

CHARTER

REVIEW

REVISION

BOARD

2014

February 3, 2014

MIAMIBEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Richard Alhadeff
Sherry Kaplan Roberts
Jonathan Beloff

Richard "Rick" J. Preira

Appointed by:

Mayor Philip Levine
Commissioner Micky Steinberg
Commissioner Michael Grieco
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

Meeting Agenda

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 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.

1. Swearing-in of board members.
2. Welcome remarks by Stephen Zack, Esq., Chair
3. Introduction of Administrative and Legal Department support team.
 - Debora Turner – First Assistant City Attorney, 305.673.7000 X 6441
 - Rafael E. Granado – City Clerk, 305.673.7000 X 6451
 - Liliam Hatfield – Office of the City Clerk, 305.673.7000 X 6592
4. Board member orientation – Debora Turner, First Assistant City Attorney.
5. Selection of a vice-chairperson.
6. Discuss Report To City Commission At December 11, 2013 Commission Meeting, Regarding Recommended Charter Amendments – Discussion led by Stephen Zack, Esq., Chair.
7. Discussion regarding procedures.

8. Timeframe:

- May 2, 2014 - 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.

ITEM 7

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MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Members of the City of Miami Beach Ad Hoc Charter Review and Revision Board

Members:

Appointed by:

Stephen Zack, Esq., Chair	Mayor Matti Herrera Bower
Aaron Perry, Vice Chair	Commissioner Jerry Libbin
Scott Diffenderfer	Commissioner Jorge R. Exposito
Jacqueline Lalonde	Commissioner Michael Góngora
Rick Kendle	Commissioner Edward L. Tobin
Alex Fernandez	Commissioner Deede Weithorn
Richard "Rick" J. Preira	Commissioner Jonah Wolfson

DATE: December 11, 2013

SUBJECT: DISCUSSION OF THE CHARTER REVIEW AND REVISION BOARD'S RECOMMENDATIONS REGARDING AMENDMENTS TO THE CITY CHARTER.

Background:

Pursuant to Section 8.01 of the Miami Beach City Charter, the City Charter "shall be reviewed ten years from November 3, 1993, and each tenth year thereafter."

On November 14, 2012, via City Resolution No 2012-28072, the City Commission created the City of Miami Beach Ad Hoc Charter Review and Revision Board (CRB) for the purpose of reviewing the City's Charter. The CRB is composed of seven direct appointees with the Mayor and each Commissioner making one appointment. The term of the CRB commenced January 1, 2013 and will expire on January 1, 2014, unless sunsetted earlier or later by the City Commission. The Charter was previously reviewed in 1993 and 2003, through Charter Review and Revision Boards chaired by Stephen Zack.

The CRB has held 15 meetings since its inception. The CRB requested the Administration to create a Charter Review webpage and an email address for citizen input to ensure communications between the citizens and the CRB members. The webpage was used to inform the public of agendas, minutes, meetings, public notices regarding meetings, and other relevant information such as access to the City Charter.

Because of the importance of the City Charter review process, the CRB felt it was necessary to reach the most citizens possible. Given this objective, there were seven meetings that were held in the City Commission Chambers and televised on MBTV. Seeking to reach all citizens, the meetings were advertised in The Miami Herald Miami Beach Neighbors Section and El Nuevo Herald. The meeting dates, times, and topics were also posted on the webpage, and broadcast via the City's social media outlets. At each meeting, whether it was held in the Commission Chamber or in a City conference room, all individuals in attendance had an opportunity to be heard.

Statutory Deadlines:

In order not to politicize its decisions, the CRB waited until after the 2013 City Elections to make its recommendations.

The CRB recommends bringing its recommended Charter amendments to the voters either at the August 26, 2014 Countywide Primary Election or the November 4, 2014 Countywide General Election.

The last day to submit a resolution to the Supervisor of Elections placing Charter amendments on the ballot for the August 26, 2014, Primary Election is Friday, June 6, 2014, and the last day to submit a resolution for the November 4, 2014 Countywide General Election is Tuesday, August 5, 2014.

Recommended Process:

Any of the issues that are approved by the City Commission for placement on a 2014 ballot, shall comply with the following procedures: a motion on each recommendation must be made by the City Commission instructing the City Attorney's Office to draft a resolution calling for a Special Election with the specific ballot language for each question. The City Attorney's Office will prepare the appropriate legislation for consideration by the City Commission.

Charter Review Board Recommendations:

After 15 public meetings, and presentations by City Staff members and City residents, including: Jose Smith, City Attorney, Donald Papy, Chief Deputy City Attorney; Debora Turner, First Assistant City Attorney; Gary Held, First Assistant City Attorney; Aleksander Boksner, Senior Assistant City Attorney; Robert Rosenwald, Jr., Senior Assistant City Attorney; Joe Jimenez, Assistant City Manager; Jorge Gomez, former Assistant City Manager; Maria Ruiz, Community Services Division Director; Nannette Rodriguez, Communications Office Director; Rafael E. Granado, City Clerk; Richard Lorber, Planning Director; Rick Rivera, Pension Office Director; Sylvia Crespo-Tabak, Human Resources Director; Nancy Liebman, Miami Beach United (MBU); Mark Needle, MBU; Terry Bienstock, MBU; Christine Florez, MBU; Frank Del Vecchio, Dr. Morris Sunshine, and others, the following Charter amendments are respectfully being presented to the City Commission for consideration:

I. Proposed Amendments To The Bill Of Rights –

A. CRB's Proposals:

(A)18 *Ethics in Government.* The public's confidence and trust in City of Miami Beach operations and government must meet the most demanding ethical standards and demonstrate the highest level of achievement in adherence to ethics laws. City of Miami Beach officials and employees are agents of the people and hold their position for the benefit of the public – as public servants, they are to observe in their official acts a high standard of conduct and to discharge faithfully the duties of their office regardless of personal considerations and interest, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concerns. 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. In upholding the values of accountability and responsibility, all city officials employees, shall abide by applicable codes of ethical conduct, and be subject to all penalties provided for in such regulations.

II. Proposed Charter Section Amendments

- A. Section 2.02 – Compensation – Compensation shall include salary and benefits. Benefits are defined as anything of value received by the Mayor or a Commissioner from the City including, but not limited to, expense allowances, vehicle allowances, travel, medical and life insurance, leave days as provided in the Unclassified Employees Leave Ordinance, and pension benefits as provided in the Miami Beach Employees' Retirement Plan. All benefits for the Mayor and City Commissioners shall be approved by the City Commission by ordinance or resolution.

The annual compensation salary for the Office of Commissioner shall be six thousand dollars (\$6,000.00) and shall be adjusted retroactively from 1966 to October 1st of each annual fiscal year using the Consumer Price Index – All Urban Consumers (Miami-Fort Lauderdale, FL Area) (CPI) rate (approximately \$43,900.00 as of October 1, 2013), and the compensation annual salary for the Office of Mayor shall be ten thousand dollars (\$10,000.00); and shall be adjusted retroactively from 1966 to October 1st of each annual fiscal year using the CPI rate (approximately \$73,200.00 as of October 1, 2013) any increase in salary for Mayor and/or Commissioner shall require approval of a majority of the electorate voting at a City election.

It is also recommended that if this Charter amendment is approved by the City Commission, that a corresponding clarification be made in the City Code to define the benefits that are pensionable.

- B. Section 2.02 – Term (Term Limits) – The term of office of the Mayor shall be two (2) years. The term of office of the City Commissioners shall be four (4) years.

Commencing with the General Election in November 1997 2015 (excluding individuals holding City of Miami Beach elective office prior thereto for their unexpired terms), the term limit for Miami Beach Commissioners shall be two terms (eight consecutive years) and their term limit for Beach Mayor shall be three terms (six consecutive years) respectively, measured retroactively from their first elections said terms not including time served as a member of the City of Miami Beach Commission as a result of having filled a vacancy in the Commission pursuant to Section 2.07 of the city of Miami Beach Charter.

- C. Section 2.07 – Vacancies in the City Commission – Any If a vacancy occurring in the City Commission, the vacancy shall be filled by the vote of the majority of the remaining members of said City Commission with the appointee serving the remainder of the unexpired term until the next succeeded general City election and with any further remainder of said unexpired term to be filled by a Commissioner member elected at said general election.

if the remaining members of the City Commission shall fail or refused to fill a the vacancy within 30 days after # the vacancy occurs and if no general City election will be held within 90 days after the expiration of said 30 days, then a special election shall be called and held within 90 days to elect a Commissioner member to fill such vacancy for the remainder of the unexpired term.

In the event of a future vacancy due to an irrevocable written resignation, if a City general election or a countywide election is scheduled to be held on or within 30 days after the effective date of the irrevocable written resignation, then the future vacancy shall be filled by the election of a Commission member for the remainder of the

unexpired term in the City general election or countywide election. If a City general election or countywide election is not scheduled to be held on or within 30 days after the effective date of an irrevocable written resignation, and if the remaining members of the Commission shall fail or refuse to fill a future vacancy within 30 days after the effective date of the written irrevocable resignation, then a special election shall be called and held within 120 days after the effective date of the written irrevocable resignation.

The qualifying period for special elections provided for in this section shall be the first 10 days after the call of the special election and any run-off election shall be held within 20 days of the certification of election results requiring the run-off.

- D. Sections 3.01, 4.01, 4.03 Referring To *Compensation and Salary of the City Attorney, City Manager and City Clerk.*

Among other things, these three Sections provide for "compensation" for the City Attorney, City Manager and City Clerk. The term compensation should be further defined to make it clear that compensation includes benefits in addition to "salary" and should be consistent with the terminology used in Section 2.02 relative to the Mayor and City Commissioners

Adopted Charter Amendments:

It is noted that the CRB considered and recommended two Charter amendments that were approved by the voters on the November 5, 2013 Special Election ballot:

1. *Prohibition of Discrimination by City of Miami Beach in Employment Practices and Benefits Offered* – Creating paragraph A(17) of the Miami Beach City Charter Citizens' Bill of Rights banning discrimination in employment practices and benefits offered by the City of Miami Beach based upon an employee or applicant's race, color, national origin, religion, gender, sexual orientation, gender identity, disability, marital status, familial status, or age.
2. *Citywide Referendum Required to Repeal or Reduce Protections in City Code Chapter 62 ("Human Relations")* – Creating Section 1.07 of the Miami Beach Charter to require a majority vote in a Citywide election to repeal, diminish, or otherwise negatively impact a right or duty established in City Code Chapter 62 ("Human Relations") that inures to the benefit of a member of the classification categories of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, marital status, familial status, and age as defined in City Code Section 62-31.

Remaining Charter Issues To Be Discussed:

- A. **Miami Beach United's Proposals:** The CRB adopted a motion approving the aspirations proposed by Miami Beach United regarding Truth in Government; Right to Be Heard; Right to Notice; Right to Public Hearing; Neighborhood Association Rights, Right of Fair Enforcement; Representation Rights; Ethics in Government and Remedies For Violations of The Bill of Rights, and recommended continuing the debate with the CRB or at a Public Workshop, as designated by the City Commission.
- B. Extending the term of office for the Mayor (currently it is two years);
- C. Preservation of the resources of the beach;
- D. Traffic - Citizens of Miami Beach have the right to reasonable access to their roads;

- E. Over scale development in residential areas;
- F. Planning Board powers;
- G. Inspector General/subpoena power;
- H. Electing officials by open seats;
- I. Commission on Ethics & Public trust – enforcement authority over Citizens' Bill of Rights;
- J. Requiring the inclusion of the City's check registry on the City's website; and
- K. Defining pensionable benefits for elected officials.

Sunset of CRB

Pursuant to Resolution No. 2012-28072, the CRB will sunset on January 1, 2014. However, pursuant to Section 2-22(5)(a) of the City Code, the terms of four of the current CRB members shall automatically expire by December 31, 2013 due to the fact that their four appointing City Commission members have left office. Thus, if the CRB is to continue in existence, a resolution extending the CRB's term is required and the new City Commission members would need to appoint individuals to fill the four vacancies on the CRB.

The members of the CRB respectfully request that the City Commission extend the term of the CRB for an additional 4 months (i.e., through April 30, 2014) to allow the CRB to discuss the above remaining issues and any further issues as needed. In the alternative, if the CRB sunsets, the CRB recommends the holding of public workshops, or referral to the Neighborhood/Community Affairs Committee, for the discussion of Charter issues that the City Commission may wish to place on the August or November 2014 ballots.

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ITEM 8

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RESOLUTION NO. 2013-28446

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CREATING AN AD HOC CHARTER REVIEW BOARD FOR A PERIOD OF 120 DAYS COMMENCING AFTER THE EXPIRATION OF THE AD HOC CHARTER REVIEW AND REVISION BOARD; PRESCRIBING ITS DUTIES, AND PROVIDING FOR THE MANNER OF ITS APPOINTMENT AND THE TERMS OF OFFICE FOR THE MEMBERS OF THE NEW AD HOC CHARTER REVIEW BOARD.

WHEREAS, pursuant to Miami Beach City Charter section 8.01, the "Charter shall be reviewed ten (10) years from November 3, 1993 and each tenth year thereafter"; and

WHEREAS, pursuant to Resolution No. 2012-28072, the Mayor and City Commission created an Ad Hoc Charter Review and Revision Board which reviewed the City Charter and presented its recommendations regarding amendments to the City Charter at the December 11, 2013 City Commission meeting; and

WHEREAS, the Ad Hoc Charter Review and Revision Board expires on January 1, 2014; however, the Mayor and City Commission wish to establish a new Ad Hoc Charter Review Board for a period of 120 days to review the City Charter and to make additional recommendations regarding amendments thereto; and

WHEREAS, a new Ad Hoc Charter Review Board ("Board") is hereby established as of January 2, 2014 to be composed of seven (7) members, who shall be direct appointees of the individual City Commissioners with the Mayor appointing Stephen Zack as a member and Chair of the Board. The terms of the Board members shall commence on January 2, 2014 and expire on May 2, 2014 (subject to earlier or later sunset by the City Commission). The Board's power of review shall include submittal of a report to the City Commission by May 2, 2014, which report shall include any recommendations concerning proposed amendments to the City's Charter.

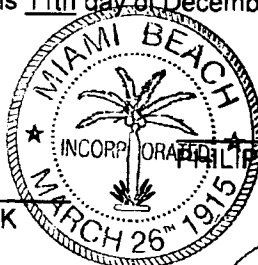
NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that an Ad Hoc Charter Review Board is hereby created for a period of 120 days commencing after the expiration of the Ad Hoc Charter Review and Revision Board for the purpose of reviewing the City's Charter and to make recommendations regarding amendments thereto; the Board shall be composed of seven (7) direct appointees of the Miami Beach City Commission, with the Mayor appointing Stephen Zack as a member and Chair of said Board; and the Board terms shall commence on January 2, 2014 and expire on May 2, 2014 (subject to earlier or later sunset by the City Commission).

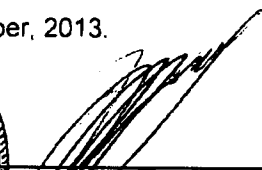
PASSED AND ADOPTED this 11th day of December, 2013.

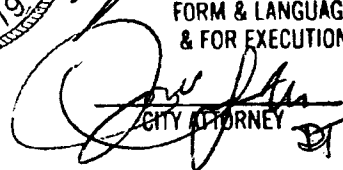
ATTEST:



RAFAEL E. GRANADO, CITY CLERK





STEPHEN ZACK, MAYOR
APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


CITY ATTORNEY

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MIAMI BEACH

OFFICE OF THE CITY MANAGER
NO. LTC # 410-2013

RECEIVED

2013 NOV 19 PM 12:57 TO COMMISSION

CITY CLERK'S OFFICE

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: November 18, 2013

SUBJECT: **UPDATED DEADLINES TO PLACE AN ITEM(S) ON THE AUGUST AND/OR NOVEMBER 2014 BALLOTS**

The below 2014 Ballot Issues Deadlines reflect the State's change of the Primary Election to August 26, 2014. Subsequently, the deadlines for submitting a resolution or ordinance for Charter amendments or any other questions have also changed.

Should the City of Miami Beach wish to conduct a special election along with the countywide 2014 Primary and/or General Elections, the deadlines listed below must be followed, in order to allow sufficient time for ballot preparation and to meet State-mandated deadlines to mail absentee ballots to overseas voters.

Pursuant to Florida Statutes Section 100.151, "...the governing authority of a municipality shall not call any special election until notice is given to the supervisor of elections and his (her) consent obtained as to a date..." Once approval is obtained from the supervisor of elections, the resolution and/or ordinance to call a special election must be passed to meet the deadlines listed below.

2014 SCHEDULED COUNTYWIDE ELECTIONS	DEADLINE TO SUBMIT RESOLUTION AND/OR ORDINANCE TO THE SUPERVISOR OF ELECTIONS FOR CHARTER AMENDMENTS OR ANY OTHER QUESTIONS
PRIMARY ELECTION August 26, 2014	No later than Friday, June 6, 2014
GENERAL ELECTION November 4, 2014	No later than Tuesday, August 5, 2014

If you have any questions, please contact the myself or the City Clerk's Office at 305.673.7411.

cc: Jose Smith, City Attorney

JLM/REG 

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February 21, 2014

MIAMIBEACH

AD HOC CHARTER REVIEW BOARD

Members:

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

Appointed by:

Mayor Philip Levine
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Meeting Agenda

Friday ~~Monday~~, February 21, 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 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.

1. **Approve the February 3, 2014 CRB minutes.**
2. **Board member orientation – Debora Turner, First Assistant City Attorney.**
Not reached at the February 3, 2014 CRB meeting.
3. **Selection of Vice-Chair.**
Not reached at the February 3, 2014 CRB meeting.
4. **Discussion of Charter amendments proposed by the 2012/2013 Ad Hoc Charter Review And Revision Board, which was created pursuant to Resolution 2012-28072:**

- I. Proposed Amendments To The Bill Of Rights –

(A)18 *Ethics in Government.* The public's confidence and trust in City of Miami Beach operations and government must meet the most demanding ethical standards and demonstrate the highest level of achievement in adherence to ethics laws. City of Miami Beach officials and employees are agents of the people and hold their position for the benefit of the public – as public servants, they are to observe in their official acts a high standard of conduct and to discharge faithfully

the duties of their office regardless of personal considerations and interest, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concerns. 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. In upholding the values of accountability and responsibility, all city officials employees, shall abide by applicable codes of ethical conduct, and be subject to all penalties provided for in such regulations.

II. Proposed Charter Section Amendments

- A. Section 2.02 – *Compensation* – Compensation shall include salary and benefits. Benefits are defined as anything of value received by the Mayor or a Commissioner from the City including, but not limited to, expense allowances, vehicle allowances, travel, medical and life insurance, leave days as provided in the Unclassified Employees Leave Ordinance, and pension benefits as provided in the Miami Beach Employees' Retirement Plan. All benefits for the Mayor and City Commissioners shall be approved by the City Commission by ordinance or resolution.

