7ths rather than 5/7ths. However, on the Supplemental Agenda today there is a different suggestion from last week's proposal, this suggestion is to amend the Related Special Acts to provide for an absolute reduction in BOA

vote from 5/7 to 4/7 vote--under this proposal there is no issue of 5/7 vote in some circumstances, this proposal provides for a 4/7 BOA vote requirement for all BOA actions. Attorney Olin explained her reasoning that imposing a different vote requirement for identical BOA actions would present potential legal challenges to the City that should be avoided, and the proposal in the Supplemental Agenda, which does not provide for different votes, is recommended. Discussion held regarding disgruntled applicants and the potential for misuse in the event the change presented at last week's CRB meeting was adopted.

Ms. Olin added that the Charter Review Board has historically considered any special act of the legislation affecting the City of Miami Beach, which acts are set forth within the City's Charter and the Related Special Acts (RSA). The City's laws regarding land use boards other than the BOA do not require public referendum, but any change to the City's Related Special Acts language governing BOA can only be amended by public vote because the Municipal Home Rule Powers Act requires that any matter that is contained in a special act of the State Legislature dealing with appointed boards of the City (such as BOA) can only be amended by vote of the public. Therefore, any change to the RSA BOA language must go out for voter approval. Commissioner Malakoff's proposed changes to the BOA language is twofold: 1) changing BOA vote from 5/7ths to 4/7ths; and 2) limiting BOA's power to grant variances to those not otherwise within jurisdiction of the City's Historic Preservation Board or the City's Design Review Board, with further explanation of this proposed amendment by Ms. Olin.

Commissioner Malakoff further explained that her proposal is that the DRB and HPB be granted the powers to grant variances stemming from variance requests specified in development applications pending before those Boards. Her recommendation is that the HPB have the right to grant a variance, instead of having the same project go to the HPB and then go to BOA, which requires an applicant to make the same presentation twice. Under this proposal, the HPB will have the power to simultaneously consider the HP development application and also vote on the specified variance request. Same is true of those buildings which receive DRB approval but need a variance. She would propose the DRB have the ability to grant the variance without having developers go through a second meeting to a BOA.

Chair Zack recommended that the issues be bifurcated for purposes of CRB vote.

MOTION 1:

Motion made by Vice-Chair Beloff; seconded by Member Kaplan Roberts to accept Commissioner Malakoff's proposal in the Supplemental Agenda as discussed, to amend the City's Related Special Acts, Article I, Section 2, to change the required affirmative vote for Board of Adjustment action from 5/7 to 4/7; Voice vote: 6-0.

Further discussion held regarding Commissioner Malakoff's proposed change to BOA's variance powers, with additional explanation of the process by Ms. Olin.

Gary Held, First Assistant City Attorney, stated that when variances are transferred to the DRB and HPB, staff needs to identify what variances appear on the plans. We cannot have a situation where applicants present plans on which variances are not identified, and they argue later they were implicitly approved by these boards. Each variance needs to be expressly stated in the applications and plans. Discussion continued. There are two standards for variances in the Charter, one is the variance standard, and the other is the practical difficulties standard. The BOA has been functioning as more of a compatibility board

rather than a hardship board. One out of 100 variances may be approved under strict hardship standard. The standard as applied is what impact a proposed variance will have on a neighborhood. The objective is to take the practical difficulties standard adding criteria to it and codifying to provide an alternative. DRB and HPB would be able to use either standard in looking at the variances.

Discussion continued regarding code amendments and variances.

MOTION 2:

Motion made by Vice-Chair Beloff; seconded by Member Kendle to accept Commissioner Malakoff's proposal in the Supplemental Agenda as discussed, to amend the City's Related Special Acts, Article I, Section 2 dealing with the Board of Adjustment, to except from the BOA's jurisdiction those variances requests specified in development applications subject to the jurisdiction of the HPB or DRB. Voice vote: 6-0.

Discussion ensued regarding Commissioner Malakoff's other proposal set forth in the Supplemental Agenda pertaining to amendment of City Code section 2-459. Ms. Olin explained that this is a proposed Code not Charter amendment that must go out to the public vote because of Charter Section 1.05, which was enacted eight years ago. The section reads that if there is an amendment to an existing section in Chapter 2, Article VII, dealing with the City's Code of Conduct for Elected Officials and Employees, which will make the Code of Conduct less strict, then that amendment may only occur if approved by voters.

