

**CHARTER
REVIEW
REVISION
BOARD
2013**

MIAMI BEACH

Charter Review Revision Board

Members:

Steven Zack, Esq.
Scott Diffenderfer
Jacqueline Lalonde
Aaron Perry
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jorge Exposito
Commissioner Michael Góngora
Commissioner Jerry Libbin
Commissioner Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

First Meeting Agenda

Thursday, April 25, 2013 at 3:30 p.m.
Commission Chambers, Third Floor, City Hall

1. Swearing-in of board members.
2. Welcome remarks by City Attorney Jose Smith.
3. Introduction of Administrative and Legal Department support team.
 - Rafael E. Granado – City Clerk, 305.673.7000 X 6451
 - Liliam Hatfield – Office of the City Clerk, 305.673.7000 X 6592
 - Debora Turner – First Assistant City Attorney, 305.673.7000 X 6441
4. Board member orientation – Jose Smith, City Attorney and Debora Turner, First Assistant City Attorney.
5. Selection of a chairperson and vice-chairperson.
6. Discussion regarding procedures.
8. Timeframe:
 - June 1, 2013 - Committee's final recommendation to the City Commission
 - Commission meeting no later than September 6, 2013 for passage of Resolution calling for a November 5, 2013 Special Election.
9. Establish future meeting dates and times.
10. Adjourn meeting.

May 6, 2013

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

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Commissioner Jerry Libbin
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Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Debora Turner, First Assistant City Attorney
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Meeting Agenda

Monday, May 6, 2013 at 4:30 p.m.
Mayor's 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. EXISTING ISSUES REQUIRING DISCUSSION/ACTION.

- a. Accept minutes of the April 25, 2013 Charter Review & Revision Board Meeting. (See Item 1.a.)
- b. Establish future meeting dates.

2. LIST OF CHARTER PROVISIONS IDENTIFIED BY THE CITY ATTORNEY FOR REVIEW. (See Item 2)

3. ITEMS REQUESTED TO BE PLACED ON THE MAY 6, 2013 AGENDA BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER. (See paragraphs 1 through 5 of Mr. Fernandez's Memorandum; Attached as Item 3)

4. ADDITIONAL ITEMS REFERRED TO THE CHARTER REVIEW & REVISION BOARD BY THE CITY COMMISSION:

- a. Election versus Appointment when Commission vacancies occur. (Referred at the May 19, 2012 Commission Retreat)
- b. Commission Salary (Referred at the May 19, 2012 Commission Retreat)
- c. Compensation of the City Attorney, City Manager and City Clerk. (Referred at the May 19, 2012 Commission Retreat)

5. **ITEMS REQUESTED TO BE PLACED ON THE AGENDA FOR DISCUSSION ON A FUTURE DATE BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.** (See paragraphs 6 through 18 of Mr. Fernandez's Memorandum; Attached as Item 3)

6. **LIST OF PROPOSED CHARTER AMENDMENTS BROUGHT FORTH FOR DISCUSSION DURING THE APRIL 25, 2013 CHARTER REVIEW & REVISION BOARD COMMITTEE MEETING:**
 - a. Term Limits for the Mayor and Commissioners (Charter Section 2.02) – Proponent Commissioner Tobin
 - b. Miami Beach Convention Center - Proponent Rick Kendle
 - c. Sale, Exchange, Conveyance or Lease of Ten Years or Longer of Convention Center District Property – Proponent Frank Del Vecchio
 - d. Citizens' Bill of Rights:
 - i. Article XV - To include traffic - Proponent Stephen Zack, Chair
 - ii. Ethics in government / Code of conduct - Proponent Stephen Zack, Chair
 - iii. Over scale development in residential areas – Proponent Stephen Zack, Chair
 - iv. Preservation of beaches - Proponent Rick Preira
 - v. Mandate that employees should be courteous to citizens in the Bill of Rights - Proponent Stephen Zack, Chair
 - vi. Neighborhood Resident Association Bill of Rights – Proponent Miami Beach United - Nancy Liebman, President
 - vii. Preserving the historical value of Miami Beach - Proponent Terry Bienstock
 - viii. Whistle blowing protection for employees - Proponent Frank Del Vecchio
 - e. Administrative Determinations Proposed and Published by the Planning Director – Proponent Commissioner Jonah Wolfson.
 - f. Electing officials by districts - Proponent Scott Diffenderfer
 - g. Subpoena powers - Proponent Alex Fernandez
 - h. Creation of an Inspector General with investigative powers - Proponent Rick Kendle

7. **CORRESPONDENCE RECEIVED SINCE LAST CHARTER REVIEW & REVISION BOARD MEETING:**
 - a. Email from Frank Del Vecchio dated April 26, 2013, entitled "Referendum Required for Any Disposition or Ten-year + Lease of City-Wide Property" [Convention Center District]. (See Item 7.a.)
 - b. Email from Nancy Liebman dated April 30, 2013, entitled General Membership Meeting (Also distributed to members via e-mail on April 30, 2013.) (See Item 7.b.)

MIAMI BEACH

Charter Review and Revision Board

Members:

Stephen Zack, Esq.
Scott Diffenderfer
Jacqueline Lalonde
Aaron Perry
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

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Commissioner Jorge R. Exposito
Commissioner Michael Góngora
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Commissioner Deede Weithorn
Commissioner Jonah Wolfson

MINUTES

Thursday, April 25, 2013 at 3:30 p.m.
Commission Chambers, Third Floor, City Hall

1. Swearing-in of Board members.

All members were sworn-in prior to commencement of the meeting.

Clerk's Note: The meeting was called to order at 3:39 p.m. All Charter Review and Revision Board members were present.

2. Welcome remarks by City Attorney Jose Smith.

City Attorney Jose Smith introduced himself and welcomed the members of the Charter Review Revision Board on behalf of the Mayor, the City Commission and the City Manager, who is out of town and would otherwise be present, his staff and the City Clerk.

The City's Charter was originally adopted in 1993. Mr. Smith sat on the original Charter Review Committee with Stephen Zack, who was selected as the Chair. In 1993, the City did not have a Charter as we know it today. What the City had was a compilation of about 100 plus pages that were actions that the State Legislature had passed governing the City of Miami Beach. If the Legislature did not give the City the authority to do something, the City would not be able to do it. With the enactment of Home Rule by the Florida Constitution, Cities slowly began to pass their own particular Charter, which provided home rule for the municipalities. The City's first Charter Review Committee took a 100 plus pages of documents that were all over the place, often time people did not know what they meant, or where to find them, and they created a Charter that is about 20 pages or so. It was the first time that a municipality in South Florida, perhaps in the State, created a Citizens' Bill of Rights, which was a very significant achievement, creating a mechanisms for residents to have the ability to be heard, to be told the truth, to get documents and also created a remedy to enforce those provision in the Bill of Rights. If you have had an opportunity to look at the City's current Charter, you have seen that it has eight Articles, in addition to the Citizens' Bill of Rights. It goes from the creation of the City, to the powers of the City Commission, the Power of the City Manager, the powers of the City Clerk, which recently "got its independence" by a referendum that took place last November. There are other sections dealing with budget, elections, initiatives and referendums, and other items that are important, and will become even more important as these discussions occur within the next six months or so.

3. Introduction of Legal Department support team and Board Member Orientation.

Jose Smith, City Attorney, stated that the Office of the City Attorney would be providing staff support to help the Charter Review and Revision Board in discussing all of the various issues

that will come up. Residents have also provided to the Charter Review and Revision Board suggestions on certain section within the Charter that need to be looked at. Gary Held, First Assistant City Attorney, who is his Land Use Expert, who is present, will provide assistance with Land Use issues, as they come up from time to time. Raul Aguila, Chief Deputy City Attorney, will also be providing assistance with regard to any transactional issues or referendum issues, which may come up. Debbie Turner, First Assistant City Attorney, will be present at all the Charter Review and Revision Board meetings. Debbie will be assigned the responsibility to be at every meeting and take notes, and bring back to the City Attorney any issues that need to be researched, discussed, or any amendments that need to be drafted.

- **Debora Turner – First Assistant City Attorney, 305.673.7000 X 6441**

Debbie Turner, First Assistant City Attorney, discussed Sunshine Law and Public Records Law. Ms. Turner provided an overview, as many of the Charter Review and Revision Board members currently serve on City Boards, or have served on City Boards. The basics of the Sunshine Law, which is contained in Chapter 286 of the Florida Statutes, is that all meetings of public boards must be held in the Sunshine, i.e. open to the public; reasonable notice must be given; and minutes must be taken and properly recorded, which will be done by the City Clerk. As to the Sunshine Law, the type of meeting covered is any gathering where two or more of the Charter Review and Revision Board members are meeting to discuss board business. Those meetings must only be held in the Sunshine, and be publicly noticed. Charter Review and Revision Board members may attend social gatherings were two or more attend, but they cannot discuss anything that is before the Charter Review and Revision Board or foreseeably may come before the Charter Review and Revision Board for their decision. Other communications that are also covered by the Sunshine Law are written communications, memos, e-mails, third party communications and liaison communications. The Charter Review and Revision Board members cannot communicate or solicit input from other Charter Review and Revision Board members by any other method that would otherwise circumvent the Sunshine Law. Charter Review and Revision Board members cannot do indirectly what they cannot do directly.

In addition, Public Records Law applies to any material made or received by the Charter Review and Revision Board or board member in connection with the transaction of official business to perpetuate, or communicate or formalize knowledge of the Charter Review and Revision Board action. These documents are, subject to limited exceptions, public records. What is not a public record are the Charter Review and Revision Board member's own private notes that are made for one's self, which are not shared or shown to anyone else. Charter Review and Revision Board members need to be mindful if they are attending meetings of other boards, and they see another Charter Review and Revision Board member, that they do not discuss, debate, or communicate with that other Charter Review and Revision Board member on any matter that is either before the Charter Review and Revision Board or that may foreseeably come before the Charter Review and Revision Board for discussion. The penalties for violating the Sunshine Law are serious. Violations are considered noncriminal infractions, which carry up to a \$500 fine. However, if anyone knowingly violates the Sunshine Law, that is subject to a second degree misdemeanor charge, which carries penalties of up to 60 days in jail and up to a \$500 fine. The penalties for Public Records law violations are noncriminal infractions up to a \$500 fine. However, if a board member is found to have willfully or knowingly violated Public Records law, it carries up to a \$1000 fine and up to a year in jail.

Ms. Turner added that she would be happy to discuss any Charter Review and Revision Board members' questions regarding the Sunshine Law and the Public Records Law on an individual basis.

4. Introduction of City Clerk support team

- **Rafael E. Granado – City Clerk, 305.673.7000 X 6451**
- **Liliam Hatfield – Office of the City Clerk, 305.673.7000 X 6592**

Rafael E. Granado, City Clerk, introduced himself and Liliam Hatfield. Mr. Granado welcomed the members, and explained that the Office of the City Clerk will be the liaisons to the Charter Review and Revision Board. If they need anything, please contact the Office of the City Clerk. Mr. Granado went over the materials that had been distributed to the Charter Review and Revision Board members. The materials were: The Charter, Copies of the items that have been referred to the Charter Review and Revision Board by the Mayor and Commissioner that are on record; emails from Frank Del Vecchio, dated April 23, 2013, and Nancy Liebman, on behalf of Miami Beach United, dated April 24, 2013; and the resolution that formed the Charter Review and Revision Board.

Mr. Granado announced that a public email address had been created for the public to send any concerns, comments or suggestion to the members of the Charter Review and Revision Board. The email address is CharterReview@miamibeachfl.gov

Mr. Granado requested the Charter Review and Revision Board to provide him instructions as to how they wanted him to distribute the e-mails received at said email address.

5. Selection of a chairperson and vice-chairperson.

Aaron Perry nominated Stephen Zack, Esq. as Chair, based on his experience, having worked on the Charter Review and Revision Board for two consecutive terms. Mr. Perry announced that he was wide-open if the Committee was interested in allowing himself (Mr. Perry) to serve as Mr. Zack's Vice Chair. Alex Fernandez seconded the nomination. Voice vote 7-0.

ACTION: Mr. Stephen Zack, Esq. elected Chair and Aaron Perry elected Vice Chair unanimously.

Mr. Zack thanked the Charter Review and Revision Board members. He appreciates the opportunity to continue to serve the City.

Jose Smith, City Attorney, stated that he has known Stephen since high school, maybe even earlier. Stephen is a modest individual; he has served as President of the Florida Bar; the American Bar Association; and he is a senior partner at one of the most prestigious law firms in the United States. Stephen has been very helpful to the City with his legal talents and skills in more than one capacity throughout the years.

Mr. Zack responded that Mr. Smith has been a good friend and a great City Attorney.

Mr. Zack stated that the original motion was for both Chair and Vice Chair. However, he would entertain the request to bifurcate the motion. No Charter Review and Revision Board members requested to bifurcate the motion, thereby confirming Mr. Perry's election as Vice Chair.

6. Discussion regarding procedures.

Mr. Zack explained that the original Charter was 192 pages. It was so obsolete that the legal description of the City was incorrect. They had one goal when they first met in 1993, which they thought would be hard to obtain. They wanted to have a Charter that anybody could come to the City the night before they had a matter on the Agenda, pick up the Charter, read it that night and

know what the rules were and what rights they had. The concept of a Citizens' Bill of Right was revolutionary at the time; no other City had it. It turned out to be a very good thing for the citizens of Miami Beach. Mr. Zack commented to the Charter Review and Revision Board members that they would enjoy this opportunity. They will leave a lasting legacy with what they do here. This City deserves a great Charter and great leadership, which can only be achieved through a great Charter.

3:54 p.m.

Mr. Zack stated that he served on the State Constitutional Revision Commission, which happens once every 20 years. There were three Commissions: One had everything that they recommended not passed by the Citizens; primarily because it worked based on a majority vote, and you could place anything you wanted there on a majority basis. The second, which was the one he served one, required a supermajority vote, so that it had more gravitas. They only had eight recommendations, which were all adopted in the subsequent election by the voters. Robert's Rules are very clear that a simple majority is all that is necessary. In the past Charter Review Committees, they have had only a simple majority requirement, but most recommendations were adopted unanimously. There were only a few areas that drew some heat in the past, these were the Manager's role and property issues; but for the most part, everything else was approved unanimously. Unless he hears otherwise, the Charter Review and Revision Board will be controlled by Robert's Rule, which is just a majority vote. He suggests a process by which the Charter Review and Revision Board members agree that nothing is in stone until they do a final vote. This is because one discussion on one area may influence the Charter Review and Revision Board members in a different way after they think about it. Mr. Zack is happy to entertain other views on this. However, we should start with the concept that to be fully discussed and debated it is necessary that we have a majority vote, and it is always on a temporary basis until the final vote, which will be a comprehensive final vote. Mr. Zack again asked if anyone had a different opinion on the matter. None was expressed.

Mr. Smith stated that he agreed, and that it was important that whatever message that the Charter Review and Revision Board sends to the City Commission that there be consensus. Because if it comes down to voting on an issue on a 4-3 vote, it is unlikely that the City Commission is going to put that on the ballot simply because there is no consensus. Mr. Smith suggested that Charter Review and Revision Board wait until the issues are thoroughly discussed, and then decide at that point, what they want to do in terms of building consensus.

Mr. Zack stated that as far the rules so far, they would have full debate on various issues that they decide they want to proceed. They will take interim votes. The issue will either be approved or disapproved on an interim basis. It does not mean that something cannot be discussed again, before a final vote. Once people have had an opportunity to reflect, they may feel differently about it. He wants to give everyone in the Charter Review and Revision Board as much opportunity to get all the necessary information, and to come to a decision that they are comfortable with. Mr. Zack explained that everyone has the right to say whatever he or she wants, but just once. When people make a point, especially the audience, we want to hear everyone's point of view, but once. There is no need to repeat what was said by somebody else, because the Charter Review and Revision Board has a very limited time to achieve its objectives. Mr. Zack inquired if his proposed procedures sounded reasonable. No contrary opinions having been presented, Mr. Zack stated that they would proceed accordingly:

Procedures Adopted:

- a. **The Charter Review and Revision Board will have full debate on the various issues that the majority decides they want to discuss.**
- b. **They will take interim votes on issues. The issues will either be approved or disapproved on an interim basis.**

- c. **Everyone has the right to say whatever he or she wants, but just once, as the Charter Review and Revision Board has a very limited time to achieve its objectives.**
- d. **The Charter Review and Revision Board will have a final vote, which will be a comprehensive final vote, on all the issues they wish to move forward to the City Commission.**

3:58:56 p.m.

Alex Fernandez stated that on the issue brought up by the City Attorney regarding the deadline for submitting issues to the City Commission, clearly, there are some issues that are of great importance to this City, and the future of this City that clearly need to be submitted to the City Commission by the deadline to make it on the November ballot. That being said, there might be other issues that are important to the City that may merit some further discussion; others issues that do not need the urgency of this November's ballot, but do merit that we give it the necessary time and discussion to make the right decision.

Mr. Fernandez inquired of City Attorney Jose Smith, if it would be appropriate for the Charter Review and Revision Board to send a two-tier recommendation to the City Commission. One with the recommendations that need to be on this year's ballot; and then a second tier of recommendations of other issues that do not need to be on this year's ballot.

Jose Smith, City Attorney, stated that they could bifurcate issues. The Charter Review and Revision Board has until January 1, 2014 within which to do their work. If the Charter Review and Revision Board believes an issue is urgent and needs to get on the November 2013 ballot, you can certainly say, "These issues are ripe for your consideration, and should be submitted sooner rather than later." There may other issues that the Charter Review and Revision Board wants to keep studying and working on, which may not be time sensitive, and extend debate on those issues, and maybe they will get in the next ballot. Next year [in 2014], there are County elections, and we can piggyback on their election.

4:02 p.m.

Mr. Zack inquired as to what the Referrals that were attached to the agenda actually meant; and could those be preliminary reviewed today.

Thereafter discussion was had regarding the April 17, 2013 referrals.

Referred to the Charter Review Board to discuss term limits:

1. *A Resolution Calling For A _____, 2013 City Of Miami Beach Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach A Question Asking Whether Miami Beach City Charter Section 2.02 Should Be Amended To Provide That Commencing With The City's General Election In November 2013 Term Limits Set Forth Therein Are Subject To A Lifetime Ban On Further Election To The City Commission For Individuals Who Have Served 14 Consecutive Years As Members Of The City Commission, Retaining Remaining Provisions In Charter Section 2.02 Including Retroactive Applicability Of Term Limits.*
2. *A Resolution Calling For A _____, 2013 City Of Miami Beach Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach A Question Asking Whether Miami Beach City Charter Section 2.02 Should Be Amended To Provide That Commencing With The City's General Election In November 2013 The "Consecutive" Term Limit Language Shall Be Deleted, Providing Instead For Term Limits Of Six Years (Three Terms) For Mayor And Eight Years (Two Terms) For Commissioner, Retaining Remaining Provisions In Charter Section 2.02 Including Retroactive Applicability Of Term Limits.*

Jose Smith, City Attorney, stated that in the referral of April 17, 2013, items 1 and 2 deal with the same topic of term limits. That item was referred by the City Commission at its last meeting. Mr. Smith stated that there was sentiment that this one was time sensitive, and should be on the November 2013 ballot. **Rafael E. Granado to add to the May 6, 2013 Agenda.**

There are others that are either moot by subsequent action of the Commission or do not belong in the Charter. Jose Smith thinks that those can be taken at the Charter Review and Revision Board's next meeting, or whenever they feel it appropriate.

Jose Smith requested that the Charter Review and Revision Board inform him how they want to tackle the Charter. Do they want to go Article by Article? Do you want to assign certain Article to different folks? How best do you believe the review of the Charter should be accomplished?

Mr. Zack stated that it was a wonderful idea if everybody on the Committee ought to raise their hand if there is a particular Charter article that they are interested in. However, everyone should take one or more Articles that they are the expert on, and review it. Mr. Zack added that every person in the Committee should review every Article.

Jacqueline Lalonde inquired of Mr. Zack as to how the review of the Articles was accomplished at the last Charter Review. Mr. Zack stated that his recollection was that as they had more time last time, articles were not assigned. The first time in 1993, they Committee's duties were extended. Mr. Zack added that the Charter is only twenty pages; they are all expected to read twenty-pages. Since it is only twenty pages, then maybe nobody gets any particular Charter provision that they are responsible for. However, he still thinks that one person should be the person who begins the discussion on each Charter provision, and thereafter each member of the Charter Review and Revision Board can fully participate. However, he leaves that decision up to the Charter Review and Revision Board.

4:05 p.m.

Alex Fernandez inquired if the Related Special Acts were going to be discussed. Mr. Zack responded that it all depends on the time.

Mr. Zack, in reference to the term limits, asked for clarification regarding a 14 consecutive term year limit, and the six or eight-year term limits.

Mr. Smith explained that the City Charter currently allows someone who has served two terms as Commissioner and three terms as Mayor to come back as a Commissioner without interrupted service; the first option states that once you have served 14 years, regardless of how they are served, Mayor and Commissioner later, you are maxed out and you are term-limited and unable to run again. The second option is somewhat different; if you serve 14 years, you can take a two-year hiatus and come back. The sponsor of this measure, Commissioner Tobin, prefers Option 1. He added that rather than getting into the merits of other issues, he would rather the Board complete the discussions today as this is an organizational meeting, dealing with procedural issues, dates, and how often meetings will be. He will raise ten or 12 questions for their consideration, in addition to these referrals, of areas in the Charter that are ambiguous, and there are differences of opinions on certain things that they should deal with, but not today.

Discussion was held between Mr. Zack and Mr. Smith regarding question about term limits requested by the City Commission.

Ms. Lalonde explained that the consensus on the City Commission was 4-3; they did not wish to proceed with this issue of term limits, and there was no absolute consensus. Discussion continued and Mr. Fernandez stated that the item was referred to Charter Review and Revision Board. Ms. Lalonde stated that this is considered a highly contentious issue.

Rafael E. Granado, City Clerk, stated that the County will hold two elections, August 12 and November 14. Mr. Smith stated that they can work and still get it on the ballot next year. Mr. Granado explained that the General Election is November 5, 2013; for next year, the City can piggyback from the County on August 12, 2014 and November 4, 2014. Mr. Zack stated that their terms would have to be extended and Mr. Smith agreed.

Mr. Smith, in answering Ms. Lalonde's questions, stated that terms can be extended from January to August, depending on the issues that need be referred.

Referred to the Charter Review Board – Administrative Determinations:

Mr. Smith asked Mr. Held to explain the issue having to do with Administrative Determinations by the Planning Director and the proposal made by Commissioner Wolfson that those administrations be published and public be made aware of them, and whether this should or should not be part of the Charter.

Gary Held, First Assistant City Attorney, explained that the Planning Director is responsible for interpreting and enforcing the land development regulation, part B of the City Code. As part of the process, where a Code provision is not clear, he will issue an Administrative Determination to clarify how the Code would apply. There is no organized process for those administrative determinations to be published; discussions have been held for doing that so that they are widely disseminated to interested persons. The Planning Director's ability to issue Administrative Determinations is provided in the City Code, and perhaps should be there, but certainly could be part of the Bill of Rights provision. The first question is to ask whether this is worthwhile; discuss the merits or not, and discuss whether it is appropriate for inclusion in the Charter.

Mr. Zack asked what constitutes an Administrative Determination. He requested that information at the next meeting.

Mr. Held added that the Planning Director can be invited to make a presentation. He also clarified that a Planning Director makes a dozen or dozens of decisions per week on various kinds of matters that may involve some ambiguity; and he does not think the intent is that every single one is published, but find those types that reach the level of requiring publication or dissemination. Mr. Zack, on behalf of the Board extended an invitation to the Planning Director, to come with examples so they have a clear understanding and the definition in the Charter or by Ordinance that constitute an Administrative Administration. **Mr. Granado to invite Richard Lorber.**

Ms. Lalonde also asked to reach out to Commissioner Wolfson to explain his intent. **Mr. Granado to invite Vice-Mayor Wolfson.**

Referred to the Charter Review Board to discuss Repeal of Laws:

Jose Smith, City Attorney, explained that Commissioner Wolfson believes there are too many existing laws, and the City should look at repealing laws. At the last Commission he had a discussion item to repeal certain laws affecting peddling, walking, customers on Ocean Drive and Lincoln Road, operators, general laws that inhibit businesses that make it more difficult and expensive for them to operate; and look at repealing certain laws. It would be good to have him here to articulate.

Mr. Zack stated that if it is an Ordinance provision, is there an established rule that City and government bodies go by? Is it not subject to repeal?

Mr. Smith stated that the City has repealed many ordinances; there are many laws that had to be repealed because the City is pre-empted by the State. Mr. Held has repealed some unconstitutional laws, but these are not Charter issues.

Mr. Zack stated that this was out of order, and suggested that as courtesy to Commissioner Wolfson, to let him know and give him an opportunity to withdraw the item, as not appropriate for the Charter Review. **Jose Smith, City Attorney, to handle.**

7. Timeframe:

3:53 p.m.

In response to a question from Mr. Zack as to the timeframe, Mr. Smith reported that after talking to the County Attorney's Office and the County's Election Supervisor, it has been determined that the City has until September 6, 2013 to put something on the ballot. Technically, if the Commission decides to have a Special Meeting to put items on the ballot, it can be any time prior to September 6, 2013. Mr. Smith would say that the period is a little longer than June 1. Mr. Zack responded that the additional time was very helpful.

4:01 p.m.

Mr. Zack, Chair, inquired how many readings by the City Commission were necessary to adopt the Charter Review and Revision Board's recommendations. Additionally, when does the City Commission take its summer recess?

Jose Smith, City Attorney, stated that there is a City Commission meeting in July 2013. Rafael E. Granado, City Clerk, added that there are regularly scheduled City Commission meetings scheduled for June 5, July 17, and September 11. Obviously, Mr. Granado added, that the September 11 meeting was too late, as it is past the September 6, 2013 deadline.

Mr. Smith added that there is a sentiment that the City Commission will be holding a special meeting before September 6, 2013, to deal with Convention Center issues. Therefore, if there is a meeting in early September, before September 6, the City Commission could consider any Charter amendments at that time.

Mr. Zack commented that for the Charter Review and Revision Board's purposes, it would seem that July 17 is a date they shoot for, in part because when they present it to the City on July 17; they may have some things that they want the Charter Review and Revision Board to take back and consider. He would assume they should try to get their work done by July 17. Mr. Zack inquired if that was agreeable to the members of the Charter Review and Revision Board and the City Clerk. No contrary opinions having been presented, Mr. Zack stated that they would proceed accordingly:

Deadline Adopted: Charter Review and Revision Board to try to get its work completed for presentation to the City Commission by July 17, 2014.

8. Establish future meeting dates and times.

4:24:52 p.m.

Chair Zack asked Liliam Hatfield to send a calendar requesting to know when everyone is available. Mr. Zack asked how everyone felt about having the meeting at the end of the day, and working on the weekend. He asked which times will be better 5 p.m. to 7 p.m., or 4 p.m. to 6 p.m. Mr. Zack inquired of the Committee what they prefer. He stated that since we have City employees involved, they need to be respectful of their time also.

Alex Fernandez requested that since this is an important proceeding that will dictate the future of this City, it would be appropriate if the Charter Review and Revision Board agrees to avoid the dates where other committees such as the Finance, Land Use and the Neighborhood Committees meet to make it accessible for anybody wanting to participate. This will make these meetings open to the public without any conflicts.

Jacqueline Lalonde stated that she would be happy with 4:30 p.m. to 6:30 p.m. She inquired of staff if it was known which day of the week that does not interfere with the other committees? Ms. Lalonde added that the Budget Advisory Committee meets on Tuesdays, so she is not available on Tuesdays.

Jacqueline Lalonde stated that they should meet every two weeks, at the least, and depending upon the final deadline it may have to be changed to weekly meetings. She added that bifurcating some of the issues, as Alex Fernandez suggested, will be a good idea, and during the summer months some members will probably be taking vacation.

Jacqueline Lalonde suggested Monday, May 6, 2013.

Mr. Zack suggested sending the calendar because they could not all agree at the moment. He explained that the time will be 4:30 p.m. to 6:30 p.m., and to "X" out the dates that they are not available.

Discussion held as to the possibility of the meeting on Monday, May 6, 2013.

Discussion opposing to having meetings on Saturdays and Sundays was held. Ms. Lalonde noted her opposition for weekend meetings.

Alex Fernandez stated that it is important to remember that this is a community of different cultures, and when advertising these meetings it will be good to reach out to the Spanish community by advertising on the Spanish newspapers and that a cross section of the community and cross section of the demographic are invited to participate.

Discussion continued as to potential conflicts and absences on May 6, 2013.

Jacqueline Lalonde emphasized that it is important to have the meeting on Monday, May 6, because there will always be somebody absent and they can telephone in for the meetings.

Chair Zack stated that it is important to have "call in" because of the different schedules of the members. He added that at some point in time there may be a need to have a Saturday meeting. This is will specially needed if they want public participation.

Jacqueline Lalonde stated that there has been weekday meetings well attended by the public and her preference is late afternoon.

Chair Zack stated that Lillian will send out the calendar and that they need the technology for members to attend by telephone. **Rafael E. Granado and Lilliam Hatfield to handle.**

TO DO: Consensus for the meeting on Monday, May 6, 2013 at 4:30 p.m. was reached. **Rafael E. Granado and Lilliam Hatfield to handle.**

Chair Zack stated that The Citizens' Bill of Rights, Article 15, is extremely important to everyone's wellbeing, and he hopes that this is reviewed. This Article refers to conserving the natural resources and scenic beauty, which includes the abatement of water pollution and excessive and unnecessary noise. He stated that he wants to add traffic as another issue that needs controlling. The issue of

traffic is absolutely strangling our City. He wanted to point this out ahead of time to make sure it is discussed. **Rafael E. Granado to handle.**

Jose Smith, City Attorney, gave credit to Dr. Morris Sunshine whose effort lead to enactment of this particular provision on the last Charter Review ten years ago. This resident fought alone in the effort to fight noise pollution, environmental quality of life, etc. He should be commended for that.

Rick J. Preira asked if it would be appropriate, during the deliberations, to consider preservation of the resources of the beach. He added that our beach, our principal asset in terms of tourism, could use a lot more attention that it actually receives. **Rafael E. Granado to handle.**

Chair Zack stated that absolutely, and added that on first job as a Legislative Aide to Senator Claude Pepper, his first assignment was to review the 10 miles of beach in Miami Beach. At that time, the beach was left to the hotels and there was total beach erosion. The Senator made it part of a resolution that made it part of our national interest, as the boundary lines of the United States, and the \$60 million turned out to be \$600 million. He agreed to add it as our resources.