~~The annual compensation salary for the Office of Commissioner shall be six thousand dollars (\$6,000.00) and shall be adjusted retroactively from 1966 to October 1st of each annual fiscal year using the Consumer Price Index – All Urban Consumers (Miami-Fort Lauderdale, FL Area) (CPI) rate (approximately \$43,900.00 as of October 1, 2013), and the compensation annual salary for the Office of Mayor shall be ten thousand dollars (\$10,000.00); and shall be adjusted retroactively from 1966 to October 1st of each annual fiscal year using the CPI rate (approximately \$73,200.00 as of October 1, 2013) any increase in salary for Mayor and/or Commissioner shall require approval of a majority of the electorate voting at a City election.~~

It is also recommended that if this Charter amendment is approved by the City Commission, that a corresponding clarification be made in the City Code to define the benefits that are pensionable.

- B. Section 2.02 – *Term (Term Limits)* – The term of office of the Mayor shall be two (2) years. The term of office of the City Commissioners shall be four (4) years.

~~Commencing with the General Election in November 1997 2015 (excluding individuals holding City of Miami Beach elective office prior thereto for their unexpired terms), the term limit for Miami Beach Commissioners shall be two terms (eight consecutive years) and their term limit for Beach Mayor shall be three terms (six consecutive years) respectively, measured retroactively from their first elections said terms not including time served as a member of the City of Miami Beach Commission as a result of having filled a vacancy in the Commission pursuant to Section 2.07 of the city of Miami Beach Charter.~~

- C. Section 2.07 – *Vacancies in the City Commission* – ~~Any~~ If a vacancy occurs in the City Commission, the vacancy shall be filled by the vote of the majority of the remaining members of said City Commission with the appointee serving the remainder of the unexpired term until the next succeeded general City election and with any further remainder of said unexpired term to be filled by a Commissioner member elected at said general election; if the remaining members of the City Commission shall fail or refused to fill a the vacancy within 30 days after # the vacancy occurs and if no general City election will be held within 90 days after the expiration of said 30 days, then a special election shall be called and held within 90 days to elect a Commissioner member to fill such vacancy for the remainder of the unexpired term.

In the event of a future vacancy due to an irrevocable written resignation, if a City general election or a countywide election is scheduled to be held on or within 30 days after the effective date of the irrevocable written resignation, then the future vacancy shall be filled by the election of a Commission member for the remainder of the unexpired term in the City general election or countywide election. If a City general election or countywide election is not scheduled to be held on or within 30 days after the effective date of an irrevocable written resignation, and if the remaining members of the Commission shall fail or refuse to fill a future vacancy within 30 days after the effective date of the written irrevocable resignation, then a special election shall be called and held within 120 days after the effective date of the written irrevocable resignation.

The qualifying period for special elections provided for in this section shall be the first 10 days after the call of the special election and any run-off election shall be held within 20 days of the certification of election results requiring the run-off.

- D. Sections 3.01, 4.01, 4.03 Referring To *Compensation and Salary of the City Attorney, City Manager and City Clerk.*

Among other things, these three Sections provide for "compensation" for the City Attorney, City Manager and City Clerk. The term compensation should be further defined to make it clear that compensation includes benefits in addition to "salary" and should be consistent with the terminology used in Section 2.02 relative to the Mayor and City Commissioners.

5. Discussion of Timeframe:

- **May 2, 2014** - 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.

6. Establish future meeting dates and times.

7. Time permitting, the following items may be discussed or carried over to the next meeting.
- a. **Voter reform** – Discussion lead by Board Member Kaplan Roberts.
 - b. **Request to revise Citizens Bill of Rights** – Discussion lead by Board Member Alhadeff. See Exhibit “A.”
 - i. Changing the term “Bill of Rights” to “Declaration of Rights”
 - c. **Casino gambling on Miami Beach** – Discussion lead by Board Members Kaplan Roberts and Kendle.
 - d. **Inspector General with subpoena power** – Discussion lead by Board member Kendle. (Invite Joe Jimenez, Assistant City Manager, and Alek Boksner, Senior Assistant City Attorney)
 - e. **Attendance requirement for committee/board members** – Discussion lead by Board member Kaplan Roberts.
 - f. **Land Use Boards – Simple majority when only five members or appointment of alternates to the Land Use Boards.** (Suggested topic by Commissioner Malakoff.) (Invite Gary Held, First Assistant City Attorney.)
 - g. **Discuss telephone attendance at board/committee meetings** – Debora Turner to draft memorandum.

THURSDAY, FEBRUARY 13, 2014 | 19NE

MIAMIBEACH

AD HOC CHARTER REVIEW BOARD MEETING NOTICE

NOTICE IS HEREBY given that the Miami Beach Ad Hoc Charter Review Board will meet on the following dates:

DATES	TIMES	LOCATION
Friday, February 21, 2014	4:30 PM	City Hall / City Manager's Large Conference Room
Monday, March 10, 2014	4:30 PM	City Hall / City Manager's Large Conference Room

City Hall is located at 1700 Convention Center Drive, Miami Beach, Florida, 33139.

Pursuant to Section 8.01 of the Miami Beach City Charter, review of the Charter shall occur every ten years. The Miami Beach Ad Hoc Charter Review Board (CRB) has been formed for the purpose of reviewing the City Charter, seeking public input thereon, and eventually presenting its recommendation to the Miami Beach City Commission.

Please visit the Miami Beach Ad Hoc Charter Review Board's website for the latest meeting information and agendas: <http://www.miamibeachfl.gov/scroll.aspx?id=72572>

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to CharterReview@miamibeachfl.gov, or by mail to Miami Beach Ad Hoc Charter Review Board, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Inquiries may also be directed to the City Clerk at 305.673.7411.

One or more members of the Miami Beach City Commission may be in attendance and participate in discussions.

Rafael E. Granado, Esq., City Clerk

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by this Board with respect to any matter considered at this meeting or hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact us five days in advance at 305.673.7411(voice) or TTY users may also call the Florida Relay Service at 711.

Ad #861

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MIAMI BEACH

Ad Hoc Charter Review Board (CRB)

Members:

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

Appointed by:

Mayor Philip Levine
Commissioner Micky Steinberg
Commissioner Michael Grieco
Commissioner Joy Malakoff
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MINUTES

Monday, February 3, 2014 at 4:30 p.m.
City Manager's Large Conference Room, 4th Floor, City Hall
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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.

4. 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

EXHIBIT A

REQUEST FROM
BOARD MEMBER ALHADEFF

Hatfield, Liliam

From: e.richard alhadeff <era1234@gmail.com>
Sent: Friday, February 07, 2014 8:39 PM
To: Granado, Rafael; Hatfield, Liliam
Subject: Charter Review Board
Attachments: ERAREVISIONS-PartICharterandRelatedSpecialActs-version (4).rtf

Attached if a copy of my attempt to revise the Citizens **Bill of Rights** which i would the Charter Review Board to consider. I do not know the procedure for getting a matter considered so if there is anything else I need to do please let me know,

E. RICHARD ALHADEFF
305 542 0791 cell
305 865-6506 home
715 NORTH SHORE DRIVE
MIAMI BEACH, FL 33141`
era1234@gmail.com

PREAMBLE

We, the citizens of the City of Miami Beach, (the "City) in order to secure for ourselves the benefits and responsibilities of home rule and in order to provide for a municipal government to serve our present and future needs, do hereby adopt this Charter and as part thereof adopt the following Declaration of Fundamental Rights..

DECLARATION OF FUNDAMENTAL RIGHTS

A. The City has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administrative management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed by the City. As used in this Charter, reference to the City shall include all departments, agencies, and governmental bodies created by the City from time to time.

1 Convenient access. Every person transacting business with the City has the right to a minimum of personal inconvenience. The City shall provide, within the City's budget limitations, reasonably convenient times and places to conduct required inspections, and to transact business with the City.

2. Truth in government. No official or employee of the City shall knowingly furnish to the Public or any person false information on any public matter, nor knowingly omit significant information when giving requested information to members of the public.

3. Development. To expedite the process to approve or deny development of property within the city, to the extent that such approval or denial must be approved by more than one board of the City the applicant shall have the right to submit the plans for review to each of the boards simultaneously. The staff of each board shall then commence its review of the plans which review shall be completed within 30 days following submission. If and to the extent that the staff of any board does not recommend approval, representatives of each staff shall meet together with the applicant and attempt to agree to such changes that will make the plans acceptable to the staff of all of the boards. If agreement has been reached the application shall be submitted to the next following meeting of each board. If a public hearing is required the boards will conduct a joint hearing.

4 Public records. All audits, reports, minutes, documents and other public records of the City and its boards, agencies, departments and authorities shall be open for inspection at reasonable time and places within the City.

5 Minutes and ordinance register. The City Clerk shall maintain and make available for public inspection for a period of not less than three (3) years after adoption an ordinance register separate from the minutes showing the votes of each member on all ordinances and resolutions listed by descriptive title. Written minutes of all meetings and the ordinance register shall be available in print or electronic format for public inspection not later than thirty (30) days after adoption of the ordinance.

6. Right to be Heard. A citizen shall have the right to be heard on matters affecting the City. If the hearing is mandated by law as part of an approval or appeal process the procedure to be followed shall be as provided in the applicable law rule or regulation. Otherwise the citizen seeking to be heard shall file an application to be heard with the City Clerk, which application shall contain the full legal name of the applicant, its residence address and a description of the matter it seeks a hearing on. If the matter requires a decision of the commission the applicant may submit testimony in support of its position and may question, through the chair those people testifying against the application. Upon receipt of an application, the Clerk shall place it on an agenda of a meeting of the City Commission which will occur within the next following 30 days. The applicant shall be promptly furnished with written notice by mail addressed to the address in the application. The time for the hearing shall be stated but shall be subject to change by the mayor or commission. If in the reasonable discretion of the Mayor it is not feasible to hold it on the day noticed it shall be re-noticed for the next following meeting of the commission and the applicant shall be duly noticed.

7(reserved)

8(reserved)

9. Managers' and attorneys' reports. The City Manager and City Attorney shall periodically make a status report on all significant matters pending or concluded within their respective office.

10 Budgeting. Prior to the City Commission's first public hearing on the proposed budget required by state law, the City Manager shall make public a budget summary setting forth the proposed cost of each individual department and the cost of each position in each department, the purposes therefor, the estimated millage cost of each department and the amount of any contingency and carryover funds for each department.

11. Quarter annual budget comparisons. The City Manager shall make public quarter annual reports showing the actual expenditures during the quarter just ended against one quarter of the proposed annual expenditures set forth in the budget. Such report shall also reflect the same cumulative information for whatever portion of the fiscal year that has elapsed

12 Adequate audits. An annual audit of the City shall be made by an independent certified public accounting firm in accordance with generally accepted Municipal auditing standards. The independent City Auditor shall be appointed by the City Commission; both appointment and removal of the independent City Auditor shall be made by the City Commission. A summary of the results of the independent City Auditor's annual audit, including any deficiencies found, shall be made public. In making such audit, proprietary functions shall be audited separately and adequate depreciation on proprietary facilities shall be accrued. Duties, method of selection, and method of compensation of the independent City Auditor shall be established by ordinance.

13. Representation of public. The City shall endeavor to provide representation at all Federal or State proceedings the decision of which may significantly affect the City.

14. *Natural resources and scenic beauty.* It shall be the policy of the City to conserve and protect its natural resources and scenic beauty, which policy shall include the abatement of air and water pollution and of excessive and unnecessary noise.

15. *Nondiscrimination.* No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.

16. *Transportation.* Though most of the major streets and roads in the city are controlled by state and federal authorities, the City is mindful of the substantial traffic problems that arise during the winter season and when major events take place. In recognition thereof the City shall use its best efforts (within the budget constraints) to improve traffic congestion within the city. Such efforts shall include but not be limited to:

- a. Supplement public transportation provided by Miami Dade County
- b. Provide out of the city parking with direct shuttle service for City employees.
- c. Implement a plan for two way traffic on one way streets when traffic is blocked on the one way street.
- d. Train, public safety personnel in traffic control.
- e. Create a dedicated line for citizens to notify the City of traffic congestion.
- f. Create a ready response team of traffic control personnel.
- g. Cause work in the street to be done, if possible, in the off season and at night.
- h. Prohibit developers from closing lanes.

(B) The foregoing enumeration of citizens' rights vests large and pervasive powers in the citizenry of the City. Such power necessarily carries with it responsibility of equal magnitude for the successful operation of government in the City. The orderly, efficient and fair operation of government requires the intelligent participation of individual citizens exercising their rights with dignity and restraint so as to avoid any sweeping acceleration in the cost of government because of the exercise of individual prerogatives and for individual citizens to grant respect for the dignity of public office.

(C) Remedies for violations. In any suit by a citizen alleging a violation of a Fundamental Right filed in the Dade County circuit Court pursuant to its general equity jurisdiction, the prevailing party, if shall be entitled to recover reasonable attorneys' fees and court costs as fixed by the court.

(D) Construction. All provisions of this article shall be construed to be supplementary to and not in conflict with the general laws of Florida. If any part of this article shall be declared invalid, it shall not affect the validity of the remaining provisions.

(A) (Res. No. 2003-25288, 7-30-03; Res. No. 2003-25391, 7-30-03; Res. No. 2003-25443, 12-10-03; Res, No. 2009-27152, 7-22-09)

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March 10, 2014

MIAMI BEACH

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

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 Agenda

Monday, March 10, 2014 at 4:30 p.m.
Commission Chambers, Third 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.

1. **APPROVE THE FEBRUARY 21, 2014 CRB MINUTES.**
2. **VOTER REFORM**
 - 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.**
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. **Debora Turner to present.**
4. **REVIEW REVISIONS TO CITIZENS' BILL OF RIGHTS/DECLARATION OF RIGHTS AS SUGGESTED BY PROPONENT R. ALHADEFF.**
5. **TRAFFIC PLAN CONCERNS** – Proponent Chair Zack
6. **PROTECT U.S. COAST GUARD FROM ENCROACHMENTS** – Proponent Rick Kendle.

7. ESTABLISH FUTURE MEETING DATES AND TIMES.

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

- **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.
- **Section 2.07 – Vacancies In The City Commission** – Item tabled at the 2/21/14 CRB meeting.
- **Land Use Boards – Simple Majority When Only Five Members Or Appointment Of Alternates To The Land Use Boards.** Gary Held, First Assistant City Attorney to present.
- **Voter Reform** – Groups (speaker to be invited)
- **Miami Beach United's Five Principles For Resident Charter Rights And Companion Legislation**
- **Section 2.02 – Compensation** - Stipend and tax reporting for Mayor and Commissioners

ITEM 1
APPROVAL OF MINUTES
February 21, 2014

MIAMI BEACH

Ad Hoc Charter Review Board (CRB)

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

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

Friday, February 21, 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.

Meeting commenced at 4:45 p.m. All board members were present.

1. Approve the February 3, 2014 CRB minutes.

ACTION: Motion made by Board Member Beloff; seconded by Mr. Kendle to approve the minutes of February 3, 2014; Voice-vote: 7-0.

2. Board Member Orientation – Debora Turner, First Assistant City Attorney.

ACTION: Each board member and City staff introduced himself or herself. Debora Turner, First Assistant City Attorney, offered to give a refresher course on Sunshine Laws and Public Records if anyone required it, and members were encouraged to contact Ms. Turner regarding any legal questions they may have.

3. **Selection of Vice-Chair.**

ACTION: Ms. Kaplan Roberts nominated Jonathan Beloff as Vice-Chair, seconded by Board Member Kendle; Voice-vote: 7-0.

Discussion held.

Chair Zack explained that the CRB meeting is being videotaped for transparency. He added that the CRB's jurisdiction ends May 2, 2014. Ms. Turner explained that an extension of the CRB would require a resolution by the City Commission. Chair Zack added that at the CRB meeting of February 3, 2014, Commissioner Malakoff discussed the issue of having a committee periodically review the City's boards. Chair Zack suggested at that time that this could be a function of the CRB.

TO DO: CRB extension issues and additional functions, if any, to be placed in a future agenda, if deemed necessary.

Board Member Kaplan Roberts suggested that since this is a new group, they could start by reviewing some of the issues the 2012/2013 Ad Hoc Charter Review And Revision Board discussed to get additional feedback. She asked the status of Miami Beach United's (MBU) proposed Charter Amendment, and Chair Zack clarified that the MBU Charter amendment draft contained language problems, it was vague and lacked definitions of many terms. Gary Held, First Assistant City Attorney, worked with MBU representatives, but the item was tabled by the 2012/2013 Ad Hoc Charter Review And Revision Board. Mr. Zack added that he does not believe it is necessary to include MBU's proposals in the Bill of Rights.

4. **Discussion Of Charter Amendments Proposed By The 2012/2013 Ad Hoc Charter Review And Revision Board, Which Was Created Pursuant To Resolution 2012-28072:**

I. Proposed Amendments To The Bill Of Rights –

(A) 18 Ethics *in Government*.

ACTION: Motion made by Vice-Chair Beloff, seconded by Board Member Kaplan Roberts to remove this item in its entirety from the agenda, as it is redundant and unnecessary. **Item removed.**

II. Proposed Charter Section Amendments

A. Section 2.02 – *Compensation –*

ACTION: Motion made to remove the issue of salary increase and CPI adjustment and to research the issue of the stipend received by elected officials. **Debora Turner to handle.**

Motion 1: Motion made by Board Member Kendle, seconded by Vice-Chair Beloff to remove salary increase and the CPI, Voice-vote: 7-0. **Salary Increase and CPI adjustment issue removed.**

Motion 2: Motion made by Board Member Kendle to look at the \$1,500 stipend received by Commissioners, and have the Office of the City Attorney review; seconded by Board Member Kaplan Roberts; Voice-vote: 7-0. **Debora Turner to research.**

Chair Zack summarized the previous discussions held by the **2012/2013 Ad Hoc Charter Review And Revision Board** regarding compensation, and added that the voters typically vote "no" on any type of salary increase.

Discussion continued regarding compensation and salary. Board Member Kendle proposed to make the salary increase for the year 2020, so that Miami Beach voters will not think the Commissioners want to increase the salaries for themselves. CPI adjustments were discussed and there was unanimous consensus not to further discuss the salary increase.

Board Member Kendle stated that currently many people could not afford to run for office because the salaries for the City's elected officials are too low. Mr. Kendle added that a resident of Miami Beach could not afford to be elected as a City Commissioner or Mayor without being independently wealthy.

Board Member Johnston mentioned that voters will not agree to a "salary increase," and voters will not be receptive to it.

Board Member Kendle added that the 1099 tax form elected officials receive for their stipend does not seem to be correct. Discussion on the 1099 tax form continued.

- B . Section 2.02 – *Term (Term Limits)* – The term of office of the Mayor shall be two (2) years. The term of office of the City Commissioners shall be four (4) years.