Amendment to Section 2-459

City Code section 2-459 as enacted in 1993 exceeds the existing ethics restrictions that are contained in State and County law, by stating that appointed board members in the City of Miami Beach are absolutely prohibited from lobbying, directly or indirectly, any City personnel. Part of Commissioner Malakoff's goal in streamlining the development review process in the City encompasses recruiting design professionals to the land use boards, particularly architects and urban planners, and one way to accomplish this is to amend 2-459 so that they may lobby City personnel, except their Boards and related City staff. This amendment will allow these design professionals to effectively do business in the City, which will at the same time attract these professionals to serve on the City's Boards.

Discussion held regarding lobbyists prohibitions.

Attorney Olin further explained Commissioner Malakoff's concern is that the City has been unable to attract qualified architects and landscape architects on DRB and HPB. This proposed amendment may make the City's Standard of Conduct less strict, hence it may require approval by voters, by providing an additional limited exception from the lobbying proscription for HPB and DRB members who are architects or landscape architects; these members will still be prohibited from lobbying their own board, as well as related City staff. Even if this exception is approved by the voters, the language that will be adopted will include a carryover of existing County Ethics Code restrictions, which basically states that even though an architect or landscape architect serving on HPB or DRB is prohibited from lobbying the board they sit on they still are permitted to submit an application to their board, with the requirement that if that matter goes before their board then they must comply with all disclosure and abstention requirements under applicable ethics laws and may not participate at all on the subject application.

MOTION:

Motion by Member Kaplan Roberts; seconded by Member Johnston to accept Commissioner Malakoff's proposal in the Supplemental Agenda as discussed, to amend Section 2-459 to provide additional limited exception for HPB and DRB members who are architects and/or landscape architects, whereby they may lobby City personnel and Agencies other than the board on which they serve and related City staff, regarding applications for development approval. Voice vote: 6-0.

Additional discussion was held regarding Commissioner Malakoff's related future proposals including amending City Code Chapter 118 in order to change vote requirements of Planning Board and Historic Preservation Board. Ms. Olin explained that Charter Section 1.06 provides that any lessening of the stringency of any provision dealing with HPB's powers and duties or reduction in stringency of HP standards must be approved by voters. If and when the Office of the City Attorney determines that these related Chapter 118 amendments require voter approval per Charter section 1.06, those matters may be represented to CRB for review, and if the Office of the City Attorney determines that the referendum requirement in Charter section 1.06 is not triggered then said amendments will be presented to the City Commission, not to CRB.

Discussion continued. CRB agreed that only in the event the Office of the City Attorney determines that these related Chapter 118 amendments require public vote will such matter be presented to CRB at its March 24, 2014 meeting. **Item to be placed on the March 24, 2014 CRB Agenda in the event Legal determines matters require public vote--matters will not be heard by CRB should Legal determine that public vote is not required.**

Vice-Chair Beloff suggested including 4/7 vote requirement language across the board for all of the City's land use boards. **Gary Held to handle.**

New Item: Sunshine Law Refresher

Debora Turner, First Assistant City Attorney, reminded members that any discussions held with any other members of this board with regard to anything that is before the board or that will foreseeably come before the board regarding Charter amendments must be done in the Sunshine during publicly noticed meetings. Members should not interact via emails, messages, or any other means of communication about any other matter that is before the board or may come before the board.

4. **CASINO GAMBLING ON MIAMI BEACH** – Proponent Rick Kendle deferred the item until State Legislature takes action.
5. **REVIEW REVISIONS TO CITIZENS' BILL OF RIGHTS/DECLARATION OF RIGHTS AS SUGGESTED BY PROPONENT R. ALHADEFF.** Proponent Richard Alhadeff.
ACTION: Item withdrawn.

Rafael E. Granado, City Clerk, announced that the City Clerk's Office received an email from Member Alhadeff withdrawing this item.

6. **TRAFFIC PLAN CONCERNS** – Proponent Chair Zack
ACTION: Not reached.

7. **PROTECT U.S. COAST GUARD FROM ENCROACHMENTS** – Proponent Rick Kendle.
ACTION: To be placed on the March 24, 2014 CRB Agenda. **Rafael E. Granado to handle.**

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

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

Meeting adjourned at 6:10 p.m.

Handouts or Reference Materials:

1. Supplemental Agenda to Item 3.
2. Option 1 – U.S. Coast Guard Base Miami Beach language – proponent Member Kendle.
3. Option 2 – U.S. Coast Guard Base Miami Beach Language Re: Zoning Ordinance – proponent Member Kendle
4. Amendments to Allow 4/7 Vote to approve an item normally requiring 5/7 where only five members are present.

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