



MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

JOSE SMITH, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower
Members of the City Commission and
Jimmy Morales, City Manager
Rafael Granado, City Clerk

FROM: Jose Smith, City Attorney

DATE: September 24, 2013

SUBJECT: **Let Miami Beach Decide v. City of Miami Beach and SBACE, LLC,**
Third District Court of Appeal, Case # 3D13-2243;
Lower Tribunal Case No.13-025234 CA13

I recently forwarded a copy of the Third District Court of Appeal's Order in the above-referenced case. The appeal was filed by Let Miami Beach Decide ("LMBD"), seeking review of the trial court's August 28, 2013 Order approving the "Convention Center Project" and the Section 1.03 Charter Amendment ballot questions, and dismissing LMBD's Counterclaim seeking the removal of the Project question from the ballot

The Appellate Court ruled that City Charter Section 1.03 **requires approval by the City of the actual lease(s)** and its material terms prior to placing the issue on the ballot. In its ruling, the Court stated that its decision was based upon a need for voters to have sufficient information to cast their vote. The Court noted that terms such as the amount of rent; the amount and specific location and square footage of the properties to be leased; and the height of air rights being transferred, were material provisions of any final leases between the City and the developer, and that voters had a right to know these material terms, prior to voting on the Project ballot question. Without such information, the court held that voters are "simply not in a position to intelligently cast their ballots to approve or disapprove the lease."¹

Having determined that the "Convention Center Project" ballot question lacked the material terms of the Project leases, the Third District ordered that it be removed from the November 5th ballot. The court also ordered that the last line of the Charter Amendment ballot question (... "This Charter change inapplicable to 'Convention Center Project' question below") also be removed. In light of the September 21, 2013 deadline by which the City was required to inform the County Department of Elections of any changes/corrections to its November 5, 2013 Master Ballot, the City Clerk instructed the DOE of the subject changes, as mandated by the Third District.

¹ The Appeals Court held that this information could not be gleaned from SBACE's letter of intent (LOI), as the LOI, by its terms, is only a basis for negotiation and does not bind the parties.

The City's November 5, 2013 ballot contains the Charter Amendment ballot question, as revised by the Third District (i.e. **without** the last line stating that the Charter Amendment does not apply to the Convention Center Project). Further, any future ballot question seeking voter approval of the City's Convention Center Project, must contain the material terms of the Project leases.

Please let me know if you have questions regarding the case.

JS/RA/ld/mmd

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