Jacqueline Lalonde asked if this Committee has the jurisdiction to do this, or was the beach the exclusive jurisdiction of the State or Federal government?

Chair Zack stated that this is a legal issue that they need to deal with, as part of what they can or cannot do. He added that there are rights that developers have, and there are infrastructure rights that the citizens have, which may require a Court determination sometimes. It is very appropriate to discuss.

Discussion continued.

Jose Smith, City Attorney, stated that the City has a management agreement with the State of Florida to manage the beaches, and the State has been very lenient in allowing the City authority discretion as to what is needed to preserve that asset. We should do a better job. He stated that adding this to the Charter would be appropriate.

Rick Kendle requested deciding what will be discussed at the next meeting, since these issues need to be on the ballot.

TO DO: Chair Zack stated that the issue of election (term limits) and the Convention Center would be discussed right away. **Rafael E. Granado to place on the May 6, 2013 agenda.**

Jose Smith, City Attorney, stated that he would identify the Charter provisions that have created problems in the past, either ambiguities, inefficiencies, additional cost to the City, and it is important for this Committee to consider those. He will identify those areas that the Committee needs to focus in before the next meeting of May 6, 2013. **City Attorney's Office to handle.**

Chair Zack stated that there are buildings in the City that are totally out of character with the City, and he does not know if something should be added to the Charter to keep that from happening in the future.

Jose Smith, City Attorney, stated that Jorge Gomez, Assistant City Manager and former Planning Department Director, lived through much of the overdevelopment in the late 1980s early and 1990s. Mr. Smith stated that provisions were added to the Charter in 1997 and after, which limit the amount of development intensity, F.A.R., etc.

Rick Kendle stated that for him the issues are term limits, Convention Center and the need for an Inspector General. He feels the Mayor's term should be 4 years and not 2 years. He feels all these issues should be on the ballot in November. **Rafael E. Granado to handle.**

Chair Zack stated that he accepted this as motion and asked if anybody else wished to bring items.

Scott Diffenderfer brought up the issue of electing official by districts, and not by seats as it is currently done.

Chair Zack stated that he tried that case and has strong feelings on the subject and the Charter Review and Revision Board should look at that. **Rafael E. Granado to handle.**

Discussion continued.

Jacqueline Lalonde stated that she would reserve her comments for the next meeting.

Public Input:

Terry Beinstock, President of the Sunset Island III and IV Homeowners Association and founding Director of Miami Beach United, stated that this group was formed to advance the rights of citizens in the City and for the City. Their first discussion was about amending the City Charter and amending the Citizen's Bill of Rights. He added that they have submitted to this Committee the proposed amendments. Miami Beach United surveyed many cities and counties' Bill of Rights to see what other communities are doing.

He requested this on the next agenda, since they spent many hours researching, analyzing and writing a good working draft for this Committee's review and obtain public comment. They will like these items to be on the ballot in November.

Mr. Beinstock also suggested preserving the City's historic character through the Charter.

Frank Del Vecchio, retired Massachusetts Attorney, thanked the members of the Committee for accepting the task. In reference to reform, and somebody mentioned the Inspector General, he stated that he thinks there is investigative authority in the Charter. He spoke about incorporating "whistle blower" protection for employees into the Bill of Rights.

Mr. Del Vecchio will look into extending the Bill of Rights to cover employees. He submitted a background, analysis and proposed language for Charter amendment for the sale, exchange or lease of City owned property for ten or more years in the Convention Center District. This is time sensitive, and there is an expectation from the public that any property sold, exchanged or lease in the Convention Center District should be subject to a referendum.

Mr. Del Vecchio also spoke about term limits. He explained that some Commissioners felt that term limits should be placed on the soonest possible ballot. The City Attorney gave a judgment that even if it was on the November 5 ballot, it may not take effect, as qualifying is September 6. So in matters like that, when you have an agenda, he would look for three things: If an item is recommended for consideration by the Charter Review and Revision Board, if at all possible, the proponent of the item should write it down, express the reasons for it, and this should be done in advance to make it available to everyone including the public. Mr. Del Vecchio explained how the meeting should be held and the items presented.

Mr. Del Vecchio also spoke about voting districts versus elections at large. He recalls that in the 2003 Charter Review and Revision Board, the City Attorney had significant questions about it. Mr. Del Vecchio did review the matter with the former City Clerk. He believes that it is worth looking at.

He has not seen any strong interest in it, since then; and no strong sentiment coming from the City Commission. However, if a member of the Charter Review and Revision Board feels strongly enough that it should be discussed further, then that member should give the reasons for that.

Jose Smith, City Attorney responded that he was a proposer of districts the first time the Charter Review Committee met in 1993. The reason that he was in favor of districts at that time was that there were no Hispanics in the City Commission. He felt that by creating districts there will be at least one Hispanic elected from the north end. Since then, he has been convinced that the City is too small and it causes people to concentrate and limit their view to specific areas of the City, rather than the whole City. He added that there should nevertheless be discussion on this issue. **Rafael E. Granado to handle.**

Chair Zack stated that there was a lawsuit brought by Victor Diaz and Matti Bower against the City, he tried it on behalf of the City and it was determined that there was no violation of the Voting Rights Act by not having districts. It costs the City a lot of money to litigate.

Discussion continued.

Chair Zack mentioned that there was an issue during the last Charter Review in 2003, as to whether to include a mandate that employees should be courteous to citizens in the Bill of Rights. Mr. Zack stated that how citizens are treated should be added to the Bill of Rights. Mr. Zack requested that this be added to the Agenda. **Rafael E. Granado to handle.**

José Smith, City Attorney, stated that on the issue of the Inspector General, in the context of the authority of the City Commission, he discussed this issue with several Commissioners and they feel there needs to be some way for them to independently investigate wrongdoing in other areas of the City. The only reference in the Charter for an independent party is an auditor and not an Inspector General. It was felt that this was not good enough, and the idea of an Inspector General under the supervision of the Mayor and Commissioners will be helpful to Commission since they no longer have subpoena powers. Chair Zack stated that this has already been requested to be placed on the agenda, and it will be discussed. **Rafael E. Granado to handle.**

Discussion continued.

Alex Fernandez stated that he would like to discuss subpoena power, especially after what has occurred in this government in the last year, it merits discussing allowing this government to investigate the acts and conducts of its officials and former officials.

Rick Kendle asked if he has an item, should he send it to Liliam and she will send it to everyone else for the next meeting. **Rafael E. Granado to handle.**

Jose Smith, City Attorney, stated that it is a good idea.

Motion – Three-Day Rule

Alex Fernandez stated that he agrees with what Frank Del Vecchio suggested, and that the proposals should be available ahead of time, and he moved to enact a three-day rule for the public to have access to this information. Seconded by Rick Kendle; Motion approved unanimously. **Rafael E. Granado to handle.**

Rafael E. Granado stated that he needs to receive the items before the three days. The items need to be provided before the agenda is prepared before the three days. He needs to draft the agenda May 1, because of the weekend, and he needs the items before May 1.

Chair Zack stated that in reference to Item 18 "Ethics in Government" the best that could be done back then was to state that it was backed by applicable codes of conduct. There needs to be discussion of what that is. The Ethics Code needs to be more specific.

Jose Smith, City Attorney, stated that the Ethics Guidelines are in Chapter 2 of the City Code. They are very strict and the citizens passed a Charter Amendment, which provides that no Commission can water down ethics legislation. They can be stricter but not weaker. He stated that it could be added to the Charter and just saying that those sections of Chapter 2 of the City Code are added to the City Charter. Mr. Zack asked that this be added to the Agenda. **Rafael E. Granado to handle.**

10. Adjourn meeting.

Meeting adjourned at 5:06:59 p.m.

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Item 2

List of Charter Provisions Identified by the City Attorney for Review

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CHARTER REVIEW TOPICS

The following Sections of the Miami Beach Charter are recommended by the City Attorney's Office for review and consideration by the Ad Hoc Charter Review and Revision Board:

- **Section 1.03. – Powers of City**
Subsection (b), entitled "Alienability of property," requires referendum approval for the "sale, exchange, conveyance or lease of ten years or longer" of certain City-owned properties. Should other City-owned properties be subject to this referendum requirement?
- **Section 2.02. – Term and compensation.**
This Section refers to both "compensation" and "salary" for the Mayor and City Commissioners. To clarify these terms, references to the annual dollar amount received by the Mayor and City Commissioners should refer to "salary." Also, provisions may be considered to address other types of compensation and benefits received by the Mayor and City Commissioners such as stipends, pension benefits, health benefits, etc.
- **Section 2.03. – Powers of the city commission.**
This Section currently provides for an independent City Auditor. Amendments providing for an Inspector General, or other like official, would be appropriate in this Section.
- **Section 2.07. – Vacancies in city commission.**
The provisions relating to the filling of vacancies on the City Commission are addressed in this Section. New provisions to further define "vacancy" when elected officials run for another elective office, such as for State Representative, may be addressed in this Section.
- **Section 3.01. – City attorney; duties generally; appointment of personnel.**
- **Section 4.01. – City manager – Compensation and qualifications.**
- **Section 4.03. – City clerk – Appointment and compensation.**
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.
- **Section 4.02. – City manager – Functions and powers**
Subsection (b) provides that the City Manager appoints all Department Directors subject to the consent of the City Commission. Should Assistant City Managers also be subject to the consent of the City Commission?
- **Section 6.03. – Qualifying.**
This Section provides the requirements for persons qualifying for elected office in the City. Currently, a person must live at least one year in the City prior to qualifying. A different qualifying time for residence in the City may be addressed in this Section.

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Item 3.
Memo From
Alex Fernandez

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MIAMI BEACH

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CITY CLERK'S OFFICE

CHARTER REVIEW AND REVISION BOARD

MEMORANDUM

TO: Mr. Rafael Granado, City Clerk

FROM: Alex Fernandez, Charter Review Board Member

DATE: April 30, 2013

SUBJECT: Items for Discussion

At the our first meeting of the Charter Review Board I sponsored a motion requiring that, in the spirit of transparency, a three day rule be implemented making agenda items and referrals for discussion available to the public for their timely review prior to meetings of the CRB. As such, please accept this memorandum containing items which I believe merit the consideration of the CRB and which should be added to the referral tracking document.

Referrals

1. Motion requesting that the City Clerk advertise meeting notices, agendas, and CRB website address on Spanish publications.
2. Motion bifurcating recommended Charter amendments to the City Commission by two tiers:
 - a) Recommended Charter amendments of a time sensitive nature which should be included on the November, 2013 ballot and which shall be presented to the City Commission for their consideration, adoption, and submittal to the Miami-Dade County Elections Department no later than the ballot deadline of September 6, 2013; and,
 - b) Items that may not be time sensitive and which may merit extended debate. Such items may be presented to the City Commission upon sunset of the Charter Review Board for the City Commission's consideration, adoption, and inclusion on the Miami-Dade County Primary Election scheduled for August 12, 2014.
3. Motion requesting that the City Commission consider amending City of Miami Beach resolution number 2012-28072 creating the Miami Beach Ad Hoc Charter Review

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and Revision Board so as to enlarge its powers of review to include the City's Related Special Acts portion of the City Code.

4. Motion establishing that the Charter Review Board will give adequate consideration to all recommendations submitted by members of the public to the Charter Review Board.
5. Motion requesting that the City Manager direct the Management Team and Department Directors to submit to the Charter Review Committee any areas or items that pertain to their department which they would like for the Charter Review Board to review or discuss.
6. Amend the *Citizen's Bill of Rights, (c) Remedies for Violations* to include language to empower the Miami-Dade County Commission on Ethics and Public Trust with investigation and enforcement of the Citizen's Bill of Rights and empowering the Commission on Ethics and Public Trust to impose any penalty allowed by law.
7. Amend the *Citizen's Bill of Rights, Item 6 Right to Notice* to add new language providing that the agenda for land use boards and quasi-judicial proceedings be made available no later than fifteen (15) business day prior to the meeting or proceeding and that staff reports be made available no later than three (3) business days prior to the meeting or proceeding.
8. Amend the *Citizen's Bill of Rights, Item 12 Quarterly Budget Comparison* to add new language providing that in keeping with the City's commitment to transparency, reliability, and accountability to residents, the City shall make public on its homepage an online check registry.
9. Review of the *Citizen's Bill of Rights* to discuss adding new language establishing property owners' rights which shall establish that a property owner is entitled to the designation (or lack thereof) and the zoning of a property as was established at the time of purchase with the exception of reasonable zoning changes. Discuss inclusion of language that would require that:
 - a) any new historic designation of property be applicable only on prospective ownership unless the property owner provides consent for the designation; and,
 - b) the down zoning of a property beyond what is reasonable shall only be applicable on prospective ownership unless the property owner provides consent for the down zoning.

The City Commission shall establish the definition of ownership and reasonable as it would relate to this clause.

10. Review of *Article I – Corporate Existence, Form of Government, Boundary and Power, Section 1.03 – Powers of the City, (b) Alienability of Property* to discuss including new

We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

language pertaining to the conveyance of air and underground easements for the construction of above ground or underground permanent structures (bridges, parking garages, basements, etc.) for uses other than utility (electric, water, gas, sewer, etc.) and to conclude whether conditions for such conveyance shall:

- a) be addressed in the City Charter;
- b) require a five seventh (5/7) vote of the City Commission and a majority vote of the Planning Board; and,
- c) the City Commission shall establish the value appraising method for above ground and underground easements being considered for conveyance.

11. Review of *Article I – Corporate Existence, Form of Government, Boundary and Power, Section 1.03 – Powers of the City, (b) Alienability of Property* to consider if in addition to the provisions set forth in the City Code (*Chapter 82 – Public Property, Article II Sale or Lease of Public Property, Section 82-37 Committee Review and Public Hearing*) shall public notice be served by mail (United States Postal Service) to every property owner within 375 feet from City-owned property which is being considered for conveyance when:

- a) the City-owned property falls within or adjacent to a residential neighborhood; and,
- b) the proposed main use of the City-owned property is different from its existing use.

12. Review of *Article II – City Commission, Section 2.03 – Powers of the City Commission* regarding new language establishing a non-interference clause which shall establish that with the exception for the purposes of inquiry and information, members of the City Commission are expressly prohibited from interfering with the performance of the duties of any employee who is under the direct or indirect supervision of the City Manager.

13. Review of *Subpart B - Related Special Acts, Article V. Health Plan for City Officers and Employees* to consider new language addressing the tax inequity of employees who elect to include their domestic partner in the City's health plan and establish that the City Commission shall enact policy to correct the inequality in taxation imposed by the Federal Government in keeping with the City's commitment to be free of all forms of discrimination and inequality.

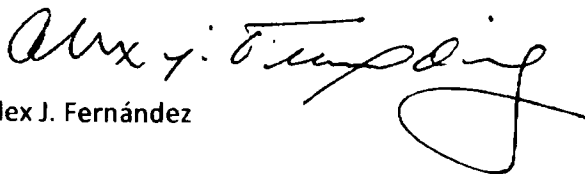
14. Discussion pertaining to the adoption of a Whistleblower Protection Act through which the City Commission shall establish protections for all City employees and appointees who report violations of any local, state, or federal law, regulation,

policy, or procedure with respect to an alleged abuse of authority, misuse of public funds, or the existence of a danger to the public health, safety, or welfare. The Commission shall establish a prohibition on any retaliatory conduct against anyone who acts as a whistleblower and reports a violation. Procedures shall be set by the City Commission.

15. Discussion pertaining to the adoption of language to require that any member of a land use board or of any board that engages in quasi-judicial hearings shall be required to resign from their appointed seat upon qualifying for elected office in the City of Miami Beach.
16. Discussion pertaining to the constitutionality of adopting recommendations regarding pension reform submitted to the City Commission by the Budget Advisory Committee.
17. Discussion pertaining to the recommendations submitted by Miami Beach United regarding the Citizen's Bill of Rights.
18. Discussion pertaining to Mr. Frank Del Vecchio's communication regarding "voter referendum approval for the sale or lease of any and all city-owned property in the 52-acre convention center redevelopment district."

I trust that the Chairman Zack will schedule the hearing of the above referral items timely and appropriately. Please ensure that the motions contained in items one (1) through five (5) are included on the May 6, 2013 agenda of the Charter Review Board. Other items will follow under separate cover to be included for future meetings. Please do not hesitate to direct any questions and/or concerns directly to me.

Thank you,



Alex J. Fernández

Item 7 a.
E-mail From
Frank Del Vecchio

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Hatfield, Liliam

From: Frank Del Vecchio <fdelvecchio@atlanticbb.net>
Sent: Friday, April 26, 2013 5:07 PM
To: Steve Zack; Fernandez, Alex; Rick Kendle; Jackie Lalonde; Aaron Perry; Richard Preira
Cc: Charter Review; Granado, Rafael; Smith, Jose; Aguila, Raul; Held, Gary; Turner, Debora; Morales, Jimmy; Gomez, Jorge; Sklar, Max
Subject: "Referendum Required for Any Disposition or Ten-year + Lease of City-Wide Property" [Convention Center District]
Attachments: Pre-Proposal Conference Presentation 2-27-2012.pdf; Map.pdf

April 26, 2013

NOTE FOR: Chairman Steven Zack and Members of the Charter Review Revision Board

FROM: Frank Del Vecchio, 301 Ocean Drive, Apt. 604, Miami Beach, FL 33139

SUBJ: My proposed amendment to Sec. 1.03(b)2. City Charter, conforming referendum requirement for alienation of city-owned Convention Center District property

I apologize for communication by e-mail, and am doing so only because of the convenience the internet affords to include links to documents, in this case to the city's official Convention Center RFQ map and to its official Pre-Proposal Conference presentation, Feb. 27, 2012. [Page 26, attached.] Hereafter, I will adhere to submissions that lend themselves to incorporation in your meeting agendas and minutes.

The purpose of this e-mail is to emphasize what I submitted to you in my e-mail of April 19, and mentioned briefly when you opened your meeting yesterday to public comment.

I believe it is essential to conform the Charter to the public expectation created by all official documents and in all public discussions that voter approval by majority vote at a city-wide referendum was required for the privatization of any Convention Center District land (all of which is publicly owned). I believe it would be an unconscionable and unacceptable breach of public trust if the city commission did not now place on the ballot a Charter amendment conforming to these representations. I ask you to take this background into consideration, and if you find it convincing submit your positive recommendation to the mayor and commissioners.

The public was led to believe from the outset that they had the safeguard of a city-wide referendum requiring approval of a majority of those voting for privatization of any portion of the 52-acre Convention Center District. If the public had been advised that only the surface parking lots were subject to the referendum requirement the process might have been much different.

The new information in this e-mail is the Power Point presentation at the Pre-Submittal Conference, Monday, February 27, 2012 to a huge audience, city manager Jorge Gonzalez presiding. Note slide number 26:

"REFERENDUM. Any disposition or lease of 10 years or longer of City-owned property requires City-wide voter approval."

This, plus the same information in the official RFQ documents, has been totally accepted by all parties, by the press, by public officials, by the city's official Miami Beach Convention Center Advisory Board, by the "Stakeholders" ad hoc committee including the Greater Miami and the Beaches Convention & Visitors Bureau and the Miami Beach Chamber of Commerce, the industry, and by the public.

Slide 26 is separately attached. The full document is available on the city's web site under the bid documentation for:

"RFQ 22-11/12 - For the Development of the Miami Beach Convention Center District, Pre-Bid Meeting - February 27, 2012 at 2 p.m. Bid Opening - April 23, 2012 at 3 p.m."

It reiterates the language in the RFQ that "Any disposition or lease of 10 years or longer of City-owned property requires City-wide approval." [RFQ Sec. I F. "REFERENDUM" and Sec. I.C.1.]

*RFQ Section I. C. 1. states that the City owns the entire project site and lists the properties on the site including: 2. The Convention Center; 3. The Gleason Theater; 4. 17th Street Garage; 5. Surface Parking Lots; 6. City offices: City Hall, 1701 Meridian, 555 17th St.; 7. Carl Fisher Club House; 8. 21st St. Community Center; 9. Internal Roads including Convention Center Drive and 18th Street. [Emphasis supplied.]

**The February, 2012 Request for Proposals (RFQ #22-11/12) represents that *"the use of any or all of the city-owned properties referenced in this RFQ will be subject to the requirements of section 1.03(b)(2) of the Miami Beach City Charter, which requires that any sale, exchange, conveyance or lease of ten (10) years or longer of such properties by the City shall also require approval by a majority vote of residents in a city-wide referendum."* [RFQ Sec. I F. "REFERENDUM"].

MIAMI BEACH
CONVENTION CENTER DISTRICT

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RFQ

Pre-Submittal Conference
Monday, February 27, 2012



MIAMIBEACH

RECOOVERVIEW

- Introductions
- Contact Person
- Sign-in Sheets
- Summary of Applicable Ordinances

RFQ PROCESS

- RFQ Schedule
- Phase 1 – Qualifications
(Master Developer and Designer)
 - Relevant Experience
 - Financial Capability

RFQPROCESS

Phase 2 –Proposal and Key LOI Terms (For Shortlisted Proposers Only)

- Master Plan
 - Community Meeting(s)
- Financing Plan
- Traffic Impact Analysis
- Project Schedule
- Economic and Community Benefits Summary
 - Convention Center and Headquarter Hotel ROI Analysis
- Public Participation Requested, if any

AERIALVIEW



SITE DESCRIPTION

Miami Beach Convention Center

- Four(4) Halls
- Exhibit Space – 500,000 SqFt
- Meeting Space – 126,000 SqFt



SITEDESCRIPTION

City Administrative Offices

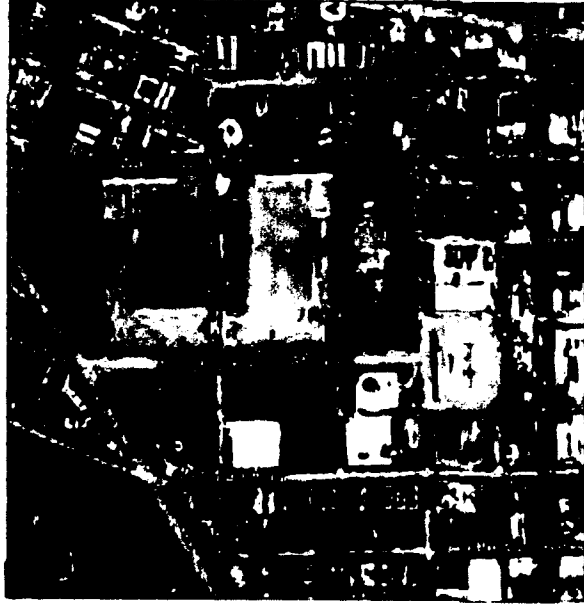
- City Hall – 110,400 Sq.Ft.
- 1701 Meridian Street – 34,570 SqFt
- 555 – 17th Street – 12,690 SqFt



SITE DESCRIPTION

17th Street Garage

- 1,450 Parking Spaces
- FY2010
 - Revenue: \$3.7 Million
 - Net Profit: \$2.5 Million



SITEDESCRIPTION

Surface Parking Lots

- 1,040 Parking Spaces
- FY2010 Revenue: \$1.3 Million



SITEDESCRIPTION

The Fillmore Miami Beach at the Jackie Gleason Theater

- 2,700 seats



SITE DESCRIPTION

21st Street Recreation Center Historic Preservation Site



SITE DESCRIPTION

Historic Preservation Site Designation
Requires Historic Preservation Board Approval

- 21st Street Community Center
 - 25,000 SqFt
- Carl Fisher Club House
 - 3,230 SqFt
 - Will not meet criteria for Certificate of Appropriateness for demolition



DEVELOPMENT OVERVIEW

Master Development Program Requirements

- Convention Center Expansion / Addition
- Convention Center Headquarter Hotel
- Public Uses (City Offices, Parking)
- Public Amenities (Parks, Open Space)
- New Uses that Maximize Public Assets

CONVENTION CENTER HEADQUARTER HOTEL

Minimum Program

- Multi-Purpose / Ballroom (60,000 Net Sq.Ft.)
- Additional Meeting Space
- Outdoor Function Space
- Class "A" Renovation

CITYOBJECTIVES

Expand and Enhance the Convention Center to attract high-impact conventions, meetings, and trade shows in an increasingly competitive market.



AMERICAN SOCIETY OF
PLASTIC SURGEONS

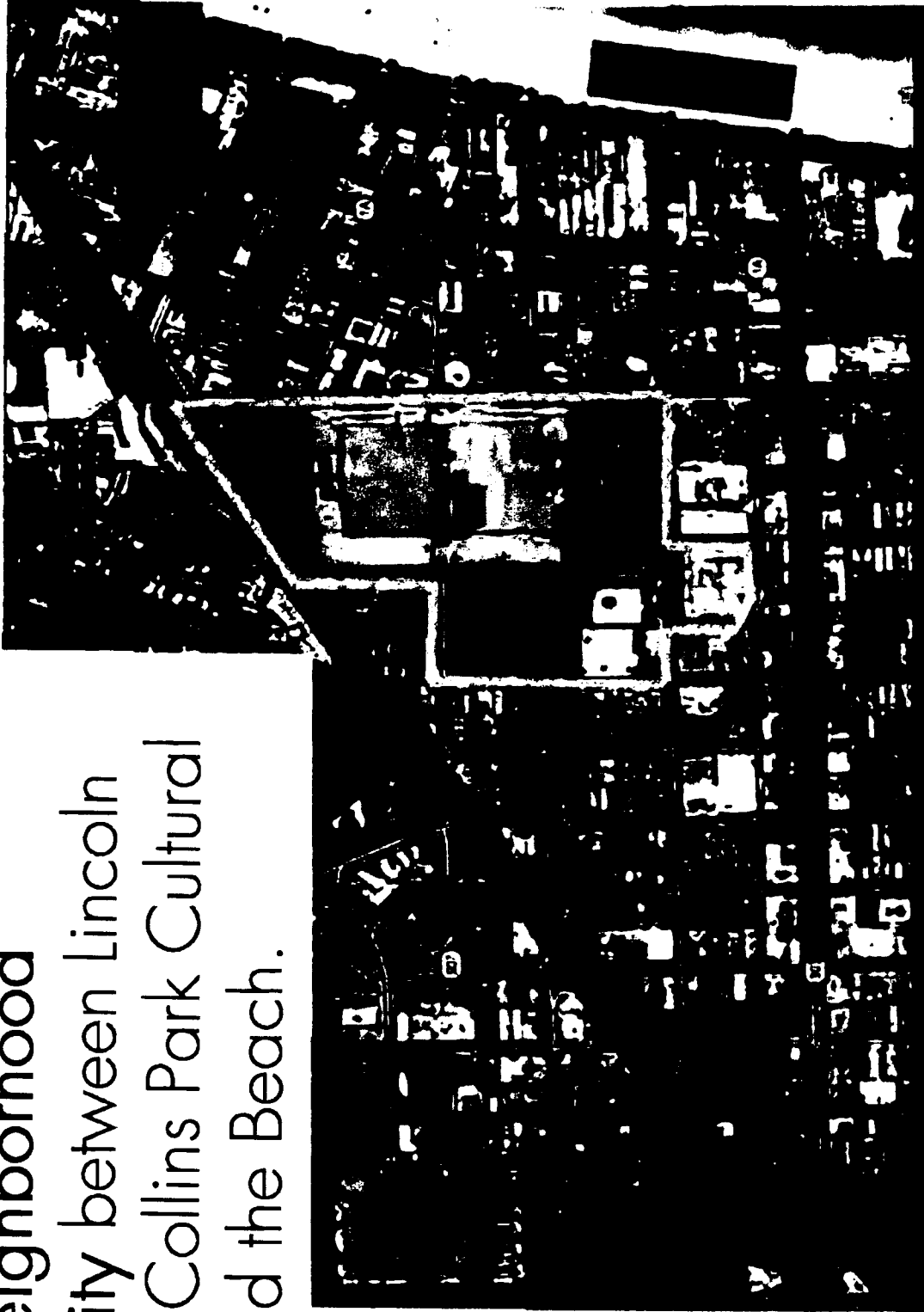


American Dental Association
www.ada.org

CITY OBJECTIVES

Provide neighborhood connectivity between Lincoln Road, the Collins Park Cultural Center, and the Beach.