ACTION: See Item No. 7 (Voter Reform). Motion made by Member Kaplan Roberts to approve the item with language that includes that at no time, under no circumstances, shall any individual serve more than 14 years as Mayor and/or Commissioner; seconded by Vice-Chair Beloff to approve as amended. Approved by acclamation. **Item to be placed at the March 10, 2014 CRB Agenda, with final language from the City Attorney's Office. Debora Turner to handle.**

Discussion held.

Vice-Chair Beloff, for the record, stated that the fourth line where it reads two terms (eight consecutive years) and their term... the word "their" should be substituted with "the."

- C. Section 2.07 – *Vacancies in the City Commission* –

ACTION: Item tabled.

Discussion held regarding the period of 120 days allowed for the special election.

Debora Turner, First Assistant City Attorney, explained that the County is in charge of holding elections.

Rafael E. Granado, City Clerk, stated that the City has to ask permission from the County in order to hold an election.

- D. Sections 3.01, 4.01, 4.03 Referring To *Compensation and Salary of the City Attorney, City Manager and City Clerk.*

ACTION: Approved by acclamation.

5. Discussion of Timeframe:

Rafael E. Granado, City Clerk, clarified that May 2, 2014 is the deadline for the Committee's final recommendation to the City Commission; no later than June 6, 2014 for passage of Resolution(s) calling for an August 26, 2014 Special Election; and no later than August 5, 2014 for passage of Resolution(s) calling for a November 4, 2014 Election.

6. Establish Future Meeting Dates And Times.

ACTION: The following dates were reserved for CRB meetings:

- ✓ Monday, March 10, 2014 and
- ✓ Monday, March 17, 2014.

The following items were discussed:

a. **Voter Reform**

ACTION: Board Member Kaplan Roberts stated voter reform could be grouped with the term limit discussion. **Item to be discussed at the next 2 upcoming CRB meetings, March 10 and 17, 2014.**

Board Member Kaplan Roberts suggested inviting Victor Diaz to speak on voter reform.

Rafael E. Granado, City Clerk, asked if the Board could suggest speakers on this item. He stated that in the past the Elections Department has not been receptive to speak on the subject.

b. **Request To Revise Citizens Bill Of Rights** – Discussion lead by Board Member Alhadeff. See Exhibit "A."

Changing the term "Bill of Rights" to "Declaration of Rights." Member Kaplan Roberts suggested comparing Bill of Rights language with the revised language as proposed by Member Alhadeff to see what changes had been made.

c. **Casino Gambling On Miami Beach**

ACTION: Discussion held. Member Kaplan Roberts expressed her opposition to gambling in Miami Beach, but the Board agreed that this be discussed at a future meeting, adding language in the Charter stating that the only gambling in Miami Beach allowed would be if the residents approve it via a referendum. **Debora Turner to draft language. Rafael E. Granado to place in the March 10, 2014 CRB agenda.**

Chair Zack disclosed his business relationship with Steve Winn and recused himself from the discussion.

d. **Inspector General With Subpoena Power.**

ACTION: Chair Zack deferred the item.

e. **Attendance Requirement For Committee/Board Members** – Discussion lead by Board Member Kaplan Roberts. Debora Turner, First Assistant City Attorney, explained that this is a Code amendment. **Item deleted from Board's discussion.**

- f. **Land Use Boards – Simple Majority When Only Five Members Or Appointment Of Alternates To The Land Use Boards.** (Suggested topic by Commissioner Malakoff.)
TO DO: Invite Gary Held, First Assistant City Attorney when item is discussed.
ACTION: Board Member Kaplan Roberts explained the limited powers of the boards. Rafael E. Granado, City Clerk, clarified that the reason for this item being on the agenda is that there is a lobbying component that Commissioner Malakoff wants to change, and that requires a Charter change. **Gary Held to handle.**

Chair Zack explained that Commissioner Malakoff requested allowing more professionals to sit on the board without being considered a conflict of interest. Discussion continued regarding simple versus supermajority majority.

Vice-Chair Beloff suggested considering, if it is a short board, reducing the required votes. **Gary Held to draft proposed language.**

Debora Turner, First Assistant City Attorney, explained that this item requires a Code amendment and requires a policy decision and the only one affected would be the Board of Adjustment, which is in the Special Related Acts, and it would mandate a referendum requirement. Discussion continued.

Vice-Chair Beloff suggested adding the issue of marine anchoring. **Gary Held to handle.**

- g. **Discuss Telephone Attendance At Board/Committee Meetings –**
ACTION: Item deleted from the CRB Agenda per legal opinion. See handouts.

ADDITIONAL ITEMS:

- h. **Traffic Plan Concerns.** Proponent Chair Zack. **Rafael E. Granado to place at the next meeting.**
- i. **Protecting US Coast Guard From Encroachments.** Proponent Rick Kendle. **Rafael E. Granado to place at the next meeting.**

Member Preira suggested discussing the issue of medicinal marihuana. Ms. Turner explained that a straw ballot question had passed at the 2013 election, but the Commission has not passed a resolution urging the State or the Federal governments to authorize the administration of medicinal marihuana. Discussion continued. The members agreed that this item is premature to discuss.

LIST OF ITEMS FOR FUTURE DISCUSSION:

Add language in the Charter Re: Gambling/Referendum
Land Use Boards – Simple Majority – Gary Held to present
Protect US Coast Guard from Encroachments – Proponent R. Kendle
Revise Citizens Bill of Rights – “Declaration of Rights” – Proponent R. Alhadeff
Section 2.02 – Term (Term Limits) – Debora Turner To Present
Inspector General/Subpoena Power – Proponent R. Kendle
Traffic Plan Concerns – Proponent Chair Zack
Voter reform – Proponent Member Kaplan Roberts

Joanne Bondi spoke.

Meeting adjourned at 6:00 p.m.

Handouts or Reference Materials:

1. Memorandum from Jose Smith, City Attorney, to Ad Hoc Charter Review Board, dated February 21, 2014, RE: Telephonic Participation by Board Members at Board Meetings.
2. Email from Richard Alhadeff regarding flooding language.
3. Section 112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys. 2013 Florida Statutes.

ITEM 4
REVISION TO CITIZENS'
BILL OF RIGHTS
Proponent – Richard Alhadeff

PREAMBLE

We, the citizens of the City of Miami Beach, (the "City") in order to secure for ourselves the benefits and responsibilities of home rule and in order to provide for a municipal government to serve our present and future needs, do hereby adopt this Charter and as part thereof adopt the following Declaration of Fundamental Rights..

CITIZENS' BILL OF RIGHTS-DECLARATION OF FUNDAMENTAL RIGHTS

(A)

~~This government~~ The City has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administrative management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed: by the City. As used in this Charter, reference to the City shall include all departments, agencies, and governmental bodies created by the City from time to time.

1.

Convenient access. ~~Every person has the right to transacting~~ business with the City with has the right to a minimum of personal inconvenience. The City shall provide, ~~It shall be the duty of the City Manager and the City Commission to provide,~~ within the City's budget limitations, reasonably convenient times and places to conduct ~~for~~ required inspections, and to ~~for~~ transacting business with the City.

2.

Truth in government. ~~No municipal official or employee of the City~~ shall knowingly furnish to the Public or any person false information on any public matter, nor knowingly omit significant information ~~facts~~ when giving requested information to members of the public.

3.

Development. To expedite the process to approve or deny development of property within the city, to the extent that such approval or denial must be approved by more than one board of the City the applicant shall have the right to submit the plans for review to each of the boards simultaneously. The staff of each board shall then commence its review of the plans which review shall be completed within 30 days following submission. If and to the extent that the staff of any board does not recommend approval, representatives of each staff shall meet together with the applicant and attempt to agree to such changes that will make the plans acceptable to the staff of all of the boards. If agreement has been reached the application shall be submitted to the next following meeting of each board. If a public hearing

is required the boards will conduct a joint hearing.

~~(MOVED TO #4) *Public records.* All audits, reports, minutes, documents and other public records of the City and its boards, agencies, departments and authorities shall be open for inspection at reasonable time and places convenient to the public.~~

4.

Public records. All audits, reports, minutes, documents and other public records of the City and its boards, agencies, departments and authorities shall be open for inspection at reasonable time and places within the City, convenient to the public.

~~(MOVED TO #5) *Minutes and ordinance register.* The City Clerk shall maintain and make available for public inspection an ordinance register separate from the minutes showing the votes of each member on all ordinances and resolutions¹⁽²⁾ listed by descriptive title. Written minutes of all meetings and the ordinance register shall be available for public inspection not later than thirty (30) days after the conclusion of the meeting.~~

5.

Minutes and ordinance register. The City Clerk shall maintain and make available for public inspection for a period of not less than three (3) years after adoption an ordinance register separate from the minutes showing the votes of each member on all ordinances and resolutions¹⁽²⁾ listed by descriptive title. Written minutes of all meetings and the ordinance register shall be available in print or electronic format for public inspection not later than thirty (30) days after adoption of the ordinance. ~~the conclusion of the meeting.~~

~~(MOVED TO #6) *Right to be heard.* So far as the orderly conduct of public business permits, any interested person has the right to appear before the City Commission or any City agency, board or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the City. Matters shall be scheduled for the convenience of the public, and the agenda shall be divided into approximate time periods so that the public may know approximately when a matter will be heard. Nothing herein shall prohibit the City or any agency thereof from imposing reasonable time limits for the presentation of a matter.~~

6.

Right to be heard. A citizen shall have the right to be heard on all matters affecting the City. If the hearing is mandated by law as part of an approval process the procedure to be followed shall be as provided in the applicable law rule or regulation. Otherwise the citizen seeking to be heard shall file an application to be heard with the City Clerk, which application shall contain the full legal name of the applicant, its residence address and a description of the matter it seeks a hearing on. If the matter requires a decision of the commission the applicant may submit testimony in support of its position and may question, through the chair those people testifying against the application. Upon receipt of an application, the Clerk shall place it on an agenda of a meeting of the City Commission which will occur within the next following 30 days. The applicant shall be promptly furnished with written notice by mail addressed to the address in the application. The time for the hearing shall be stated but shall be subject to change by a mayor or commission. If in the reasonable discretion of the Mayor it is not feasible to hold it on the day noticed it shall be re-noticed for the next following meeting of the commission and the applicant shall be duly noticed. So far as the orderly conduct of public business permits, any interested person has the right to appear before the City Commission or any City agency, board or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the City. Matters shall be scheduled for the convenience of the public, and the agenda shall be divided into approximate time periods so that the public may know approximately when a matter will be heard. Nothing herein shall prohibit the City or any agency thereof from imposing reasonable time limits for the presentation of a matter.

~~Right to notice.~~ Persons entitled to notice of a City hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing. Copies of proposed ordinances or resolutions shall be made available at a reasonable time prior to the hearing, unless the matter involves an emergency ordinance or resolution.

7.

(Reserved) ~~No unreasonable postponements.~~ No matter once having been placed on a formal agenda by the City shall be postponed to another day except for good cause shown in the opinion of the City Commission, or

~~agency conducting such meeting, and then only on condition that any person so requesting is mailed adequate notice of the new date of any postponed meeting. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing. "~~

8.

~~(Reserved) *Right to public hearing.* Upon a timely request of any interested party a public hearing shall be held by any City agency, board, department or authority upon any significant policy decision to be issued by it which is not subject to subsequent administrative or legislative review and hearing. This provision shall not apply to the law department of the City nor to any body whose duties and responsibilities are solely advisory.~~

~~At any zoning or other hearing in which review is exclusively by certiorari, a party or his counsel shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The decision of any such agency, board, department or authority must be based upon the facts in the record. Procedural rules establishing reasonable time and other limitations may be promulgated and amended from time to time.~~

9.

~~*Managers' and attorneys' reports.* The City Manager and City Attorney shall periodically make a public status report on all major significant matters pending or concluded within their respective office jurisdictions.~~

~~*Notice of action and reasons.* Prompt notice shall be given of the denial in whole or in part of a request of an interested person made in connection with any municipal administrative decision or proceeding when the decision is reserved at the conclusion of the hearing. The notice shall be accompanied by a statement of the grounds for denial.~~

10.

~~*Budgeting.* Prior to the City Commission's first public hearing on the proposed budget In addition to any budget required by state law statute, the City Manager shall make public a budget summary setting forth the proposed cost of each individual department, the purposes therefor, the estimated millage cost of each department and the amount of any contingency and carryover funds for each department. prepare a budget showing the cost of each department for each budget year. Prior to the City Commission's first public hearing on the proposed budget required by state law, the City Manager shall make public a budget summary setting forth the proposed cost of each individual department and reflecting the personnel for each~~

~~department, the purposes therefor, the estimated millage cost of each department and the amount of any contingency and carryover funds for each department.~~

~~(MOVED TO #9) *Managers' and attorneys' reports.* The City Manager and City Attorney shall periodically make a public status report on all major matters pending or concluded within their respective jurisdictions.~~

11.

Quarterly annual budget comparisons. The City Manager shall make public a quarterly annual reports showing the actual expenditures during the quarter just ended against one quarter of the proposed annual expenditures set forth in the budget. Such report shall also reflect the same cumulative information for whatever portion of the fiscal year that has elapsed.

~~(MOVED TO #10) *Budgeting.* In addition to any budget required by state statute, the City Manager shall prepare a budget showing the cost of each department for each budget year. Prior to the City Commission's first public hearing on the proposed budget required by state law, the City Manager shall make public a budget summary setting forth the proposed cost of each individual department and reflecting the personnel for each department, the purposes therefor, the estimated millage cost of each department and the amount of any contingency and carryover funds for each department.~~

12.

Adequate audits. An annual audit of the City shall be made by an independent certified public accounting firm in accordance with generally accepted Municipal auditing standards. The independent City Auditor shall be appointed by the City Commission; both appointment and removal of the independent City Auditor shall be made by the City Commission. A summary of the results of the independent City Auditor's annual audit, including any deficiencies found, shall be made public. In making such audit, proprietary functions shall be audited separately and adequate depreciation on proprietary facilities shall be accrued so the public may determine the amount of any direct or indirect subsidy. Duties, method of selection, and method of compensation of the independent City Auditor shall be established by ordinance.

~~(MOVED TO #11) *Quarterly budget comparisons.* The City Manager shall make public a quarterly report showing the actual expenditures during the quarter just ended against one quarter of the proposed annual expenditures set forth in the budget. Such report shall also reflect the same cumulative information for whatever portion of the fiscal year that has elapsed.~~

13.

Representation of public. The City Commission shall endeavor to provide representation at all Federal or State proceedings the decision of which may significantly affecting the City and its residents before state and federal regulatory bodies.

(MOVED TO #12) ~~*Adequate audits.* An annual audit of the City shall be made by an independent certified public accounting firm in accordance with generally accepted auditing standards. The independent City Auditor shall be appointed by the City Commission; both appointment and removal of the independent City Auditor shall be made by the City Commission. A summary of the results of the independent City Auditor's annual audit, including any deficiencies found, shall be made public. In making such audit, proprietary functions shall be audited separately and adequate depreciation on proprietary facilities shall be accrued so the public may determine the amount of any direct or indirect subsidy. Duties, method of selection, and method of compensation of the independent City Auditor shall be established by ordinance.~~

14.

Natural resources and scenic beauty. It shall be the policy of the City of ~~Miami Beach~~ to conserve and protect its natural resources and scenic beauty, which policy shall include the abatement of air and water pollution and of excessive and unnecessary noise.

(MOVED TO #13) ~~*Representation of public.* The City Commission shall endeavor to provide representation at all proceedings significantly affecting the City and its residents before state and federal regulatory bodies.~~

15.

Nondiscrimination. No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.

(MOVED TO #14) ~~*Natural resources and scenic beauty.* It shall be the policy of the City of Miami Beach to conserve and protect its natural resources and scenic beauty, which policy shall include the abatement of air and water pollution and of excessive and unnecessary noise.~~

16.

Transportation. Though most of the major streets and roads in the city are controlled by state and federal authorities, the City is mindful of the substantial traffic problems that arise during the winter season and when major events take place. In recognition there of the City shall use its best

efforts (within the budget constraints) to improve traffic congestion within the city. Such efforts shall include but not be limited to:

- a. Supplement public transportation provided by Miami Dade County
- b. Provide out of the city parking with direct shuttle service for City employees.
- c. Implement a plan for two way traffic on one way streets when traffic is blocked on the one way street
- d. Train, public safety personnel in traffic control.
- e. Create a dedicated line for citizens to notify the City of traffic congestion.
- f. Create a ready response team of traffic control personnel.
- g. Cause work in the street to be done, if possible, in the off season and at night.
- h. Prohibit developers from closing lanes.

(B)

The foregoing enumeration of citizens' rights vests large and pervasive powers in the citizenry of the City of Miami Beach. Such power necessarily carries with it responsibility of equal magnitude for the successful operation of government in the City. The orderly, efficient and fair operation of government requires the intelligent participation of individual citizens exercising their rights with dignity and restraint so as to avoid any sweeping acceleration in the cost of government because of the exercise of individual prerogatives, and for individual citizens to grant respect for the dignity of public office.

(C)

Remedies for violations. In any suit by a citizen alleging a violation of a Fundamental Right ~~this Bill of Rights~~ filed in the Dade County circuit Court pursuant to its general equity jurisdiction, the prevailing party, if plaintiff, if successful, shall be entitled to recover reasonable attorneys' fees and court costs as fixed by the court. ~~costs as fixed by the court. Any public official or employee who is found by the court to have willfully violated this article shall forthwith forfeit his office or employment.~~

(D)

Construction. All provisions of this article shall be construed to be supplementary to and not in conflict with the general laws of Florida. If any part of this article shall be declared invalid, it shall not affect the validity of the remaining provisions.

(Res. No. 2003-25288, 7-30-03; Res. No. 2003-25391, 7-30-03; Res. No. 2003-25443, 12-10-03; Res. No. 2009-27152, 7-22-09)

~~(MOVED TO #15) **Nondiscrimination.** No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.~~

17. Drainage. The City is and island community and subject to regular flooding caused by rain and anticipates that within a few years rising tides may cause additional flooding. Therefore, the City shall: (a)review the existing pumping and drainage systems (b)create a multi-year plan for the maintenance and improvement of the systems.(c) allocate the resources for effecting the plan."

[Reserved]

18.

~~*Ethics in Government. The public's confidence and trust in City of Miami Beach operations and government must meet the most demanding ethical standards and demonstrate the highest level of achievement in its adherence to ethics laws. City of Miami Beach officials and employees are agents of the people and hold their positions for the benefit of the public as public servants, they are to observe in their official acts a high standard of conduct and to discharge faithfully the duties of their office regardless of personal considerations and interests, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern. In upholding the values of accountability and responsibility, all city officials and employees shall abide by applicable codes of ethical conduct, and be subject to all penalties provided for in such regulations.*~~

FOOTNOTE(S):

-- (2) --

~~*Editor's note—The following footnote to this section on citizen's bill of rights was adopted with the Charter: "Ordinance" means an official legislative action of the Miami Beach City Commission, which action is a regulation of a general and permanent nature and enforceable as a local law. "Resolution" means an expression of the Miami Beach City Commission concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the Miami Beach City Commission. (Back)*~~

March 17, 2014

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
Liliam Hatfield, OAV, City Clerk's Office

Meeting Agenda

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.

1. **APPROVE THE MARCH 10, 2014 CRB MINUTES.**
2. **VOTER REFORM** – Proponent Member Kaplan Roberts. Guest Victor Diaz, Esq. to present
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.
4. **PROTECT U.S. COAST GUARD FROM ENCROACHMENTS** – Proponent Rick Kendle.
5. **TRAFFIC PLAN CONCERNS** – Proponent Chair Zack
6. **CASINO GAMBLING ON MIAMI BEACH** – “Gambling allowed on Miami Beach only if residents approve via Referendum.” Proponent Rick Kendle
7. **REVIEW REVISIONS TO CITIZEN’S BILL OF RIGHTS/DECLARATION OF RIGHT AS SUGGESTED BY PROPONENT RICHARD ALHADEFF** – *Clerk’s Note: Item Withdrawn by Mr. Alhadeff.*

8. ESTABLISH FUTURE MEETING DATES AND TIMES.

a. The following two meetings are currently set:

- Monday, March 24, 2014 – 4:00 p.m. to 7:00 p.m.
- Thursday, April 10, 2014 – 4:00 p.m. to 7:00 p.m.

**TIME PERMITTING, THE FOLLOWING ITEMS MAY BE DISCUSSED
OR ALTERNATIVELY, CARRIED OVER TO THE NEXT MEETING:**

- INSPECTOR GENERAL WITH SUBPOENA POWER** – Discussion lead by Board member Kendle. (Invite Joe Jimenez, Assistant City Manager, and Alek Boksner, First Assistant City Attorney)
- ADDITIONAL FUNCTIONS OF THE CRB – EXTENSION OF JURISDICTION/TIME**
- MIAMI BEACH UNITED'S (MBU) FIVE PRINCIPLES FOR RESIDENT CHARTER RIGHTS AND COMPANION LEGISLATION** (Time Certain to be determined.)
- SECTION 2.02 COMPENSATION – STIPEND AND TAX REPORTS FOR MAYOR AND COMMISSIONERS** (Invite fiancé Department)
- SECTION 2.07 – VACANCIES IN THE CITY COMMISSION** – Item tabled at the 2/21/14 CRB meeting.

Timeframe:

- May 2, 2014 - 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.

ITEM 1

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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

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 serve 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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Granado, Rafael

From: Richard J. Preira <RPreira@smgqlaw.com>
Sent: Monday, March 10, 2014 3:54 PM
To: Granado, Rafael; Steve Zack
Cc: Held, Gary; Granado, Rafael; Hatfield, Liliam; City Clerk's Office
Subject: RE: Agenda for the next Ad Hoc Charter Review Board Meeting

Importance: High

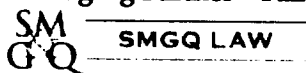
Dear Messrs. Granado and Zack:

I regret that unexpected commitments are impacting my service with the Charter Review Board. I would like to resign from the Board. Please let me know if this decision will impede the progress of the Board. If not, Please let me know the appropriate protocol.

I will not be able to attend the meeting this afternoon.

Best,
Rick Preira

RICHARD J. PREIRA
Managing Partner – Family Law Practice Group



SANCHEZ-MEDINA, GONZALEZ, QUESADA,
LAGE, CRESPO, GOMEZ, MACHADO & PREIRA LLP
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March 5, 2014

**Miami Beach United's Core Principle Amendments to the
Miami Beach City Charter**

1. Residents, and the neighborhood associations that represent them, have sufficient information and opportunity to protect and improve their community's quality of life
2. Information before public boards and provided to residents and neighborhood associations be accurate, complete and accessible in a timely manner via the City's Website so that all parties are apprised of future development or zoning impacts in their community
3. The role of neighborhood associations should be recognized in the City charter and further enforced by City laws
4. The ideals of a fully transparent government and fundamental procedural fairness be enshrined in the City's charter and reinforced by City laws
5. Remedies for violation of the City charter should allow for non-judicial review as an alternative to legal action

TERM LIMITS

PROPOSED CHARTER TEXT

Section 2.02 Term and Compensation.

The term of office of the Mayor shall be two (2) years. The term of office of the City Commissioners shall be four (4) years.

Commencing with the General Election in November ~~1997~~ 2015 (~~excluding individuals holding City of Miami Beach elective office prior thereto for their unexpired terms~~), the term limit for Miami Beach Commissioners shall be two four-year terms ~~eight consecutive years~~ and the term limit for Miami Beach Mayor shall be three two-year terms ~~six consecutive years~~ respectively, measured retroactively from their first elections and said terms shall not include time served as a member of the City of Miami Beach Commission as a result of having filled a vacancy in the Commission pursuant to Section 2.07 of the City of Miami Beach Charter. 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.

The annual compensation for the Office of Commissioner shall be six thousand dollars (\$6,000.00) and the compensation for the Office of Mayor shall be ten thousand dollars (\$10,000.00); any increase in salary for Mayor and/or Commissioner shall require approval of a majority of the electorate voting at a City election.

SECTION 3.01. ELECTION AND COMMENCEMENT OF TERMS OF COUNTY COMMISSIONERS.

- A. The election of the Commissioners from even-numbered districts shall be held in 1994 and every four years thereafter and the election of Commissioners from odd-numbered districts shall be held in 1996 and every four years thereafter at the time of the state primary elections.
- B. A candidate must receive a majority of the votes cast to be elected. Effective with the election for County Commission in 2004, if no candidate receives a majority of the votes cast there will be a runoff election at the time of the general election following the state primary election between the two candidates receiving the highest number of votes. Should a tie result, the outcome shall be determined by lot.
- C. Except as otherwise provided in this Charter, beginning with the elections in 2004, the terms of office of the Mayor and County Commissioners shall commence on the second Tuesday next succeeding the date of the general election in November.
- D. Notwithstanding any other provision of this Charter, effective with the term of Mayor scheduled to commence in October, 1996, no person shall be elected as Mayor for more than two consecutive four-year terms. Neither service as Mayor or County Commissioner prior to the terms scheduled to commence in October, 1996, nor service of a partial term subsequent to October, 1996, shall be considered in applying the term limitation provisions of this section.
- E. Notwithstanding any other provision of this Charter, effective with the term of Commissioners scheduled to commence in 2012, no person shall be elected as Commissioner for more than two consecutive four-year terms. No term of service as a Commissioner commencing prior to 2012 shall be considered a part of or counted toward the two term limit.

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ITEM 2

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Item 2

VOTER REFORM

**A Commission
That Resembles Its Citizens**

Fort Myers News-Press, 21 March 1998

Andrew Reding
Guest Opinion

A commission that resembles its citizens

Frustration is running high on Lee County's barrier islands, the "Lee Island Coast". Collectively, Boca Grande, Captiva, Upper Captiva, Pine Island, Sanibel, Fort Myers Beach, and Bonita Beach pay something like a third of all Lee County taxes. Yet we have no representation we can truly call our own on the County Commission. In a recent survey conducted by the Committee of the Islands on Sanibel and Captiva, dissatisfaction with our nominal representative hit a staggering 98%. That has led to calls for creation of a barrier island county.

There is, of course, no chance the state legislature would approve the creation of a new county. It wouldn't even be a good idea, as it would require the creation of a whole new bureaucracy—new county commission, new sheriff, new school board, new mosquito control district—to serve a string of islands geographically isolated from each other. What's more, we are all neighbors, islanders and mainlanders alike, so that we should be aiming to work together for a better future, not pretending we can split apart.

Yet the frustration felt by our island citizens points to the need for a more inclusive county commission. As John Adams put it, a legislature "should be an exact portrait, in miniature, of the people at large."

Where is representation?

Whatever one thinks of the current Lee County commission, it is anything but a "portrait, in miniature" of the people of this county. There is not one woman on the Commission. There is no African-American or Latino. There is not one Democrat though a third of the voters are Democrats. The last barrier islander to serve was Sanibel's Porter Goss, and he got on through appointment, not election.

In an editorial, the *News-Press* suggested the possibility of increasing the number of commissioners from 5 to 7, as allowed by state law. There is certainly merit in the idea, given the county's rapid growth in population. Yet unless we were to change the method by which we elect commissioners, the only difference is that we would likely end up with seven white Republican men in business suits instead of five white Republican men in business suits. We would be no nearer to a truly diverse, representative commission.

The problem lies in the method of election. Though commissioners must live in their respective districts, they are elected by countywide majorities. With no room for minority representation, it is no wonder there is so little diversity, whether geographic, ethnic, or political.

Two remedies

There are two possible remedies. One would be to elect by district. That could conceivably offer some improvement, though not with current district boundaries, which make little political sense. Sanibel and Captiva, for instance, are bundled with Cape Coral, which is a much larger community, with differing needs and interests. To remedy this problem, we could increase the number of commissioners to seven, and create a barrier island district.

But districting has its own problems. Though it improves geographic representation, it does little to afford representation to minorities, be they ethnic or political. What's more, the power to redistrict is almost invariably abused to create safe seats for incumbents. That restricts competition, and thus democracy.

There is another option, which does not suffer from any of these defects. It is known as choice or preference voting. Under this option, and assuming an increase to seven commissioners, all seven would continue to be elected at-large, as they are now. But they would be elected all at once, and citizens would vote for up to seven candidates, ranking them in order of preference. Any candidate winning one-seventh of the first-choice votes would be elected. The candidate receiving the least first-choice votes would be disqualified, and the corresponding second-choice votes would be redistributed among the remaining candidates, and the process repeated until seven candidates are elected.

That would afford representation to any community of interest that could win one-seventh of the vote. The barrier islands could surely win a seat on the commission in that way; so could African-Americans or Latinos. Women could win at least a couple. So could Democrats.

Without safe districts, there would be no safe seats. There would be no wasted votes, since those whose first choices were disqualified would have their second and third choices influence the outcome. Wherever this method has been used, it has led to increased voter turnout and a legislature that more closely resembles the people it is supposed to represent.

We could have the same in Lee County, bringing us together to build a future we can all be proud of.

Andrew Reding, a registered Republican, was elected to a four-year term on the Sanibel City Council in 1996



[return to index and cover page](#)

Item 2

VOTER REFORM

Instant Runoff Voting (IRV)

INSTANT RUNOFF VOTING (IRV)

A Fairer Way to Conduct Single-Winner Elections

Most U.S. elections are held under plurality voting rules in which the candidate with the most votes wins. If three or more candidates run in the race, then the winner can have less than a majority of the vote. But the question always arises: was that winning candidate really preferred by most voters?

Instant Runoff Voting (IRV) is a sensible reform for elections where one person wins. Examples include elections for governors, mayors, legislatures using single-seat districts, and US president (for allocation of Electoral College electors). Instant Runoff Voting is better than plurality elections because:

- it ensures the election of the candidate preferred by most voters
- it eliminates the problem of spoiler candidates knocking off major candidates
- it frees communities of voters from splitting their vote among their own candidates
- it promotes coalition-building and more positive campaigning

IRV is also better than "two-round" runoff or primary elections, which often result in a change in voter turnout between the two rounds. IRV finishes the job with one election, which means that

- election officials and taxpayers don't have to foot the bill for a second election
- candidates don't have to raise money for two races, providing some campaign finance reform
- the decisive election occurs when voter turnout is highest

How IRV Works: Each voter has one vote, and ranks candidates in order of choice (1, 2, 3, etc.). The counting of ballots simulates a series of run-

off elections. All first choices are counted, and if no candidate wins a majority of first choices, then the last place candidate (candidate with the least first-choices) is eliminated. Ballots of voters who ranked the eliminated candidate first then are redistributed to their next-choice candidates, as indicated on each voter's ballot. Last place candidates are successively eliminated and ballots are redistributed to next choices until one candidate remains or a candidate gains over 50% of votes.

Voters have the option to rank as many or as few candidates as they wish—their favorite candidate first, their next favorite second and so on. Voters have every incentive to vote for their favorite candidate rather than the "lesser of two evils" because their ballot can still count toward a winner if their first choice loses. There also is every reason for a voter to rank as many candidates as they want, since a voter's lower choice will never help defeat one of their higher choices.

IRV is used to elect the parliament in Australia and the presidents of the Republic of Ireland and the American Political Science Association. A related method is used in Cambridge (MA) for city council.

Example: In both 1992 and 1996, Bill Clinton was elected president with less than 50% of the popular vote. IRV could have been used to elect a majority-winner. Here's how it could have worked.

The 1992 Presidential Election — a Simulation			
Candidate	First Choice %	Ballots redistributed to 2nd choices	Final Tally
George Bush	38%	+10%	= 48%
Bill Clinton	43%	+9%	= 52%
Ross Perot	19%	- 19%	X

Assume that of the 19 percent of voters who ranked Ross Perot first, slightly more than half (e.g. 10% of all voters) ranked George Bush second on their ballots, and slightly less than half (e.g. 9% of all voters) ranked Bill Clinton second. When Ross Perot is eliminated, those votes are redistributed. Bill Clinton ends up with 52 percent of the overall vote, a clear majority, and is declared the winner.

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return to index and cover page

Item 2

VOTER REFORM

**Proportional Voting (STV)
In Cambridge, Massachusetts**

Proportional Voting (STV) in Cambridge, Massachusetts

- [Plan E](#)
 - [Proportional Representation](#)
 - [Instructions to the voter](#)
 - [How the PR quota system works](#)
 - [How the ballots are counted](#)
-

Plan E

On 1 June 1938, Massachusetts Governor Charles F. Hurley signed a bill adding a fifth city charter form (Plan E) to the four plans already available. Modeled after a successful Cincinnati charter, Plan E provides for a city manager form of government with proportional representation (PR) elections. Once the bill became law, the Cambridge Committee for Plan E obtained the necessary signatures to put the question on the Cambridge ballot in November 1938.

Plan E advocates said it would mean that a trained administrator and not a politician would run the city. Of PR voting, they said it would guarantee majority rule and at the same time give minorities representation in proportion to their actual strength. Opponents said PR would excite group prejudices and make voting a lottery. They also said the plan would be too expensive and would give too much power to the City Council. Plan E was defeated by 1,767 votes.

Two years later, Plan E was adopted by 7,552 votes, with a winning margin in eight of eleven wards. The first PR election was held in 1941, and the first Plan E government took office in January 1942. Since then, there have been five referenda—in 1952, 1953, 1957, 1961, and 1965—on whether to repeal or retain proportional representation. On each occasion, voters chose to retain it.

As a result, Cambridge has a City Manager form of government with nine Councillors and six School Committee members elected at large by Proportional Representation (PR) for a two year term. After members of the Council take the oath of office in January, they elect one of the nine to serve as Mayor. The Council appoints the City Manager, City Clerk, and City Auditor. The City Manager is the chief administrative officer of the city carrying out policies of the City Council for an indefinite term. The Mayor is the official head of the city for all ceremonial purposes, the presiding officer of the Council when it is in session, and the chairperson of the School Committee.

Proportional Representation

Proportional Representation (PR) is the method by which voters under Plan E elect members of the City Council and School Committee. It ensures minority representation with majority control. Any group of voters that numbers more than one-tenth of the total population can be sure of electing at least one member of a nine-member Council, but a majority group of voters can be sure of electing a majority of the Council.

Proportional Representation requires that the candidates' names be rotated in alphabetical order on the ballot so that each candidate appears in the desirable top-of-the-ballot position on an equal number ballots.

Instructions to the voter

In a PR election you may vote for as many of the candidates listed on the ballot as you wish. You must, however, indicate the order of your preference among the various candidates for whom you vote.

Mark your preferences with numbers only. Put the number "1" next to the name of the candidate who is your first choice. Put the numbers "2", "3", "4", etc. next to the names of other candidates in the order of your preference to indicate your second, third, fourth, etc. choices.

Be careful not to put the same number next to more than one candidate's name as this invalidates the votes cast for those candidates. Your other choices will be counted, however, if they are ranked by preference.

If you mark an X or put a check mark next to all candidates' names, your entire ballot becomes invalid and cannot be counted.

How the PR quota system works

Proportional representation or PR is the form of voting used by Cambridge under the Plan E form of government. Under PR a candidate needs to win a certain proportion of the the votes to be elected. This winning fraction of the votes is referred to as the "quota".

The quota is determined by dividing the total number of valid ballots cast by the number of positions to be elected plus one and then adding one to the resulting dividend.

Thus, to elect 9 City Councillors, the total number of valid ballots cast is divided by 10; to elect 6 School Committee members, the total is divided by seven. And in both cases 1 is added to the result of the division.

For example, if 25,000 valid ballots are cast for City Councillors, the quota will be 2,501 (25,000 divided by ten, plus 1).

How the ballots are counted

The count begins with the sorting of ballots by the first preference shown. This is known as the "First Count."

Any candidates who reach the necessary quota with Number 1 votes are declared elected. Any extra ballots they receive beyond the quota, referred to as the "surplus," are redistributed to the candidates marked next in preference on those surplus ballots according to the "Cincinnati Method."

After the surplus is redistributed, the count continues with the elimination of those candidates who received fewer than fifty votes in the first count. Their ballots are redistributed to the remaining unelected candidates according to the next preference marked.

After each distribution, the candidate now having the lowest number of votes is eliminated and his/her ballots are redistributed to the next

indicated preference among the remaining unelected candidates.

As candidates “reach quota” through the addition of redistributed ballots to their totals, they are declared elected and no further ballots are transferred to them.

This process continues until all candidates have been eliminated except the nine winners.



return to [index and cover page](#)

Item 2

VOTER REFORM

Types of Electoral Systems

Types of Electoral Systems

electoral system	districts	type	description
first-past-the-post (FPTP)	single-member	plurality	The candidate that obtains more votes than any other is elected, even if that person only won a minority of votes cast
two-round system (TRS)	single-member	majority	A runoff election is held between the two top vote-getters, in order to ensure that the winner obtains a majority of votes cast
alternative vote (AV), or instant runoff	single-member	majority	Voters indicate an order of preference among candidates. If no candidate obtains a majority outright, the last-place candidate is removed, and the associated second-choice votes are added to the totals of the remaining candidates. The process is repeated until a candidate secures a majority.
block vote (BV)	multiple-member	plurality	Voters may cast as many votes as there are open seats. If there are n seats to be filled, the top n vote-getters are elected
single non-transferable vote (SNTV)	multiple-member	semi-proportional	Voters can only cast a single vote among candidates for n seats. The top n vote-getters are elected.
single transferable vote (STV), also known as preference or choice voting	multiple-member	proportional	Voters indicate an order of preference among candidates. Candidates whose first-choice vote totals attain the Hare Quota— $(\text{votes cast}/n+1) + 1$ —are elected. The last-place candidate is removed, and the associated second-choice votes are added to the totals of the remaining candidates. The process is repeated until all n seats are filled.
			The legislature consists of a block of seats that are elected by plurality or majority from single-member districts,

mixed member proportional (MMP)	mixed	proportional	and another block of seats that are elected in multi-member districts under a proportional system. The proportional seats are awarded in such a way as to compensate for disproportional effects in the single-member district outcomes.
parallel	mixed	semi-proportional	The legislature consists of a block of seats that are elected by plurality or majority from single-member districts, and another block of seats that are elected in multi-member districts under a proportional system. The proportional seats are awarded independently of the outcomes in single-member districts.
party list	multiple-member	proportional	Voters choose from among party lists, and seats are awarded in proportion to the vote received by each party. Candidates are seated in the order listed.



return to [index and cover page](#)

Item 2

VOTER REFORM

What is Proportional Representation?