Opportunity to Improve Canal



CITY OBJECTIVES

Transform the Convention Center

District to a new Mixed-Use neighborhood

- Public Amenities
- Enhanced experience for Convention Goers

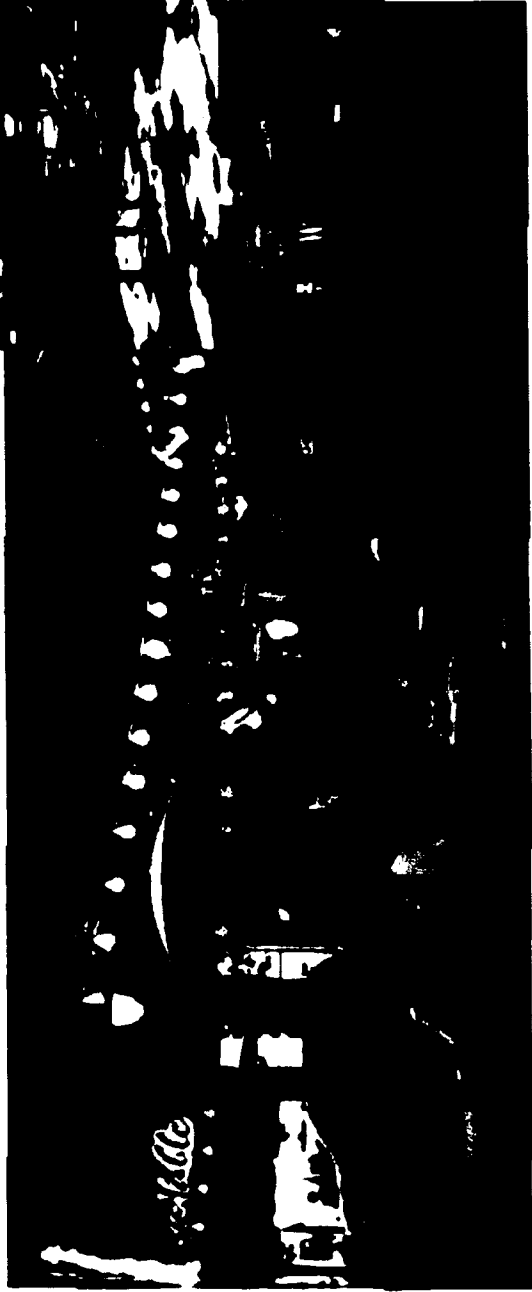


Boston Hynes Convention Center

Washington Convention Center,
Seattle

CITYOBJECTIVES

Activate the Convention Center District to a vibrant place with year-round activities



CITYOBJECTIVES

Provide new public amenities
for residents, visitors, and
convention goers



Kansas City
Convention Center



San Francisco
Yerba Buena Gardens



CITY OBJECTIVES

City of Miami Beach Tradition of Iconic
Design and High-Quality Architecture



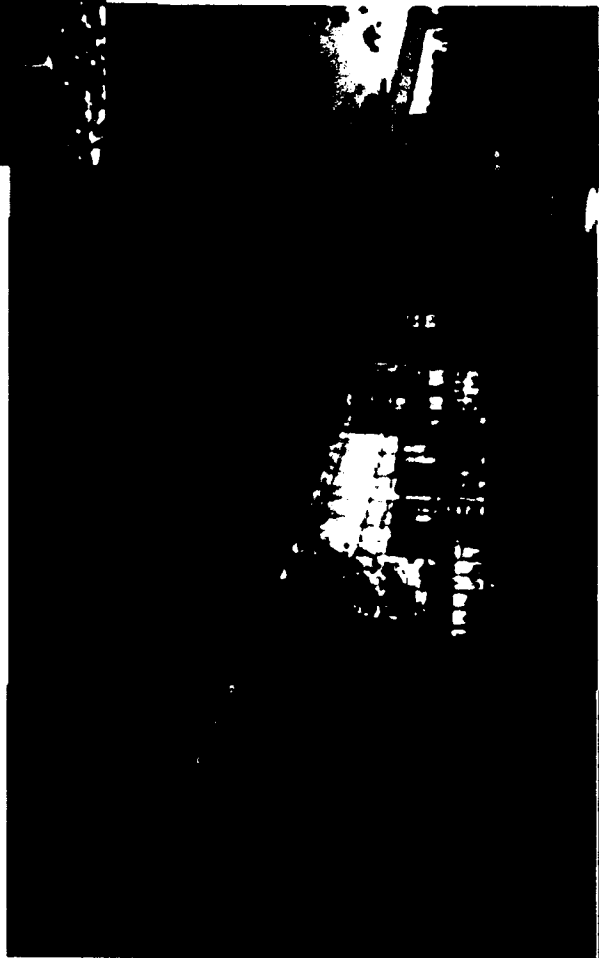
CITY OBJECTIVES

Sustainable design
LEED Certification

53



California Academy of Sciences
San Francisco
LEED Platinum Certified



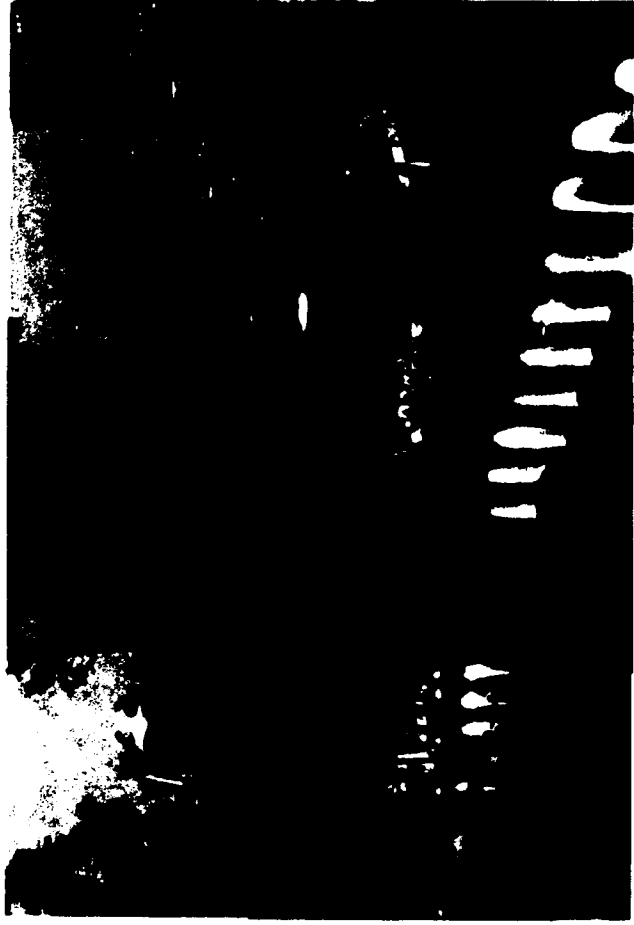
Georgia Gwinnett College Library
LEED Gold Certified

IDEABOARD

- Enhance Urban Pedestrian Experience
- Utilize Natural Amenities



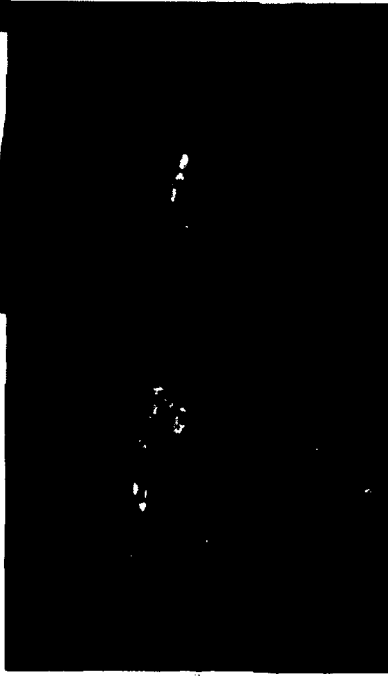
San Antonio Convention Center



Midtown Park, Tokyo

IDEABOARD

New Community Uses



CITY OBJECTIVES

Economic Benefits

- Maximize Public Assets
- Generate new City revenue
- Minimize Public Financing

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Community Benefits

- New Mix-Use District
 - Provide additional Community Amenities
 - Enhance Urban Experience for residents and visitors
- Parks / Open Space

CONSIDERATIONS

- **Economic Impact Analysis**
 - City Benefits (property tax, land lease, sales tax, etc.)
 - Hotel Economic Impact (resort tax, land lease etc.)
- **Traffic Impact Analysis** for proposed development
- **Provide a Phasing Plan** for continued Convention Center operations during master development construction

REFERENDUM

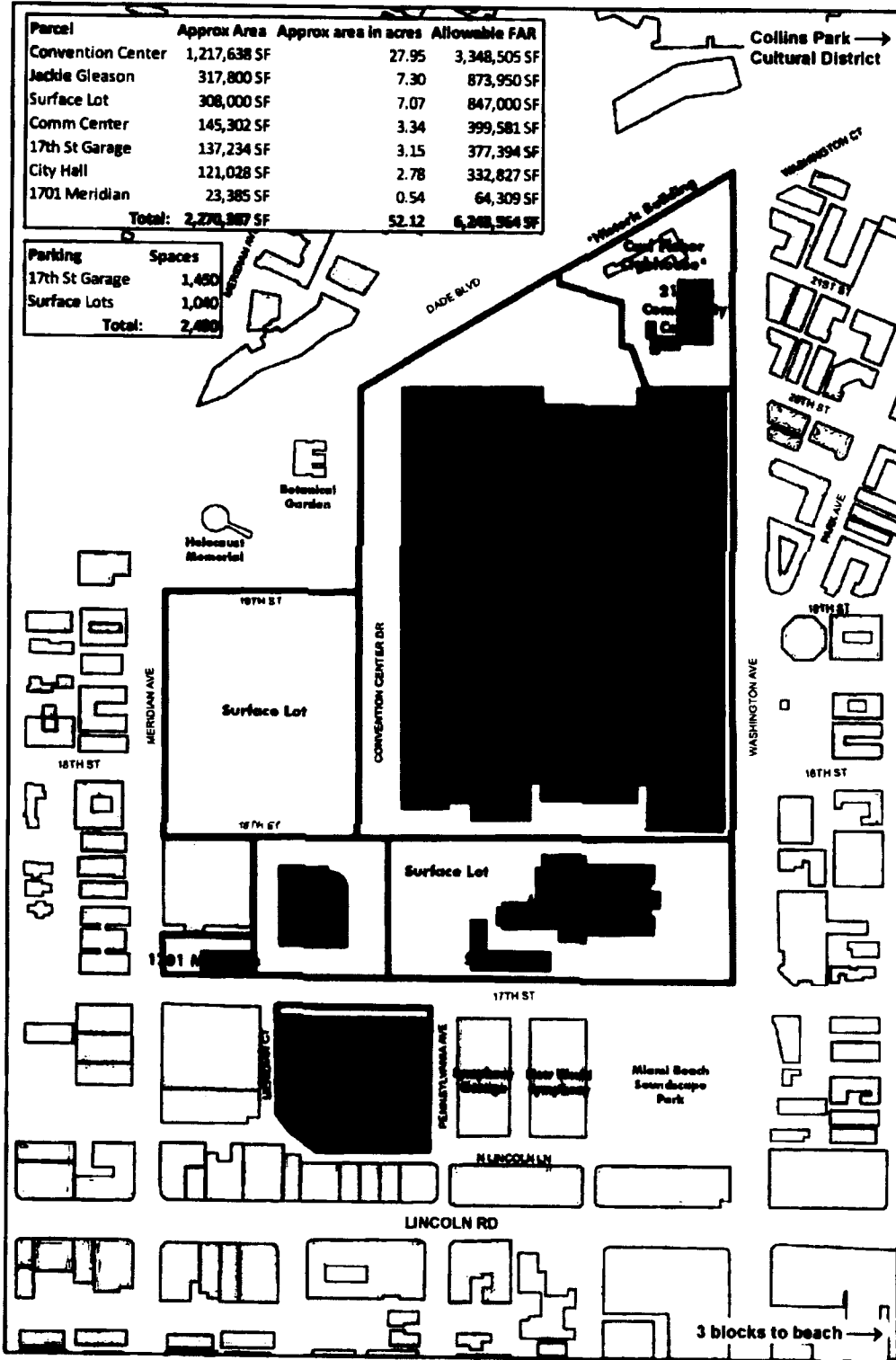
Any disposition or lease of 10 years or longer
of City-owned property requires City-wide
voter approval

RFP PROCESS

- Minimum Submission Requirements
- Evaluation Process
- Forms to be Completed and Submitted
- Performance Evaluation Surveys

QUESTIONS AND ANSWERS

Miami Beach Convention Center District Map



From: Frank Del Vecchio [<mailto:fdelvecchio@atlanticbb.net>]
Sent: Friday, April 19, 2013 4:57 PM
To: Jackie Lalonde; Scott Diffenderfer; Aaron Perry; Fernandez, Alex; Richard Preira; Steve Zack
Cc: Morales, Jimmy; Granado, Rafael; Smith, Jose; Aguila, Raul; Gomez, Jorge; Sklar, Max; Bower, Matti H.; Weithorn, Deede; Tobin, Ed; Libbin, Jerry; Wolfson, Jonah; Gongora, Michael; Exposito, Jorge
Subject: Convention Center Referendum Requirement

April 19, 2013

MEMO FOR: City of Miami Beach Charter Review Board

cc: Mayor and City Commissioners, City Clerk, City Manager, City Attorney

FROM: Frank Del Vecchio, 301 Ocean Drive, Apt. 604, Miami Beach, FL 33139

SUBJ: Request to Consider a Convention Center Development Charter Amendment to Require Voter Referendum Approval for Sale or Lease of Any and All City-Owned Property in the 52-Acre Convention Center Redevelopment District

The public has been officially led to believe that all property in the 52-acre Convention Center District is subject to voter approval in a city-wide referendum. Only recently have officials realized that the strict requirements of the City Charter require voter referendum approval only for city park property and the surface parking lots in the Convention Center District.

The only way to honor the explicit representations in the City Commission-Approved RFQ [outlined below] and the numerous public meetings and city commission discussions, is to amend the City Charter to correspond to those representations.

I have drafted a Charter amendment that adds buildings and streets to the city-wide voter approval referendum requirement. [Draft attached].

 I urge the Charter Review Board to study the official RFQ documents, the applicable sections of the current city charter, and the minutes and videos of public meetings at which top city officials made these representations. It would be unconscionable now for the City to *discover* that the RFQ misstated the Charter requirement, and for the city commission to pull back at this late date. The credibility of our city and the process would be severely damaged.

Since all the timetables for Convention Center District redevelopment assume that a voter referendum is a requirement, the inclusion of a validating Charter Amendment need not by itself affect the timetable. If the definitive details regarding the sale, conveyance, exchange or lease of RFQ properties are ready for inclusion on the November 5, 2013 General Election Ballot, voter approval can be made contingent on approval of the validating Charter Amendment that same date.

NOTES:

*The February, 2012 Request for Proposals (RFQ #22-11/12) represents that *"the use of any or all of the city-owned properties referenced in this RFQ will be subject to the requirements of section 1.03(b)(2) of the Miami Beach City Charter, which requires that any sale, exchange, conveyance or lease of ten (10) years or longer of such properties by the City shall also require approval by a majority vote of residents in a city-wide referendum."* [RFQ Sec. I F. "REFERENDUM"].

**RFQ Section I. C. 1. states that the City owns the entire project site and lists the properties on the site including: 2. The Convention Center; 3. The Gleason Theater; 4. 17th Street Garage; 5. Surface Parking Lots; 6. City offices: City Hall, 1701 Meridian, 555 17th St.; 7. Carl Fisher Club House; 8. 21st St. Community Center; 9. Internal Roads including Convention Center Drive and 18th Street. [Emphasis supplied.]

***A lawyer could argue that notwithstanding the representations in the RFQ, the small print in the city charter excludes most of the property listed, for only two categories of property in the Convention Center District are subject to the Charter requirement for city-wide referendum voter approval: City-owned parks [Charter Section 1.03(b)1.] and City-owned surface parking lots [Charter Section 1.03(b) 2. (4) *Convention Center Parking Lots*].

Draft amendment to Sec. 1.03(b) 2., City Charter

Sec. 1.03. - Powers of city.

...

(b) Alienability of property.

...

2. The sale, exchange, conveyance or lease of ten years or longer of the following properties shall also require approval by a majority vote of the voters in a City-wide referendum: (1) *Lots West of the North Shore Open Space Park*: All City-owned property bounded by 87 th Street on the North, Collins Avenue on the East, 79 th Street on the South, and Collins Court on the West; (2) *Cultural Campus*: All City-owned property bounded by 22nd Street on the North, Park Avenue on the West, 21st Street on the South, and Miami Beach Drive on the East; (3) *72 nd Street Parking Lot*: The City-owned surface parking lot bounded by 73 rd Street on the North, Collins Avenue on the East, 72 nd Street on the South, and Harding Avenue on the West; (4) *Convention Center Parking Lots*: All City-owned surface parking lots located in the Civic and Convention Center District, generally bounded by Lincoln Lane on the South, Washington Avenue on the East, Meridian Avenue on the West and Dade Boulevard on the North; ~~and (5) *Convention Center District Buildings, Streets and Alleys*: All City-owned buildings, streets, avenues, alleys, rights-of-way and public places, inclusive of easements and use agreements, located in the Civic and Convention Center District, generally bounded by Lincoln Lane on the South, Washington Avenue on the East, Meridian Avenue on the West and Dade Boulevard on the North; and (5) (6) *Lincoln Road Parking Lots*: All City-owned surface parking lots in the vicinity of Lincoln Road located within the area bounded by 17th Street on the North, Euclid Avenue on the East, 16th Street on the South, and West Avenue on the West.~~

ATTACHMENT:

City Charter

Sec. 1.03. - Powers of city.

(a) *General.* The City shall have all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as expressly prohibited by law or this Charter.

(b) Alienability of property.

1. The only limitation concerning alienability of City-owned park, recreation or waterfront property is the restriction of the sale, exchange, conveyance or lease of ten (10) years or longer (including option periods) of park, recreation, or waterfront property in the City of Miami Beach, unless such sale, exchange, conveyance or lease is approved by a majority vote of the voters in a City-wide referendum. This provision shall be liberally construed in favor of the preservation of all park, recreation and waterfront lands.

2. The sale, exchange, conveyance or lease of ten years or longer of the following properties shall also require approval by a majority vote of the voters in a City-wide referendum: (1) *Lots West of the North Shore Open Space Park:* All City-owned property bounded by 87th Street on the North, Collins Avenue on the East, 79th Street on the South, and Collins Court on the West; (2) *Cultural Campus:* All City-owned property bounded by 22nd Street on the North, Park Avenue on the West, 21st Street on the South, and Miami Beach Drive on the East; (3) *72nd Street Parking Lot:* The City-owned surface parking lot bounded by 73rd Street on the North, Collins Avenue on the East, 72nd Street on the South, and Harding Avenue on the West; (4) *Convention Center Parking Lots:* All City-owned surface parking lots located in the Civic and Convention Center District, generally bounded by Lincoln Lane on the South, Washington Avenue on the East, Meridian Avenue on the West and Dade Boulevard on the North; ~~and (5)~~ *Convention Center District Buildings, Streets and Alleys:* All City-owned buildings, streets, avenues, alleys, rights-of-way and public places, inclusive of easements and use agreements, located in the Civic and Convention Center District, generally bounded by Lincoln Lane on the South, Washington Avenue on the East, Meridian Avenue on the West and Dade Boulevard on the North; and (5) (6) Lincoln Road Parking Lots: All City-owned surface parking lots in the vicinity of Lincoln Road located within the area bounded by 17th Street on the North, Euclid Avenue on the East, 16th Street on the South, and West Avenue on the West.

3. The sale, exchange, conveyance or lease of ten years or longer of all remaining City-owned property (other than public beach rights-of-way — see (d) herein below, and other than those properties addressed more specifically in this Charter section 1.03) shall, as provided by Ordinance, require approval by a majority 4/7 vote of all members of the Planning Board and 6/7 vote of the City Commission.

4. The terms of this Charter section shall not apply to any valid written contractual commitments or bids or bonded indebtedness, which commitments, bids or indebtedness existed prior to January 14, 2004; nor shall this Charter section apply to any City property which is the subject of a settlements of a claim which the City had notice of as of January 14, 2004.

Item 7 b.
E-mail From
Nancy Liebman

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Hatfield, Liliam


From: Granado, Rafael
Sent: Tuesday, April 30, 2013 1:18 PM
To: Hatfield, Liliam
Subject: FW: PLEASE SEND TO THE CHARTER REVIEW COMMITTEE

MIAMI BEACH

Rafael E. Granado, Esq., City Clerk
CITY CLERK'S OFFICE
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7411 www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

From: Nanlieb@aol.com [<mailto:Nanlieb@aol.com>]
Sent: Monday, April 29, 2013 4:47 PM
To: Granado, Rafael
Subject: PLEASE SEND TO THE CHARTER REVIEW COMMITTEE



GENERAL MEMBERSHIP MEETING

DISCUSSION ABOUT MIAMI BEACH UNITED
RESIDENT'S BILL OF RIGHTS

TOPIC A draft proposal has been presented to the city's Charter Review Committee. Become informed about how you can help move the proposal to the November 5 General Election ballot.

WHEN Tuesday, MAY 7th, 2013 **WHERE** BAYSHORE GOLF COURSE
25111 AND ALTON ROAD 6PM

HOW MUCH Free Admission **RSVP** 305-609-4288
info@miamibeachunited.org

SAVE THE DATE MAY 13 2013 NORMANDY SHORES GOLF CLUB
2401 Sebring Drive (off 71st street in North beach)
HAPPY HOUR AND GENERAL MEETING
See the newest Miami Beach Golf Course in North Beach.
Great Happy Hour. Meet our North Beach Members
and learn about the other
MIAMI BEACH UNITED issues

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ADDENDUM FROM FERNANDEZ

Referrals

1. Motion requesting that the City Clerk advertise meeting notices, agendas, and CRB website address on Spanish publications.

2. Motion bifurcating recommended Charter amendments to the City Commission by two tiers:
 - a) Recommended Charter amendments of a time sensitive nature which should be included on the November, 2013 ballot and which shall be presented to the City Commission for their consideration, adoption, and submittal to the Miami-Dade County Elections Department no later than the ballot deadline of September 6, 2013; and,

 - b) Items that may not be time sensitive and which may merit extended debate. Such items may be presented to the City Commission upon sunset of the Charter Review Board for the City Commission's consideration, adoption, and inclusion on the Miami-Dade County Primary Election scheduled for August 12, 2014.

3. Motion requesting that the City Commission consider amending City of Miami Beach resolution number 2012-28072 creating the Miami Beach Ad Hoc Charter Review

and Revision Board so as to enlarge its powers of review to include the City's Related Special Acts portion of the City Code.

4. Motion establishing that the Charter Review Board will give adequate consideration to all recommendations submitted by members of the public to the Charter Review Board.

5. Motion requesting that the City Manager direct the Management Team and Department Directors to submit to the Charter Review Committee any areas or items that pertains to their department which they would like for the Charter Review Board to review or discuss.

6. Amend the *Citizen's Bill of Rights, (c) Remedies for Violations* to include language to empower the Miami-Dade County Commission on Ethics and Public Trust with investigation and enforcement of the Citizen's Bill of Rights and empowering the Commission on Ethics and Public Trust to impose any penalty allowed by law.

7. Amend the *Citizen's Bill of Rights, Item 6 Right to Notice* to add new language providing that the agenda for land use boards and quasi-judicial proceedings be made available no later than fifteen (15) business day prior to the meeting or proceeding and that staff reports be made available no later than three (3) business days prior to the meeting or proceeding.

8. Amend the *Citizen's Bill of Rights, Item 12 Quarterly Budget Comparison* to add new language providing that in keeping with the City's commitment to transparency, reliability, and accountability to residents, the City shall make public on its homepage an online check registry.

9. Review of the *Citizen's Bill of Rights* to discuss adding new language establishing property owners' rights which shall establish that a property owner is entitled to the designation (or lack thereof) and the zoning of a property as was established at the time of purchase with the exception of reasonable zoning changes. Discuss inclusion of language that would require that:

a) any new historic designation of property be applicable only on prospective ownership unless the property owner provides consent for the designation; and,

b) the down zoning of a property beyond what is reasonable shall only be applicable on prospective ownership unless the property owner provides consent for the down zoning.

The City Commission shall establish the definition of ownership and reasonable as it would relate to this clause.

10. Review of *Article I – Corporate Existence, Form of Government, Boundary and Power, Section 1.03 – Powers of the City, (b) Alienability of Property* to discuss including new

language pertaining to the conveyance of air and underground easements for the construction of above ground or underground permanent structures (bridges, parking garages, basements, etc.) for uses other than utility (electric, water, gas, sewer, etc.) and to conclude whether conditions for such conveyance shall:

- a) be addressed in the City Charter;
- b) require a five seventh (5/7) vote of the City Commission and a majority vote of the Planning Board; and,
- c) the City Commission shall establish the value appraising method for above ground and underground easements being considered for conveyance.

11. Review of *Article I – Corporate Existence, Form of Government, Boundary and Power, Section 1.03 – Powers of the City, (b) Alienability of Property* to consider if in addition to the provisions set forth in the City Code (*Chapter 82 – Public Property, Article II Sale or Lease of Public Property, Section 82-37 Committee Review and Public Hearing*) shall public notice be served by mail (United States Postal Service) to every property owner within 375 feet from City-owned property which is being considered for conveyance when:

- a) the City-owned property falls within or adjacent to a residential neighborhood; and,
- b) the proposed main use of the City-owned property is different from its existing use.

12. Review of *Article II – City Commission, Section 2.03 – Powers of the City Commission* regarding new language establishing a non-interference clause which shall establish that with the exception for the purposes of inquiry and information, members of the City Commission are expressly prohibited from interfering with the performance of the duties of any employee who is under the direct or indirect supervision of the City Manager.

13. Review of *Subpart B - Related Special Acts, Article V. Health Plan for City Officers and Employees* to consider new language addressing the tax inequity of employees who elect to include their domestic partner in the City's health plan and establish that the City Commission shall enact policy to correct the inequality in taxation imposed by the Federal Government in keeping with the City's commitment to be free of all forms of discrimination and inequality.

14. Discussion pertaining to the adoption of a Whistleblower Protection Act through which the City Commission shall establish protections for all City employees and appointees who report violations of any local, state, or federal law, regulation,

policy, or procedure with respect to an alleged abuse of authority, misuse of public funds, or the existence of a danger to the public health, safety, or welfare. The Commission shall establish a prohibition on any retaliatory conduct against anyone who acts as a whistleblower and reports a violation. Procedures shall be set by the City Commission.

15. Discussion pertaining to the adoption of language to require that any member of a land use board or of any board that engages in quasi-judicial hearings shall be required to resign from their appointed seat upon qualifying for elected office in the City of Miami Beach.

16. Discussion pertaining to the constitutionality of adopting recommendations regarding pension reform submitted to the City Commission by the Budget Advisory Committee.

17. Discussion pertaining to the recommendations submitted by Miami Beach United regarding the Citizen's Bill of Rights.

18. Discussion pertaining to Mr. Frank Del Vecchio's communication regarding "voter referendum approval for the sale or lease of any and all city-owned property in the 52-acre convention center redevelopment district."

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Debora Turner, First Assistant City Attorney
Rafael E. Granado, City Clerk
Lillian Hatfield, OAV, City Clerk's Office

Meeting Agenda

Monday, June 3, 2013 at 4:30 p.m.
1755 Meridian Avenue, 5th Floor Conference Room.
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. Accept Minutes Of The May 6, 2013 Charter Review & Revision Board Meeting. (See Attached Item 1.)
2. Presentation By Debora Turner, First Assistant City Attorney, List Of Charter Provisions Identified By The City Attorney For Review. (See Attached Item 2)
3. Presentation By Miami Beach United Of Proposed Charter Amendment To The Miami Beach Citizens' Bill Of Rights (Resident Association Bill Of Rights). (See Attached Item 3)
4. Items Requested To Be Discussed On May 6, 2013 By Alex Fernandez, Charter Review & Revision Board Member, But Were Not Reached. (See Paragraphs 2 Through 16 Of Mr. Fernandez's Memorandum; Attached As Item 4.a.)
5. Discussion Relating To Investigation And Enforcement Authority Of The Miami-Dade County Commission On Ethics And Public Trust Pertaining To Alleged Violations Of Citizens Bill Of Rights, Sunshine, Public Records And Campaign Finance Laws. (See Attached Item 5.) Item Placed On The Agenda At The Request Of Alex Fernandez, Charter Review & Revision Board Member.)

6. The Following Materials Were Requested By The Charter Review And Revision Board Of Staff During The May 6, 2013 Meeting:
 - a. Requirement That Employees Receive Annual Performance Evaluations (Attached As Item 6.a. Are The Applicable Sections Of The Personnel Rules And The Collective Bargaining Agreements With AFSCME, CWA, FOP, GSA And IAFF.)
 - b. Duties Of The Independent City Auditor (Attached As Item 6.b. Are Sections 2-251, 2-252 And 2-253 Of The City Code.)

PENDING ITEMS

List Of Proposed Charter Amendments Brought Forth For Discussion During The April 25, 2013 And May 6, 2013 Charter Review & Revision Board Committee Meetings, Which Have Yet To Be Fully Discussed:

- a. Term Limits For The Mayor And Commissioners (Charter Section 2.02) – Proponent Commissioner Tobin
- b. Election Versus Appointment When Commission Vacancies Occur. (Referred At The May 19, 2012 Commission Retreat)
- c. Commission Salary (Referred At The May 19, 2012 Commission Retreat)
- d. Compensation Of The City Attorney, City Manager And City Clerk. (Referred At The May 19, 2012 Commission Retreat)
- e. Citizens' Bill Of Rights:
 - i. Article XV - To Include Traffic - Proponent Stephen Zack, Chair
 - ii. Ethics In Government / Code Of Conduct - Proponent Stephen Zack, Chair
 - iii. Over Scale Development In Residential Areas – Proponent Stephen Zack, Chair
 - iv. Preservation Of Beaches - Proponent Rick Preira
 - v. Mandate That Employees Should Be Courteous To Citizens In The Bill Of Rights - Proponent Stephen Zack, Chair
 - vi. Preserving The Historical Value Of Miami Beach - Proponent Terry Bienstock
 - vii. Whistle Blowing Protection For Employees - Proponent Frank Del Vecchio
- f. Electing Officials By Districts - Proponent Scott Diffenderfer
- g. Subpoena Powers - Proponent Alex Fernandez
- h. Creation Of An Inspector General With Investigative Powers - Proponent Rick Kendle
- i. Requirement That All City Employees Be Evaluated On Recurring Basis – Proponent Stephen Zack, Chair

MIAMI BEACH

CHARTER REVIEW AND REVISION BOARD MEETINGS NOTICE

Pursuant to Section 8.01 of the Miami Beach City Charter, review of the Charter shall occur every ten years. The Charter Review and Revision 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.

NOTICE IS HEREBY given that the Miami Beach Charter Review and Revision Board will meet as follows:

DATE	TIME	LOCATION
Monday, June 3, 2013	4:30 PM	1755 Meridian Avenue, 5th Floor Conference Room
Monday, June 10, 2013	4:30 PM	Commission Chambers, 3rd Floor, City Hall
Monday, June 24, 2013	4:30 PM	Commission Chambers, 3rd Floor, City Hall
Monday, July 1, 2013	4:30 PM	Commission Chambers, 3rd Floor, City Hall
Monday, July 15, 2013	4:30 PM	City Manager's Large Conference Room, 4th Floor, City Hall

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

Meeting dates, times and locations are subject to change. Please visit the Charter Review Board's website at <http://www.miamibeachfl.gov/scroll.aspx?id=72572> for the latest meeting information and agendas.

INTERESTED PARTIES are invited to appear at these meetings, or be represented by an agent, or to express their views in writing addressed to CharterReview@miamibeachfl.gov, or by mail to 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.

For any and/or all of the above meetings, one or more members of the Miami Beach City Commission may be in attendance and participate in discussions.

Rafael E. Granado, Esq., City Clerk
City of Miami Beach

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 these meetings or its hearings, 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 #778

MIAMIBEACH

HORARIOS DE LA JUNTA DE REVISION DE LA CARTA CONSTITUCIONAL DE LA CIUDAD DE MIAMI BEACH

Conforme a la Sección 8.01 de la Carta Constitucional de la Ciudad de Miami Beach, la revisión de la Carta Constitucional tendrá lugar cada diez años. La Junta de Revisión de la Carta Constitucional, se ha formado con el propósito de revisar la Carta Constitucional de la Ciudad, en busca de sugerencias del público; y finalmente, presentar sus recomendaciones a la Comisión de la Ciudad de Miami Beach.