What Is Proportional Representation?

Proportional representation (PR) voting systems are **used by most of the world's major democracies**. Under PR, representatives are elected from multi-seat districts in proportion to the number of votes received. PR assures that political parties or candidates will have the percent of legislative seats that reflects their public support. A party or candidate need not come in first to win seats.

In contrast, in the United States we use “winner-take-all” single seat districts, where votes going to a losing candidate are wasted, even if that candidate garners 49.9% of the vote. This leaves significant blocs of voters unrepresented. Voters sense this, and so often we do not vote for a candidate we like, but rather the one who realistically stands the best chance of winning—the “lesser of two evils.” Or, all too often, we don't bother to vote at all.

No wonder that, among the 21 democracies in Western Europe and North America, the United States is next to last in voter turn-out, with only 36% participating in the 1994 Congressional elections.

What Are The Advantages Of PR?

Greater voter turn-out (typically 70-90%) because there are more choices for voters—third, fourth, fifth parties and more from diverse perspectives including more women and minorities elected:

- 41% women in Sweden
- 39% in Finland
- 36% in Norway
- only 11% in the U.S.

This leads to:

- more diverse representation
- cleaner campaigns run on the issues, not mud-slinging

- reduced effects of big money

Where In The World Is PR Used?

Some form of PR is used by most of the world's major democracies, including:

- Germany
 - Sweden
 - Switzerland
 - Belgium
 - Denmark
 - Holland
 - Greece
 - Spain
 - Austria
 - Australia
 - Mexico
 - Portugal
 - Japan
 - Russia
 - Italy
 - Ireland
 - Israel
 - Poland
 - Hungary
 - New Zealand
 - Iceland
 - Brazil
 - Nicaragua
 - Norway
 - Finland
 - Venezuela
- and more...*

“Winner-take-all” is still used in France, Great Britain, and a few of Britain’s former colonies that inherited it: the United States, Canada, and

India.

In April 1994 South Africa became the latest nation to switch to PR. In 1993 New Zealand, Japan, Russia and Mexico adopted a form of PR. Significantly, only a few of the former Soviet Bloc countries, including Russia, have chosen to model their emerging democracies after the “winner-take-all” model. Almost all have adopted some form of PR because they recognize the obvious: PR is a fairer, more flexible, more modern electoral system than the antiquated eighteenth century “winner-take-all” method.

Is PR The Same As A Parliamentary System?

No, it isn't. A parliamentary system is a type of governmental system, while PR is a type of voting/electoral system. One is about the structure of government, the other about how votes are counted. Many, but not all, of the countries using PR combine it with a parliamentary governmental system. But this does not have to be the case, and a PR electoral system could successfully be combined with the U.S. presidential system.

Has PR Been Tried In The U.S.?

Various forms of PR are used today to elect the city councils of Cambridge MA, Peoria IL, Alamogordo NM, various cities and counties in Alabama and Texas, the community school boards in New York City, the Democratic presidential primaries, various corporate boards, and the finalists for the Academy Awards.

The preference voting form of PR was first tried in the U.S. **earlier this century**. PR was first tried in the U.S. in the 1920's and worked very well in 24 cities like New York City, Boulder, Cincinnati, Cleveland, and Cambridge, MA. Both the majority and various political and racial minorities gained representation where their voices had previously been unheard. Although only two of the first 26 attempts to repeal preference voting were successful in cities around the country, formerly dominant political forces outlasted reformers and were successful in repealing PR nearly everywhere. Their general tactic was targeting unpopular minorities like blacks and leftists.

So How Does PR Work?

There are many different types of PR, because it is a flexible system that may be adapted to the situation of any city, state or nation. Here are a few of the most common:

- **List System**—by far the most widely used form of PR. The voter selects one party and its slate of candidates to represent them. Party slates can be either “closed” or “open,” allowing voters to indicate a preference for individual candidates. If a party receives 30% of the vote, they receive 30% of the seats in the legislature, 10% of the vote receives 10% of the seats, and so on. A minimum share of the votes can be required to earn representation; typically a 5% threshold is used. This type of PR is ideal for large legislatures on state and national levels.
- **Mixed Member System (MM)**—This PR hybrid elects half the legislature from single-seat, “winner-take-all” districts and the other half by the List System. Mixed-member smoothly combines geographic, ideological and proportional representation.
- **Preference Voting (PV)**—the voter simply ranks candidates in an order of preference (1,2,3,4, etc...). Once a voter’s first choice is elected or eliminated, excess votes are “transferred” to subsequent preferences until all positions are filled. Voters can vote for their favorite candidate(s), knowing that if that candidate doesn’t receive enough votes their vote will “transfer” to their next preference. With preference voting, every vote counts and very few votes are wasted. Preference voting is ideal for non-partisan elections like city councils. This method is also called “Single Transferrable Vote” or “STV”.

What About The President? We Can’t Divide Up The Presidency, Can We?

No, we can’t. However, there are much better ways for electing officials such as president, mayor, or governor than what we use today:

- **Majority preference voting (MPV)**—related to preference voting. Like preference voting, the voter simply ranks candidates in an order

of preference (ex. 1. Perot 2. Clinton 3. Bush). The candidate with the least number of first place votes is eliminated, and their votes are “transferred” to their 2nd choice until a candidate has a majority.

- **Approval**— Voters are allowed to vote for *all* candidates they approve. For example, Bush-Yes Perot-No Clinton-Yes. The candidate with the highest number of “yes” votes wins. For a more complete explanation, see <http://bcn.boulder.co.us/government/approvalvote/center.html>
- **Condorcet’s Method** — Like preference voting and majority preference voting, the voter simply ranks candidates in an order of preference (ex. 1. Perot 2. Clinton 3. Bush). Unlike majority preference voting though, several two-way races are simulated using the ballots, determining who would win a Perot/Clinton race, who would win a Perot/Bush race, and who would win a Bush/Clinton race. The one who wins all of the pairwise elections wins. For a more complete explanation, see <http://www.eskimo.com/~robla/politics/condorcet.html>

All of these methods give voters a greater voice in how their vote is used, and alleviate the “lesser-of-two-evils” problem for voters. Our current winner-take-all system promotes candidates who blame all of our problems on those who would never vote for them, and punishes candidates who come up with pragmatic, middle-ground solutions.

Could PR Help Break The Political Impasse In The U.S. Over Important Issues Like Health Care?

Yes, it could. PR allows small parties to be a credible alternative to voters, giving them a national audience for their views to advance new ideas. PR had no ideological bias, but simply facilitates a fuller and more informed discussion of policy options; this more grounded discussion in turn provides greater opportunities to move to majority consensus on difficult issues.

An example of this is the German Greens. Without ever winning a single district election or receiving more than 10% of the national vote, the German Greens were able to see several of their environmental positions

become part of a national consensus. PR allows majorities to make policy while also bringing minority perspectives to the table for consideration.

But I Like Having A Representative From My Own District. Won't I Lose Out Without It?

A representative from your own district is nice, but with “winner-take-all” there’s a good chance you didn’t vote for that representative. In the 1994 Congressional elections, only 21% of eligible voters helped elect someone. Under PR, you will have, not one, but several representatives from a larger district. And there is a much greater likelihood that at least one of those reps will be someone you voted for. In South Africa’s 1994 PR elections, 86% of eligible voters helped elect someone.

Also, the mixed-member form of PR used by Germany can give voters the benefits of both: a representative from your district, as well as a legislature that proportionally reflects the electorate.

PR doesn’t base representation so much on geography but on political viewpoint. When our republic was young and dotted with small communities barely connected by slow communication and primitive transportation, the interests of citizens were similar to those of their neighbors. But our society is more mobile now, more multicultural and diverse. People living right next door to one another can have completely opposite viewpoints, yet with our single seat “winner-take-all” districts, only one of these voters will receive representation—the one that voted for the winner. Simple geographical representation can no longer ensure fair political representation for all voters and all political perspectives.

What’s Wrong With Only Two Parties?

Two parties limit the voters’ choices. U.S. citizens would never accept an economic system that allowed us to buy cars from only two companies, or to choose from only two airlines. Why then, should we have to settle for just two options in politics? It’s no wonder such a large portion of the U.S. electorate decides not to participate. They’re not buying what the two parties are selling!

The logjam and partisan bickering of U.S. politics is partly the result of the winner-take-all two-party system, where each party says everything they do is right and the other party does is wrong. The optimum campaign strategy is to sling mud at your opponent, driving their voters to your party. New ideas and solutions have a hard time percolating to the surface in such an environment. But this dynamic is not so advantageous when there are three or more parties.

Winner-take-all elections are also more susceptible to the corruption of big money. A majority of votes is a lot of votes to win, and a candidate has to plaster her or his name and face over every billboard, bumper sticker and TV ad. Since so much is at stake—you either win the seat or you lose—there is an urgency to spend lavishly.

But with PR you don't have to come in first to win seats. Whatever proportion of votes your party wins, you get that many seats in the legislature. PR actually reduces the number of votes it takes for a party or candidate to win a seat. Candidates tend to run cleaner, more positive, issue-oriented campaigns, targeted at a particular constituency. Such campaigns require less money to win seats.

Could PR Help In Voting Rights Cases?

Absolutely. With PR, you actually need less votes to gain a seat than in the winner-take-all system, and you can gather these votes from a larger area. This makes it easier for racial or political minority perspectives to win seats, **without** having to gerrymander districts.

In June 1995, the U.S. Supreme Court ruled in *Miller v. Johnson* that racially gerrymandered districts are unconstitutional. Voting rights experts like Lani Guinier, Ed Still, Gerald Hebert, Pamela Karlan and Richard Engstrom have proposed various forms of PR as a race-neutral method to give racial as well as political minorities and women a fair chance to elect representatives in competitive elections.

Does PR Affect The Election of Women?

Yes, very much so. Research has shown that systems of proportional

representation result in greater numbers of elected women, and that greater numbers of women are elected in multi-seat rather than single-seat districts. Women currently make up only 11% of the U.S. House of Representatives and 8% of the U.S. Senate. In state and local legislatures, women average only one out of five legislators. According to United Nation reports, the United States ranks 24th of 54 western democracies in terms of women's representation in national legislatures. In fact, scholars have demonstrated that the underrepresentation of blacks is largely an underrepresentation of black women. African American women have only about one fourth the representation of black men.

So How Do We Change From "Winner-Take-All" To PR?

In many states it is possible to convert to PR simply by changing applicable laws. Amendments to the U.S. Constitution are not required. The laws can be changed by a simple vote of the legislatures, or in many cases via a voter initiative. PR can be adapted to local, state and national levels, bringing the democratic promise of "one person, one vote" closer to fulfillment.

If the political will could be mobilized, it is possible to convert immediately to a system of proportional representation for electing representatives to city councils, state legislatures, and even the U.S. House of Representatives. U.S. Senators could be elected by Majority Preference Voting (MPV), giving voters more choice. As a bonus, PR would spare states the torment of legislative redistricting, an arduous, bitter and partisan gerrymandering affair.

Where Can I Learn More About Proportional Representation?

Here's a reading list we've assembled about PR:

- *Real Choices, New Voices*. Douglas Amy; Columbia University Press, 1993
- *Tyranny of the Majority*. Lani Guinier, 1994

- *Electoral Systems and Party Systems* Professor Arend Lijphart; Oxford University Press, 1994
- *United States Electoral Systems: Their Impact on Women and Minorities*. editors Dr. Wilma Rule and Dr. Joseph Zimmerman; Praeger Publishers, 1992
- *Voting and Democracy Report, 1995*. CVD's survey of electoral reforms.
- *Dubious Democracy: 1994 U.S. House Elections*. CVD's groundbreaking statistical analysis showing reasons for low voter turnout
- "A Radical Plan to Change American Politics" by Michael Lind, *Atlantic Monthly*, August 1992
- *Choosing an Electoral System*, edited by Arend Lijphart and Bernard Grofman, Praeger Press, 1984.
- *The Power to Elect*, Enid Lakeman, Heinemann Press, 1982.
- *Seats and Votes*, Rein Taagepera and Matthew Shugart; Yale Univ Press, 1989.
- *PR: The Key to Democracy*, George Hallett; National Municipal League, 1940.
- *Considerations on Representative Government*, John Stuart Mill; Park, Son and Bourn, 1861.
- *Women, Elections and Representation*, by Robert Darcy, Susan Welch and Janet Clark; Longman Press, 1987.

A full bibliography is available from The Center for Voting and Democracy for \$1.

How Can I Get Involved In the Proportional Representation Movement?

You can get involved by becoming a member of the Center for Voting and Democracy.

The Center for Voting and Democracy is a non-profit organization dedicated to educating U.S. citizens about the impact of voting systems and the benefits of PR. Contact the national office or our west coast office for more information about PR and about how to get involved in the national and local efforts to bring PR to the United States.

For only \$15, you can receive our quarterly newsletter, as well as regular

updates about the rapidly growing PR movement in the United States.

Center for Voting and Democracy

6905 Fifth St. NW Suite 200

Washington, D.C. 20012

Tel. (202) 882-7378

email: cvdusa@aol.com

Web: <http://www.igc.apc.org/cvd>

Center for Voting and Democracy-West

1124 Anza Street

San Francisco, CA 94118

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email: shill@igc.apc.org



return to [index and cover page](#)

Item 2

VOTER REFORM

**Making Every Vote Really Count
“Winner take all” isn’t fair -**

Los Angeles Times, 17 July 1994, M5

Making Every Vote Really Count

“Winner take all” isn’t fair—a proportional system would offer minority voices a chance for representation

by **Andrew Reding**

Among the most pressing problems confronting Deval Patrick as the new assistant attorney general for civil rights is how to respond to the growing number of federal court decisions casting doubt on the constitutionality of racially delineated legislative districts.

The challenges began a year ago, when, in a case involving congressional redistricting in North Carolina, several Supreme Court justices signalled their discomfort with racially determined districts, noting an unfortunate irony in using a form of electoral “apartheid” to solve problems of inadequate representation. In December, a three-judge court of Appeals ruled unanimously that Louisiana’s 4th congressional district, which snakes along the state’s borders for 600 miles, is an unconstitutional racial gerrymander. On instructions from the Supreme Court, another three-judge federal panel is presently reviewing the constitutionality of two “majority-minority” districts in North Carolina. One of these, the 12th congressional district, which meanders along three interstate highways to connect majority black communities, was the one described by Justice Sandra Day O’Connor in her majority opinion as bearing “an uncomfortable resemblance to political apartheid.”

The easiest response to these challenges would be a reflexive—and aggressive—defense of the present system. Liberal editorialists and civil rights organizations are already trying to characterize the choice as limited

to upholding the status quo or returning to the bad old days of minority exclusion. There are, however, other options.

Rather than try to defend a flawed system, the Justice Department should seize the opportunity to pursue more effective strategies for achieving equitable representation. For not only do black and Latino districts tend to reinforce and legitimate patterns of racial segregation; they also reproduce the injustice they seek to remedy, by denying representation to other minorities within the so-called minority district.

The essential problem is that the very nature of our "winner take all" electoral system discriminates against minorities, and no satisfactory way has been found to fix it. As illustrated by a Florida redistricting case, in which blacks and Latinos have been battling over mutually exclusive plans to secure an additional seat in the state senate, there is no way to draw district boundaries that does not shift the burden of uneven representation from one group of citizens to another. And gerrymandering, as in Louisiana's 4th congressional district and North Carolina's 12th congressional district, invites ridicule, if not hostility.

Simple justice demands a more equitable system, one designed to assure equal representation to every citizen, regardless of race, creed, political orientation, or ethnicity.

With that in mind, the vast majority of the world's democracies have adopted forms of proportional representation. Under proportional representation, single-member districts are replaced by multiple-member districts, and seats are assigned in proportion to the percentage of votes received. Thus in a five-member district, a ticket that wins 20% of the vote is entitled to one seat, one that wins 40% gets two seats, and so on. With some variations, this is how legislators are elected in Germany, Sweden, Spain, Costa Rica, Ireland, and dozens of other countries, without need of gerrymandering to ensure pluralism.

Conventional wisdom holds that proportional representation could not be introduced in the United States because it requires voting for political parties instead of individuals. Though "party list" systems are indeed common in Europe, they represent but one form of proportional representation. An alternative form known as the single transferable vote

(STV) is, like our existing political system, centered not on parties but on candidates.

Under STV, which is now used in Ireland, Malta, and Australia, voters rank candidates in order of preference. In our hypothetical five-member district, the candidates who obtain at least 20% of the first-choice votes are elected. The remaining seats are filled by consulting successive choices, subject to the same 20% threshold. This ensures proportional representation of significant minorities while preserving majority rule (since a ticket that receives 60% of the vote will win three of the five seats). It also avoids racial and ethnic discrimination.

Best of all, STV transfers more power to the citizen. There is no presumption that members of any given ethnic group will always want to vote on the basis of their ethnicity. Minorities of all types—political as well as ethnic and religious—are guaranteed the voice they are entitled to in the shaping of laws and policies that affect all alike.

STV would also free voters from the strictures of the two-party system. Since candidates would not need to win pluralities in order to be elected, third-party and independent candidacies would become viable. With 20% of the vote, a third party could elect something like one-fifth the House of Representatives.

Furthermore, since all votes under STV count toward the outcome, none are wasted. There is little pressure to vote for “lessers of evils,” and less incentive for the disaffected to not vote at all.

The fact that every vote affects the outcome equally under proportional representation has the additional advantage of eliminating the swing factor—that 5% or so of the vote that often tips a close election one way or the other. The heavy spending and negative advertising that have come to characterize U.S. campaigns are targeted at the small swing vote. By abolishing winner-take-all, proportional representation removes the 95% gain that can result from a 5% swing, greatly diluting the impact of money.

Significantly, there are no constitutional obstacles to electing the House of Representatives and most state legislatures by proportional representation. The Constitution only mandates that states maintain separate

representation in Congress, in keeping with the postulates of federalism. Thus California, with 52 representatives, could divide itself into eight five-member and two six-member districts. North Carolina, with 12 seats, could set up two six-member districts. Louisiana, with seven seats, could form a single seven-member district. Should blacks, Latinos or Asians in any of these districts wish to elect members of their own ethnic groups, they would then need only 15% to 20% of the vote in each district to elect one representative (30% to 40% to elect two representatives). Hence the objective of achieving a Congress and state legislatures that look like America could be achieved without separating the country into racial enclaves.

Andrew Reding directs the Americas Project of the World Policy Institute



[return to index and cover page](#)

**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."

* * *

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~~ 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.

* * *

*Requested by City Commissioner Joy Malakoff.

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
Liliam 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.

MIAMIBEACH

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(Vacant)

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Gary M. Held, First Assistant City Attorney
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Meeting Agenda

Monday, March 24, 2014 at 4:00 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.

1. **APPROVE THE MARCH 17, 2014 CRB MINUTES.**
2. **REPORT ON COMMISSIONER MALAKOFF'S MEMORANDUM REGARDING THE LEGAL OPINION THAT HOLDS THAT COMMISSIONER MALAKOFF'S PROPOSED CHARTER AMENDMENT TO THE PROVISIONS GOVERNING THE HISTORIC PRESERVATION BOARD SET FORTH IN CITY CODE CHAPTER 118 DO NOT REDUCE THE POWERS AND DUTIES OF THE CITY'S HISTORIC PRESERVATION BOARD OR CREATE LESS STRINGENT HISTORIC PRESERVATION STANDARDS AND REGULATIONS, AND THUS DO NOT TRIGGER THE REFERENDUM REQUIREMENT OF CHARTER SECTION 1.06.**
No Action Needed.
3. **TRAFFIC - CITIZENS OF MIAMI BEACH HAVE THE RIGHT TO REASONABLE ACCESS TO THEIR ROADS** - Proponent Chair Zack
4. **PROTECT U.S. COAST GUARD FROM ENCROACHMENTS** – Proponent Rick Kendle.
5. **DISCUSS WHETHER CHARTER QUESTIONS SHOULD BE PLACED ON PRIMARY ELECTION BALLOT OF AUGUST 26, 2014 OR GENERAL ELECTION BALLOT OF NOVEMBER 4, 2014.**

6. **DISCUSS CRB REPORT TO CITY COMMISSION FOR APRIL 23, 2014 CITY COMMISSION MEETING (CRB SUNSETS MAY 2, 2014; CITY COMMISSION TO CONSIDER CRB REPORT AT APRIL 23, 2014 MEETING AS RESOLUTIONS PLACING CHARTER QUESTIONS ON THE AUGUST 26, 2014 BALLOT MUST BE PLACED ON THE MAY 21, 2014 CITY COMMISSION AGENDA.)**
7. **ESTABLISH FUTURE MEETING DATES AND TIMES.**

THE FOLLOWING MEETING IS CURRENTLY SET:

Thursday, April 10, 2014 – 4:00 p.m. to 7:00 p.m.

TIME PERMITTING, THE FOLLOWING ITEMS MAY BE DISCUSSED OR ALTERNATIVELY, CARRIED OVER TO THE NEXT MEETING:

- a. **INSPECTOR GENERAL WITH SUBPOENA POWER** – Discussion lead by Board member Kendle. (Invite Joe Jimenez, Assistant City Manager, and Alek Boksner, First Assistant City Attorney)
- b. **ADDITIONAL FUNCTIONS OF THE CRB – EXTENSION OF JURISDICTION/TIME**
- c. **MIAMI BEACH UNITED'S (MBU) FIVE PRINCIPLES FOR RESIDENT CHARTER RIGHTS AND COMPANION LEGISLATION** (Time Certain to be determined.)
- d. **SECTION 2.02 COMPENSATION – STIPEND AND TAX REPORTS FOR MAYOR AND COMMISSIONERS** (Invite Finance Department)
- e. **SECTION 2.07 – VACANCIES IN THE CITY COMMISSION** – Item tabled at the 2/21/14 CRB meeting.
- f. **CASINO GAMBLING ON MIAMI BEACH** – Proponent Rick Kendle deferred the item until State Legislature takes action.

TIMEFRAME:

- **April 23, 2014** – Last Regular City Commission meeting before CRB sunsets; CRB recommendation to be presented.
- **May 2, 2014** – CRB Sunsets.
- **May 21, 2014** – Last Regular City Commission meeting to consider resolutions calling for Special Election on **August 26, 2014** for ballot questions. (Commission meeting no later than June 6, 2014 for passage of Resolution(s) calling for an August 26, 2014 Special Election); and
- **July 23, 2014** – Last Regular City Commission meeting to consider resolutions calling for Special Election on **November 4, 2014** for ballot questions. (Commission meeting no later than August 5, 2014 for passage of Resolution(s) calling for a November 4, 2014 Special Election.)

MIAMI BEACH

AD HOC CHARTER REVIEW BOARD MEETING NOTICE

NOTICE IS HEREBY given that the Miami Beach Ad Hoc Charter Review Board will meet on the following dates:

DATE	TIME	LOCATION
March 24, 2014	4:00 PM	City Hall/City Manager's Large Conference Room
April 10, 2014	4:00 PM	City Hall/City Manager's Large Conference Room

City Hall is located at 1700 Convention Center Drive, Miami Beach, Florida, 33139.

Pursuant to Section 8.01 of the Miami Beach City Charter, review of the Charter shall occur every ten years. The Miami Beach Ad Hoc Charter Review Board (CHRB) has been formed for the purpose of reviewing the City Charter, seeking public input thereon, and eventually presenting its recommendation to the Miami Beach City Commission.

Please visit the Miami Beach Ad Hoc Charter Review Board's website for the latest meeting information and agendas: <http://www.miamibeachfl.gov/hocril.aspx?id=72572>

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to CharterReview@miamibeachfl.gov or by mail to Miami Beach Ad Hoc Charter Review Board, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Inquiries may also be directed to the City Clerk at 305.673.7411.

One or more members of the Miami Beach City Commission may be in attendance and participate in discussions.

Rafael E. Granada, Esq., City Clerk

Pursuant to Section 288.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by this Board with respect to any matter considered at this meeting or hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact us five days in advance at 305.673.7411 (voice) or TTY users may also call the Florida Relay Service at 711.

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MIAMI BEACH

AD HOC CHARTER REVIEW BOARD

Members:

Stephen Zack, Esq., Chair
Jonathan Beloff, Vice-Chair
Richard Alhadef
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 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 City staff needs to identify what variances appear on the plans. Discussion continued. There are two standards for variances in the Related Special Acts. 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 the strict hardship standard. The standard as applied is what impact this will generate in neighborhoods and the

objective is taking the practical difficulty standard and 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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MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: City of Miami Beach Charter Review Board
FROM: Joy V. W. Malakoff, Commissioner
DATE: March 19, 2014
SUBJECT: Your March 24, 2014 agenda

Please note that the City Attorney's Office has opined that my proposed amendments to provisions governing the Historic Preservation Board set forth in City Code Chapter 118 do not "...reduce the powers and duties of the City's Historic Preservation Board, or create less stringent historic preservation standards or regulations...", and thus do not trigger the referendum requirement of Charter section 1.06.

Accordingly, inasmuch as discussion held at last week's CRB meeting required placement on today's agenda of my proposed Code amendments to HPB in the event said amendments were subject to public vote, in light of the above legal opinion, said matters will now proceed to placement on a future City Commission agenda for its consideration.

I again thank the Board for its thoughtful consideration and approval of my proposed amendments to the City's Special Related Acts and to City Code section 2-459 presented at last Monday's meeting.

JVWM

ITEM 2

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The City recognizes U.S. Coast Guard Base Miami Beach as an area of critical economic, safety and military concern to the City. Changes to zoning, for any property within a 1400 ft radius of the base, must not adversely impact the mission and readiness of the U.S. Coast Guard.

option 1

Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, hurricanes, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood and hurricane protection, schools, parks, playgrounds, recreational facilities, and other public requirements; (v) to protect against destruction of or encroachment upon historic areas; (vi) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, hurricane, panic or other dangers; (vii) to encourage economic development activities that provide desirable employment and enlarge the tax base; (viii) to provide for the preservation of lands of significance for the protection of the natural environment; (ix) to provide for a pedestrian friendly city; (x) to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of Miami Beach; and (xi) to provide reasonable protection against encroachment upon the United States Coast Guard military base, and its adjacent safety areas.

option 2

MIAMI BEACH

AD HOC CHARTER REVIEW BOARD (CRB)

Members:

Stephen Zack, Esq., Chair
Jonathan Beloff, Vice-Chair
Richard Alhadef
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 Counsel
Rafael E. Granado, City Clerk
Lilliam Hatfield, OAV, City Clerk's Office

Meeting Agenda

Thursday, April 10, 2014 at 4:00 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 Board may move any agenda item to another meeting date. In addition, the members of the Charter Review Board may, at their discretion, adjourn the Charter Review Board meeting without reaching all agenda items.

1. **APPROVE THE MARCH 24, 2014 CRB MINUTES.**
2. **MIAMI BEACH UNITED'S (MBU) PRINCIPLES FOR RESIDENT CHARTER RIGHTS AND COMPANION LEGISLATION** – MBU representatives Mark Needle, Christine Florez and Nancy Liebman will be present.
3. **INCOME/STIPEND TAX REPORTING FOR MAYOR AND COMMISSIONERS** – Georgie P. Echert, Assistant Finance Director to report. *For information only; no action necessary.*
4. **CITIZENS' BILL OF RIGHTS, SECTION (C) REMEDIES FOR VIOLATIONS: FORFEITURE OF OFFICE** – Jean Olin, CAO Outside Counsel and Donald Papy, Chief Deputy City Attorney to present.
5. **SECTION 2.02. – TERM – (TERM LIMITS)** – Proponent Commissioner Joy Malakoff – Jean Olin, CAO Outside Counsel to present.
6. **SECTION 2.04. – INDUCTION AND MEETINGS** – Debora Turner, First Assistant City Attorney to present.

7. **SECTION 2.07. – VACANCIES IN CITY COMMISSION** – Jean Olin, CAO, Outside Counsel to present.
8. **SECTION 6.04. – VACANCY IN CANDIDACY** – Jean Olin, CAO Outside Counsel to present.
9. **ESTABLISH FUTURE MEETING DATES AND TIMES, IF DEEMED NECESSARY.**

TIMEFRAME:

- **April 23, 2014** – Last regularly scheduled City Commission meeting before CRB sunsets; CRB recommendations/Final Report to be presented.
- **May 2, 2014** – CRB Sunsets.
- **May 21, 2014** – Last regularly scheduled City Commission meeting to adopt resolutions calling for City Special Election for **August 26, 2014** for Charter amendment ballot questions. (Per County Elections Department, last date by which City Commission may adopt a resolution placing a Charter amendment on the August 26th ballot is June 6, 2014); and
- **July 23, 2014** – Last regularly scheduled City Commission meeting to adopt resolutions calling for City Special Election for **November 4, 2014** for Charter amendment ballot questions. (Per County Elections Department, last date by which City Commission may adopt a resolution placing a Charter amendment on the November 4, 2014 ballot is August 5, 2014.)

ITEM 1

**Approve Charter Review Board
Minutes of March 24, 2014**

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MIAMI BEACH

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
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Meeting Minutes

Monday, March 24, 2014 at 4:00 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 4:03 p.m. by Vice-Chair Beloff.

Roll call taken. All Board members are present with the exception of Chair Zack and Member Kendle. Chair Zack had previously communicated that he would be arriving late.

Also present: Commissioner Joy Malakoff.

Rick Kendle arrived at 4:05 p.m.
Stephen Zack, Esq., Chair, arrived at 4:10 p.m.

In response to an inquiry from the Board, Rafael E. Granado, City Clerk, advised that the vacancy left by former Board Member Richard Preira has not been filled.

1. APPROVE THE MARCH 17, 2014 CRB MINUTES.

ACTION: Minutes approved as amended.

CORRECTION TO THE MINUTES:

Member Kaplan Roberts stated that on Page 9, second paragraph from the top, the last sentence should read: Ms. Kaplan Roberts is in support of doing away with the groups and is not in favor of districts. Discussion continued.

MOTION 1:

Motion made by Member Alhadeff; seconded by Member Kaplan Roberts to approve the minutes as amended; Voice-vote: 4-0. Absent: Chair Zack and Member Kendle.

Attorney Turner announced that Gary Held, First Assistant City Attorney, had additional revisions to the minutes.

Motion to reopen the approval of the minutes for further amendment was made by Member Kaplan Roberts; seconded by Member Kendle. Voice-vote: 5-0. Absent: Chair Zack.

New Language to replace language on Page 10, last paragraph

Gary Held, First Assistant City Attorney, stated that when the authority to approve variances is transferred to the DRB and HPB, staff will need to identify what variances appear on the plans. There cannot be a situation where applicants present plans on which variances are not identified, and they argue later that 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 Related Special Acts governing the Board of Adjustment (BOA): one is the variance standard of hardship and the second is the practical difficulties standard. The BOA has been functioning as more of a compatibility board rather than a hardship board. 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 was held regarding criteria, granting of variances and hardship.

Commissioner Malakoff suggested that the Legal Department work on codifying criteria regarding practical difficulties. **Gary M. Held, First Assistant City Attorney to handle.**

Mr. Held added that the courts are not willing to accept a Board decision based upon practical difficulties, unless there are criteria. More work needs to be done and they are working on it. In addition, it is a Land Development Regulations (LDR) amendment, not a Charter amendment, which goes to the Planning Board first and then to the City Commission.

FINAL MOTION TO APPROVE MINUTES AS AMENDED

Motion to approve the minutes as amended made by Member Alhadeff; seconded by Member Johnston, including the corrections stated earlier by Member Kaplan Roberts and language clarification as reported by First Assistant City Attorney Gary Held; Voice-vote: 5-0; Absent: Chair Zack.

Member Kaplan Roberts asked if a Charter amendment is needed regarding the sharing of FAR. Mr. Held stated that there was a Legal opinion by the City Attorney issued on Friday that goes a long way to resolving that issue; the other issue is the absence of a definition of unified development site, which is in the LDR and requires an LDR amendment to correct. There may be other plans in the works to provide for the sharing of the FAR, such as overlay

districts, but that would require a Code and possibly Charter amendment. Discussion continued regarding transfer of FAR.

2. REPORT ON COMMISSIONER MALAKOFF'S MEMORANDUM REGARDING THE LEGAL OPINION THAT HOLDS THAT COMMISSIONER MALAKOFF'S PROPOSED CHARTER AMENDMENT TO THE PROVISIONS GOVERNING THE HISTORIC PRESERVATION BOARD SET FORTH IN CITY CODE CHAPTER 118 DO NOT REDUCE THE POWERS AND DUTIES OF THE CITY'S HISTORIC PRESERVATION BOARD OR CREATE LESS STRINGENT HISTORIC PRESERVATION STANDARDS AND REGULATIONS, AND THUS DO NOT TRIGGER THE REFERENDUM REQUIREMENT OF CHARTER SECTION 1.06.

ACTION: *No action needed.*

Debora Turner, First Assistant City Attorney, explained that no action is needed because a new power will be added to the HPB to allow that Board to grant variances; no power or duties are being reduced nor is any standard or regulation being made less stringent. This will not require a referendum.

3. TRAFFIC - CITIZENS OF MIAMI BEACH HAVE THE RIGHT TO REASONABLE ACCESS TO THEIR ROADS - Proponent Chair Zack - Jose Gonzalez, City of Miami Beach Transportation Manager, to present.

Chair Zack constantly hears complains of traffic congestion from residents and visitors, and there is frustration driving Alton Road, the Venetian Causeway and the Sunsest Islands. He has been told that, unfortunately, the City does not have control over many of these streets/roads. Chair Zack asked if the City would consider requiring a traffic plan as part of a submission to obtain permits in Miami Beach. Chair Zack had made a motion that the Citizen's Bill of Rights should include language that citizens of Miami Beach should have reasonable access to roads. He asked for input from Jose Gonzalez, City of Miami Beach Transportation Director.

Jose Gonzalez, City of Miami Beach Transportation and Concurrency Department Director, explained that one of the Key Intended Outcomes in the City is to enhance mobility throughout the City. He spoke about safety and signal timing, which may interfere with traffic flow. The City is taking a multifaceted intermodal approach to the problem. Transportation facilities are sidewalks, waterways, public transit, and roadways. In Miami Beach, many streets/roads/facilities are either owned by the Florida Department of Transportation (FDOT) or Miami-Dade County, and therefore out of the City's control. These include: 8th Street, 1st Street, 71 Street, Collins Avenue, Alton Road, the MacArthur and Julia Tuttle Causeways, and Indian Creek in some portions.

Discussion held regarding control of roads.

Chair Zack asked if there is a traffic plan requirement for events held on Miami Beach. Mr. Gonzalez answered that there are for events such as Art Basel and the Boat Show, but other events do not present traffic plans, but the City takes steps to mitigate for those events. Discussion continued.

Member Kendle stated that the City has to coordinate efforts in advance, and is happy to have Mr. Gonzalez dealing with Transportation.

Mr. Gonzalez stated that FDOT reviews plans with the City at different stages. The new Public Works Director has instituted a policy where even FDOT plans will be reviewed as if there were local plans, as if someone was coming in for a permit and City engineers must sign off.

Discussion continued regarding traffic on Collins Avenue and Mr. Gonzalez stated that in a few months the construction in that area will be completed.

Member Kendle explained that other cities have indicated that if there is going to be construction of an arena or casino, the public welfare requires light rail. Mr. Gonzalez stated that concurrency and impact fees are component of all major developments. One of the things the City Manager had done to emphasize the importance he places on traffic issues is to create the Department of Transportation and Concurrency, it is now a standalone department, where they will be updating and revising the concurrency ordinance and making it more realistic; identifying problems and adopting solutions that make sense.

Member Kaplan Roberts stated that the language "Miami Beach residents have the right to reasonable access to roads," may cause unwanted litigation; as what may be reasonable access to one person may not be the same to another. Chair Zack is concerned about the potential litigation as well.

Chair Zack asked Mr. Gonzalez what the CRB members can do as a Board, since he is the expert, to improve the traffic congestion on Miami Beach, whether it is by Charter or by ordinance.

Mr. Gonzalez, with respect to the Charter, stated that he does not know if the proposed statement would be able to give him any more power than what they already have; they have the comprehensive plan, with many aspirational traffic objectives, including working with other agencies, transit and making streets "complete" for pedestrians, cyclists, and motorists.

Mr. Gonzalez explained that "Complete Streets" are streets for everyone. They are designed and operated to enable safe access for all users, including pedestrians, bicyclists, motorists, and transit riders. "Complete Streets" make it easy to cross the street, walk to shops, and bicycle to work. Creating "Complete Streets" means transportation agencies must change their approach to community roads. By adopting a "Complete Streets" policy, communities direct their transportation planners and engineers to routinely design and operate the entire right of way to enable safe access for all users, regardless of age, ability, or mode of transportation. This means that every transportation project will make the street network better and safer for drivers, transit users, pedestrians, and bicyclists.

Discussion continued. Member Alhadeff's proposed Declaration of Fundamental Rights language regarding "Transportation" was considered.