POR ESTE MEDIO invitamos al público a las próximas reuniones de la Junta de Revisión de la Carta Constitucional de Miami Beach:

DIA	HORA	LOCALIDAD
Lunes, 3 de junio del 2013	4:30 P.M.	1755 Meridian Avenue, 5º Piso, Sala de Conferencia
Lunes, 10 de junio del 2013	4:30 P.M.	Cámara de la Comisión, 3er Piso, Ayuntamiento
Lunes, 24 de junio del 2013	4:30 P.M.	Cámara de la Comisión, 3er Piso, Ayuntamiento
Lunes, 1º de julio del 2013	4:30 P.M.	Cámara de la Comisión, 3er Piso, Ayuntamiento
Lunes, 15 de julio del 2013	4:30 P.M.	4º Piso, Ayuntamiento

El Ayuntamiento Municipal esta localizado en el 1700 Convention Center Drive, Miami Beach, Florida, 33139.

Los días, fechas y localidades pueden ser sujetos a cambios. Para la más reciente información en relación con las reuniones y agendas, favor de visitar la página cibémetica de la Junta de Revisión de la Carta Constitucional de Miami Beach: <http://www.miamibeachfl.gov/cityclerk/scroll.aspx?id=72572>.

LAS PERSONAS INTERESADAS pueden participar de esta reunión, o ser representados por un agente; o pueden expresar sus puntos de vista por escrito a CharterReview@miamibeachfl.gov, o por correo a la Junta de Revisión de la Carta Constitucional, c/o Secretario Municipal, 1700 Convention Center Drive, Primer Piso, Ayuntamiento Municipal, Miami Beach, Florida 33139. Para más información, llamar al 305.673.7411.

Uno o más miembros de la Comisión de la Ciudad de Miami Beach puede estar presente y participar en las discusiones.

Conforme a la Sección 286.0105, Estatutos de la Florida, la Ciudad por la presente informa al público que si una persona decide apelar cualquier decisión tomada por la Junta de Revisión de la Carta Constitucional con respecto a cualquier asunto considerado en estas reuniones o de sus audiencias, dicha persona debe asegurarse de que se haga un acta fiel de los procedimientos, registro que incluye los testimonios y pruebas que la apelación debe basarse. Este aviso no constituye el consentimiento de la Ciudad para la introducción o la admisión de pruebas de lo contrario inadmisibles o irrelevantes, o que autorice a los retos o apelaciones no permitidas por la ley.

Para solicitar este material en formato accesible, intérpretes de lenguaje de señas, información sobre el acceso para personas con discapacidades o cualquier alojamiento para revisar cualquier documento o participar en cualquier proceso patrocinados por la ciudad, póngase en contacto con nosotros con cinco días de anticipación al 305.673.7411; o los usuarios de TTY también puede llamar al servicio de retransmisión de Florida al 711.

ITEM 1.

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MIAMI BEACH

Charter Review and Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice-Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff Present Staff:

Raul Aguila, Chief Deputy City Attorney
Alexander Boksner, Senior Assistant City Attorney
Jorge Gomez, Assistant City Manager
Rafael E. Granado, City Clerk
Liliam R. Hatfield, City Clerk's Office
Gary Held, First Assistant City Attorney
Richard Lorber, Planning Director
Debora Turner, First Assistant City Attorney

MINUTES

Monday, May 6, 2013 at 3:30 p.m.
Mayor's Conference Room, Fourth Floor, City Hall

The meeting was called to order at 4:41 p.m. All Charter Review and Revision Board members were present with the exception of Board Member Preira, who was tried to be reached by telephone unsuccessfully.

1. EXISTING ISSUES REQUIRING DISCUSSION/ACTION.

- a) Motion by Rick Kendle, seconded by Jacqueline Lalonde to approve the April 25, 2013 Minutes; 6-0; Absent: Member Preira.
- b) Establish future meeting dates.
The Board reached consensus, and meetings will be scheduled to begin at 4:30 PM during the following dates:

Monday, June 3
Monday, June 10
Monday, June 24
Monday, July 1st, and
Monday, July 15

2. LIST OF CHARTER PROVISIONS IDENTIFIED BY THE CITY ATTORNEY FOR REVIEW Not reached.

3. **ITEMS REQUESTED TO BE PLACED ON THE MAY 6, 2013 AGENDA BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.** (See paragraphs 1 through 5 of Mr. Fernandez's Memorandum; Attached as Item 3)

- a. Motion requesting that the City Clerk advertise meeting notices, agendas, and CRB website address on Spanish publications.

ACTION: Motion made by Member Fernandez to advertise the Charter Review & Revision Board Meetings in local Spanish publications; seconded by Member Lalonde. Approved by acclamation. **Rafael E. Granado to handle.**

ITEMS NOT REACHED

- a. Motion bifurcating recommended Charter amendments to the City Commission into two tiers.
- b. Motion requesting that the City Commission consider amending City of Miami Beach resolution number 2012-28072, creating the Miami Beach Ad Hoc Charter Review and Revision Board, to enlarge its powers of review to include the City's Related Special Acts.
- c. Motion establishing that the Charter Review Board will consider all recommendations submitted by the public to the Charter Review Board.
- d. Motion requesting that the City Manager direct the Management Team and Department Directors to submit to the Charter Review Committee any areas or items that pertains to their department, which they would like for the Charter Review Board to review or discuss.

4. **ADDITIONAL ITEMS REFERRED TO THE CHARTER REVIEW & REVISION BOARD BY THE CITY COMMISSION:**

- a. Election versus Appointment when Commission vacancies occur. (Referred at the May 19, 2012 Commission Retreat) Not reached.
- b. Commission Salary (Referred at the May 19, 2012 Commission Retreat)
4:55:38 p.m.

Chair Zack stated that he was under the impression that the Commission salary issue was not raised for review, as it is usually defeated. Rafael E. Granado clarified that this issue was referred to the Charter Review Board at the May 19, 2012 Commission Retreat and had been added to the agenda. **Issue to be discussed at a later time.**

Board Member Kendle explained that the word "emolument" is in the City Charter (Page 8, Sec. 2.04, 3rd paragraph), and there is no definition of its meaning, and asked if the City Commission's emoluments may increase at times. There needs to be a definition.

5. **ITEMS REQUESTED TO BE PLACED ON THE AGENDA FOR DISCUSSION ON A FUTURE DATE BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.** (See paragraphs 6 through 18 of Mr. Fernandez's Memorandum; Attached as Item 3) Not reached.

6. **LIST OF PROPOSED CHARTER AMENDMENTS BROUGHT FORTH FOR DISCUSSION DURING THE APRIL 25, 2013 CHARTER REVIEW & REVISION BOARD COMMITTEE MEETING:**

- Term Limits for the Mayor and Commissioners (Charter Section 2.02) – Proponent Commissioner Tobin

5:10:56 p.m.

Board Member Kendle asked to discuss the referendum

- Miami Beach Convention Center - Proponent Rick Kendle
- Sale, Exchange, Conveyance or Lease of Ten Years or Longer of Convention Center District Property – Proponent Frank Del Vecchio

Chair Zack read into the record an email from City Manager Jimmy Morales, dated May 6, 2013 to Frank Del Vecchio, regarding referendum, in trying to achieve closure on the issues.

5:12:37 p.m.

Frank Del Vecchio explained that he is requesting for the Board to consider and forward to the Commission for consideration a Charter amendment that will conform the official representations made by the City Commission and City Administration to the Charter. In 2012, the City Commission approved the Miami Beach Convention Center (MBCC) RFQ, and explained the procurement process that would occur regarding the 52 acres. Mr. Del Vecchio suggests and requested that if the Charter Review and Revision Board believes this item has merit, to send it to the full Commission as soon as possible. If the City is ready for September 6 with a definitive deal that could be put on the November ballot, then the possibility of two of the questions can be placed on the ballot, one contingent with the other, regarding what the specific private interests would be. If the City is not ready, a Special Elections ballot can be done. His recommendation to this Board is that this is an important public question, timing is important, and the City Commission is the body to deliberate, so the public will know what to expect.

Discussion held.

Mr. Del Vecchio gave a brief summary, and stated that in reviewing all the records from MBCC public meetings, he composed this proposed Charter amendment for the November 5 ballot; however, there is also a petition being circulated on this issue. Discussion continued regarding petition requiring 10% of the voter's signature, and then this would trigger a referendum.

Chair Zack stated that there are major interests that can get a petition on the ballot, and asked if this is something to look at.

Raul Aguila, Chief Deputy City Attorney, explained that regardless of the different arguments posed, the legal requirement under the Charter at this time would be that only a sale or lease of more than ten years of a use on the Convention Center parking lots, (P-lot and the parking lot behind the Fillmore) would actually trigger a referendum requirement. That is what the Charter requires, and it is the position the City Attorney's Office is taking in the Letter Of Intent. The second issue is considering Mr. Del Vecchio's proposal today; there is Mr. Del Vecchio's proposal, and a proposed Charter amendment language that is being pursued through an initiative process. There are two issues for the City: 1) Timing, which the City Manager is concerned about and wanted me to convey to the Board; and 2) Mr. Del Vecchio's requirements and the initiative requirement, if they get on the ballot at the same time, there is the legal issue that if both passed, which one would govern?

Discussion continued.

Jorge Gomez, Assistant City Manager, and Richard Lorber, Planning Director, made a presentation and explained the areas representing the 52-acre parcel. Both proposers (Portman-CMC and South Beach Ace / Tishman) have shown elements of the plans that would trigger a referendum, unless the Commission decides to reduce the program. The hotel in both projects is on the footprint of the Convention Center. If the Charter question fails, the components on the two lots could not go forward, but the hotel on the roof of the MBCC might go forward, if it was still financially feasible for them to develop.

Discussion continued.

Chair Zack stated that the petition does not change the Charter, only puts it on the ballot.

Board Member Fernandez stated that in researching this issue, this Board (10 years ago) discussed the same issue concerning the New World Symphony. At that time, it was determined that any decision or revision of the CRB would be prospective in nature, and they were explicit in saying that their decisions should not delay or interfere with any projects currently in consideration. Therefore, he asked if any action of this Board is applicable to this, he thinks this is a policy issue for the City Commission, and they do not establish this Board to look at the MBCC project, and he feels it is outside the scope of the CRB.

Chair Zack stated that to rephrase Member Fernandez's comments, this matter of the MBCC is out of order for the CRB to discuss. He explained that this would not be appropriate in the Charter but he would open it up for discussion and a vote.

Member Fernandez explained that the issue that Mr. Del Vecchio brought up is very important and merits discussion, but going into the future, not as it relates to this specific project.

Discussion held.

Member Lalonde asked Raul Aguila, Chief Deputy City Attorney, if Mr. Del Vecchio would have another forum to introduce his issue. Mr. Aguila explained that there have always been discussions aside from the legal requirements under the Charter that pertain to the City lots, and policy discussion has been held at Commission level

whether or not the entire project should be subject to a straw ballot referendum or non-binding referendum question; if Mr. Del Vecchio is looking for an alternate forum to make the other uses on the project subject to Citywide referendum, the City Commission is an appropriate forum, and if the Commission wants to considers that, it can go to the ballot in November. Discussion continued.

Discussion continued regarding MBCC referendum.

Chair Zack stated that it would be great for citizens to know what they are voting on in concept.

FINAL MBCC REFERENDUM MOTION:

Member Fernandez made a motion that the MBCC referendum issue is out of order for consideration by the CRB, but nothing that is being done by the Charter Review and Revision Board goes to the merit of Mr. Del Vecchio's proposal, and Mr. Del Vecchio should seek another avenue to address this issue; seconded by Member Lalonde; 5-1; Opposed: Member Kendle; Absent: Member Preira.

Chair Zack made a friendly amendment, to add that nothing that is being done goes to the merit of this proposal and to allow Mr. Del Vecchio another avenue to which he can address this issue.

- Citizens' Bill of Rights:

- i. Article XV - To include traffic - Proponent Stephen Zack, Chair
Not reached.
- ii. Ethics in government / Code of conduct - Proponent Stephen Zack, Chair
Chair Zack explained that the State Ethics Commission has rules on that issue; and he believes they increased ethical guidelines. He asked who handled ethical issues.

Deborah Turner, First Assistant City Attorney, explained that Legal Department handles these issues, and at times they ask the Commission on Ethics for opinions.

Board Member Fernandez stated that he has spoken with Joseph M. Centorino, Executive Director of the Miami-Dade Commission on Ethics. Mr. Fernandez asked the CRB members to consider giving the Commission on Ethics investigative enforcement authority over alleged violations of the Citizen's Bill of Rights. He explained that the Bill of Rights can only be enforced by litigation in court, and his concern is given the economic rate of disparity in the community, that it would be beneficial to those who do not have access to litigation and/or attorneys to have the Commission on Ethics investigate possible violations. He also spoke to Mr. Centorino regarding allowing the Commission on Ethics to investigate and enforce issues pertaining to the Sunshine Law, Public Record Law and Campaign Finance Law.

Board Member Kendle commended the proposals done by Miami Beach United. Discussion continued. This issue will be discussed at a later time.

- iii. Over scale development in residential areas – Proponent Stephen Zack, Chair
Not reached.
- iv. Preservation of beaches - Proponent Rick Preira
Not reached.
- v. Mandate that employees should be courteous to citizens in the Bill of Rights -
Proponent Stephen Zack, Chair
Not reached.
- vi. Neighborhood Resident Association Bill of Rights – Proponent Miami Beach
United - Nancy Liebman, President

Terry Bienstock, President of Sunset Islands III and IV, explained that the proposed amendment for the Resident's Bill of Rights identifies issues of enforcement to give Neighborhood Residents Associations nonpartisan opportunities to participate in quasi-judicial boards.

- One of the deficiencies is giving specificity on some issues on due process, the opportunity to be heard, present witnesses, reviewing documents, and added that the only enforcement in the Bill of Rights today is in court. The group came up with ideas based on what other municipalities have done.
- The right to be heard shall be made bilateral; if a proponent has rights, the resident shall have similar rights. In addition, they proposed that a resident does not need to have counsel to exercise his/her right to be heard.
- The right to notice with time limitations and advance notices to the public, with penalty if notice is not timely.
- The right to a public hearing – that notice is given to resident associations that have jurisdiction within the area.
- In the Ethics section, they proposed that once a year board members and City employees sign and acknowledgement that they receive and will honor the Bill of Rights.
- On remedy section, instead of two ways of complaining, one is to the City Manager or designee, or a board of residents established by the Commission set forth by Code that have the power to adjudicate issues.
- The Neighborhood Association Section 7 gives all the rights that individual have through HOA's. Other communities enforce this in the Code, so this has been left open.

Nancy Liebman, President of the Association, stated that they are trying to vet this to define what a Neighborhood Association is. Discussion held.

Christine Florez, member of Miami Beach United, spoke.

Member Kendle stated that Miami Beach was one of the first municipalities to have a Citizen's Bill of Rights, but there was no enforcement, and it is important and should be looked at and how it affects residents. Discussion held.

Member Fernandez explained that he had a conversation with Joseph Centorino, Miami-Dade County Commission on Ethics and Public Trust, about the Citizen's Bill of Rights, to give his agency authority for the Citizen Bill of Rights, for those people that do not have the financial means to go through the litigation process, as it is too expensive. Mr. Centorino is open to the possibility, at no fiscal impact to the City, to undertake this task. Mr. Fernandez stated that this would be of great benefit to the City.

Gary Held, First Assistant City Attorney, explained that the Code states that the Ethics Commission has authority over County and Municipal Bill of Rights. Discussion held.

Chair Zack added that the evolution of the Bill of Rights is enforcement, including possibly an attorney's fees provisions for violators and for injunction relief. This Board should talk about how to further refine this section. He does not understand why neighborhood associations need this. Everyone should have the same rights, no matter what association they belong to. He does not understand why it should be separate.

Christine Florez stated that the issue is noticing requirements.

Terry Bienstock gave examples of lack of noticing that affected the neighbors.

Nancy Liebman spoke. Discussion continued.

Member Lalonde spoke on the Palau project, and for the record, disclosed that she is a member of the Sunset Island Associations III and IV and secretary thereof. The Islands were impacted by that project, but the only person with standing was one resident. Residents look to the Neighborhood Association President to represent them.

Discussion continued.

Chair Zack asked if their suggestions will solve all issues, and he thinks they have the full right for enforcement. Discuss it and do not limit yourselves. Residents should be entitled to all rights. Discussion continued regarding enforcement, attorney fees and injunctions.

Richard Lorber explained the noticing process and difficulties when addresses change and bring burden to City staff. Discussion held. **Item to be placed at the next Charter Review & Revision Board Agenda for further discussion.**

- vii. Preserving the historical value of Miami Beach - Proponent Terry Bienstock
Not reached.
- viii. Whistle blowing protection for employees - Proponent Frank Del Vecchio
Not reached.

- Administrative Determinations Proposed and Published by the Planning Director – Proponent Commissioner Jonah Wolfson.

5:52:16 p.m.

Richard Lorber, Planning Director, made a presentation and explained the proposal by Vice-Mayor Wolfson. He stated that Administrative Determinations are done on a day-to-day basis, and he distributed an example of LTC 102-2012, having to do with transferring development rights from one parcel to another and its determination; and eventually this can be appealed to the Board of Adjustment. These determinations are available on the City's website and transmitted to the City Commission via LTC. Mr. Lorber added that ultimately if there are ten Administrative Determinations, this should be taken in front of the Land Use and Development Committee, as this should be re-codified, and he recommends to the City Commission to amend it as it was interpreted.

Gary Held, First Assistant City Attorney, in answering Member Lalonde's question, stated that the issue is whether the Administrative Determinations should be required by Charter to be published or whether it should be a Code requirement or just a matter of policy. Discussion continued.

Chair Zack stated that the important issue is that it be consistent, published in a way that is usable, and that there is an appellate process.

MOTION ON ADMINISTRATIVE DETERMINATION

Motion by Member Lalonde that this issue is out of order for consideration to the CRB, but encourage the Department to continue making the Determinations available publicly; 6-0; Absent: Member Preira.

- Subpoena powers - Proponent Alex Fernandez

4:41 p.m.

Chair Zack stated that Page 7 of the Charter, Section 2.03 regarding Powers of City Commission, third paragraph reads: "the Commission may also investigate the official acts and conduct of any City official, and by similar investigations may secure information upon any matter. In conducting such investigations, the Commission may require the attendance of witnesses and the production of books, papers and other evidence." Mr. Zack explained that his belief is that the only manner to do this is with Subpoena Power; however, he asked advice from the Legal Department.

Debora Turner, First Assistant City Attorney, introduced Alex Boksner to clarify this matter.

Senior Assistant City Attorney, Alex Boksner, explained that he has done research with other municipalities that may or may not have this provision, such as Miami and Fort Lauderdale. In the City of Fort Lauderdale, they do not have such authority and they grant the authority by a way of an "investigative arm" essentially that has the ability to subpoena individual and records. The City of Miami has this subpoena power in the Charter, but he is still looking at other municipalities in terms of how they function, in what would be the best course of action should something to that extent be thought of by the City of Miami Beach. In answering Chair Zack's question, he explained that an "investigative arm" is someone that is given the authority to investigate. For example in Miami Beach, the Procurement Director can be an investigator that investigates the

debarment contract. It is a body that is created and given authority to issue and conduct an investigation and it has the authority to do it.

Discussion held.

Chair Zack stated that there is a conflict in this section, and a Resolution should be added to that section. They need to understand if they wish to give Subpoena Powers to the Commission. He requested legal advice. **Alex Boksner to handle.**

Board Member Fernandez stated that from research that he has done, during the last Charter Review ten years ago, Mr. Abraham Laeser had concerns about information being covered with immunity, and individuals and witnesses being covered with immunity if the issues were of a criminal nature. His question is whether this language on the Charter was left so that the City Commission could still be empowered to conduct investigations that may not rise to the level of criminal acts or corruption, but still merit investigation. He asked the Legal Department to find out when was the period when this language was left on the Charter. **Alex Boksner to handle.**

- Creation of an Inspector General with investigative powers - Proponent Rick Kendle

Chair Zack stated that in Page 7 of the Charter, Section 2.03, fourth paragraph regarding Independent City Auditor, it does not address its responsibility. Are there limitations that need to be added; how does that auditor function work since the last Charter Review. This needs to be addressed.

Jorge Gomez, Assistant City Manager, stated that in Division 4, Section 2-251 of the City Code, the duties of the Independent City Auditor are enumerated. Chair Zack asked Mr. Gomez to provide the committee members with the Section of the Code. Mr. Gomez added that the City has an auditor department that generates comparative reports. Discussion held. **Jorge Gomez to handle.**

4:53:24 p.m.

New Item

Chair Zack referred to Charter Section 4.02 on Page 10, where it seems that there is a requirement for an evaluation of the City Manager, (Paragraph b); but there is no full requirement that the City Manager has an employee evaluation of every employee; it seems that this should be included in the Charter.

Rafael E. Granado, City Clerk, explained that the Personnel Board reviews any evaluations that are late more than 30 or 60 days, and that is part of their standard.

Chair Zack asked for an evaluation form, to review if there is the issue of courtesy, timeliness, etc., in that evaluation process. **Rafael E. Granado to handle.**

ITEMS TO BE PLACED AT THE NEXT AGENDA:

1. **LIST OF CHARTER PROVISIONS IDENTIFIED BY THE CITY ATTORNEY FOR REVIEW**
Debora Turner, First Assistant City Attorney to make Presentation
2. **ITEMS REQUESTED TO BE PLACED ON THE MAY 6, 2013 AGENDA BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.**
 - Bifurcating recommended Charter Amendments to the City Commission by two tiers
 - a) Items of time sensitive nature to include in the November 2013 ballot
 - b) Items that are not time sensitive and may merit extended debate(See paragraphs 1 through 5 of Mr. Fernandez's Memorandum; Attached as Item 3)
3. **CITIZEN'S BILL OF RIGHTS**

SUMMARY OF ITEMS DISCUSSED AND ACTIONS TAKEN

- **ESTABLISH FUTURE MEETING DATES.**
- **ITEMS REQUESTED BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.**
 1. Advertise meeting notices, agendas on Spanish publications. **Approved.**
- **COMMISSION SALARY** - Issue to be discussed at a later time.
- **MBCC REFERENDUM MOTION** - Issue deemed out of order.
- **MOTION ON ADMINISTRATIVE DETERMINATION** – Issue deemed out of order.

SUMMARY LIST OF PENDING ITEMS FOR DISCUSSION

- **ITEMS REQUESTED TO BE PLACED ON THE MAY 6, 2013 AGENDA BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.**
- **ADDITIONAL ITEMS REFERRED TO THE CHARTER REVIEW & REVISION BOARD BY THE CITY COMMISSION:**

Election versus Appointment when Commission vacancies occur. (Referred at the May 19, 2012 Commission Retreat) Not reached at the 5/6/13 Meeting.
- **ITEMS REQUESTED TO BE PLACED ON THE AGENDA FOR DISCUSSION ON A FUTURE DATE BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.**
- **LIST OF PROPOSED CHARTER AMENDMENTS BROUGHT FORTH FOR DISCUSSION DURING THE APRIL 25, 2013 CHARTER REVIEW & REVISION BOARD COMMITTEE MEETING:**
- **CITIZENS' BILL OF RIGHTS:**

Article XV - To include traffic - Proponent Stephen Zack, Chair

Over scale development in residential areas – Proponent Stephen Zack, Chair
Preservation of beaches - Proponent Rick Preira
Mandate that employees should be courteous to citizens in the Bill of Rights - Proponent Stephen Zack, Chair
Preserving the historical value of Miami Beach - Proponent Terry Bienstock
Whistle blowing protection for employees - Proponent Frank Del Vecchio

- **LIST OF CHARTER PROVISIONS IDENTIFIED BY THE CITY ATTORNEY FOR REVIEW**
- **ITEMS REQUESTED TO BE PLACED ON THE MAY 6, 2013 AGENDA BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.**
- **CITIZEN'S BILL OF RIGHTS**

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CHARTER REVIEW TOPICS

The following Sections of the Miami Beach Charter are recommended by the City Attorney's Office for review and consideration by the Ad Hoc Charter Review and Revision Board:

- **Section 1.03. – Powers of City**
Subsection (b), entitled "Alienability of property," requires referendum approval for the "sale, exchange, conveyance or lease of ten years or longer" of certain City-owned properties. Should other City-owned properties be subject to this referendum requirement?
- **Section 2.02. – Term and compensation.**
This Section refers to both "compensation" and "salary" for the Mayor and City Commissioners. To clarify these terms, references to the annual dollar amount received by the Mayor and City Commissioners should refer to "salary." Also, provisions may be considered to address other types of compensation and benefits received by the Mayor and City Commissioners such as stipends, pension benefits, health benefits, etc.
- **Section 2.03. – Powers of the city commission.**
This Section currently provides for an independent City Auditor. Amendments providing for an Inspector General, or other like official, would be appropriate in this Section.
- **Section 2.07. – Vacancies in city commission.**
The provisions relating to the filling of vacancies on the City Commission are addressed in this Section. New provisions to further define "vacancy" when elected officials run for another elective office, such as for State Representative, may be addressed in this Section.
- **Section 3.01. – City attorney; duties generally; appointment of personnel.**
- **Section 4.01. – City manager – Compensation and qualifications.**
- **Section 4.03. – City clerk – Appointment and compensation.**
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.
- **Section 4.02. – City manager – Functions and powers**
Subsection (b) provides that the City Manager appoints all Department Directors subject to the consent of the City Commission. Should Assistant City Managers also be subject to the consent of the City Commission?
- **Section 6.03. – Qualifying.**
This Section provides the requirements for persons qualifying for elected office in the City. Currently, a person must live at least one year in the City prior to qualifying. A different qualifying time for residence in the City may be addressed in this Section.

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Strengthening Resident Rights

Proposed charter amendment for the Miami Beach Citizens' Bill of Rights

Shall Sections (A) and (C) of the Miami Beach Charter, the Citizens' Bill of Rights, be amended to enhance truth and ethics in government; to enhance notice and hearing rights for all residents; to create a right of fair enforcement of city laws; to define rights and courtesies to be provided to neighborhood resident associations; and to create non-judicial remedies for violations of the Citizens' Bill of Rights?

Proposed new language indicated by underscore.

(A) 2. **Truth in government.** All residents shall have the right to expect and receive prompt, courteous, informed responses to all questions regarding city business, including timely access to requested documents. No municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.

(A) 5. **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. For matters affecting a substantial number of neighborhood residents, a reasonable and convenient time certain should be provided and reasonably adhered to or continued to a subsequent time certain. Nothing herein shall prohibit the City or any agency thereof from imposing reasonable time limits for the presentation of a matter. All residents shall have the right to fundamental fairness and due process in connection with any city hearing, board or committee meeting, or public workshop, or related non-public meetings with city staff and individual commissioners, board, or committee members. Residents shall not be required to secure counsel to exercise these rights.

(A) 6. **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. Prior to any zoning or other quasi-judicial hearing, applicants shall make available to the public copies of presentation documents at least 15 days prior to the hearing (including plans, diagrams, renderings, or models, or written legal briefs in an appeal from a prior city hearing). Material changes shall cause the subject to be rescheduled to comply with this requirement unless waived in writing by affected parties.

(A) 8. **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. In any zoning or other quasi-judicial hearing related to land use, affected parties and neighborhood resident associations proximate to the subject property shall have adequate time to address and present evidence and to reasonably cross-examine witnesses, and shall not be required to secure counsel to exercise these rights.

(A) 17. Neighborhood resident association rights. Every organized, inclusive, and officially recognized association of residents for a defined neighborhood, as further elaborated in city code, has the right to expect and receive the following from city officials, employees and agencies:

- All rights afforded to individual residents under the Citizens' Bill of Rights or any other city law;
- The same rights as affected residents for a matter having potential impact within or proximate to any part of the neighborhood;
- Advance courtesy notification, even when formal notice is not required, on matters having potential direct impact within or adjacent to any part of the neighborhood, including public works or utility projects, proposed land use or legislative actions, or similar matters where specific notice to affected neighborhood associations can effectively supplement general public notices.
- Advance courtesy invitation to participate in the planning and design of new or amended ordinances directly affecting any part of the neighborhood, or publicly funded projects within or adjacent to any part of the neighborhood, including review of detailed plans prior to implementation.

(A) 18. Right of fair enforcement. All residents have the right to expect and receive active, fair, and efficient enforcement of all city laws and regulations by city officials, employees, and agencies. Decisions to enforce or not to enforce shall be impartial, objective, and subject to public record review.

(A) 18 19. 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 and board or committee members shall abide by applicable codes of ethical conduct, shall be provided this Citizens Bill of Rights in the official agenda for all public meetings, and shall sign to indicate compliance upon election, employment, or appointment and on an annual basis, and be subject to all penalties provided for in such regulations.

(C) Remedies for violations. Any resident alleging a violation of this Bill of Rights shall first pursue redress through non-judicial means by submitting the allegation in writing to the City Clerk, who may seek to resolve the matter administratively within a reasonable period of time and shall place unresolved violations on the City Commission agenda for public hearing, with further resident right of judicial appeal or the option of mediation and binding arbitration in lieu of court. In any suit by a citizen alleging a violation of this Bill of Rights filed in the Dade County circuit 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.

ITEM 4.

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MIAMI BEACH

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2013 APR 30 PM 4:33
CITY CLERK'S OFFICE

CHARTER REVIEW AND REVISION BOARD

MEMORANDUM

TO: Mr. Rafael Granado, City Clerk

FROM: Alex Fernandez, Charter Review Board Member

DATE: April 30, 2013

SUBJECT: Items for Discussion

At the our first meeting of the Charter Review Board I sponsored a motion requiring that, in the spirit of transparency, a three day rule be implemented making agenda items and referrals for discussion available to the public for their timely review prior to meetings of the CRB. As such, please accept this memorandum containing items which I believe merit the consideration of the CRB and which should be added to the referral tracking document.

Referrals

1. Motion requesting that the City Clerk advertise meeting notices, agendas, and CRB website address on Spanish publications.
2. Motion bifurcating recommended Charter amendments to the City Commission by two tiers:
 - a) Recommended Charter amendments of a time sensitive nature which should be included on the November, 2013 ballot and which shall be presented to the City Commission for their consideration, adoption, and submittal to the Miami-Dade County Elections Department no later than the ballot deadline of September 6, 2013; and,
 - b) Items that may not be time sensitive and which may merit extended debate. Such items may be presented to the City Commission upon sunset of the Charter Review Board for the City Commission's consideration, adoption, and inclusion on the Miami-Dade County Primary Election scheduled for August 12, 2014.
3. Motion requesting that the City Commission consider amending City of Miami Beach resolution number 2012-28072 creating the Miami Beach Ad Hoc Charter Review

and Revision Board so as to enlarge its powers of review to include the City's Related Special Acts portion of the City Code.

4. Motion establishing that the Charter Review Board will give adequate consideration to all recommendations submitted by members of the public to the Charter Review Board.
5. Motion requesting that the City Manager direct the Management Team and Department Directors to submit to the Charter Review Committee any areas or items that pertains to their department which they would like for the Charter Review Board to review or discuss.
6. Amend the *Citizen's Bill of Rights, (c) Remedies for Violations* to include language to empower the Miami-Dade County Commission on Ethics and Public Trust with investigation and enforcement of the Citizen's Bill of Rights and empowering the Commission on Ethics and Public Trust to impose any penalty allowed by law.
7. Amend the *Citizen's Bill of Rights, Item 6 Right to Notice* to add new language providing that the agenda for land use boards and quasi-judicial proceedings be made available no later than fifteen (15) business day prior to the meeting or proceeding and that staff reports be made available no later than three (3) business days prior to the meeting or proceeding.
8. Amend the *Citizen's Bill of Rights, Item 12 Quarterly Budget Comparison* to add new language providing that in keeping with the City's commitment to transparency, reliability, and accountability to residents, the City shall make public on its homepage an online check registry.
9. Review of the *Citizen's Bill of Rights* to discuss adding new language establishing property owners' rights which shall establish that a property owner is entitled to the designation (or lack thereof) and the zoning of a property as was established at the time of purchase with the exception of reasonable zoning changes. Discuss inclusion of language that would require that:
 - a) any new historic designation of property be applicable only on prospective ownership unless the property owner provides consent for the designation; and,
 - b) the down zoning of a property beyond what is reasonable shall only be applicable on prospective ownership unless the property owner provides consent for the down zoning.

The City Commission shall establish the definition of ownership and reasonable as it would relate to this clause.

10. Review of *Article I – Corporate Existence, Form of Government, Boundary and Power, Section 1.03 – Powers of the City, (b) Alienability of Property* to discuss including new

language pertaining to the conveyance of air and underground easements for the construction of above ground or underground permanent structures (bridges, parking garages, basements, etc.) for uses other than utility (electric, water, gas, sewer, etc.) and to conclude whether conditions for such conveyance shall:

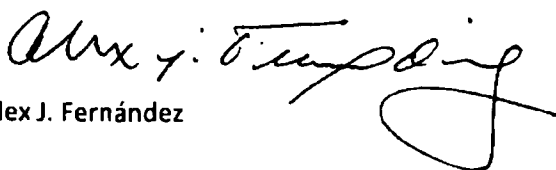
- a) be addressed in the City Charter;
 - b) require a five seventh (5/7) vote of the City Commission and a majority vote of the Planning Board; and,
 - c) the City Commission shall establish the value appraising method for above ground and underground easements being considered for conveyance.
11. Review of *Article I – Corporate Existence, Form of Government, Boundary and Power, Section 1.03 – Powers of the City, (b) Alienability of Property* to consider if in addition to the provisions set forth in the City Code (*Chapter 82 – Public Property, Article II Sale or Lease of Public Property, Section 82-37 Committee Review and Public Hearing*) shall public notice be served by mail (United States Postal Service) to every property owner within 375 feet from City-owned property which is being considered for conveyance when:
- a) the City-owned property falls within or adjacent to a residential neighborhood; and,
 - b) the proposed main use of the City-owned property is different from its existing use.
12. Review of *Article II – City Commission, Section 2.03 – Powers of the City Commission* regarding new language establishing a non-interference clause which shall establish that with the exception for the purposes of inquiry and information, members of the City Commission are expressly prohibited from interfering with the performance of the duties of any employee who is under the direct or indirect supervision of the City Manager.
13. Review of *Subpart B - Related Special Acts, Article V. Health Plan for City Officers and Employees* to consider new language addressing the tax inequity of employees who elect to include their domestic partner in the City's health plan and establish that the City Commission shall enact policy to correct the inequality in taxation imposed by the Federal Government in keeping with the City's commitment to be free of all forms of discrimination and inequality.
14. Discussion pertaining to the adoption of a Whistleblower Protection Act through which the City Commission shall establish protections for all City employees and appointees who report violations of any local, state, or federal law, regulation,

policy, or procedure with respect to an alleged abuse of authority, misuse of public funds, or the existence of a danger to the public health, safety, or welfare. The Commission shall establish a prohibition on any retaliatory conduct against anyone who acts as a whistleblower and reports a violation. Procedures shall be set by the City Commission.

15. Discussion pertaining to the adoption of language to require that any member of a land use board or of any board that engages in quasi-judicial hearings shall be required to resign from their appointed seat upon qualifying for elected office in the City of Miami Beach.
16. Discussion pertaining to the constitutionality of adopting recommendations regarding pension reform submitted to the City Commission by the Budget Advisory Committee.
17. Discussion pertaining to the recommendations submitted by Miami Beach United regarding the Citizen's Bill of Rights.
18. Discussion pertaining to Mr. Frank Del Vecchio's communication regarding "voter referendum approval for the sale or lease of any and all city-owned property in the 52-acre convention center redevelopment district."

I trust that the Chairman Zack will schedule the hearing of the above referral items timely and appropriately. Please ensure that the motions contained in items one (1) through five (5) are included on the May 6, 2013 agenda of the Charter Review Board. Other items will follow under separate cover to be included for future meetings. Please do not hesitate to direct any questions and/or concerns directly to me.

Thank you,


Alex J. Fernández

ITEM 5.

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stated in item six of my memo from April 30th, 2013, I would like for this Charter Review Board to consider including the Miami-Dade County Commission on Ethics and Public Trust as an option for those seeking remedies to violations of their citizen rights.

Expand Authority of Ethics Commission

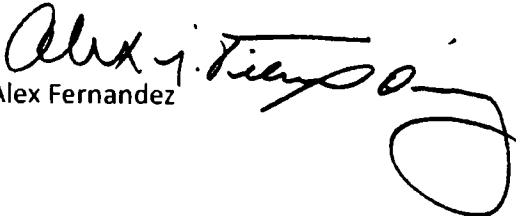
Furthermore, from time to time the Miami-Dade Commission on Ethics and Public Trust is approached to investigate alleged violations of laws pertaining to the State's sunshine provision, public records, and campaign law. Though the Commission on Ethics and Public Trust does look into these matters, they are eventually referred to law enforcement and/or state agencies for enforcement. Given the work load of law enforcement agencies, these violations become of low priority for law enforcement and are often neglected. Through my communications with Mr. Centorino he has shared his belief that it may be at times more practical to allow the Commission on Ethics and Public Trust to enforce such issues.

As such, I would like for this Charter Review Board to consider and discuss as to whether the Miami-Dade County Commission on Ethics and Public Trust should be engaged to investigate and enforce issues relating to sunshine, public record, and campaign laws.

Finally, during yesterday's meeting one of colleagues brought forth concerns pertaining to "bad experiences" which of some our elected officials may have had with the Miami-Dade Commission on Ethics and Public Trust. The board member mentioned that it was his opinion that the will of the City Commission will be not to adopt such proposal as a result of those negative experiences and that as such this Charter Review Board should not consider the issue. While the board member's statement may or may not reflect the position of all members of the City Commission, I believe that while conducting our business this Charter Review Board should attempt to insulate itself as much as possible from the political will and sentiments of the moment. It is not our task to consider what the will of the City Commission will be on any of the issues we will be discussing. Rather, the Commission has entrusted us with the review of the provision contained within our Charter to propose amendments which make it a better governing document for our City and it is the duty of the City Commission to determine if it is indeed their will to submit those proposals to the voters for adoption. Therefore, I respectfully request that this item to be given adequate consideration by this Charter Review Board on its merits of protecting our citizen's and their rights established within the Citizen's Bill of Rights.

Please direct any questions and/or concerns directly to me.

Thank you,


Alex Fernandez

ITEM 6.a.

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**CITY OF MIAMI BEACH, FLORIDA
PERSONNEL RULES**

Approved by the Personnel Board February 20, 1939

Adopted by the City Council March 8, 1939

AS AMENDED OCTOBER, 1998

AS AMENDED APRIL, 2001

AS AMENDED AUGUST, 2005

- (b)** Salary for a reinstated employee shall be within the salary range for the classification to which he/she is appointed.
- (c)** When an employee is transferred from a position in one class to another position in the same class, no change in salary shall be made because of such transfer.
- (d)** When an employee is promoted to a position in a higher class and his/her salary is lower than the minimum of the higher class, his/her salary immediately shall be increased to within the salary range of the higher class.
- (e)** When an employee is demoted to a position in a lower class and his/her salary is higher than the maximum of the lower class, his/her salary immediately shall be decreased to no higher than the maximum of the lower class.
- (f)** An annual review of the salary of each employee shall be made by the Personnel Director in consultation with the Appointing Officer, and adjustments within the range may be made after an analysis of the performance evaluation and length of service of each employee, and after considering the recommendations of the Appointing Officer, provided that in no case shall the salary of any such employee be increased above the maximum established for the class; and provided further, that such salary adjustments shall receive the approval of the City Manager.
- (g)** Amendments of the Compensation Plan with supporting data justifying such changes as prepared by the Personnel Director may be submitted by the City Manager at any time to the City Commission for approval.

RULE VIII. PROBATIONARY PERIOD

SECTION 1: OBJECT OF PROBATIONARY PERIOD: The Probationary period shall be regarded as an intrinsic part of the examination process and shall be utilized for closely observing the employee's work, for securing the most effective adjustment of a new employee for his/her position, and for eliminating any Probationary employee whose performance does not meet the required standards.

SECTION 2: DISCIPLINARY ACTION AND REMOVAL DURING PROBATIONARY PERIOD: During the Probationary period an employee may be suspended, reduced in pay or class, or removed for reasonable cause at any time during the Probationary period by the Appointing Officer. Notice of the suspension, reduction in pay or class, or removal shall be given both the employee and the Personnel Director together with a statement of the reasons therefore. No Probationary employee has the right to appeal any disciplinary action or removal by his/her Appointing Officer for any cause whatsoever to the Personnel Board. The Personnel Board has no jurisdiction over Probationary employees. In the case of a removal, the Personnel Director may determine whether or not the name of the removed Probationary employee should be restored to an eligible list; provided that the name of a person who has been removed a second time during the Probationary period shall not be restored to a list of eligibles.

SECTION 3: REPORTS DURING THE PROBATIONARY PERIOD: The Personnel Director may, if he/she deems it desirable, require that Appointing Officers file with him/her at a designated time a performance evaluation of each Probationary employee on such form as he/she may prescribe.

SECTION 4: REGULAR APPOINTMENT AFTER PROBATIONARY PERIOD

- (a) All original appointments and probationary promotional appointments and re-employment of Probationary employees shall be made for a period of six (6) months, except as hereinafter provided. All probationary promotional appointments, made as of January 19, 1973 and thereafter, made within the same department in which the employee has been employed for a minimum of six (6) months shall be for a period of three (3) months, except as hereinafter provided; provided, however, that any and all absences totalling in excess of three (3) days with pay during such three (3) month period shall be added thereto so as to extend such period by the number of days of such absences. No probationary period is to be required for re-employment in the same, equivalent, or lower classification of an employee with Regular status. (Amended 8/18/89)

If an employee requests a change in departments during the probationary period, a new probationary period will begin from the date of transfer. If the employee returns to the original department, the first probationary period will commence from the date it ended prior to the transfer. (Amended 8/18/89)

After the expiration of the required probationary period from the date of the original appointment or the re-employment of a Probationary employee, or from the date of a promotional appointment, no salary or other compensation payment shall be made unless the Appointing Officer has first filed with the Personnel Director a statement in writing that the services of the employee during the probationary period were satisfactory and that it is desired that he/she be continued in the service. Such statement shall contain an appraisal of the value of the services of the employee and if the Personnel Director so determines, may include a performance evaluation upon forms prescribed by him/her. (Amended 8/18/89)

RULE XIII. PERFORMANCE EVALUATIONS
(Amended 11/17/89; 04/20/01)

SECTION 1: ORIGIN, DEFINITIONS, AND PURPOSE

- (a) **ORIGIN:** Section 2, Paragraph L. Special Acts of 1937, Chapter 18696 - (H.B. No. 687), authorizes the Personnel Department to: "Establish by rule a system of service ratings based on records of attendance, performance, conduct, and output of each officer or employee in the Classified Service and designated as far as may be possible to reflect his worth to the City".
- (b) **DEFINITIONS:** For the purposes of this Rule, the following definitions shall apply:
1. "SERVICE RATING" is defined as all formal or informal systems of performance evaluations for measuring or describing the performance, output, conduct, and attendance of all employees in the Classified Service of the City.
 2. "EVALUATORS" for the System shall be Appointing Officers of the City and their designated supervisory employees.
 3. "EMPLOYEES" shall include all persons in the Classified Service of the City.
- (c) **PURPOSE:**
1. Performance evaluation reports of employees shall be evaluated and records maintained under the supervision of the Director of Personnel, and such reports shall be a part of the procedures determining, but not the sole determinant of salary increases or decreases, promotions, demotions, transfers, separations, or other personnel status changes, where such reports are pertinent and of value in making intelligent and fair decisions thereon.
 2. (a) Upon the recommendation of the Personnel Director, with concurrence of the City Manager and the approval of the Personnel Board, performance evaluation reports shall not be required for designated administrative personnel and/or personnel on special assignment.

(b) If, because of unusual circumstances, the Personnel

Director believes that no evaluation should be given for a particular employee during any particular evaluation period, the Personnel Director shall have the authority to waive the evaluation for such employee for that particular period. The waiver of an evaluation hereunder shall not be construed either favorably or unfavorably in regard to the employee involved.

3. It is the intent of this Rule to promulgate and promote a policy to enhance the morale, incentive, and industry of the City's employees.

SECTION 2: EVALUATORS

- (a) **AUTHORITY:** The Director of Personnel shall designate the Appointing Officers of the City as evaluators and shall delegate to them the authority to designate evaluators from among their supervisory personnel. The Appointing Officer shall provide the Director of Personnel with a record of all such appointments and any subsequent changes in appointments.
- (b) **RESPONSIBILITIES:** As set forth in this Rule and in accordance with directives of the Director of Personnel, evaluators shall be responsible for the timely and accurate preparation and submission of performance evaluation reports for the employees of their assigned responsibility. Evaluators shall attest to the validity and accuracy of their reports, as having been prepared to the best of their ability, observation, and knowledge.
- (c) **TRAINING:** The Director of Personnel shall provide a continuing program of orientation and training for all evaluators, which will explain to and instruct the evaluators in the purpose and techniques of performance evaluations. Each evaluator must participate in an introductory training course. After the initial training is completed, evaluators will be retrained only at the request or recommendation of the Department Head, Personnel Director, or Personnel Board, and in such further courses as may be required by the Personnel Director.

SECTION 3: APPEALS

- (a) The Personnel Board shall adopt and publish practices and procedures enabling employees and department heads to appeal performance evaluations. Appeals shall be permitted for performance levels of less than 5 for individual factors on a performance evaluation report and less than 50 for overall evaluations. All appeal requests must be filed in writing within ten (10) days following notification to the employee of the overall evaluation. If the performance level, for either an individual factor or an overall evaluation is appealed and the appeal results in a finding in favor of the employee, the evaluation shall be raised to 5 for individual factors and to 50 for overall evaluations, as applicable. Any employee whose last performance evaluation was less than 50 overall shall be disqualified from any promotional examination until such time as he/she receives a 50 or better evaluation. (Adopted 10/16/98) (Amended 3/18/05)

1. **Personnel Board:** At such appeals, the Personnel Board shall permit the parties involved to present such evidence as the Personnel Board deems pertinent to the issue.

Testimony taken before the Personnel Board shall be reported and transcribed at the cost of the party desiring such testimony to be part of the record.

- (b) **VOTING:** In all cases a simple majority vote will control.

SECTION 4: PERFORMANCE EVALUATION REPORT: There is hereby created a performance evaluation report hereinafter called the Performance Evaluation Report, which will be prepared no less than annually for each employee.

(a) **PURPOSE:** The Performance Evaluation Report shall be designed so far as possible to accurately measure the value of an employee's performance with respect to the critical factors of his/her job classification and his/her overall responsibilities to conditions of employment. It will become a permanent and integral record of his/her employment and will be utilized within the purview of Section 1(c) of this Rule.

(b) **FORMS:**

1. Forms shall be designed and distributed by the Director of Personnel. Such forms will describe the several critical factors of the job classifications being evaluated, and insofar as possible, provide a reliable means for accurately measuring the work performance of the employees. They shall provide for descriptions of the employee's fulfillment of conditions of employment.

2. Forms will be completed by the evaluators, and discussed with the individual employees before being submitted to the Director of Personnel for permanent record.

(c) **EVALUATIONS:** Performance levels shall be used to describe the employee's performance, and standardized descriptions shall be used to describe the employee's adherence to conditions of employment. Performance evaluations of "Meets Expectations" shall be the minimum acceptable standard for Classified employees. Receipt of two (2) consecutive overall performance evaluations of less than 50, or two (2) consecutive overall performance evaluations of "Unsatisfactory", or a combination thereof, shall be sufficient grounds for disciplinary action. It shall be mandatory that such disciplinary action be taken by the appropriate Appointing Officer. (Amended 4/20/01)

SECTION 5: SPECIAL AWARDS: All Classified and Unclassified employees shall be eligible for special awards to be granted annually. The awards period will be on a fiscal year basis, commencing October 1st and ending September 30th. (Amended 7/21/95)

(a) SPECIAL AWARDS

1. **Beyond the Call of Duty (Extra Mile Award):** For brave and courageous acts performed during or beyond course of duties. Involves exposure to extreme danger in saving and/or protecting lives and/or property (Amended 08/19/2005).
2. **City Achievement Award:** For specific contribution to the betterment of the department or City's operation in the form of development of new methods and/or procedures; ideas or suggestions resulting in the saving of time, labor and/or money to the City.
3. **Community Service Award:** For employees who, in addition to valuable contributions to the City service in the nature of continued loyal and efficient performance, have made vital and valuable contributions to community, civic, educational, athletic and/or related fields in the community (Amended 08/19/2005).
4. **Safety Award:** For original ideas or suggestions on methods, procedures, or equipment which, when implemented, resulted in a reduction of on-the-job injuries, or in the removal or reduction of a substantial safety hazard to employees.
5. **Customer Service Award:** Displayed customer service which has been witnessed and documented (Created 08/19/2005).

(b) NOMINATIONS: Nominations are to be made during a fiscal year, commencing October 1st and ending September 30th. Nominations must be submitted on standard questionnaires supplied by the Personnel Department. Recommendations for awards will be accepted from department heads and all other City employees.

(c) REVIEW AND SELECTION: The awards nominations will be reviewed thoroughly by the Personnel Board. The Board may select one winner and three runners-up for each category. At the discretion of the Board, committees may be appointed to investigate thoroughly the substantiation submitted to determine the validity of the evidence presented and the worthiness of the nominations. The decision of the Board shall be final. There will be no appeal procedure. It will be the responsibility of the Board

to ascertain, beyond a shadow of a doubt, the validity of the substantiations submitted and that the final selections are, to the best of their knowledge, the most deserving.

CONTRACT

Between

CITY OF MIAMI BEACH, FLORIDA

and the

AMERICAN FEDERATION OF STATE, COUNTY AND

MUNICIPAL EMPLOYEES, AFSCME LOCAL NO. 1554

May 1, 2010 – April 30, 2013

AFSCME i

ARTICLE 8

WAGES AND FRINGE BENEFITS

Section 8.1. Wages.

The City of Miami Beach classification and pay system will be utilized under this contract. This includes salary range changes, job audits, and market classification studies. This does not include cost-of-living increases. No change shall take place until the Union President or his/her designee concurs. No decision made within the context of this provision shall result in a lower grade, the removal of a job classification from the bargaining unit, nor shall said decision result in an exemption from FLSA overtime requirements.

No bargaining unit member who left the City's employment prior to the date of ratification of this Agreement by both parties will be eligible for any wages or benefits under this Agreement.

- a.) Effective the first (1st) pay period ending in May, 2010, there shall be no across-the-board wage increase for any bargaining unit positions. Also, there shall be no increase on the minimums and maximums of each range.

- b.) Effective the first (1st) pay period ending in May, 2011, there shall be no across-the-board wage increase for any bargaining unit positions. Also, there shall be no increase on the minimums and maximums of each range.

- c.) Effective with the first full pay period ending in April 2012, there shall be an across-the-board wage increase of three percent (3%) for all bargaining unit positions. Also, the minimums and maximums of each range will increase by three percent (3%) effective with the first full pay period ending in April 2012.

Within sixty (60) days of an employee's merit review date, the employee's Department shall complete a Performance Evaluation and forward it to Human Resources. The Evaluation shall be completed in accordance with the policy established by Human Resources. Failure to complete a Performance Evaluation within sixty (60) days will result in an automatic two percent (2%) salary increase.

The following language does not apply for this Agreement:

Employees who receive a score of ninety (90) or above shall receive a four percent (4%) increase on their merit review date.

Employees who receive a score of less than ninety (90), but eighty (80) or above, shall receive a three percent (3%) increase on their merit date.

Employees who receive a score of less than eighty (80), but sixty (60) or above, shall receive a two percent (2%) increase on their merit date.

Any other increase will take effect retroactively when the evaluation is completed. Performance Evaluation increases may total no more than four percent (4%).

The following language applies for this Agreement:

Employees who receive a score of sixty (60) or above shall receive a two percent (2%) increase on their merit review date.

Employees who receive a score of less than sixty (60) shall not receive a merit increase.

For the period of May 1, 2010 through April 30, 2011 and May 1, 2011 through April 30, 2012, there shall be no merit salary increases for any bargaining unit employees. Beginning May 1, 2012, all bargaining unit employees may be eligible to receive a two percent (2%) merit increase subject to the provisions outlined above.

If an employee's merit rating score does not qualify him/her for a merit increase, the employee may grieve the evaluation up to Step 3 under the provisions of this Agreement.

Section 8.2. Shift Differential. There shall be a shift differential of forty five cents (\$.45) per hour for work performed at the City's request on shifts beginning after 2:30 P.M. and at or before 11:00 P.M. There shall be a shift differential of fifty five cents (\$.55) per hour for work performed at the City's request on shifts beginning after 11:00 P.M. and before 6:00 A.M.

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A G R E E M E N T

Between

CITY OF MIAMI BEACH, FLORIDA



MIAMI BEACH

and

COMMUNICATIONS WORKERS OF AMERICA (CWA)

LOCAL 3178



Period Covered

October 1, 2009 to September 30, 2012

ARTICLE 2
EMPLOYEE AND UNION RIGHTS

Section 2.1 Employee Rights During Meetings or Interviews.

- a) An employee shall be entitled to request Union representation at all meetings where the representative of the City intends to seek to gain information from the employee which may become a part of the written disciplinary record or may result in a written warning/reprimand of the employee.
- b) The employee shall be informed of the nature of the meeting, the alleged conduct, and if requested, be given a reasonable period of time prior to the meeting to contact and consult with the Union. Nothing contained herein shall preclude an employee from legal representation in the event of a criminal investigation.
- c) At the request of the employee, the City will advise the Union President of all such meetings with the employee and the Union President will arrange to have a Union Representative present.
- d) All meetings will be held in the City at a reasonable hour during the employee's shift or contiguous to the shift on the clock, unless an emergency or serious condition prevents such action.
- e) This provisions of Article 2, Section 2.1 shall be subject to the Union Time Bank as described in Section 4.8.

Section 2.2 Notice of Disciplinary Action.

- a) No reprimand, termination, suspension, demotion, punitive transfer, or punitive reassignment which results in loss of pay shall be taken against an employee unless he/she is notified of the action, and the reason(s) for such recommended action given in writing specifically prior to the action. Notice in writing shall be given to the employee as soon as practicable.
- b) If such disciplinary action is taken against any employee which results in loss of pay or monetary benefits or denial of annual merit increase, Management will adhere to progressive discipline:

Written "verbal warnings" shall not be kept in departmental or Human Resources files. If the employee is not disciplined for the same incident again during a calendar year, the written "verbal warning" shall not be used for his/her Annual Performance Evaluation report.

- c) The employee must have received a Special Report during the evaluation period informing him/her of the less than satisfactory performance and what action should be taken for improvement. A copy of the Special Report must be submitted with the Annual Evaluation Report.
- d) The employee must have received a warning during the evaluation period at least sixty (60) but no more than ninety (90) days prior to an employee receiving a less than satisfactory performance. If the unsatisfactory work performance occurred prior to ninety (90) days before the anniversary increase was due, the warning must state what action the employee must take to correct the unsatisfactory performance. A copy of the warning shall be submitted with the Annual Evaluation Report.
- e) Nothing in this section shall be intended to contravene public record law.

Annual merit increases are not automatic and may be denied.

The employee's Department will be responsible for monitoring the progress or lack of progress on the employee's effort to correct the problem which led to the unsatisfactory rating. Such follow-up shall be every ninety (90) days after the corrective process commenced. Upon correction of the problem, the employee will be granted the annual increase.

Section 2.3 Retaliation for Exercising Rights. - No employee, supervisor or management person shall be retaliated against or be threatened with any such retaliation by reason of his/her exercise of any rights set forth in this Agreement.

Section 2.4 Union Membership-Right of Union to Represent Only Members. - The City and the Union agree not to interfere with the right of employees to become or not become members of the Union, and further, both parties agree that there shall be no discrimination, interference, restraint, or coercion against any employee because of Union membership or lack of it; except that the Union may process grievances for, advise,

October 1, 2010). Therefore, effective October 1 2010 all classifications in the CWA Bargaining Unit shall be in the pay for performance pay system. This classification and pay system includes salary range changes, job audits, and market classification studies, but does not include cost-of-living increases. No change (to salary ranges, job audits or market classification studies) shall take place until the Union President or his/her designee concurs. No decision made within the context of this provision shall result in a lower grade, the removal of a job classification from the bargaining unit, nor shall said decision result in an exemption from FLSA overtime requirements.

The classifications of Lifeguard I, Lifeguard II and Lifeguard Lieutenants shall remain under the current step plan, due to the unique nature of their work, until October 1, 2010, at which time they shall be placed in the pay for performance system. All other employees will remain the pay for performance system, which has no longevity benefits. Consistent with the classification and pay system, no employee's salary shall thereafter exceed, for any reason, the applicable maximum salary for the pay range of the employee's position. However, employees in the Lifeguard I, Lifeguard II and Lifeguard Lieutenant classifications shall be eligible for longevity pay as outlined in Section 8.17 through September 29, 2012. Effective September 30, 2012, longevity pay will be eliminated.

With the exception of Lifeguard I, Lifeguard II and Lifeguard Lieutenants who shall remain under the current step plan until October 1, 2010, commencing on each employee's first merit review date that falls on or after the effective date of the classification and pay system, an employee who receives a score of ninety (90) or above on their respective annual performance evaluation shall receive a four percent (4%) increase on their merit review date, provided that the employee's salary shall not exceed the maximum salary range of his/her position. This shall now also apply to all Lifeguard I, Lifeguard II and Lifeguard Lieutenants effective October 1, 2010.

Employees in the pay for performance plan who receive a score of less than ninety (90), but eighty (80) or above, shall receive a three percent (3%) increase on their merit date, provided that the employee's salary shall not exceed the maximum salary range of his/her position. This shall now also apply to all Lifeguard I, Lifeguard II and Lifeguard Lieutenants effective October 1, 2010.

Employees in the pay for performance plan who receive a score of less than eighty (80), but sixty (60) or above, shall receive a two percent (2%) increase on their merit date, provided that the employee's salary shall not exceed the maximum salary range of his/her position. This shall now also apply to all Lifeguard I, Lifeguard II and Lifeguard Lieutenants effective October 1, 2010.

If an employee's merit rating score does not qualify him/her for a merit increase, the employee may grieve the evaluation up to Step III under the provisions of this Agreement.

However, effective October 1, 2010, there shall be no merit or step salary increases for any CWA bargaining unit employees.

[ATTACHED - The Pay for Performance MINIMUM/MAXIMUM PAY RANGE SCHEDULE for all CWA Classifications effective October 1, 2010 for all CWA classifications including Lifeguard I, Lifeguard II and Lifeguard Lieutenants. Also attached is the STEP PLAN APPLICABLE TO THE LIFEGUARD I, LIFEGUARD II AND LIFEGUARD LIEUTENANT CLASSIFICATIONS for time period of October 1, 2009 through September 30, 2010].

Section 8.2 Shift Differential. Where a majority of an employee's regularly assigned shift hours fall between 3:00 p.m. and 11:00 p.m., the employee shall receive a shift differential of forty five (\$.45) per hour for work performed after 3:00 p.m.

Where a majority of an employee's regularly assigned shift hours fall between 11:00 p.m. and 6:30 a.m., the employee shall receive a shift differential of fifty five (\$.55) per hour for work performed after 11:00 p.m.

However, effective October 1, 2010, Shift Differential pay shall be eliminated.

Section 8.3 Holidays. – (See Section 7.6) The following fourteen (14) days shall be considered as holidays but the City reserves the right to schedule work on the holidays:

New Years' Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day following Thanksgiving, Christmas Day, Martin Luther King's Birthday, three (3) floating holidays, and the employee's birthday.

Employees shall become eligible for floating holidays and the birthday holiday upon completing six (6) months' continuous service with the City.

Section 8.4 Bereavement Leave. - In case of death in the immediate family of an employee, time off with straight-time pay will be allowed of two (2) scheduled work days off per death and four (4) scheduled work days off per death if the funeral is held outside the State of Florida. The immediate family shall be defined as father, mother, husband, wife, sister, brother, son, daughter, grandchild, grandfather, grandmother,

capacity. All employees who express an interest and whose last performance evaluation was satisfactory shall be considered eligible for certification as a CTO. Generally, an employee without CTO certification shall not be required to perform in a training capacity unless a CTO is not available. However, if a Non-CTO is mandated to train, he/she will also receive the stipend.

Section 8.17 Step and Longevity Increases for Lifeguard I, Lifeguard II and Lifeguard Lieutenant only

For the time period of October 1, 2009 through September 30, 2010, the following shall apply:

- a) Starting Salary – New employees will start at the minimum step of the pay range.
- b) First (1st) Step Increase – Newly hired employees shall receive a step increase after satisfactory completion of the probationary period.
- c) Anniversary Date Increase – Step increases shall become effective on the payroll period commencing on the employee’s anniversary date. A step increase shall be awarded based upon the employee receiving a satisfactory 50 merit evaluation during that rating period. Anniversary date shall be defined as the date that an employee completes probation or the effective date when promoted to a higher classification.
- d) Longevity Pay - Longevity increases shall become effective on the payroll period commencing on the employee’s date of hire. Longevity Pay – Longevity shall be calculated by multiplying the employees’ earnings (as defined in arbitration decision FMCS 03-04117 by arbitrator Robert Hoffman) at the end of each pay period by the percentage of longevity pay as determined by years of service per the following table:

e)

Completed Years of Service *	Percentage Increase
7 Years	2.5%
10 Years	5.0%
15 Years	7.5%
20 Years	10.0%
25 Years	11.0%

* This does not include time taken as unpaid leave.