Discussion continued regarding Hop-On Hop-Off buses, and Mr. Gonzalez explained that the Transportation and Concurrency Department is drafting an ordinance to regulate these buses to regulate the industry, including specifying where the buses can stop and providing loading areas. Mr. Gonzalez added that the Transportation and Concurrency Department is drafting resolutions and ordinances adopting "Complete Streets" policies.

Member Kaplan Roberts asked if there was an educational component for this plan.

Discussion continued.

Chair Zack at this point withdrew his motion to further discuss this issue due to legal implications. **Item withdrawn.**

Mr. Gonzalez added that there are three critical projects to improve traffic: the "Beach Corridor Transit Connection" study with off-wire new technology, which is more aesthetic and respects historic neighborhoods, this project has a great deal of momentum behind it; the Trolley System; and the South Beach Local. They will be launching a North Beach Trolley this summer and a system called ITS, Intelligent Traffic System, which consists of a system of cameras, and cellular signals, similar to the system used in London to alleviate congestion, and using smart phones to find where parking is available. Discussion continued regarding ridership statistics. This is a City led effort which started as a pilot program during Art Basel.

Chair Zack thanked Mr. Gonzalez for informing them and addressing their concerns and if there is anything, the Board can do to help, to let the Board know.

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

Member Kendle explained that the Coast Guard base is an industrial facility, and every two to three years developers want to develop the land across from the facility. He is concerned about someone slipping in a commercial ferry without notifying or disclosing the materials on the ferry. Harvey Hernandez of Newgard Development came before the Land Use & Development Committee to talk about a 30-40 story building that would overlook the base, which would encroach upon their operations. Mr. Kendle spoke to the Governor's Office, and the Governor set up a Task Force that has a list of bases that have a potential to be encroached on, and the Task Force is going to recommend to the Legislature that the US Coast Guard in Miami Beach be placed on that list. At this time, Mr. Kendle withdrew the item as it is something that the Legislature is handling. **Item withdrawn.**

5. DISCUSS WHETHER CHARTER QUESTIONS SHOULD BE PLACED ON PRIMARY ELECTION BALLOT OF AUGUST 26, 2014 OR GENERAL ELECTION BALLOT OF NOVEMBER 4, 2014.

ACTION: By acclamation, the Board unanimously agreed to recommend placing the suggested ballot questions on the August ballot. Approved: 6-0.

Chair Zack explained that the Board's jurisdiction ends May 2. He suggested that all the members be present at the City Commission Meeting.

The City Clerk suggested that a Time Certain be given for the Chair's presentation to the Commission at the April 23, 2014 Commission Meeting. Chair Zack suggested a time certain of 1:30 p.m. **Rafael E. Granado to handle.**

Commissioner Malakoff explained the importance of placing ballot questions on the August Primary Election ballot rather than on the November General Election ballot, because the voters need to be educated, whether it is on the issues of term limits or other items discussed. The November ballot will have many questions and offices, and it may be difficult to educate our voters for such a busy election.

6. FUTURE MEETING DATE AND TIME.

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

7. NEW ITEM FOR DISCUSSION ADDED:

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

Discussion was held regarding MBU and the fact that Member Alhadeff withdrew his Bill of Rights Amendment item from the agenda.

Member Kaplan Roberts stated, for the record, that Ms. Liebman is not in favor of having the Citizens' Bill of Rights include associations. Discussion continued.

Chair Zack announced that this item will be discussed at the April 10, 2014 CRB meeting. **Rafael E. Granado to notify Ms. Liebman.**

MOTION TO REQUEST EXTENSION OF JURISDICTION

Chair Zack stated that if the City Commission wishes to extend the CRB's jurisdiction for discussion of specific issues that the Board will be able to review the additional materials without having to reappoint members.

Commissioner Malakoff stated that this is an Ad Hoc committee, but suggested that as issues come up that the City Commission thinks should be considered by the CRB, the CRB should reconvene and not be discontinued, at least for the rest of the year. Discussion continued.

Chair Zack stated that at the City Commission presentation, appreciation will be expressed for giving the Board members the opportunity to give recommendations. However, the Board would suggest that its term be extended.

Attorney Turner stated that if so desired, she can prepare a proposed resolution extending the CRB terms until the end of the year, since Ad Hoc committees are only in existence for up to one year. The City Commission could consider the resolution along with the Board's other recommendations. Discussion continued.

Motion made by Vice-Chair Beloff to have Ms. Turner prepare a resolution for the City Commission to consider extending the Board's term; seconded by Member Kaplan Roberts; Voice-vote: 6-0. **Debora Turner to handle.**

8. INSPECTOR GENERAL WITH SUBPOENA POWERS

Member Kendle met with Mayor Levine and he does not think that currently there is a need for this.

Chair Zack stated that he acted as Inspector General for the City on a particular investigation many years ago, but nothing can be done without subpoena power.

Member Kaplan Roberts inquired as to where employees go to complaint within the City. Mr. Granado explained that, recently there was an agenda item where the Commission created a hotline where employees could call and inform wrongdoing. There is also Labor Relations and Employee Relations for Union and non-union employees as a resource. Discussion held.

9. STIPEND & TAX REPORTS FOR MAYOR AND COMMISSIONERS

Rafael E. Granado, City Clerk, will invite a representative of the Finance Department to explain the process.

Chair Zack clarified that this was removed because they felt any increase in compensation would not be favorably viewed by the voters. Mr. Granado clarified that this is a taxing reporting issue; thus not to go on the April 10 Agenda. No further action needed as compensation item not to be recommended by the Board.

10. SECTION 2.07 – VACANCIES IN THE CITY COMMISSION

Attorney Turner stated that if the Board's goal is to have a provision that states if there is a vacancy, the Commission will fill such vacancy within thirty days, and if they do not, then they will utilize the closest General Election held shortly thereafter to fill the vacancy. If there is no election within close proximity of the vacancy then a Special Election would be called.

Discussion held regarding appointment for the remainder of the term. Ms. Turner explained the State law requirements. The goal is to clarify the language and proposed language will be presented at the April 10th CRB meeting.

Chair Zack recognized Debora Turner, Rafael E. Granado and Liliam Hatfield for their efforts.

ITEMS TO BE PLACED ON THE NEXT AGENDA:

- ✓ Miami Beach United Presentation
- ✓ Section 2.02 Compensation - Stipend and Tax Reports
- ✓ Section 2.07 – Vacancies in the City Commission

Meeting adjourned at 5:29 p.m.

Handouts or Reference Materials:

1. Declaration of Fundamental Rights – Withdrawn by Member Alhadeff.
2. March 17, 2014 Minute Amendments by Gary Held, First Assistant City Attorney
3. Transmittal Letter to Florida Department of State Re: Charter amendments approved at the November 5, 2013 Election.

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ITEM 2

**Miami Beach United
Principles For Resident Charter Rights**

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MBU principles for resident charter rights

Miami Beach United, a non-profit organization working cooperatively with local neighborhood associations, seeks to ensure that the charter reflects the following values:

1. **Public information.** Information provided by local government and all information submitted by applicants before city boards should be accurate, complete, and accessible in a timely manner through technology. If material evidence submitted by applicants is not made available for timely public review, the matter should be continued.
2. **Non-judicial remedies.** Notwithstanding other remedies, the city should establish non-judicial processes to facilitate the resolution of alleged charter violations and to avoid future violations. No resident or association must be represented by counsel in order to participate in any city process.
3. **Procedural fairness.** All residents should have a full and fair opportunity to participate before all city boards and committees, and to present evidence, argue merits, and question witnesses for a land use decision that will affect their neighborhood.
4. **Neighborhood associations.** Registered neighborhood associations should have the same rights as residents under the charter.

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ITEM 3

**Income/Stipend Tax Reporting for
Mayor and Commissioners**

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ITEM 4

**Citizens' Bill Of Rights, Section (C) Remedies
For Violations: Forfeiture Of Office**

**Jean Olin, CAO Outside Counsel and Donald
Papy, Chief Deputy City Attorney to present.**

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**City of Miami Beach Charter
"Citizens' Bill of Rights"**

* * *

(C) Remedies for violations. In any suit by a citizen alleging a violation of this Bill of Rights filed in the Dade County eCircuit Court pursuant to its general equity jurisdiction, the plaintiff, if successful, shall be entitled to recover costs as fixed by the court. ~~Any public official or employee who is found by the court to have willfully violated this article shall forthwith forfeit his office or employment.~~

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ITEM 5

**SECTION 2.02. – TERM – (TERM LIMITS) –
Proponent Commissioner Joy Malakoff
Jean Olin, CAO Outside Counsel to present.**

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City of Miami Beach Charter
Section 2.02
“Term, Term Limits and Compensation”

The term of office of the Mayor shall be two (2) years. The term of office of the City Commissioners shall be four (4) years.

Commencing with the General Election in November ~~1997~~ 2015 (~~excluding individuals holding City of Miami Beach elective office prior thereto for their unexpired terms~~), the term limit for Miami Beach Commissioners shall be two four-year terms ~~eight consecutive years~~ and the term limit for Miami Beach Mayor shall be three two-year terms ~~six consecutive years~~ respectively, measured retroactively from their first elections, said terms not including time served as a member of the City of Miami Beach Commission as a result of having filled a vacancy in the Commission pursuant to Section 2.07 of the City of Miami Beach Charter so long as such time served in filling a vacancy does not exceed 50% of that subject term. Service by a Commission member in excess of 50% of any term of office shall be considered a full term for purposes of the term limit provisions in this section.

The annual compensation for the Office of Commissioner shall be six thousand dollars (\$6,000.00) and the compensation for the Office of Mayor shall be ten thousand dollars (\$10,000.00); any increase in salary for Mayor and/or Commissioner shall require approval of a majority of the electorate voting at a City election.

(Requested by Commissioner Joy Malakoff.)

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SECTION 2.04. – INDUCTION AND MEETINGS

Debora Turner, First Assistant City Attorney to present.

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City of Miami Beach Charter
Section 2.04
“Induction and meetings”

The City Commission shall, at its first meeting after each general election, ~~which shall be within three (3) days after the general election (or within thirty (30) days after the runoff election~~ at its first meeting after the runoff election, if a runoff election is held), elect from its membership a Vice-Mayor who, during the absence or disability of the Mayor, shall perform the duties of Mayor. In the absence or disability of both the Mayor and Vice-Mayor, the said duty shall be performed by another member appointed by the Commission.

The City Commission shall meet at such times as may be prescribed by ordinance or resolution. The Mayor, or the City Manager, may call special meetings of the Commission upon at least twenty-four (24) hours written notice to each member, served personally, or left at his usual place of abode; provided, however, that the requirement of such written notice may be waived at a special meeting by the unanimous vote of the Commission. In addition, special meetings of the City Commission may be called by a majority of the members of the Commission upon written notice to the City Clerk and in accordance with the procedures set forth in a resolution of the City Commission.

No member of the City Commission shall, during the time for which he/she was elected, be appointed or elected to any City office that has been created or the emoluments thereof shall have been increased during such time.

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ITEM 7

SECTION 2.07. – VACANCIES IN CITY COMMISSION

Jean Olin, CAO Outside Counsel to present.

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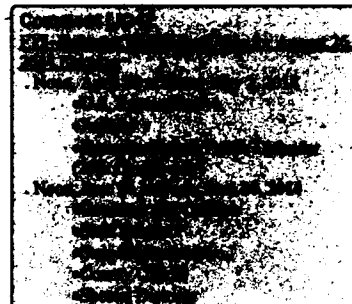
City of Miami Beach Charter
Section 2.07
"Vacancies in eCity eCommission

Any vacancy occurring in the City Commission shall be filled as follows:

a) Vacancy for reasons other than resignation: The City Commission shall fill said vacancy by the vote of the majority of the remaining members of said City Commission within 30 days after the vacancy occurs and with the appointee serving the remainder of the unexpired term until the next succeeding gGeneral City eElection and with any further remainder of said unexpired term to be filled by a Commissioner member elected at said gGeneral eElection; if the remaining members of the City Commission shall fail or refuse to fill such vacancy within said 30 days period, after it occurs and if no general City election will be held within 90 days after the expiration of said 30 days, then a eSpecial eElection shall be called and to be held within 90 days after expiration of the subject 30 day period to elect a Commissioner member to fill such vacancy for the remainder of the unexpired term.

b) Vacancy due to resignation: The Commission shall fill said vacancy by vote of the majority of the remaining members of the Commission within 30 days from submittal of resignation to City Clerk, with the appointee serving the remainder of the unexpired term from said resignation's effective date until the next succeeding General City Election and with any further remainder of said unexpired term to be filled by a Commission member elected at said General Election. If the remaining members of the City Commission shall fail or refuse to fill such vacancy within said 30 day period, then a Special Election shall be called to be held within 120 days after expiration of the subject 30 day period to elect a Commission member to fill such vacancy for the remainder of the unexpired term, but if a City General or County-wide election is scheduled to be held within 150 days after such 30 day period has expired the Commission may defer the required Special Election until such City General or County-wide election. Any person who has been elected to fill a vacancy due to resignation filed pursuant to Florida Statute section 99.012 shall take office no earlier than the resignation's effective date provided by terms of such statute; any person who has been elected to fill a vacancy due to resignation not filed pursuant to Florida Statute section 99.012 shall take office no earlier than the effective date set forth in said resignation.

Provisions related to a Special Election called pursuant to this section, including the qualifying period and Runoff Election (if required), shall be established in the City Resolution calling the Special Election.



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ITEM 8

SECTION 6.04. – VACANCY IN CANDIDACY

Jean Olin, CAO Outside Counsel to present.

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City of Miami Beach Charter
Section 6.04
“Vacancy in candidacy”

If the death, withdrawal or removal of a qualified candidate for Miami Beach City Commission following the end of the qualifying period results in ~~only one~~ fewer than two candidates remaining on the ballot for that office, there shall be one supplemental qualifying period of five (5) days beginning on the first business day following the vacancy in candidacy. No further supplemental qualifying period shall thereafter be established at all if a vacancy in candidacy occurs within ~~twenty-six (26)~~ forty-five (45) days prior to the date of the ~~general~~ election for the office of City Commissioner or Mayor. If within ~~twenty-six (26)~~ forty-five (45) days prior to the date of the ~~general~~ election for the office of City Commissioner or Mayor, there is only one candidate on the ballot for an elected office, said candidate shall be declared elected and no election for that office shall be required.

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**April 10, 2014
Minutes**

MIAMI BEACH

AD HOC CHARTER REVIEW BOARD (CRB)

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 Counsel
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Minutes

Thursday, April 10, 2014 at 4:00 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 Board may move any agenda item to another meeting date. In addition, the members of the Charter Review Board may, at their discretion, adjourn the Charter Review Board meeting without reaching all agenda items.

Meeting was called to order at 4:13:41 p.m. Roll call taken. All members present. Chair Zack participated during the discussion via telephone, therefore, he did not vote.

Commissioner Malakoff was also present.

Commissioner Grieco came in at 4:50 p.m., and left at approximately 5:05 p.m.

1. APPROVE THE MARCH 24, 2014 CRB MINUTES.

ACTION: Motion made by Member Alhadeff to approve the minutes; seconded by Member Kendle as amended. Member Kendle requested rewording the first paragraph on Page 10 under Item 8 to read: "Member Kendle does not think that currently there is a need for this." Voice vote: 5-0.

2. MIAMI BEACH UNITED'S (MBU) PRINCIPLES FOR RESIDENT CHARTER RIGHTS AND COMPANION LEGISLATION – MBU representatives Mark Needle and Nancy Liebman presented.

ACTION: Nancy Liebman explained that MBU has been filtering language from its previous presentation to CRB, and proceeded to read MBU's four desired principles: 1) Public Information, 2) Non-judicial remedies, 3) Procedural fairness and 4) Neighborhood associations. MBU is requesting that the Board consider each one individually to see if the CRB members wish to support all of them or any one of them.

PRINCIPLE 2 - RESIDENT REPRESENTATION

Discussion held regarding resident representation. Mark Needle explained that the issue of representation arose when some neighborhood association in a land use hearing were told that they needed an attorney to represent it on an issue.

Ms. Liebman explained that the concept is that residents get together as a group to argue against an issue going on at the Commission or a board meeting and now they feel compelled to have a lawyer. Once a resident testifies as a neighbor, it becomes a difficult decision for a resident who does not have legal representation. Discussion continued.

Chair Zack explained that a Chair of a committee who rules that an individual needs an attorney in order to speak before a City board or committee made an incorrect decision. No law requires that a person have legal representation to speak to the City unless they are a corporation appearing in court, in which case the corporation must be represented by legal counsel. A City Committee is not a courtroom, and this requirement for legal representation is not necessary. He suggested revising the language to read: "No resident or association shall be required to be represented by counsel in order to participate in a City process." He believes that that was the intention. However, Mr. Zack added that there is no benefit derived from Item 2 because the requirement to have legal representation before speaking to a City board or committee does not exist.

Vice-Chair Beloff agreed with Chair Zack. Discussion continued.

Mark Needle spoke.

Commissioner Malakoff also finds it difficult to understand how a Chair or board member of any land use board could advise a neighbor that it is a requirement to have counsel; it is not correct. She has requested that the City conduct a workshop to be presented by the City Attorney's Office, the City Manager's Office and Planning Department with all members of City boards and specifically their Chairpersons to discuss issues including the timing of people speaking, how to handle neighborhood associations, and other procedural policies. This will be part of training information that land use board members need to have. Discussion continued.

Mark Needle addressed the need for processes, and if there are violations, how they shall be addressed.

Vice-Chair Beloff requested the Office of the City Attorney to explain what would happen if there is a violation of the Charter.

City Attorney's Office Outside Legal Counsel Jean Olin explained that if there is an alleged violation of the City Charter's Bill of Rights, there is a non-judicial remedy even though it is not specifically provided for in the City Charter, as this is pursuant to Miami-Dade County law. The County law specifically provides that if there is an alleged violation of the Bill of Rights,

the Miami-Dade County Ethics Commission has the power and duty to investigate and issue violations and penalties.

PRINCIPLE 4 – NEIGHBORHOOD ASSOCIATIONS

Chair Zack and Member Kaplan Roberts discussed adding associations as suggested by MBU to the class of those protected under the City Charter's Bill of Rights.

Vice-Chair Beloff stated that neighborhood associations are voluntary associations, not created by charter, and they do not necessarily have unanimous votes on different issues; he has never seen their lack of rights as an issue in front of a land use board since they speak through their individual members who have rights and speak before City boards and committees. To give the association the same rights as a resident would mean that an association could ask for adequate audits and representation and this is not applicable to associations, it is applicable for residents, who make up the association.

Discussion continued.

Ms. Liebman clarified that they are asking for direction, as this is the last CRB meeting. They will take that direction from CRB to have its text written properly and follow with the legislation. Discussion continued regarding public information.

PRINCIPLE 1 – PUBLIC INFORMATION:

Discussion held regarding revamping technology in the Planning Department to allow documents to be readily accessible electronically to residents.