AGREEMENT
BETWEEN
CITY OF MIAMI BEACH, FLORIDA

and

MIAMI BEACH FRATERNAL ORDER OF POLICE
WILLIAM NICHOLS LODGE NO. 8

Period Covered

October 1, 2009 through September 30, 2012

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- e) Certified Hire with or greater than three (3) years of experience - A newly hired Police Officer with or greater than three (3) years of experience shall be placed in Step B for the duration of his/her first year of service.

2) Detention Officer

A newly hired Detention Officer will be placed in Step A of the pay scale for the duration of his/her first year of service.

- B) State Certification Re-examination** - In the event a newly hired Police Officer who is required to take the State Certification examination fails to pass said examination, he/she shall be placed on a leave of absence without pay until such time as he/she passes the State Certification examination. Said bargaining unit employee shall sign up for the next scheduled examination in the State of Florida and take the examination at his/her expense. In the event the bargaining unit employee fails the re-examination, his/her employment with the City shall terminate.

Section 8.4. Step and Longevity Increases. All step and longevity increases shall become effective on the payroll period commencing nearest the employee's anniversary date, as per current practice. A step increase shall be awarded based upon the employee receiving a satisfactory evaluation during that rating period, as per current practice.

Section 8.5. Shift Differential. At the time this Agreement was executed, the City maintained three standard shifts of work to-wit: a first shift starting approximately 11:00 p.m.; a second shift (also called "Day Shift") starting approximately 7:00 a.m.; and a third shift (also called "Afternoon Shift") starting approximately 3:00 p.m. For all work by the third shift performed after 3:00 p.m., effective October 1, 2006, the shift differential pay of forty-five cents (\$.45) per hour shall be increased to seventy-five cents (\$.75) per hour, which shall be added to the employee's hourly rate; and effective October 1, 2006, for all work by the first shift performed after 11:00 p.m., the shift differential pay of seventy-five cents (\$.75) per hour shall be increased to one dollar (\$1.00) per hour, which shall be added to the employee's hourly rate. If the City rearranges the shift scheduling or establishes any new shift, shift differential pay shall follow the above formula based on the time period in which a majority of hours are worked by the employee. Thus, if a majority of the non-standard shift hours are after 3:00 p.m., all the shift differential pay for all post 3:00 p.m. hours, effective October 1, 2006, shall be changed to seventy-five cents (\$.75) per hour. If a majority of the non-standard hours are after 11:00 p.m., all the shift differential pay for all post 11:00 p.m. hours, effective October 1, 2006 shall be changed to one dollar (\$1.00) per hour.

ARTICLE 16 PROMOTIONS

Section 16.1. Advancement to the ranks of Sergeant and Lieutenant shall be by examinations that measure the knowledge, skills, and ability of personnel and by seniority. A promotional examination will be given every-two (2) years, unless the FOP President and the City Manager or his designee for Labor Relations mutually agrees to some other schedule. Effective with the first test given after ratification, the following revisions to Article 16 shall apply.

Section 16.2. Eligible applicants for the promotional examination for Sergeant and Lieutenant shall be given a two-part examination, consisting of a validated, written test, which shall comprise fifty percent (50%) of the final examination score, and an Assessment Center or a mutually agreed upon behavioral assessment component. The Assessment levels shall have a weight of fifty percent (50%) of the total score. The written portion shall be given first and applicants for Sergeant or Lieutenant positions must successfully pass the written test with a raw score of seventy percent (70%) to be eligible, at a later date, to take the Assessment Center or the behavioral assessment component portion of the examination. Passing scores for the Assessment Center or the behavioral assessment component shall be set by the test consultant. If there are not a significant number of minorities promoted after the next round of promotional testing after the effective date of this Agreement, the parties will meet to review the respective weights and re-negotiate the Article, if necessary.

Section 16.3. All police officers who on written test date have four (4) years of seniority from date of appointment to Police Officer or Police Officer Trainee and performance evaluations of satisfactory or above for the preceding twenty-four (24) month period shall be eligible to take the Sergeant's test. All Sergeants who on written test date have two (2) years seniority from the date of appointment as Sergeant and performance evaluations of satisfactory or above for the preceding twenty-four (24) month period shall be eligible to take the Lieutenant's test. Applicants must, in both cases, apply on or before the application cutoff date and time in accordance with Personnel Rules.

The City Manager or his designee for Human Resources may refuse to permit an applicant to take the examination on the grounds of conduct disgraceful to the Department and his/her officer status; or refused advancement from probationary status. In the latter case, if at least three (3) years have elapsed since such failure of probationary advancement, such candidate will be considered qualified. Should any applicant, so disqualified for any of these alleged reasons, contest such disqualification, he shall have access to the grievance procedure under this contract.

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A G R E E M E N T

Between

CITY OF MIAMI BEACH, FLORIDA

and the

**GOVERNMENT SUPERVISORS ASSOCIATION
OF FLORIDA, OPEIU, LOCAL 100**

Period Covered

October 1, 2009 to September 30, 2012

- 5) A maximum of two (2) delegates of the Association's four (4) Representatives will be granted a leave of absence with pay not to exceed five (5) business days per delegate (for a total of ten (10) business days) per calendar year, for the purpose of attending State and International union conventions. The two (2) delegates shall not be from the same division and/or work unit. Leaves of absence shall not exceed ten (10) business days in total in any calendar year. Business days shall be defined as Monday through Friday, excluding City recognized holidays and are not permitted to be taken in any two (2) consecutive workweeks. All requests for leave shall be submitted to the Office of Labor Relations by the Association's President. The Association's President shall provide supporting documentation for the dates and locations of any such conventions a minimum of eight (8) weeks in advance for any leaves of absence requested. The Office of Labor Relations shall forward all granted leaves of absences to the appropriate department director and/or direct supervisor so that the department directors can make appropriate arrangements.
- 6) The Association shall have the right to send one (1) of its four (4) designated Representatives authorized with pay to attend and participate in City-wide employee orientations for new hires whose classification is represented by the Association, provided that attendance is only permitted for the portion of the Citywide employee orientation where Collective Bargaining Units are permitted to address the attendees. The Representative is required to return to work immediately or as soon as practicable after the particular matter relating to the Association has ended.

Section 5.2. Employee Rights.

- 1) An employee is entitled to request that a single Association Representative be permitted to attend all formal interviews where the City's representative intends to gain information from the employee being interviewed that may result in disciplinary action against the employee. The employee shall be informed of the nature of the interview, the alleged conduct being investigated, and if requested by the employee, given a reasonable period of time prior to the interview to contact an available Association Representative, provided that the interview is not reasonably delayed.
- 2) No disciplinary action which results in loss of pay shall be taken against an employee unless he/she is notified of the action and the reason(s) for such recommended action given in writing prior to the action. Notice in writing shall be given to the employee as soon as practicable but no more than forty-five (45) days after the date of the alleged incident, along with a copy provided to the Association.
- 3) Management will adhere to progressive discipline where appropriate.

- 4) Written "verbal warnings" shall not be kept in an employee's personnel file maintained in Human Resources unless it is a document supporting formal disciplinary action (i.e. suspension/termination). If an employee receives two (2) or more written verbal warnings for a similar action and/or behavior during the time period being assessed for the employee's Annual Performance Evaluation, the written verbal warning shall be used in that particular employee's Performance Evaluation.
- 5) No employee shall be retaliated against or threatened with retaliation by reason of the employee to exercise their rights set forth in this Agreement.
- 6) The City and the Association agree not to interfere with the rights of an employee to become or not become a member of the Association.
- 7) Upon reasonable request, an employee shall have the right in the presence of the appropriate representative of the City, to review and copy all or a portion of the employee's official records which are a part of the employee's personnel file maintained by Human Resources or the employee's personnel file maintained by the employee's Department. The City may charge a reasonable fee for copying in accordance with Chapter 119, Florida Statutes, but under no circumstances will the City charge the employee for labor fees associated with the request.

ARTICLE 8
WAGES & FRINGE BENEFITS

Section 8.1. Wages.

The City of Miami Beach classification and pay system will be utilized under this contract. This includes salary range changes, job audits, and market classification studies. This does not include cost-of-living increases. No change shall take place until the Union President or his/her designee concurs.

No bargaining unit member who left the City's employ prior to the date of ratification of this Agreement by both parties will be eligible for any wages or benefits under this Agreement.

No decision made within the context of this provision shall result in a lower grade, the removal of a job classification from the bargaining unit, nor shall said decision result in an exemption from FLSA overtime requirements.

- a) Effective the first (1st) pay period ending in October 2009 there shall be no across-the-board wage increase for any bargaining unit positions.
- b) Effective the first (1st) full pay period ending in October 2010, there shall be no across-the-board wage increase for any bargaining unit positions.
- c) Effective the first (1st) full pay period ending in October 2011, there shall be no across-the-board wage increase for any bargaining unit positions.
- d) Effective with the first full pay period ending April 2012, there shall be an across-the-board wage increase of three percent (3%) for all GSAF bargaining unit positions. In addition, the minimums and maximums of each job classification range will be increased by three percent (3%), accordingly.

Within sixty (60) days of an employee's merit review date, the employee's Department shall complete a Performance Evaluation and forward it to Human Resources. The Evaluation shall be completed in accordance with the policy established by Human Resources. Failure to complete a Performance Evaluation within sixty (60) days will result in an automatic two percent (2%) salary increase. Performance Evaluation increases may total no more than two percent (2%).

Employees who receive a score of sixty (60) or above shall receive a two percent (2%) increase on their merit review date. If an employee's merit rating score does not qualify him/her for a merit increase, the employee shall not receive any merit salary increase; however, said employee may grieve the evaluation up to Step III under the provisions of this Agreement.

employee shall be offered a alternative position. If the impacted employee's base hourly rate is above the maximum base hourly rate of the position being offered to them, said employee will remain at their current hourly base rate even if that hourly base rate exceeds the maximum hourly base rate of the position being offered. In addition, the impacted employee shall have recall rights to their previously held position. This recall right shall exist for up to two (2) years after the date the impact occurred.

Section 11.12. Military Leave. Federal and State law concerning military leave govern the City and all employees represented by this Agreement shall receive the benefits of such laws.

Section 11.13. Pay Advances. An employee in this unit may request his/her pay check in advance of any scheduled annual leave by submitting a written request to the Human Resources Director at least one (1) pay period prior to leaving on annual leave. However, the written request does not guarantee that the City will be able to provide the employee with a pay check in advance of any scheduled pay day. Approval for an advanced pay check will not be unreasonably withheld.

Section 11.14. Mentoring Program. Bargaining unit employees may request to participate in the City's Mentoring Program, as set forth in the Human Resources' Department policies and procedures, which may be changed from time to time or discontinued at the City Manager's discretion. Denial or disapproval of a request for participation in this Program shall not be grievable.

Section 11.15. Political Activities of Employees. Except as provided by Federal, State, County laws and/or City of Miami Beach laws, ordinances or rules including Personnel Rule I(b), the City shall not make, adopt or enforce any rule, regulation or policy:

- a) Forbidding or preventing employees from engaging or participating in politics or from becoming candidates for public office; or
- b) Controlling, directing or tending to control or direct the political activities or affiliations of employees.

It is understood that no political activities may be conducted by unit members during the employee's scheduled work day or with City equipment and/or City resources.

Section 11.16. Promotions. The term promotion as used in this Agreement means the advancement of an employee to a higher paying classification. Whenever a bargaining unit job opening occurs in any existing job classification or as a result of the development or establishment of a new classification, a notice shall be posted for no less than two (2) weeks.

Eligible and qualified employees who wish to apply for the open bargaining unit position may do so in writing and submit the application to Human Resources. If there is more than one (1) employee qualified for promotion to the bargaining unit job classification that have equal skill, ability and qualifications (factors to be considered include but are not limited to skill, ability, qualifications, interview score, disciplinary history, attendance history and performance evaluation scores) then seniority with the City shall apply. Seniority for the purpose of this subsection shall mean length of continuous service with the City.

A G R E E M E N T

Between

CITY OF MIAMI BEACH, FLORIDA

and the

**FIRE FIGHTERS OF MIAMI BEACH
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS**

LOCAL 1510

AFL-CIO-CLC

Period Covered

October 1, 2009 through September 30, 2012

cases where a vacancy occurs and the current eligibility list has been exhausted with no eligible candidates remaining to be appointed to a vacancy, the promotion, compensation and seniority of an eligible candidate off the new promotional list shall be retroactive back to the first day following the expiration of the previous list, subject to the conditions above.

- C.** A list of authoritative sources from which technical knowledge for the behavioral assessment component and the written test questions will be compiled by a Book Committee consisting of the Human Resources Director, Fire Chief, the Union President and the test developer or their designees, along with two incumbents, one designated by the Fire Chief and one designated by the union president. Without exception, no member of the Book Committee shall be a candidate for the promotional examination for which the list is compiled. These committee members will be responsible for the authoritative sources for Fire Lieutenant and Fire Captain promotional processes. It is the intent of the City and Union that all sections of the promotional processes will be complete with standing lists ready to post upon expiration of the current three (3) year lists. At least ninety (90) days prior to the scheduled date of the written promotional examination; a final notice will be posted containing a list of authoritative sources from which the technical knowledge, for the behavioral assessment component and the written test questions will be drawn. The technical knowledge for the behavioral assessment component shall be based on written standard operating procedures (SOP)/standard operating guidelines (SOG) that are job related and rank specific selected by the established Book Committee and/or agreed upon authoritative sources.
- D.** Candidates meeting the time in grade service requirements on the date the register expires are eligible to apply to take the promotional examination for their next higher rank. All Fire Fighter I's who on the date the register expires have four (4) years of seniority from their date of appointment to Fire Fighter I, are State certified paramedics, and have performance evaluations of satisfactory or above for the preceding twenty-four (24) month period shall be eligible to take the Fire Lieutenant test. All Fire Lieutenants (and Fire Fighter IIs for next promotional testing period only) who on the date the register expires have two (2) years regular status from their date of appointment as Fire Lieutenant (or Fire Fighter II for the next promotional testing period only) and

have performance evaluations of satisfactory or above for the preceding twenty-four (24) month period shall be eligible to take the Fire Captain's test. For the Fire Captain promotional process, an Associate's degree or equivalent in Fire Science, Fire/Business/Public Administration, or a closely related area from an accredited college or university may substitute for one (1) year of experience (five (5) semester credits equals one (1) month experience). Coursework meeting the State Fire Marshall's requirements for the "Firefighter Supplemental Compensation Program" (Florida Statutes 633.382) will be acceptable. All applicants must have a valid Florida driver's license. Applicants must, in all cases, apply on or before the application cutoff date and time in accordance with Personnel Rules.

- E. There shall be at least two (2) post-test review/scoring sessions conducted on separate days and occurring within fourteen (14) calendar days of the administration of the written examination. Each examinee will review their results when off duty, and will be able to review a copy of his own answer sheet and the scoring key (for use only during the review session) containing the correct response, the name of the reading source and the location from which each test question was drawn. Challenges will be written and submitted to the test developer during the post-test review sessions. The test developer, the City's Manager's designee for Human Resources and the Union President or his designee shall conclusively decide all challenges by a majority vote.

Upon completion of the determination of a score for the behavioral assessment component of the examination, each examinee shall be furnished with their result. Each examinee may review his behavioral assessment component of the examination at a post-test review session for a time period of twice the duration of the behavioral assessment component of the examination. Each examinee will review their results when off duty. Challenges regarding the behavioral assessment component must be made in writing and submitted to the test developer either during the post-test review session, or at an optional challenge session scheduled within ninety-six (96) hours of the post-test review session. There will be no review of the behavioral assessment component during the optional challenge session. However, an applicant can review their individual behavioral assessment component during the post-test review and submit challenges during the optional

A promotional list for each promotional process will then be created listing examinees in descending, numerical order of final score including any education, seniority or Veterans' Preference calculations. The Fire Chief will appoint from these promotional lists. Skip-overs may result from an examinee being rated unsatisfactory in two (2) or more evaluation within the last twenty-four (24) months; being issued three (3) or more written reprimands/suspensions within the last twenty-four (24) months; serving under a Last Chance Agreement; or being physically/mentally unqualified to perform the essential functions of the position.

Promotions shall be made by rank order provided that the ranking examinee's documented performance and/or discipline history are not significantly inferior to that of the next ranking candidate.

The IAFF shall facilitate participation of bargaining unit employees in providing information in order to conduct the job analyses and develop the tests within the time frames requested by the process; provided that such participation shall be on duty time.

The parties agree to review the formula for promotional credit and to implement such revisions as the parties may agree upon in writing.

6.14. Light Duty Assignments. If an employee is temporarily unable to perform the essential functions of the employee's job classification due to a non-job related injury/illness, he may make a written request to the Fire Chief for a light duty assignment. The Chief shall determine if there are any necessary functions which could be performed by a light duty employee. If there are such opportunities, the Chief shall inform the employee in writing of any light duty assignments and the physical capabilities required for their performance.

The employee shall present this light duty assignment information to his/her treating physician and obtain, at his/her expense, a written evaluation of his/her capacity to perform the functions of the assignment. The medical evaluation must be in sufficient detail to satisfy the Chief. The Chief reserves

ITEM 6.b.

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Subpart A - GENERAL ORDINANCES
Chapter 2 - ADMINISTRATION
ARTICLE IV. - OFFICERS AND EMPLOYEES

DIVISION 4. - INDEPENDENT CITY AUDITOR

DIVISION 4. - INDEPENDENT CITY AUDITOR ^[21]

Sec. 2-251. - Duties.

The duties of the independent city auditor are to:

- (1) Render a professional opinion on the fair presentation of the city's general purpose financial statements (GPFS) and prepare an audit in accordance with generally accepted accounting principals (GAAP) for the applicable fiscal year. The audit shall:
 - a. Be conducted in accordance with generally accepted accounting standards (GAAS) and generally accepted government auditing standards (GAGAS) applicable to financial statement and compliance audits.
 - b. Be performed in accordance with F.S. § 11.45 and shall comply with the state audit or general rule 10.550.
 - c. Include:
 1. An auditor's report on the fair presentation of the general purpose financial statements included in the comprehensive annual financial report.
 2. The necessary separately issued federal and state single audit reports in accordance with OMB circular A-128 and the rules of the auditor general of the state.
 3. A management letter for the mayor and city commissioners and the city's audit committee in compliance with the rules of the Auditor General.
 4. A report on irregularities and illegal acts, if warranted.
- (2) Fulfill all requirements as set forth by the Government Finance Officers Association (GFOA) in the Certificate of Achievement for Excellence in Financial Reporting Program in preparing the comprehensive annual financial report (CAFR).
- (3) Assist the city in planning and preparation for and implementation of new Government Auditing Standard Board (GASB) pronouncements.
- (4) Use the audit process to evaluate strengths and weaknesses in internal auditing controls and assess areas to improve the efficiency and effectiveness of accounting and related processes. These matters shall be communicated at least annually through management letters to the city manager.
- (5) Maintain a yearround dialogue with city commissioners and management of the city and related organizations.
- (6) Be available for related work not covered under the letter of intent, such as verification of data used in official statements, verification of bond escrow assistance with special projects and consent to use the auditor's report in official statements. A fee schedule for such related work shall be provided.

(Ord. No. 97-3087, § 1(A). 7-16-97)

Subpart A - GENERAL ORDINANCES
Chapter 2 - ADMINISTRATION
ARTICLE IV. - OFFICERS AND EMPLOYEES

DIVISION 4. - INDEPENDENT CITY AUDITOR

Sec. 2-252. - Method of selection.

- (a) The independent city auditor shall be selected pursuant to a request for qualifications procedure. The proposals shall be publicly opened in the procurement division office at the time and date specified. Late proposals shall not be accepted or considered and shall be returned to the bidder unopened. The city reserves the right to accept any proposal deemed to be in the interest of the city or to waive any informality in any proposal. The city may reject any or all proposals and readvertise.
- (b) The city's audit committee shall appoint a subcommittee to review and recommend a list of auditors to the city commission which shall appoint the independent city auditor by resolution. The city commission shall have the authority to remove the independent city auditor with or without cause.

(Ord. No. 97-3087. § 1(B), 7-16-97)

Sec. 2-253. - Compensation.

- (a) The independent city auditor shall be paid either on an hourly rate or based on the service to be rendered. The services to audit the records of the general employees' pension system, unclassified employees' and elected officials' retirement system, the parking system fund and the city redevelopment agency shall be separately priced.
- (b) If payment is to be based on an hourly rate, the proposed fee schedule for such services shall set forth the title and classification of each person anticipated to render services, the maximum hours to be worked by each person and the hourly rate of each person.

(Ord. No. 97-3087. § 1(C), 7-16-97)

Secs. 2-254—2-275. - Reserved.

FOOTNOTE(S):

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Cross reference— Taxation. ch. 102. [\(Back\)](#)

MIAMIBEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Debora Turner, First Assistant City Attorney
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Meeting Agenda

Monday, June 10, 2013 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 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. Accept Minutes Of The June 3, 2013 Charter Review & Revision Board Meeting. (See Attached Item 1.)
2. List Of Charter Provisions Identified By The City Attorney For Review. (See Attached Item 2)

PENDING ITEMS

List Of Proposed Charter Amendments Brought Forth For Discussion During Previous Charter Review & Revision Board Committee Meetings, Which Have Yet To Be Fully Discussed:

- a. Term Limits For The Mayor And Commissioners (Charter Section 2.02) – Proponent Commissioner Tobin
- b. Election Versus Appointment When Commission Vacancies Occur. (Referred At The May 19, 2012 Commission Retreat)
- c. Commission Salary (Referred At The May 19, 2012 Commission Retreat)
- d. Compensation Of The City Attorney, City Manager And City Clerk. (Referred At The May 19, 2012 Commission Retreat)

- e. Citizens' Bill Of Rights:
 - i. Article XV - To Include Traffic - Proponent Stephen Zack, Chair
 - ii. Ethics In Government / Code Of Conduct - Proponent Stephen Zack, Chair
 - iii. Over Scale Development In Residential Areas – Proponent Stephen Zack, Chair
 - iv. Preservation Of Beaches - Proponent Rick Preira
 - v. Mandate That Employees Should Be Courteous To Citizens In The Bill Of Rights - Proponent Stephen Zack, Chair
 - vi. Preserving The Historical Value Of Miami Beach - Proponent Terry Bienstock
 - vii. Whistle Blowing Protection For Employees - Proponent Frank Del Vecchio
- f. Electing Officials By Open Seats - Proponent Scott Diffenderfer
- g. Subpoena Powers - Proponent Alex Fernandez
- h. Creation Of An Inspector General With Investigative Powers - Proponent Rick Kendle
- i. Requirement That All City Employees Be Evaluated On Recurring Basis – Proponent Stephen Zack, Chair

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MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Present by telephone

Absent

Staff:

Debora Turner, First Assistant City Attorney
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office
Jorge Gomez, Assistant City Manager
Aleksandr Boksner, Senior Assistant City Attorney

Members from the public:

Terry Bienstock
Robert Wolfarth
Brad Ugent

MINUTES

Monday, June 3, 2013 at 4:30 p.m.
1755 Meridian Avenue, 5th Floor Conference Room.

Meeting called to order by Chairman Zack at 4:33:32 p.m.

Roll call by City Clerk Rafael E. Granado. All present with the exception of Member Preira; Member Lalonde was present via telephone.

1. Accept Minutes Of The May 6, 2013 Charter Review & Revision Board Meeting.
ACTION: Motion made by Member Fernandez; seconded by Member Perry to approve the minutes; Approved by acclamation. Absent: Member Preira.
2. Presentation By Debora Turner, First Assistant City Attorney, List Of Charter Provisions Identified By The City Attorney For Review.

Debora Turner, First Assistant City Attorney, presented Sections of the Miami Beach Charter recommended by the City Attorney's Office for review and consideration by the Board as far as Charter Amendments.

Section 1.03 - Powers of the City. This item was ruled "out of order" at the last meeting, but certain City properties are subject to referendum and this is something that the Board might want to consider.

Member Fernandez asked about the definition of waterfront and oceanfront properties and Assistant City Manager Jorge Gomez explained.

Member Fernandez explained that in the research he has done from previous Charter Reviews, properties that front the Collins Canal are based on the erosion control line, and he asked to make sure what the intent is in protecting certain properties. He wants to know if the properties in front of the Collins Canal are protected and not be jeopardized in the future, such as the Botanical Garden. Discussion held. One of his recommendations is regarding bridges over City owned property and underground structures that may be permanent, such as that proposed for the expansion of the Convention Center.

Mr. Gomez explained that in 2003, a map was designed showing all the City properties inclusive. He also stated that several months ago the City Commission requested an easement to utilize the air rights connecting two properties owned by the same entity for a hotel. They requested an aerial easement; there was also a request for an underground easement for a parking garage connected. The Commission granted both. The question is do they make every conceivable exchange of land to require a referendum or keep what is existing, which is to have an incredible super majority of 6/7 vote of the Commission in addition to a 5/7 vote of the Planning Board. Discussion continued regarding easements and bridges. He suggested considering making a higher threshold if granting an easement over public streets versus an alley.

Member Fernandez agreed to put proposed language to the Commission with an extra layer of approval for bridges or over alleys, as he is concerned in keeping with the character of the City. Discussion continued.

Section 2.02 -Term and Compensation. Presently the terminology refers to salary and compensation but not in a consistent way; and the Board might want to clarify what is meant by salary or full compensation, including other benefits.

Chairman Zack asked for a straw vote on salary versus compensation and for the definition of compensation; is it inclusive with salary, all benefits and pension?

Debora Turner, First Assistant City Attorney, explained that it is defined as employees of the City, Legal suggests changing compensation to salary, since the salary is what is provided in the Charter, or if changed to compensation, then provide for other things such as expense accounts.

Chairman Zack stated the real issue is what kind of compensation they receive; he thinks compensation is how they benefit; he would increase both the salary and compensation, but he requested to know the compensation received.

Member Kendle suggested making it simple. Discussion continued.

Vice-Chairman Perry suggested finding out exactly what the package is and then the Board can discuss. **Rafael E. Granado and Debora Turner to handle.**

Section 2.03 – Powers of the city commission. This section deals with the City Auditor or a potential Inspector General. Page 75 of the Agenda, describes the duties of an Independent City Auditor. She explained that if the Board wants to consider other duties for the Inspector General, Mr. Boksner from the City Attorney's Office would answer questions.

Section 2.07 – Vacancies in city commission. The term *vacancy* may not be in line with the practices and procedures are of the city commission. The concern is that sometimes candidates for city commission will resign to run for other seats, for example in July for a November election. The City prefers to hold elections concurrent with a November election. The practice that has been engaged in with regard to holding an election in November is that the City piggybacks onto other elections for cost-savings purposes, rather than spending \$200,000 for stand-alone elections. The Legal Department suggests correcting language to clarify that if an individual decides to resign to run for another seat, that an election be held concurrently in November with other elections. Ms. Turner distributed two City Attorney's opinions on the issue for consideration.

Discussion held regarding vacancies in city commission.

Rafael E. Granado, City Clerk, in answering Chairman Zack's questions, explained that usually vacancies occur in November. The resign to run, if done timely, is effective on the date the individual is elected (November); therefore, the vacancy does not occur until that election is closed. The question is when can the Clerk ask the Elections Department and have candidates come in for a vacancy that has not occurred. This is what needs to be cleared up.

Chairman Zack asked if they are legally able, if a person has resigned to run for another office, at the next scheduled election there will be an election for that seat, even though technically a nanosecond has to go by before there is a vacancy.

Ms. Turner explained that under the State resign-to-run law, whatever the City provides in the Charter for that procedure would be what controls. That is the reason for the clarification in the Charter. Discussion continued.

Mr. Granado informed the Board that the costs are approximately \$22,000 when the City piggybacks; if the City does not piggyback is \$200,000. Discussion held.

Section 3.01 – City attorney; duties generally; appointment of personnel.

Section 4.01 – City manager – Compensation and qualifications

Section 4.03 – City clerk – Appointment and compensation

Ms. Turner explained that the terms of compensation and salary are used in these three provisions and Legal recommends that they be defined consistently throughout.

Section 4.02 – City Manager – Functions and powers. Ms. Turner explained that at the present time City department directors are subject to the consent of the City Commission, and Legal proposes that Assistant City Managers also be subject to the consent of the City Commission, since in many instances Assistant City Managers are overseeing department directors.

Section 6.03 – Qualifying. Currently a person must live at least one year in the City prior to qualifying, and Legal recommends that a different qualifying time for residence in the City. She explained that the County you must be a resident with one year in the district, but a resident of the County for three years. Discussion held.

Member Fernandez stated that these are important issues that he has comments on, and suggesting letting the public in attendance speak on the item Miami Beach United.

NOTE: Rafael E. Granado, City Clerk, for the record, stated that at the next agenda the discussion topic would include the Charter Provisions identified for review as recommended by the City Attorney's Office. (Sections 2.02, 2.03, 2.07, 3.01, 4.01 and 4.03). **Rafael E. Granado to place on the June 10, 2013 CRB Agenda.**

In answering Chairman Zack's question regarding Section 1.03-Powers of City, Ms. Turner explained that the Board might want to review the last sentence of the paragraph. Discussion held regarding management agreement and referendum requirements.

Jorge Gomez, Assistant City Manager, stated that a management agreement can be used to circumvent the intent of the Charter provision, and added that the Board may need to create language to read that if someone enters into a management agreement using City owned property, the Board may want to add language with a clear definition. Discussion continued regarding the Convention Center.

Handouts for Item 2:

1. Letter to Commission from Jose Smith, City Attorney, to Mayor Dermer and City Commission, dated June 7, 2006, RE: Filling Vacancy on City Commission
2. Letter to Commission from Jose Smith, City Attorney, to Mayor Matti Herrera Bower and City Commission, dated March 21, 2008, RE: Filling Possible Vacancy on City Commission.

Discussion on the Miami Beach Convention Center

In answering Jorge Gomez, Assistant City Manager, explained that the City Commission expressed the sentiment that regardless of the precise language of the Charter and their technical components and requirements, the City Commission feels that when they choose a developer, they will put the question out to the community, regardless of what the technical requirements are.

3. Presentation By Miami Beach United Of Proposed Charter Amendment To The Miami Beach Citizens' Bill Of Rights (Resident Association Bill Of Rights). (See Attached Item 3) **5:43:56 p.m.**

Terry Bienstock made a presentation. He explained that the comments expressed at the last meeting had been incorporated in the proposed amendment. In addition, the neighborhood association members met at the golf course with good attendance by residents, candidates for the 2013 election and City Commissioners.

Chair Zack asked how he is giving official recognition as to different organizations.

Mr. Bienstock stated that an official recognized association must be organized, inclusive, open to residents of the area, and officially recognized association, and they will contemplate a separate ordinance implementing this that will set up the Clerk's Office as repository to have a form and determine under the code provisions if they are legitimate neighborhood associations. Discussion held.

Chairman Zack asked what constitutes organized and what constitutes inclusive, and most importantly officially recognized. He suggested looking at what the ordinance will look like, and if organization residents will need to sign official papers. Discussion continued.

Mr. Bienstock stated that defining what a neighborhood association is, is a statutory issue since it changes all the time, and can be liberalized by the Commission at times. Discussion

held. He explained that as of now they have no standing or the rights to appeal a denial, to attend, cross-examine witnesses, because under the Code they are not recognized.

Member Lalonde suggested having the City require recognizing organized neighborhood associations.

Chairman Zack suggested defining what an "organized association" is. Mr. Bienstock stated that their group discussed clarifying or enhancing individual rights, the right to be heard and the right to be noticed. **Mr. Bienstock to provide.**

ACTION: Motion made by Member Kendle to have a special meeting having to do with Bill of Rights and discuss all related proposals; seconded by Member Fernandez; by acclamation. Absent: Member Preira. **City Clerk Rafael E. Granado to handle and to place on the agenda at a future meeting.**

4. Items Requested To Be Discussed On May 6, 2013 By Alex Fernandez, Charter Review & Revision Board Member, But Were Not Reached. (See Paragraphs 2 Through 16 Of Mr. Fernandez's Memorandum; Attached As Item 4.a.)
Not reached.
5. Discussion Relating To Investigation And Enforcement Authority Of The Miami-Dade County Commission On Ethics And Public Trust Pertaining To Alleged Violations Of Citizens Bill Of Rights, Sunshine, Public Records And Campaign Finance Laws. (See Attached Item 5.) Item Placed On The Agenda At The Request Of Alex Fernandez, Charter Review & Revision Board Member.)
Not reached.
6. The Following Materials Were Requested By The Charter Review And Revision Board Of Staff During The May 6, 2013 Meeting:
 - a. Requirement That Employees Receive Annual Performance Evaluations (Attached As Item 6.a. Are The Applicable Sections Of The Personnel Rules And The Collective Bargaining Agreements With AFSCME, CWA, FOP, GSA And IAFF.)
 - b. Duties Of The Independent City Auditor (Attached As Item 6.b. Are Sections 2-251, 2-252 And 2-253 Of The City Code.)
Not reached.

5:17:37 p.m.

ACTION: Chairman Zack requested to have an order for discussion for future agendas, and suggested the following:

- Discuss recommendations made by the City Attorney's Office
- Electing Officials by Open Seat – Proponent Scott Diffenderfer
- Subpoena Powers – Proponent Alex Fernandez
- Creation of an Inspector General with Investigative Powers – Proponent Rick Kendle
- Requirement that all City employees be evaluated – Proponent Chair Zack
- Citizen's Bill of Rights

Chairman Zack suggested that the Board members invite the public. Mr. Kendle suggested that the public needs to be heard from, from big developers to residents. Mr. Zack hopes

that by having an agenda that can be published with the Mayor and Commissioners' newsletters; he would like to give the CRB items for discussion to advertise. Member Perry will advertise in The Miami Beach News. **Rafael E. Granado to handle.**

PENDING ITEMS

List Of Proposed Charter Amendments Brought Forth For Discussion During The April 25, 2013 And May 6, 2013 Charter Review & Revision Board Committee Meetings, Which Have Yet To Be Fully Discussed:

- a. Term Limits For The Mayor And Commissioners (Charter Section 2.02) – Proponent Commissioner Tobin
- b. Election Versus Appointment When Commission Vacancies Occur. (Referred At The May 19, 2012 Commission Retreat)
- c. Commission Salary (Referred At The May 19, 2012 Commission Retreat)
- d. Compensation Of The City Attorney, City Manager And City Clerk. (Referred At The May 19, 2012 Commission Retreat)

e. Citizens' Bill Of Rights:

- i. Article XV - To Include Traffic - Proponent Stephen Zack, Chair

Chairman Zack suggested noticing this issue. Traffic is one of the most problematic issues in this community. The citizen's ability to drive in their own community is a fundamental right, especially during major events. It seems to him that residents' ability to use the roads have become severely compromised, and he wants to discuss the possibility of requiring any person or group who is going to hold an activity on Miami Beach to be required to have a traffic plan submitted with their request to protect the citizens in their ability to use the highways.

Vice-Chair Perry added that they have to be very careful not to discourage events on Miami Beach. They need to be cautious how they treat people who contribute to economic engine as Miami Beach becomes more competitive.

Member Fernandez explained major events plans in existence in the City, as far as outreach.

Jorge Gomez, Assistant City Manager, stated that during major events planning efforts are in place for traffic mitigation. The City is exploring and looking to enhance is for residents to have special hand tags to bypass checkpoints, occurring during these events to minimize the impact. Discussion continued.

Vice-Chair Perry explained that the focus should be connectivity between Miami Beach and Miami and this should be discussed, as well as better communications with FDOT.

Member Diffenderfer, also member of the Transportation & Parking Committee, agreed that the City is building places and is not managing traffic. A traffic component is necessary.

Discussion continued on traffic concerns and what is the maximum number of vehicles the various roadways can hold. The FDOT Alton construction was brought up and the lack of communication that exists in notifying the public. Assistant City Manager Jorge Gomez stated that this is called "level of service"; as a matter of policies City's

Comprehensive Plan, the level has been set ad "D." The City needs to eventually face the fact that in order to improve mobility, they need to introduce other modes of transportation. The City is participating in a study, collaborating with the County and the State.

Member Diffenderfer explained that the City is in a dramatic situation, and the Commission is not taking this issue seriously; they need to react.

Chairman Zack stated that the Bill of Rights can include the right of a citizen to use its highways, and perhaps if the Commission is not willing to support, the residents insist.

Member Fernandez stated that this may be included with the Quality of Life, as there are many intricate planning components, such as Planning Board and Transportation and Parking Committee members who are experts. He suggested asking these experts for their recommendations to be sent to the Board that they can include as basic citizen's right. Member Lalonde concur. **Jorge Gomez and Saul Frances to handle.**

ACTION: Motion made by Member Fernandez requesting recommendations from the Planning Board and the Transportation and Parking Committee and brings to future meetings; seconded by Chair Zack. No vote taken.

Debora Turner, First Assistant City Attorney, clarified that some of these committees are authorized to give advice to the City Commission directly and others to the Administration, but she will research to see if they can advise the CRB. **Ms. Turner to handle.**

- ii. Ethics In Government / Code Of Conduct - Proponent Stephen Zack, Chair
- iii. Over Scale Development In Residential Areas – Proponent Stephen Zack, Chair
- iv. Preservation Of Beaches - Proponent Rick Preira
- v. Mandate That Employees Should Be Courteous To Citizens In The Bill Of Rights - Proponent Stephen Zack, Chair
- vi. Preserving The Historical Value Of Miami Beach - Proponent Terry Bienstock
- vii. Whistle Blowing Protection For Employees - Proponent Frank Del Vecchio
In answering Chairman Zack's comments on whistle blowers and financial percentage received after lawsuits; Mr. Boksner explained that the City has an ordinance that an employee, vendor or contractor blows the whistle and allows the City to take action.

Member Fernandez suggested a memorandum be included with a future agenda for next month, with background, analysis and recommendations and for the public to comment on. **Alex Boksner to handle.**

- f. Electing Officials ~~By Districts~~ By Open Seats- Proponent Scott Diffenderfer
Member Diffenderfer clarified that he suggested having the seat system revised, so that candidates do not run for specific seats, since they have no meaning and suggested substituting with By Open Seats.
- g. Subpoena Powers - Proponent Alex Fernandez
See comments in h.
- h. **Creation Of An Inspector General With Investigative Powers - Proponent Rick Kendle**

Aleksandr Boksner, Senior Assistant City Attorney, stated that if there is a contemplation that an Inspector General is something the CRB will want to pursue, it will eliminate the subpoena power. He needs to understand where the Board wants to go. Discussion held.

Member Fernandez clarified that he brought up Subpoena authority was in the context of the City Commission.

Mr. Boksner stated that subpoena power for the Commission should be eliminated if an Inspector General is brought in.

Discussion held regarding authority to issue subpoenas and creating an Inspector General in the Charter.

Member Kendle suggested creating an Office of Accountability.

Mr. Boksner stated that when the City Commission was contemplating entering into a contractual agreement with Miami-Dade County Inspector General's Office, the consensus in the City Attorney's Office is that this organization perpetuates itself, and they will continue to create issues to investigate. It has the ability to take its own life, and the ability to essentially branch itself out. He added that there is an existing false claims ordinance that has never been utilized by anyone. This is based upon someone billing the City for things they did not do, and it is an effective tool, since penalties are severe. He asked for guidance to proceed.

Discussion held. Member Fernandez clarified that to subpoena on issues that may merit correction, performance improvement, etc., but certainly not empowering elected officials to subpoena on issues of criminal nature. Discussion continued.

ACTION: Chairman Zack requested a recommendation from the City Attorney's Office as to whether this is necessary or not, and if the recommendation is to obtain Subpoena Power, whether it should go to the City Attorney, the City Commission or the Auditor General. He also requested that the City Attorney's Office reach out to State Attorney's Office regarding this issue. **Alek Boksner to handle.**

- i. Requirement That All City Employees Be Evaluated On Recurring Basis – Proponent Stephen Zack, Chair
Not reached.

Next meeting is scheduled for Monday, June 10, 2013 in the Commission Chambers.

Meeting adjourned at 6:36 p.m.

CHARTER REVIEW TOPICS

The following Sections of the Miami Beach Charter are recommended by the City Attorney's Office for review and consideration by the Ad Hoc Charter Review and Revision Board:

- **Section 1.03. – Powers of City**
Subsection (b), entitled "Alienability of property," requires referendum approval for the "sale, exchange, conveyance or lease of ten years or longer" of certain City-owned properties. Should other City-owned properties be subject to this referendum requirement?
- **Section 2.02. – Term and compensation.**
This Section refers to both "compensation" and "salary" for the Mayor and City Commissioners. To clarify these terms, references to the annual dollar amount received by the Mayor and City Commissioners should refer to "salary." Also, provisions may be considered to address other types of compensation and benefits received by the Mayor and City Commissioners such as stipends, pension benefits, health benefits, etc.
- **Section 2.03. – Powers of the city commission.**
This Section currently provides for an Independent City Auditor. Amendments providing for an Inspector General, or other like official, would be appropriate in this Section.
- **Section 2.07. – Vacancies in city commission.**
The provisions relating to the filling of vacancies on the City Commission are addressed in this Section. New provisions to further define "vacancy" when elected officials run for another elective office, such as for State Representative, may be addressed in this Section.
- **Section 3.01. – City attorney; duties generally; appointment of personnel.**
- **Section 4.01. – City manager – Compensation and qualifications.**
- **Section 4.03. – City clerk – Appointment and compensation.**
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.
- **Section 4.02. – City manager – Functions and powers**
Subsection (b) provides that the City Manager appoints all Department Directors subject to the consent of the City Commission. Should Assistant City Managers also be subject to the consent of the City Commission?
- **Section 6.03. – Qualifying.**
This Section provides the requirements for persons qualifying for elected office in the City. Currently, a person must live at least one year in the City prior to qualifying. A different qualifying time for residence in the City may be addressed in this Section.

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MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Jose Smith, City Attorney
Debora Turner, First Assistant City Attorney
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Meeting Agenda

Monday, June 24, 2013 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 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. Accept Minutes Of The June 10, 2013 Charter Review & Revision Board Meeting. (See Attached Item 1.)
2. Report by Ms. Sylvia Crespo-Tabak of any and all types of compensation that are received by executive staff and Charter Officials.
3. Presentation by the City Attorney's Office regarding the role and power of an Inspector General and the Independent Auditor. (Note, at the request of Aleksandr Boksner, Senior Assistant City Attorney, this item is being requested to be deferred to July 1, 2013, due to Mr. Boksner's unavailability.)
4. Discussion of term limits – Section 2.02.
5. Discussion of the term of Office for the Mayor – Section 2.02.

PENDING ITEMS

List Of Proposed Charter Amendments Brought Forth For Discussion During Previous Charter Review & Revision Board Committee Meetings, Which Have Yet To Be Fully Discussed:

- a. Election Versus Appointment When Commission Vacancies Occur. (Referred At The May 19, 2012 Commission Retreat)
- b. Commission Salary (Referred At The May 19, 2012 Commission Retreat)
- c. Citizens' Bill Of Rights:
 - i. Article XV - To Include Traffic - Proponent Stephen Zack, Chair
 - ii. Ethics In Government / Code Of Conduct - Proponent Stephen Zack, Chair
 - iii. Over Scale Development In Residential Areas – Proponent Stephen Zack, Chair
 - iv. Preservation Of Beaches - Proponent Rick Preira
 - v. Mandate That Employees Should Be Courteous To Citizens In The Bill Of Rights - Proponent Stephen Zack, Chair
 - vi. Preserving The Historical Value Of Miami Beach - Proponent Terry Bienstock
 - vii. Whistle Blowing Protection For Employees - Proponent Frank Del Vecchio
- d. Electing Officials By Open Seats - Proponent Scott Diffenderfer
- e. Subpoena Powers - Proponent Alex Fernandez
- f. Requirement That All City Employees Be Evaluated On Recurring Basis – Proponent Stephen Zack, Chair

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MIAMIBEACH

CHARTER REVIEW AND REVISION BOARD MEETING NOTICE

NOTICE IS HEREBY given that the Miami Beach Charter Review and Revision Board will meet as follows:

DATE	TIME	LOCATION
Monday, June 24, 2013	4:30 PM	Commission Chambers, 3rd Floor, City Hall
Monday, July 1, 2013	4:30 PM	Commission Chambers, 3rd Floor, City Hall
Monday, July 15, 2013	4:30 PM	City Manager's Large Conference Room, 4th Floor, City Hall

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

Meeting dates, times and locations are subject to change. Please visit the Charter Review Board's website at <http://www.miamibeachfl.gov/scroll.aspx?id=72572> for the latest meeting information and agendas.

INTERESTED PARTIES are invited to appear at these meetings, or be represented by an agent, or to express their views in writing addressed to CharterReview@miamibeachfl.gov, or by mail to 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.

For any and/or all of the above meetings, 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 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 these meetings or its hearings, 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 #788

MIAMIBEACH

HORARIOS DE LA JUNTA DE REVISION DE LA CARTA CONSTITUCIONAL DE LA CIUDAD DE MIAMI BEACH

POR ESTE MEDIO invitamos al público a las próximas reuniones de la Junta de Revisión de la Carta Constitucional de Miami Beach:

DIA	HORA	LOCALIDAD
Lunes, 24 de junio del 2013	4:30 P.M.	Cámara de la Comisión, 3er Piso, Ayuntamiento
Lunes, 1º de julio del 2013	4:30 P.M.	Cámara de la Comisión, 3er Piso, Ayuntamiento
Lunes, 15 de julio del 2013	4:30 P.M.	Sala de Conferencias Grande del Administrador de la Ciudad, 4º Piso, Ayuntamiento

El Ayuntamiento Municipal está localizado en el 1700 Convention Center Drive, Miami Beach, Florida, 33139.

Los días, fechas y localidades pueden ser sujetos a cambios. Para la más reciente información en relación con las reuniones y agendas, favor de visitar la página electrónica de la Junta de Revisión de la Carta Constitucional de Miami Beach: <http://www.miamibeachfl.gov/cityclerk/scroll.aspx?id=72572>.

LAS PERSONAS INTERESADAS pueden participar de esta reunión, o ser representados por un agente, o pueden expresar sus puntos de vista por escrito a CharterReview@miamibeachfl.gov, o por correo a la Junta de Revisión de la Carta Constitucional, c/o Secretario Municipal, 1700 Convention Center Drive, Primer Piso, Ayuntamiento Municipal, Miami Beach, Florida 33139. Para más información, llamar al 305.673.7411.

Uno o más miembros de la Comisión de la Ciudad de Miami Beach puede estar presente y participar en las discusiones.

Rafael E. Granado, City Clerk

Conforme a la Sección 288.0105, Estatutos de la Florida, la Ciudad por la presente informa al público que si una persona decide apelar cualquier decisión tomada por la Junta de Revisión de la Carta Constitucional con respecto a cualquier asunto considerado en estas reuniones o de sus audiencias, dicha persona debe asegurarse de que se haga un acta literal de los procedimientos, registro que incluye los testimonios y pruebas que la apelación debe basarse. Este aviso no constituye el consentimiento de la Ciudad para la introducción o la admisión de pruebas de lo contrario inadmisibles o irrelevantes, o que autoriza a los retos o apelaciones no permitidas por la ley.

Para solicitar este material en formato accesible, intérpretes de lenguaje de señas, información sobre el acceso para personas con discapacidades o cualquier alojamiento para revisar cualquier documento o participar en cualquier proceso patrocinados por la ciudad, póngase en contacto con nosotros con cinco días de anticipación al 305.673.7411; o los usuarios de TTY también puede llamar al servicio de retransmisión de Florida al 711.

MIAMIBEACH

HORARIOS DE LA JUNTA DE REVISION DE LA CARTA CONSTITUCIONAL DE LA CIUDAD DE MIAMI BEACH

Conforme a la Sección 8.01 de la Carta Constitucional de la Ciudad de Miami Beach, la revisión de la Carta Constitucional tendrá lugar cada diez años. La Junta de Revisión de la Carta Constitucional, se ha formado con el propósito de revisar la Carta Constitucional de la Ciudad, en busca de sugerencias del público; y finalmente, presentar sus recomendaciones a la Comisión de la Ciudad de Miami Beach.

POR ESTE MEDIO invitamos al público a las próximas reuniones de la Junta de Revisión de la Carta Constitucional de Miami Beach:

DIA	HORA	LOCALIDAD
Lunes, 3 de junio del 2013	4:30 P.M.	1755 Meridian Avenue, 5° Piso, Sala de Conferencia
Lunes, 10 de junio del 2013	4:30 P.M.	Cámara de la Comisión, 3er Piso, Ayuntamiento
Lunes, 24 de junio del 2013	4:30 P.M.	Cámara de la Comisión, 3er Piso, Ayuntamiento
Lunes, 1° de julio del 2013	4:30 P.M.	Cámara de la Comisión, 3er Piso, Ayuntamiento
Lunes, 15 de julio del 2013	4:30 P.M.	4° Piso, Ayuntamiento

El Ayuntamiento Municipal esta localizado en el 1700 Convention Center Drive, Miami Beach, Florida, 33139.

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Uno o más miembros de la Comisión de la Ciudad de Miami Beach puede estar presente y participar en las discusiones.

Conforme a la Sección 286.0106, Estatutos de la Florida, la Ciudad por la presente informa al público que si una persona decide apelar cualquier decisión tomada por la Junta de Revisión de la Carta Constitucional con respecto a cualquier asunto considerado en estas reuniones o de sus audiencias, dicha persona debe asegurarse de que se haga un acta literal de los procedimientos, registro que incluye los testimonios y pruebas que la apelación debe basarse. Este aviso no constituye el consentimiento de la Ciudad para la introducción o la admisión de pruebas de lo contrario inadmisibles o irrelevantes, o que autorice a los retos o apelaciones no permitidas por la ley.

Para solicitar este material en formato accesible, intérpretes de lenguaje de señas, información sobre el acceso para personas con discapacidades o cualquier alojamiento para revisar cualquier documento o participar en cualquier proceso patrocinados por la ciudad, póngase en contacto con nosotros con cinco días de anticipación al 305.673.7411; o los usuarios de TTY también puede llamar al servicio de retransmisión de Florida al 711. AD 784

ITEM 1

MINUTES

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MIAMI BEACH

Charter Review & Revision Board (the Board)

Members:

Stephen Zack, Esq., Chair	-	Present
Aaron Perry, Vice Chair	-	Present
Scott Diffenderfer	-	Absent
Jacqueline Lalonde	-	Present
Rick Kendle	-	Present
Alex Fernandez	-	Present
Richard "Rick" J. Preira	-	Present (Arrived at 5:07 p.m.)

Staff:

Jose Smith, City Attorney	-	Present
Debora Turner, First Assistant City Attorney	-	Present
Rafael E. Granado, City Clerk	-	Present
Liliam Hatfield, OAV, City Clerk's Office	-	Present

MINUTES

Monday, June 10, 2013 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 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.

Meeting Called to Order: 4:40:06 p.m.

1. Accept Minutes Of The June 3, 2013 Charter Review & Revision Board Meeting.

Mr. Rafael E. Granado announced changes to the minutes requested by Jorge Gomez, Assistant City Manager, and Debora Turner, First Assistant City Attorney. The proposed changes were submitted in writing to the Committee.

ACTION: Minutes accepted as corrected by acclamation.

2. List Of Charter Provisions Identified By The City Attorney For Review.

- *Section 2.02 – Term and Compensation*

Mr. Zack suggested commencing the discussion by defining the term "compensation." Mr. Zack asked Ms. Turner if there was a generally accepted definition in a government context of the term "compensation." Ms. Turner replied that there was, and provided a copy of Ordinance 2013-3788, which was adopted this year, that codifies in the City Code the compensation referred to in the Charter related to the City Manager and the City Attorney. The Ordinance sets the different categories.

Mr. Smith provided background on the enactment of the Ordinance. The Charter provides that the compensation of the City Manager, City Attorney and City Clerk shall be set by Ordinance. Commissioner Wolfson had a concern that the Ordinance that was in place prior to this Ordinance being enacted merely stated that the compensation of the City Manager and City attorney would be set by the Commission. He felt that: 1) the Ordinance should not delegate the responsibility to the Commission to set the compensation of those two officials, but rather it should be done through a specific Ordinance stating what the compensation is for those two officers. Not just salary, but also benefits. Mr. Smith's original research going back to the 1960's revealed that back in the 60's the word "salary" and "compensation" meant the same thing. Over the years, the word "compensation" began to take a different meaning such as health insurance, stipends, sick leave, vacation, etc. So Commissioner Wolfson said that we are in the year 2012, it is time for us to have a specific Ordinance setting forth not just the salary but also the benefits of the office.

Mr. Fernandez asked if the base salary for the City Manager, which is listed as \$162,916 per year to \$263,126 per year, includes the insurance and the deferred compensation. Mr. Smith stated that the number referenced is only salary. The other categories are additional to salary or "other compensation."

Ms. Lalonde inquired if it was term life insurance or whole. Mr. Smith stated that it was term. Ms. Lalonde asked if the 457 deferred compensation given to the City Attorney and the City Manager was made by the City. Mr. Smith confirmed that the City contributed on behalf of the employees. Ms. Lalonde asked if the amount was predefined. Mr. Smith stated that it was up to the maximum authorized by the IRS. Ms. Lalonde thereafter asked what was the actual 457 given to the City Attorney and the City Manager. About \$23,500.00 was Mr. Smith's response.

Thereafter discussion was had regarding how the IRS calculates the maximum compensation that may be given to an employee. Ms. Sylvia Crespo-Tabak, Human Resources Director, stated that the minimum authorized by the IRS is \$7,000. Ms. Crespo-Tabak explained how the 457 program worked, and that it was not taxable income, and cannot be withdrawn until retirement or the employee leaves the organization.

Mr. Smith explained that the City Manager's salary is in the neighborhood of \$240,000 plus. This City Manager, based on his negotiations with the City Commission, is not receiving deferred compensation. If he wanted a deferred compensation plan, he would have to fund it himself.

Ms. Lalonde explained that in City government type plans, just like a 401K, you have an equivalent called a 457 deferred compensation plan. Employees can self-contribute to the maximum limits authorized by the IRS, which is based on age. What is traditionally different in government is that the City is contributing on behalf of the employee. In a 401K plan, it would be the employee who would be making the contribution of his or her own salary.

Mr. Smith explained that both the City Attorney and the City Manager are classified at level 26 salary. Level 26 provides for compensation between \$162,916 and \$263,126. So the Commission is authorized by Code to negotiate a contract with the City Manager somewhere in that range.

Mr. Kendle asked if the City Commission has to approve the base salary and all additional compensation for the City Manager and the City Attorney. Mr. Smith responded in the affirmative, that an Ordinance has to be entered approving the benefits.

Mr. Kendle asked about trips and expenses, if they too had to be approved by the City Commission via Ordinance. Mr. Smith stated that if it is a reimbursable, as when attending a conference or continuing education, is not considered compensation.

Mr. Kendle stated that the Miami Herald a few weeks ago stated that the Mayor was paid an extra \$20,000 that was not pensionable. Mr. Smith stated that the Charter stated that the salary for Commissioners is \$6,000 per year and the Mayor receives a salary of \$10,000 per year. Mr. Smith added that since the 1990's, as part of the budget process, the elected officials have received a stipend, which when he served as the Commission was about \$600 a month, which is supposed to go towards public policy/benefit types of issues. Over the years that stipend, which is part of the budget approved in October, is currently \$1,500 a month and the Mayor is \$2,000 a month. The Elected officials receive a stipend in addition to salary. Mr. Smith stated that the stipend is part of the Mayor and Commission's budget, which is approved annually.

Mr. Kendle inquired as to how the expenses for the Commissioners and the Mayor, when they travel are done. Mr. Smith explained that travel is a line item in their budget, which is ultimately approved by the director of the department, which in this case it is the Mayor.

Mr. Fernandez explained that it is not an individual amount for each Commissioner for travel; it is one sum for the office.

Mr. Kendle stated that his reading of the Charter is that the intent is that salaries and expenses should be approved by Ordinance. Everything should be approved by Ordinance. Therefore, the perception is not that they are gaining a benefit that is not approved by Ordinance. This way everyone can see what the expense is.

Mr. Zack inquired if there is a policy as to how the Commission travels, i.e. business or coach; how is that determined? Mr. Smith replied that the standard is that used in the County and approved by the Miami-Dade County Ethics Commission. It is coach, and there are guidelines as to mileage and how much you can spend per day. **TO DO: City Attorney's Office to obtain Guidelines.**

Mr. Fernandez explained that each department gets a lump sum for travel allocation, which is approved during the budget hearings, which are held in public; and the public is invited to participate and discuss the number.

In response to Mr. Zack's question, the City Attorney explained that it is easy to ascertain the amount incurred by each Commissioner or the Mayor for travel during any given period. Mr. Smith added that this is something that is frequently requested via public records requests by the media.

Mr. Zack stated that there is no annual report as to how much the Commission spends on travel. Mr. Smith agreed that such a report is not done.

Mr. Fernandez stated that the transparency and accountability committee suggested having the check registry for the City on the website. Thereby giving everyone access to view every

check. He does not believe that is occurring. That is something we could discuss when we discuss the Citizen's Bill of Rights. Because that transparency is important, especially given the technology we have today people should be allowed to see where their money is going. Mr. Zack and Ms. Lalonde cautioned as to how that might affect privacy and fraud.

Mr. Kendle stated that Ordinance 2013-3788 is not a definition of salary that can be used. Because some things are salary and other are benefits. In the existing Charter, in section 2.04, it says, "No member of the City Commission shall, during the time for which he/she is elected, be appointed or elected to any City office that has been created or the emoluments thereof shall have been increased during such time." Does that mean that if you voted, or someone has increased your benefits, you cannot run for office? Mr. Smith stated that there has not been any pension increase recently. Mr. Kendle stated that if emoluments are any benefits, 2.04 does that mean that some of the candidate currently running should not be?

Ms. Lalonde stated that it seemed out of context the way it was written.

Mr. Smith stated that this provision means that they cannot increase their salaries while they sit. Emoluments do not include travel expenses, those are reimbursements.

Mr. Zack stated that to him it means that they should not create a position that pays more than their current salary, and then be allowed to run for that position. Mr. Zack stated that the sentence as written is not clear, and it should be changed to "plain English" to avoid a problem in the future. **TO DO: Mr. Zack suggested that the City Attorney's Office provide sample language that is clearer.**

Mr. Zack inquired if the stipend is accounted for via receipts. Mr. Smith stated they have tried to get the Miami-Dade County Ethics to opine as to how to do it right, as there has been situations in the past where there was no accounting – people getting checks and spent it, and did not account for it. The better approach, which is one that has been endorsed by the Miami-Dade Ethics Commission, is that you have to account for every dollar spend and it must be spent for a public purpose.

Mr. Kendle stated that every penny the Commission gets should be approved by Ordinance. That the public should get an opportunity to discuss it. During the budget, there are much bigger things. If there is a perception that there is hidden money going to Commissioners it is bad and creates mistrust in government.

Ms. Lalonde stated that she does not believe it is hidden. She wants to be careful that we do not create a situation where every single penny is spent via Ordinance. There must be leeway for budgetary items. She cited the example of reimbursements for normal expenses that do not have to be approved via Ordinance, as it is part of an executive budget.

Mr. Kendle inquired as to the multiplier for the pension for the Mayor and Commissioner.

Mr. Kendle stated that expenditures for elected officials should be approved by Ordinance.

Mr. Fernandez stated that the Salary of the Mayor and Commissioner should not be approved by Ordinance, but instead approved by the voters of Miami Beach. Mr. Fernandez stated that Miami Beach voters, when voting for County elected officials voted in favor of Commissioner for Miami-Dade County obtaining salary increases. He does not feel comfortable taking this privilege out of the hands of the voters.

Ms. Lalonde stated that we should not approve every single line item via Ordinance.

Mr. Fernandez commented that the travel allowance for the office of the Mayor and Commission is \$23,000, to be split among seven people. Ms. Lalonde stated that there is nothing-egregious going on, so she is dismayed at this conversation.

Mr. Fernandez stated that the public does come and participate in the budget process, and many meetings are held.

Ms. Lalonde stated that the stipend is not going into the elected officials' pocket as compensation; it is for a public purpose that is part of their expenses that are incurred as a result of doing their work.

Mr. Fernandez stated that the \$1,500 is going for food for the elderly, purchasing children's school backpacks, etc. They are going to programmable activities.

Mr. Kendle stated that the Charter should state that a stipend is issued to elected officials, as set in the budget, so the public knows about it.

Ms. Lalonde just wants to make sure that the public understands that they are not getting an additional compensation of \$1,500. We need to clear the perception. Ms. Lalonde is not opposed to require that the elected officials submit receipts for these expenditures for public purposes.