Attorney Olin stated that since this proposed amendment to the Bill of Rights is worded as an absolute mandate it could not be legally recommended as it imposes an absolute duty on the City to provide public records in electronic form without any time frame etc., and also would have fiscal impact on the City that must be analyzed by City Administration to see if such absolute condition is viable. She suggested presenting this matter as an aspirational goal to the City. If this language were to be inserted into the Charter, Ms. Olin suggested that the City would need to insert a mandatory provision of time by which such public records would need to be available electronically.

Vice-Chair Beloff explained that Items 2 and 3 are in the Charter, Truth in Government and Public Records, so this is already covered. Those rights are already granted.

Discussion held.

Mark Needle spoke.

PRINCIPLE 3 – PROCEDURAL FAIRNESS

Member Kaplan Roberts asked whose standards are used for procedural fairness. What can be fair to someone may not be fair to another person and she is concern with liability issues.

Ms. Liebman stated that as a resident and an activist she knows that people are not able to speak every time that they have to, or ask questions, whereas attorneys can go on and on. Residents should be treated with respect, this does not happen now, since the current Commission is wonderful, but she is referring to future Commissions.

Member Kaplan Roberts agreed with Ms. Liebman on this, but she is not sure if it belongs in the Charter, but it needs to be adjusted.

Debora Turner, First Assistant City Attorney, stated that those procedures should be in the City Code and Legal is presently drafting related legislation. Discussion continued.

Attorney Olin pointed out that the City Code presently has a quasi-judicial ordinance, which has a process for procedural quasi-judicial hearings, including cross-examination and the opportunity to speak.

Attorney Turner further clarified that there are new provisions based upon on new State law, regarding public participation at meetings that will provide detailed procedures.

Ms. Liebman stated that the State law has changes, but the aspiration for residents of this City is based upon Charter language that can be revised, which will make this a real duty of the City to rule itself on issues of proper process. Discussion continued.

Attorney Turner explained that the draft ordinance she is working on with Commissioner Malakoff deals with procedures for all City boards and committees, and this process will, include provisions for a designated spokesperson for a group to have opportunity to speak before such boards and committees. This procedure already exists in the County Code, and it gives everyone a fair and equal opportunity to speak. Discussion continued regarding public information.

Mark Needle stated this was about good government and asked that CRB approve each one of MBU's principles in concept and then he will ask his group to work out specific language with the City Attorney, City Manager and with Commissioner Grieco in regards to associations.

Nancy Liebman thanked the CRB members for taking their time to discuss the MBU issues.

Announcement:

Vice-Chair Beloff requested Legal to address the issue of Sunshine Law in light of City Commissioner Grieco's and Commissioner Malakoff's attendance at this CRB meeting. Attorney Olin announced that even though there are two City Commissioners present at this meeting, the Sunshine Law is complied with as long as they do not interact on of the Charter issues presented that will foreseeably come in front of the City Commission.

FINAL MOTIONS:

ACTION:

Principle 1 – Public Information

No motion was made as language is already provided within the Bill of Rights, which satisfies the subject concerns of MBU.

For the record, Vice-Chair Beloff read language drafted by Member Alhadeff: "The City shall make available to any citizen for inspection, information within the City's control with respect to any matter then pending before a City Commission or board, agency or committee thereof." He stated that this language is already in the Charter.

Attorney Olin explained that the Office of the City Attorney cannot recommend MUB's proposed language, for the reasons previously stated. The City's duty to provide public records is already specifically provided within the Bill of Rights.

Principle 2 – Non-judicial remedies

Motion was made by Member Kendle to make this procedure available online; seconded by Alhadeff; Voice-vote: 5-0.

Vice-Chair Beloff explained that as explained by the Office of the City Attorney, non-judicial remedies for violation of the Charter's Bill of Rights are presently available via the Miami-Dade County Ethics Commission. MBU's proposed language does not belong in the City Charter. Discussion continued.

Member Kendle suggested adding to the City's website their ability to file complaints for alleged BOR violations with the County's Ethics Commission, for citizens to know what to do if they believe such a violation has taken place. Vice-Chair Beloff stated that is a good idea to make that information publicly available and that is CRB's recommendation.

Principle 3 – Procedural fairness

No motion was made.

This provision is already in the Charter "right to be heard" and is also addressed in the Quasi-judicial regulations in the City Code.

Principle 4 – Neighborhood associations

No motion needed.

Commissioner Malakoff's Commission Workshop on Procedural Process for land use boards will address many of the issues raised by MBU.

Handouts:

1. MIAMI BEACH UNITED MBU Principles for Resident's Charter Rights
3. **INCOME/STIPEND TAX REPORTING FOR MAYOR AND COMMISSIONERS** – Georgie P. Echert, Assistant Finance Director to report. *For information only; no action necessary.*
ACTION: No action needed.
Georgie P. Echert, Assistance Finance Director, answered questions from Member Kendle regarding income/stipend for Mayor and Commissioners. Commissioners receive \$1,500 and the Mayor receives \$2,000 per month as "Office Expense," with a total of \$30,000 for Commissioners and \$40,000 for the Mayor. Discussion held regarding pensionable benefits and tax reporting.
4. **CITIZENS' BILL OF RIGHTS, SECTION (C) REMEDIES FOR VIOLATIONS: FORFEITURE OF OFFICE** – Jean Olin, CAO Outside Counsel and Donald Papy, Chief Deputy City Attorney to present.
ACTION: Motion made by Member Kendle; seconded by Member Alhadeff to approve this item. Voice-vote: 5-0. **Rafael E. Granado to place on the list of items to present to the City Commission at the April 23, 2014 Commission Meeting.**

Attorney Olin explained that in regards to the City Charter's Bill of Rights at Section (c) Remedies for Violations, in November 2012 there was a Miami-Dade Countywide vote in

which the County's Charter was amended to similarly delete the "forfeiture of office" remedy in the Bill of Rights. The County Charter has the same Bill of Rights that the City of Miami Beach has. The City of Miami Beach enacted the Bill of Rights in 1993. The remedy section was the same as the County's Charter. In November 2012, Countywide voters approved an amendment to the County's Bill of Rights, whereby they deleted the language that authorizes forfeiture of office for an employee or an official who was found to have violated the Bill of Rights. She explained further that although the City's Bill of Rights does not state as such, the Miami-Dade County Ethics Commission has jurisdiction over alleged violations of the Bill of Rights, which language is in the County's Bill of Rights and has applicability to the City of Miami Beach as well as all municipalities in Miami-Dade County. Instead of having to go to court, citizens have an alternate forum for a dispute regarding the Bill of Rights, which is going in front of the Ethics Commission for a determination of a violation. Discussion held.

Ms. Olin introduced Chief Deputy City Attorney Don Papy, who explained the primary reasons that the "forfeiture of office" remedy language was deleted from the County Bill of Rights was due to the County Attorney's Office legal concerns with said remedy in light of the rights of government employees to collective bargaining prior to their removal, and the draconian nature of the forfeiture remedy which had the effect of discouraging persons from seeking governmental office.

Discussion held.

Attorney Olin added that the process works. The City of Miami Beach already has had a complaint filed by a citizen with the County's Ethics Commission alleging that the City violated the City Charter's Bill of Rights section regarding public records; there was a full investigation by the Ethics Commission and it found that there was no violation by the City of the Bill of Rights. The citizen was afforded his non-judicial remedy, with no need to hire a lawyer, consistent with MBU's concerns. Discussion continued.

In answering Member Kaplan Robert's question regarding terminating employees, Attorney Papy added that under the Florida Constitution, employees have the right to have a Union in a particular setting, and part of the statutory language, pursuant to the Constitutional rights, is that they are deemed entitled to a binding arbitration as the final part of the process. The City can terminate an employee but under this statute, they have the right to pursue binding arbitration, at which point, there is a final decision by a neutral individual. Discussion continued.

MOTION:

Motion made by Member Kendle; seconded by Member Alhadeff to approve this item. Voice-vote: 5-0.

5. **SECTION 2.02. – TERM – (TERM LIMITS)** – Proponent Commissioner Joy Malakoff – Jean Olin, CAO Outside Counsel to present.

ACTION: Motion made by Member Kaplan Roberts; seconded by Member Kendle to approve the amended language as set forth in the second paragraph of the proposed text. Voice-vote: 5-0; **Rafael E. Granado to add to the list to present to the City Commission at its April 23, 2014 Commission Meeting the CRB's previously recommended change to the third paragraph of Charter section 2.02 regarding compensation of the City Commission.**

Commissioner Malakoff asked what happens when someone is appointed to fill the unused term of an elected official leaving to run for another office. Discussion held.

Attorney Olin explained the reason language was added to show that service by a Commission member in excess of 50% of any term of office shall be considered a full term for purposes of the term limit provisions in this section. Discussion continued regarding term limits and proposed added language in the first paragraph.

6. **SECTION 2.04. – INDUCTION AND MEETINGS** – Debora Turner, First Assistant City Attorney to present.

ACTION: Motion made by Member Alhadeff to approve the item as amended; seconded by Member Kaplan Roberts; Voice vote; 5-0; Title "Induction and meetings" is to be substituted with "Election of Vice Mayor and meetings." **Rafael E. Granado, City Clerk, to add to the list of items to be presented to the Commission at its April 23, 2014 Commission Meeting.**

Attorney Turner explained this is a cleanup amendment. In the City Code, Chapter 38 dealing with elections was amended recently, and this proposed language will make it more consistent with the current Miami-Dade County Elections Department's procedures and policies in providing the City with election information. Existing Charter section 2.04's language refers to having the Commission's "first" meeting three days after the General Election, and the City should not be tied to a particular date in order to accommodate the timing by which the DOE issues its Final Election Returns, so this existing language has been proposed for deletion. The suggested change will provide instead that the Commission's "first" meeting after the election is the first meeting after each General Election (or after the Runoff if held) when final results from the County are obtained. Ms. Turner further added that the title "induction and meetings" is to be substituted with "Election of Vice-Mayor and meetings."

Vice-Chair Beloff asked if there is room for abuse, as a result of extending the date for the Commission's "first" meeting after the election to the first meeting after the Run-Off Election. City Clerk Granado explained that the first meeting is when elected officials are sworn in. The Elections Department provides election results approximately three days after an election date, so instead of matching the Charter's language to a specific date, the swearing in has been left for the first meeting. Discussion continued.

Vice-Chair Beloff raised the concern that a person could delay the swearing in of newly elected officials by going to Court and getting an injunction. Attorney Olin added that there certainly could be an injunction entered, but there still needs to be a procedure in place setting forth when inductions take place. As soon as an injunction order is disposed of, the injunction is lifted and the newly elected officials will then immediately be entitled to take office. The Miami-Dade County Elections Department changes policies for the issuance of its final certification of election results, dependent upon changes in statutory law, so whenever DOE issues the final certification of election results, the persons elected will be sworn in on the next business day immediately following such issuance.

Member Kendle raised the issue of possibly deleting the word emoluments from Section 2.04, and had not the CRB recommended such deletion. City Clerk Granado reviewed his CRB material and noted that although this issue had been raised at prior meetings of the CRB, the Board had not recommended such deletion.

Attorney Olin explained her concern. The ballot question is going to be a simple question referencing the date that the Vice-Mayor is to be elected, and if they add additional language, it may be confusing. At this point, Member Kendle withdrew his item.

7. **SECTION 2.07. – VACANCIES IN CITY COMMISSION** – Jean Olin, CAO, Outside Counsel to present.

ACTION: Motion made by Member Kaplan Roberts; seconded by Member Kendle as amended with changes suggested by Attorney Olin; Voice-vote: 5-0. **Rafael E. Granado to place on the list of items to be presented to the City Commission at its April 23, 2014 Commission Meeting.**

Amendment per Olin's suggested additions, reading: "Any person who has been elected to fill a vacancy due to resignation filed pursuant to Florida statute section 99.012 shall be installed and take office no later than... and after "section 99.012 shall be installed and take office..."

Attorney Olin stated that in the past the City of Miami Beach Commission has had Commission members resign to run for another office whose term was concurrent with that of the subject Commission member, which vacancy is governed by the State's Resign to Run law; this law basically sets forth the effective date of the resignation that must be filed by the Officer. For example, the Statute reads that the elected official seeking to run for a State representative seat that runs concurrent with the term that the elected official presently has, must submit a resignation, and the resignation is irrevocable. The resignation is effective the earlier of two days: a) the date that person would assume office if elected; or b) the date that person's successor will take office if elected. In the City of Miami Beach, because of the current Charter language, it establishes a process for how the City Commission fills that vacancy, but the trigger date for the Commission's procedure of filling the vacancy is when the vacancy actually occurs. Because in the past the vacancy has not actually occurred until the day the person would assume office if elected, which has been after the City's General Election, the City has been unable to conduct the required Special Election to fill the vacancy at time of its regularly scheduled election, and this has caused the City to hold a specially set election that impose an additional expense to the City that could be avoided if the election to fill the vacancy could be held at time of the general election. The proposed amended language bifurcates the existing language into a section A and section B to what previously and now was one section. The current Charter amendment states that if there is a vacancy on the Commission, the vacancy may be filled by the Commission appointing someone to fill that position within 30 days of the vacancy occurring; and if appointed within 30 days, that person is to serve until the next General Election, at which point there shall be an election to fill the remainder of the term. The existing Charter also states that if no appointment is made by the Commission within that time frame, a Special Election shall be called to fill the remainder of the term.

The proposed amendments provide that if the vacancy is due to a resignation, the trigger date for the City Commission action to fill that vacancy will not be when the vacancy occurs

but instead will be upon submittal of the resignation, which in turn will allow for an earlier date by which the City Commission's process for filling of the vacancy can occur. The amended provision will state that upon submittal of the resignation to the Clerk, the City Commission will still have the 30 days to consider an appointment to fill the vacancy, and if the Commission does appoint, then the person appointed will fill the subject term until the next General Election with the remainder to be filled at that Election. Ms. Olin further explained the difference between a resignation pursuant to the State's Resign To Run Law and a resignation due to other reasons such as death, withdrawal or removal from office. The proposed amended language provides for the Commission's ability to conduct a Special Election to fill a vacancy due to resignation to be held 120 days after expiration of the 30-day period for appointment, which time period is expected to address the problem the City has dealt with under the existing language. Discussion continued regarding vacancy and a resignation's effective date. Attorney Olin explained that by changing the threshold trigger date for the City Commission's filling of vacancy due to resignation, the City will be able to compute the dates for the Commission's appointment and/or calling of election at an earlier time so that if a Special Election is needed it may be held at the time of the City's General Election. Discussion continued.

Motion made by Member Kaplan Roberts; seconded by Member Kendle to approve the item.

Attorney Olin added that there were two words added in the second paragraph, 4th line from the bottom: "Any person who has been elected to fill a vacancy due to resignation filed pursuant to Florida statute section 99.012 shall be installed and take office no later than... and after "section 99.012 shall be installed and take office. Motion made to approve language as amended.

8. **SECTION 6.04. – VACANCY IN CANDIDACY** – Jean Olin, CAO Outside Counsel to present. **ACTION:** Motion made by Member Alhadef; seconded by Member Johnston; Voice-vote: 4-1; Opposed: Member Kaplan Roberts. **Rafael E. Granado to place on the list of items to be presented to the City Commission at its April 23, 2014 Commission Meeting.**

Discussion held regarding the potential of an emergency in which a majority of the Commission would not be seated, and how the Governor in that situation would have power to appoint persons to fill vacancies on the Commission until a subsequently scheduled election to elected replacement Commission members. Attorney Olin explained that in light of past events, the likelihood of this occurring is remote, as it has not occurred to Ms. Olin's knowledge.

Attorney Olin discussed the difference between vacancy on the commission and vacancy in candidacy, the latter being where there are a certain number of candidates at the end of qualifying, but after the end of qualifying, because of death, removal or withdrawal of candidates, there are fewer than two candidates for any one particular Commission seat, and, so long as there are at least two candidates for each such seat, the election proceeds with no need for a supplemental qualifying period. Under State law enacted several years ago, if at the end of the qualifying there are fewer than two candidates per seat due to death, withdrawal or removal, then there is a need for another qualifying period, and this statutory provision was the basis for the original enactment of Charter Section 6.04. When voters approved Section 6.04 and the former CRB recommended this section, the statutory law was new. The Elections Supervisor 20 years ago advised the CRB that the cutoff date for the supplemental qualifying period would be within 26 days from the election and that was

codified into Charter section 6.04. The Elections Department now has changed their procedures and in contacting the DOE, the City has been informed that the cutoff date for supplemental qualifying should now be 45 days. That is the only amendment to this section, and it is more in the nature of a housekeeping amendment, in order to comport with procedures suggested by the Miami-Dade Elections Department.

Member Kaplan Roberts stated that a supplemental qualifying process is tough on candidates and she will not vote in favor of this item.

9. **ESTABLISH FUTURE MEETING DATES AND TIMES, IF DEEMED NECESSARY.**
ACTION: None needed.

Attorney Turner stated that the CRB's Final Report to the City Commission will be finalized and placed in the next Commission Agenda of April 23, 2014. Discussion continued.

Discussion held regarding extension of jurisdiction. **Debora Turner to handle if needed.**

Vice-Chair Beloff thanked City staff for their work.

Member Kendle asked if Commissioner Malakoff could address that during Sutnick Hours the Mayor and Commissioners do not walk away from the dais when people are speaking, as it is not polite.

Chair Zack stated that the Board will sunset on May 2, 2014, and he will present to the City Commission the CRB's Final recommendations at the 23rd April Meeting. City Clerk Granado stated that the Time Certain has been requested for 1:30 p.m., but has not been confirmed. Discussion held regarding deadlines for ballot question placement. He thanked everyone for their hard work.

Member Alhadeff asked how will the minutes for this meeting will be approved in light of the fact that today is CRB's final meeting. Attorney Olin suggested that CRB take action granting the Chair power to approve the minutes. Motion adopted 5-0 granting power to Chair Zack to approve minutes from CRB's April 10, 2014 meeting.

Motion to adjourn the meeting made by Member Kaplan Roberts; seconded by Member Alhadeff. Voice-vote: 5-0.

Meeting adjourned at 6:13:12 p.m.

TIMEFRAME:

- **April 23, 2014** – Last regularly scheduled City Commission meeting before CRB sunsets; CRB recommendations/Final Report to be presented.
- **May 2, 2014** – CRB Sunsets.
- **May 21, 2014** – Last regularly scheduled City Commission meeting to adopt Resolutions calling for City Special Election for **August 26, 2014** for Charter amendment ballot questions. (Per County Elections Department, last date by which City Commission may

adopt a Resolution placing a Charter amendment on the August 26th ballot is June 6, 2014); and

- **July 23, 2014** – Last regularly scheduled City Commission meeting to adopt Resolutions calling for City Special Election for **November 4, 2014** for Charter amendment ballot questions. (Per County Elections Department, last date by which City Commission may adopt a Resolution placing a Charter amendment on the November 4, 2014 ballot is August 5, 2014.)

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