Mr. Fernandez reiterated that the Commissioners receive \$6,000 in salary and the Mayor \$10,000 in salary. Each Commissioner gets a \$1,500 monthly allowance and the Mayor gets \$2,000 monthly allowance, which are used mostly for activities for seniors, children, or of need in the community. There is one travel allowance for the entire office of the Mayor and Commission for the entire budget year, which is \$23,000. The Mayor and Commissioners also get their insurance, their pension and a car allowance. To say that they get insurance, pension and car allowance on top of a \$6,000 salary, he does not think it is unreasonable. Mr. Fernandez agreed that there should be accountability as to what is done with the monthly allowance. Perhaps that is a direction that this Board should be giving. Mr. Lalonde agreed.

Mr. Zack's inquired as to the pension received by the City Commission. Mr. Smith stated that it was minimal due to the low salary. Mr. Smith added that the multiplier is established by Ordinance, and it has not been modified over the last ten years.

Ms. Crespo-Tabak explained pension vesting and the current multiplier, and the nominal amount received by the Commissioner as a pension benefit.

Mr. Fernandez inquired of the City Attorney what clarification was his office seeking of the Board as to the term "compensation and salary"? Ms. Turner referred to Section 2.02, which refers to in the title "term and compensation." If you were only referring to the salary provision, you would want to change the word compensation to the term "salary." In addition, the last sentence refers to annual compensation, but really, the numbers there are reflective of salary. Therefore, you can change the term "compensation" to "salary" in that sentence as well.

Mr. Fernandez stated that perhaps what it should state that the annual compensation for the office of Commission shall include a salary of \$6,000 in addition to other compensation in the form of insurance, pension and car allowance to be determined. Therefore, it is in the Charter and the public knows that it will be approved via the budget process.

Mr. Zack stated that he had a different viewpoint as to the \$1,500 monthly stipend, as this is public money. He is not reimbursed for his expenditures unless he provides every receipt, and explains the purposes. It is his opinion that the elected officials should get more money to go to the community and develop the personal relationships that are essential in the community, but he believes that every such penny spent should be accounted for. The stipend should be fully accounted for and verified. They should require, via Ordinance, that the stipend should be \$1,500 a month and appropriate backup should be provided to draw that stipend down.

Ms. Lalonde agreed that appropriate documentation should be attached.

Mr. Fernandez stated that Miami-Dade County requires that their Commissioners publish in their website how they utilize their discretionary and office budgets. They must disclose how that money is being spent. Mr. Fernandez stated that in the spirit of transparency he backs Mr. Zack's recommendation.

Mr. Zack stated that it is the public's perception that unless the money is accounted for, then it is not going where is supposed to go.

MOTION:

Motion by Rick Kendle that as a principle the Board agrees that stipends received by Elected Official need to have appropriate documentation to indicate how it is being spent. At a subsequent time, the Board can determine if this is an item that should be included in the Charter. Seconded by Mr. Fernandez. Voice Vote: Approved 6-0 (Mr. Diffenderfer absent.)

Mr. Smith suggested that this may be accomplished by the Commission via resolution, and does not have to be via Ordinance, as they both have the same force of law.

Discussion continued as to who receives a stipend.

Mr. Zack requested that quantify the value of these "other benefits." **Sylvia Crespo-Tabak to handle.**

Mr. Fernandez requested a breakdown of the value of these items. Mr. Fernandez commended Mr. Smith for foregoing the planning days when he negotiated his latest contract.

Mr. Smith explained planning days. Planning Days was intended as an additional incentive to provide to City employees in managerial positions who are not subject to the collective bargaining process, and it is based on the number of hours each managerial employee receives. In his particular situation, and in the Manager's situation, it was 144 hours of planning days per year, which came to about \$15,000 of additional compensation for both the former City Manager and himself. Mr. Jorge Gonzalez had a separate bank of additional planning days, in addition to that. This was eliminated when the City Manager and City

Attorney's contracts were recently negotiated; there are no longer planning days. Other Department heads do receive some limited number of planning days.

Mr. Zack stated that this is additional compensation. Ms. Lalonde agreed that it was a euphemism for additional compensation.

Mr. Smith explained that planning days are approved via line item during the budget.

Mr. Zack inquired as to the number of sick days, vacations and floating days received by the City Attorney, City Clerk and the City Manager. **Sylvia Crespo-Tabak to handle.**

Mr. Smith stated that such leave is not applicable to City Commissioners or the Mayor.

Mr. Zack stated that he does not have a problem with such compensation being paid, but it should be fully disclosed.

Ms. Lalonde stated that we should define and stipulate that salary and/or compensation needs to be delineated exactly as it occurs. In other words, perhaps we need to understand from some of these folks how this compensation plays a role in their employment. For example, an Assistant City Manager makes \$175,000 (an arbitrary number), but in reality their real compensation is \$200,000, she would be in favor of getting rid of all the euphemisms and having them declare their actual salary. The Board should call for those actions.

Mr. Fernandez stated that perhaps the Board needs to define what "salary" is.

Ms. Lalonde stated that if someone is getting a total compensation of \$200,000 and that is well deserved, and she believes many Assistant City Managers are definitely underpaid, it is not about the level of compensation is about the description of the compensation. It should be transparent and easily understood. Mr. Zack agreed.

Mr. Zack suggested that the Board state, "Compensation shall include the salary and the value of all benefits received." That does not limit what they get in benefits; it just discloses them. City Manager's work very hard, and could make more money in the private sector. If we quantify the value of all benefits, then we can define the word benefit to include whatever we decide.

Ms. Lalonde wants a delineation of all compensation and benefits received.

Mr. Smith explained the sick leave buy back, which is subject to collective bargaining. Therefore, if the unions are getting it, by implication the unclassified employees also get it.

Jorge Gomez, Assistant City Manager, explained sick hours, which is all set by Ordinance. You accumulate certain of hours of sick leave for every paid period that you work. You can accumulate up to a certain limit. Then by Ordinance, when you leave your employment with the City and you have unused sick time, you get half of the hours up to a maximum limit. There are limits set by the Ordinance. The vacation days, that works the same, you accumulate certain hours per pay period; it is roughly two weeks on average a year. There are paid national holidays. Floating holidays were derived many years ago out of contract negotiations; you can take an additional 3 holidays, so you can take another vacation day

whenever they want it. They are not compensation, they are days off, if you do not use them you lose them, they are not paid.

Mr. Kendle asked if that applied to the City Manager also. Mr. Smith stated that the former City Manager received 50% of the accumulated sick days when he left employment.

Mr. Zack asked what would be the problem of saying, "compensation is salary and the value of all benefits." Mr. Gomez said that he did not see an issue, and it was the exact question that was asked of the Board.

Mr. Gomez stated that floating days, those extra days off, for the union contract is part of the collective bargaining.

Ms. Lalonde wants to know in addition to the basic salary, what other forms of compensations exists for managers or other various City employees. Ms. Lalonde asked Ms. Crespo-Tabak if she was familiar with how many planning days each person is entitled to. Ms. Crespo-Tabak stated that there are three or four levels of executive compensation and she does not remember off the top of her head how many planning days are assigned to each level. As of very recently though, the Commission took action that new employees, regardless of their level, no longer get planning days.

Mr. Fernandez asked for the definition of executive compensation. Mr. Smith stated that neither the City Manager nor the City Attorney will any longer receive planning days compensation. The Commission did not rule out continuing to pay executive management type employees whatever they are getting in their planning days; and that is an issue that is still open and it was referred to a Committee for further discussion, and it will likely be part of the budget process.

Ms. Crespo stated that those getting planning days did not lose them, but new employees do not get planning days.

In response to a question posed by Mr. Zack, City Attorney Smith stated that the Mayor and Commission do not have outside offices that are paid by the City, but they do have one Aide to assist them and work for them. Additional Aides are provided to the Mayor. The Aides are paid directly by the City, and are City employees.

Mr. Zack wants to know of any other benefit, aside from travel, that is not included in the ones they have talked about.

Mr. Kendle inquired about training, who approves it. Ms. Crespo explained the City has a tuition reimbursement program, which would not cover the cost of registration of a program of the nature as described Mr. Kendle.

Ms. Lalonde reiterated that they want all forms of compensations and/or benefits for the Commissioners and for executive staff, managers, etc.

Mr. Gomez, Assistant City Manager, inquired if they are proposing to add additional employees into the Charter, aside from the City Manager, City Attorney and City Clerk. The response was "No."

Mr. Fernandez stated that the public should know the actual total compensation, inclusive of benefits.

Mr. Gomez, Assistant City Manager, inquired if the Board wanted to have the salary for the Charter Officials in the Charter. The response was "No." Ms. Lalonde stated that they wanted to merely have in the Charter the ability of determining the total compensation.

Mr. Zack stated that the requirement would apply to the City Commissioners, the Mayor, the City Attorney, the City Manager and the City Clerk.

Mr. Zack requested that they take the new City Manager's contract, and present what it entails. For example, salary, benefits, vehicle value and let the Board see what the total compensation is in reality. They are not opining as to the money; they are talking about only transparency. **Sylvia Crespo-Tabak to handle.**

Mr. Kendle requested if the new City Manager left six months from now, what would the City Manager receive as severance? Ms. Lalonde stated that it would depend on when the City Manager leaves. Mr. Smith stated that it is in the contract, and it is six weeks of salary, not compensation. Mr. Smith explained that there is a State Statute that limits the weeks of severance to 24 weeks. So its 24 weeks of the Manager's salary. The new Manager's contract refers to salary, not compensation.

- *Section 4.02 – City Manager – Function and Powers*

Mr. Zack commented that Section 4.02, which provides that the City Manager appoints all Department Directors, subject to the consent of the City Commission. He inquired if Assistant City Managers also be subject to the consent of the City Commission?

He has a very strong feeling about it. However, he wants others to express their views.

Ms. Lalonde stated that she thinks the City Manager has always had the ability to appoint their Assistant City Managers. We need to give the Manager some flexibility. On the other hand, she would say, the City Commission has the ability to disapprove of an Assistant City Manager; or even fire an Assistant City Manager. She would not mind seeing it in the reverse.

Mr. Zack stated that he is worried about politics being played at the lower level by certain Assistant City Managers ingratiating themselves to certain Commissioners and undermining the actions of the City Manager.

Mr. Zack stated that if the Commission has an issue with the City Manager, they can simply get rid of the Manager.

Ms. Lalonde stated that in the last go round, many Commissioners felt that they did not always have equal access to the same set of information. The issue of access to information has been a long-standing problem. She also recognizes what Mr. Zack is saying. Historically we have allowed the City Manager to make the choice as to his/her Assistant City Managers, and she proposes to continue this. If there was a supermajority that one Assistant City Manager should stay or go, she would be agreeable to that as well.

Mr. Zack stated that when you bring in a City Manager they need to have the ability to put together their own team. Ms. Lalonde agreed. Mr. Zack stated that if the Assistant City Manager does not do a good job, they should be fired.

Mr. Kendle added that the Commission always has the right to pass a resolution stating that they do not have confidence regarding a particular Assistant City Manager. Mr. Kendle stated that when we lost our last City Manager, he does not know why it was such a production to select an acting City Manager. Mr. Kendle suggests having a succession plan, until they found a replacement. No money should have been spent recruiting an acting City Manager.

Ms. Lalonde stated that the spending of the money was to find a new City Manager, not to recruit an Acting City Manager.

Mr. Zack stated that many City Managers do not want a succession plan. They need to be told to have such a plan in place.

Ms. Lalonde stated that at this moment in time, the City Manager should nominate a Deputy Assistant City Manager jump into that role if it was ever necessary. She would like to see that as the resolution.

MOTION:

Motion by Rick Kendle that they do not think that the City Commission should have power of appointment over Assistant City Managers. Seconded by Ms. Lalonde. Voice Vote: Approved 6-0 (Mr. Diffenderfer absent.)

Mr. Gomez stated that the Charter lists as an express power of the Commission that they get to appoint the City Manager, including an interim or acting City Manager. That is the power of the Commission. Mr. Gomez suggested that if there was an automatic replacement mandate, it would take some of that power away.

Ms. Lalonde expressed that she was in agreement with what Mr. Gomez stated, and the person who is selected as the automatic successor should be voted upon by the City Commission via appointment.

Mr. Zack believes that a succession plan must be very fluid. You do not want to have a "coach in waiting" who is constantly a problem. We need however to have succession planning.

Mr. Kendle stated that other Cities have term limits on City Managers. He is in favor of an eight-year term limit on all City Managers. He wants the Board to think about it. Mr. Fernandez stated that he agreed that the position of City Manager should have a term limit, but he does not necessarily think that eight years is the correct amount as the City may lose a great deal of institutional knowledge.

Mr. Zack explained that he originally was in favor of term limits, but has found them to be largely resulting in unintended consequences where you end up with lobbyist who are running the legislature. The worse thing is mandatory retirement. You have some very capable people today, who are able to continue on. When the City gets tired of the City Manager, it can simply get rid of him or her.

- *Section 2.03 – independent City Auditor*

Mr. Zack reported this section currently provides for an Independent City Auditor. There is a discussion if this should be an Inspector General type official. Will an Inspector General be a paper tiger, a meaningless position without subpoena powers? Many of the Board members felt that that an Attorney General should have subpoena powers. At the last Charter Review 10 years ago, they had the State Attorney's Office come in and explain the problems of giving subpoena powers to the Commission, the Manager or the Auditor. It seems to him that this is a reverse discussion. If we do not want to give subpoena powers to the Inspector General, then how is the Inspector General any different that the Independent City Auditor. How do you define those terms? He raises these questions for discussion purpose.

Mr. Kendle stated that the City Auditor and the Inspector General could do the same function if they were independent. Would it be reasonable to have an elected City Auditor? Someone who is only accountable to the people, so they could review all the documents and see what is going on.

Ms. Lalonde stated that she would like to get a presentation from Mr. Boksner. Mr. Smith explained that Mr. Boksner has been given the responsibility to deal with the Inspector General.

Mr. Smith stated that the current City Auditor is Jim Sutter. However, he does not serve the role that the City Charter provides. Mr. Sutter is an Internal Auditor. There are External Auditors that go through the books for financial scrutiny. What Mr. Smith believes the Board is interested in is someone who looks at other things, other than financial matters. The types of issues that are performed by the Inspector General in Miami-Dade County.

TO DO: Add the Inspector General to the Agenda, if Mr. Boksner is available. **Rafael E. Granado to handle.**

Mr. Fernandez asked do we want an elected Inspector General, or an appointed one. He is concerned about making it an elected position, which may then become politicized. He believes that an appointed Inspector General, with term limits, who has a non-interference clause, where the political body cannot interfere by law or Charter, so that the person is not thinking about a reappointment and does not need to worry about interference and political pressures from the elected body.

Ms. Lalonde wants to see additional presentation before the Board tackles the subject.

Mr. Zack wants to know what the City Auditor does and what an Inspector General would do that is different.

Mr. Smith stated that a presentation could be had at the next meeting.

MOTION:

Motion by Ms. Lalonde to have a presentation by the City Attorney's Office regarding the role and power of Inspector General. Seconded by Mr. Fernandez. Voice Vote: Approved 6-0 (Mr. Diffenderfer absent.) **Aleksandr Boksner, Senior Assistant City Attorney, to handle.**

- *Section 2.07 – Vacancies in City Commission*

Mr. Zack stated that when a vacancy is created the citizen ought to fill it as quickly and inexpensively as possible. Mr. Zack inquired as to what is being done today.

Mr. Smith explained how the process has worked, and stated that there is an issues that must be addressed. There have been three instances where elected officials have resigned from office in order to run for a different office. Typically, it is a Commissioner that wants to run for State Representative. What occurs is that the Commissioner files a paper under the Resign to Run Law, which is a State Statute. It is a paper that must be filed ten days prior to qualifying, which says, "I resign effective, for example November 4th, which is the day of the election." Before he became City Attorney, the position of the City was that the Commission had a choice of either selecting someone for that vacancy, or scheduling an election for the next ensuing general election, which is typically November 4 or 5. However, there is a legal problem when you set an election before you have a vacancy because the vacancy does not really occur until the date of the election and by then it is not the appropriate way of filling the seat when the seat has not been vacant. If you decide that you want to hold a special election after the vacancy occurs in November, then you have to have a special election, which is very costly. They need to clarify when a vacancy occurs. What the Board must do is give the Commission the ability to appoint, if they want to appoint. If they do not want to appoint, then they must have the election when they normally have the election in November. That way you avoid calling for a special election.

Ms. Lalonde stated that there may be situation where items that come before the Commission results in a tie; or there is no super majority when necessary, and the City could stall for years if there is no appointment.

Ms. Lalonde recounted when Victor Diaz was appointed.

Mr. Zack asked why we could not have a Charter provision stating that "when a vacancy occurs due to a resignation, the vacancy occurs the night before the actual election," and therefore there is an actual vacancy for which the City can have an election on election day, and therefore avoid the cost of a new election; and not have the City Commissioner who fills that vacancy.

Ms. Lalonde stated that if someone resigns for health reasons two months after they are elected, this proposal could create a stall. It is her understanding that historically they have appointed someone. She does not know why they are visiting this issue, as the present system has worked.

Mr. Smith explained that when David Pearlson resigned to run office, he made his resignation effective the day of the election. This meant that the Commission scheduled an election, not an appointment, for November. There was no appointment during that process.

Ms. Lalonde inquired what the City Attorney's recommendation was. He stated that he did not have a recommendation today. He was only raising the problem. He believes the Chair's suggestion is a good one. The day that a resignation is filed, under the Resign to Run Law to run for another office, that should be the effective date. If someone resigns for another, reason other than the Resign to Run Law, then there is an immediate vacancy, and the Charter sets a window as to when a vacancy must be filled. Mr. Smith explained that they are not taking away the power of the Commission to appoint.

Alex Fernandez explained that this is elected official who resign under the Resign to Run Law. They need to give the Commission an opportunity to appoint. What the Board may want to do is make the person appointed agree not to run for the seat they are filling so the position does not become politicized and the person does not worry about reelection. We have a very vocal community, who make its thoughts known to the Commission and he would like to see when this occurs the Commission to make the determination of whether they appoint or whether the voters should be allowed to decide.

Mr. Smith explained that the Resign to Run Law allows a candidate to resign at a future date. Mr. Smith thinks this is phony. If they resign, they resign. Then the Commission has an opportunity either to appoint or to have an election. Mr. Smith stated that they must submit their resignation, pursuant to the Resign to Run Law, ten days before qualifying for the new office. They should be required to resign upon the filing of the notice of intention to run for another office, under the Resign to Run Law.

Mr. Zack explained that when judges are appointed, they must stand for election at the next regularly scheduled election. He suggested some similar provision for the City. Mr. Zack would not mandate a prohibition against the person appointed from running for the seat they have been appointed to, as that may be the best-qualified individual.

The Board was in agreement that a simple majority should be used when appointing an individual to fill a vacant Commission seat.

MOTION:

Motion by Mr. Fernandez that in the event of a resignation in the City Commission, the vacancy is immediate upon tendering the resignation, and the person who may be appointed will stand for election at the next regularly scheduled election. Seconded by Mr. Kendle. Voice Vote: Approved 6-0 (Mr. Diffenderfer absent.)

MOTION (No Second Offered):

Motion by Mr. Fernandez that when someone is appointed that they agree that they are not going to run to permanently fill that seat. They can still run in a future race; but not in the coming election. No second offered.

Ms. Lalonde stated that she did not agree with this proposal.

Mr. Zack stated that if a Commissioner did not want to give such an advantage, they would not vote to appoint the person.

Mr. Fernandez stated that the appointment gives the perception of incumbency; and make for political playing.

MOTION (No Second Offered):

Motion by Mr. Fernandez that when they fill a vacancy via appointment, the appointment must be via a supermajority of 5/7th vote. No second offered.

Mr. Smith reminded that when you have a resignation you only have 6 members on the Commission.

Mr. Kendle stated that there may be unintended consequences with this motion if more than one member of the Commission resigns to run.

Additional Directives:

- Ms. Lalonde requested that when the Board undertakes to review those items referred by the Mayor and Commissioners, that those items be reviewed in one meeting by topic.
- Mr. Fernandez suggested that the Charter be reviewed section by section, as to proceed in an orderly manner. **ACTION:** By acclamation, the Board agreed to proceed to review the Charter section by section.

MOTION:

Motion to adjourn made by acclamation.

By acclamation, the Clerk was instructed to add to the agenda, in addition to the two previous topics mentioned, discussion regarding Term Limits and the Mayor's Term.

Meeting concluded at 6:29 p.m.

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Jose Smith, City Attorney
Debora Turner, First Assistant City Attorney
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Amended Meeting Agenda

Monday, July 1, 2013 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 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.

EXISTING ISSUES REQUIRING DISCUSSION/ACTION.

1. **Accept Minutes Of The June 24, 2013 Charter Review & Revision Board Meeting.** (See Item 1)
2. **Continuation Of Salary And Compensation Discussion** – Presentation by Sylvia Crespo-Tabak, Human Resources Director.
Continued from June 24, 2013.
3. **City Auditor/Inspector General** – Presentation by Aleksandr Boksner, Senior Assistant City Attorney.
Deferred from June 24, 2013.
4. **Subpoena Powers** – Proponent Alex Fernandez
5. **Election Versus Appointment When Commission Vacancies Occur** – Referred at the May 19, 2012 Commission Retreat.
6. **Preservation Of Beaches** - Proponent Rick Preira

7. Discussion regarding possible referral of proposed ballot question(s) to the City Commission for the July 17, 2013 City Commission Meeting.

8. Handout

- a. Florida League of Cities & FPPA 2011 Salary Survey Results (See Item 7a.) – Requested to be distributed by Jacqueline Lalonde

9. Issue Requested to be Discussed on July 1, 2013, by Commissioner Michael Góngora. (See Item 9) – New Item

A(16). *Nondiscrimination.* No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, gender identity, disability, marital status, familial status, or age.

A(17). Reserved. Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach shall discriminate in employment practices and benefits offered based upon an employee or applicant's gender identity, race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.

A(18). The City of Miami Beach shall make reasonable or best efforts to recruit applicants for employment or contracts with the City from people of color, women, lesbian, gay, bisexual, or transgender, and the disabled.

A(18). **19.**

The underlined is new proposed text to an existing section. **Bold underlined** represents a new Charter section rather than an amendment to an existing section.

PENDING ITEMS

- Bill of Rights – to be discussed at a Special Charter Review Board Meeting
- Mandate That Employees Should Be Courteous To Citizens In The Bill Of Rights - Proponent Stephen Zack, Chair
- Ethics In Government / Code Of Conduct - Proponent Stephen Zack, Chair
- Over Scale Development In Residential Areas – Proponent Stephen Zack, Chair
- Preserving The Historical Value Of Miami Beach - Proponent Terry Bienstock
- Electing Officials ~~By Districts~~ By Open Seats- Proponent Scott Diffenderfer

MIAMIBEACH

CHARTER REVIEW AND REVISION BOARD MEETING NOTICE

NOTICE IS HEREBY given that the Miami Beach Charter Review and Revision Board will meet as follows.

DATE	TIME	LOCATION
Monday, June 24, 2013	4:30 PM	Commission Chambers, 3rd Floor, City Hall
Monday, July 1, 2013	4:30 PM	Commission Chambers, 3rd Floor, City Hall
Monday, July 15, 2013	4:30 PM	City Manager's Large Conference Room, 4th Floor, City Hall

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

Meeting dates, times and locations are subject to change. Please visit the Charter Review Board's website at <http://www.miamibeachfl.gov/scroll.aspx?id=72572> for the latest meeting information and agendas.

INTERESTED PARTIES are invited to appear at these meetings, or be represented by an agent, or to express their views in writing addressed to CharterReview@miamibeachfl.gov, or by mail to 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.

For any and/or all of the above meetings, 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 these meetings or its hearings, 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 #785

MIAMIBEACH

HORARIOS DE LA JUNTA DE REVISION DE LA CARTA CONSTITUCIONAL DE LA CIUDAD DE MIAMI BEACH

POR ESTE MEDIO invitamos al público a las próximas reuniones de la Junta de Revisión de la Carta Constitucional de Miami Beach.

DA	HORA	LOCALIDAD
Lunes, 24 de junio del 2013	4:30 PM	Cámara de la Comisión, 3er Piso, Ayuntamiento
Lunes, 1º de julio del 2013	4:30 PM	Cámara de la Comisión, 3er Piso, Ayuntamiento
Lunes, 15 de julio del 2013	4:30 PM	Sala de Conferencias Grande del Administrador de la Ciudad, 4º Piso, Ayuntamiento

El Ayuntamiento Municipal está localizado en el 1700 Convention Center Drive, Miami Beach, Florida, 33139.

Los días, fechas y localidades pueden ser sujetos a cambios. Para la más reciente información en relación con las reuniones y agendas, favor de visitar la página cibernética de la Junta de Revisión de la Carta Constitucional de Miami Beach: <http://www.miamibeachfl.gov/cityclerk/scroll.aspx?id=72572>

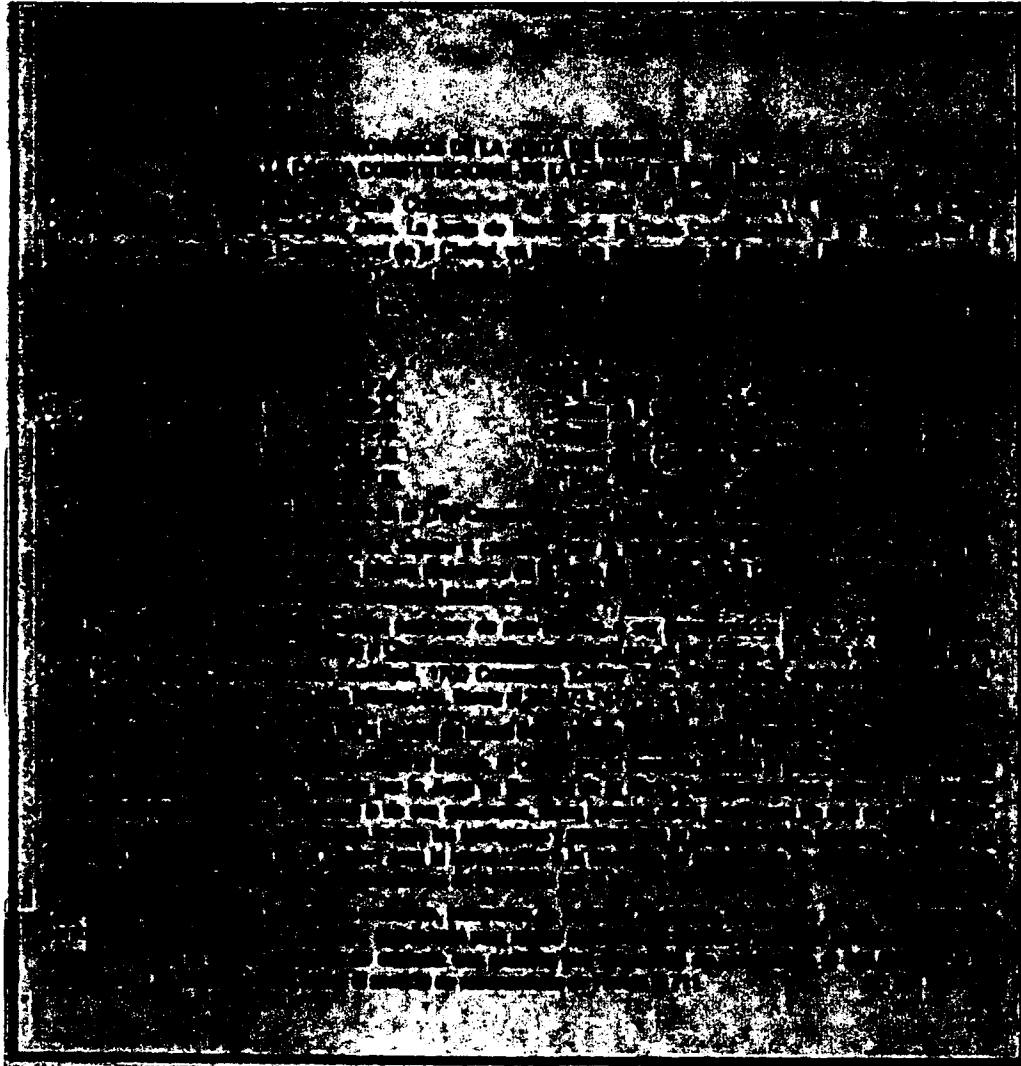
LAS PERSONAS INTERESADAS pueden participar de esta reunión o ser representados por un agente, o pueden expresar sus puntos de vista por escrito a CharterReview@miamibeachfl.gov, o por correo a la Junta de Revisión de la Carta Constitucional, c/o Secretario Municipal, 1700 Convention Center Drive, Primer Piso, Ayuntamiento Municipal, Miami Beach, Florida 33139. Para más información, llame al 305.673.7411.

Uno o más miembros de la Comisión de la Ciudad de Miami Beach puede estar presente y participar en las discusiones.

Rafael E. Granado, City Clerk

Conforme a la Sección 286.0105, Estatutos de la Florida, la Ciudad por la presente informa al público que si una persona decide apelar cualquier decisión tomada por la Junta de Revisión de la Carta Constitucional con respecto a cualquier asunto considerado en estas reuniones o de sus audiencias, dicha persona debe asegurarse de que se haga un acta literal de los procedimientos, registro que incluye los testimonios y pruebas que la apelación debe basarse. Este aviso no constituye el consentimiento de la Ciudad para la introducción o la admisión de pruebas de lo contrario inadmisibles o irrelevantes, o que autorice a los retos o apelaciones no permitidas por la ley.

Para solicitar este material en formato accesible, intérpretes de lenguaje de señas, información sobre el acceso para personas con discapacidades o cualquier alojamiento para revisar cualquier documento o participar en cualquier proceso patrocinados por la ciudad póngase en contacto con nosotros con cinco días de anticipación al 305.673.7411 o los usuarios de TTY también puede llamar al servicio de retransmisión de Florida al 711.



THE
MAY 1954

THE UNIVERSITY OF CHICAGO

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair	-	Present
Aaron Perry, Vice Chair	-	Present
Scott Diffenderfer	-	Present
Jacqueline Lalonde	-	Present
Rick Kendle	-	Present
Alex Fernandez	-	Present
Richard "Rick" J. Preira	-	Present

Staff:

Jose Smith, City Attorney	-	Absent
Donald Papy, Chief Deputy City Attorney	-	Present
Debora Turner, First Assistant City Attorney	-	Present
Rafael E. Granado, City Clerk	-	Absent
Liliam Hatfield, OAV, City Clerk's Office	-	Present
Maria E. Martinez, Assistant City Clerk	-	Present

MINUTES

Monday, June 24 2013 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 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.

Meeting called to order at 4:41 p.m.

Liliam Hatfield, City Clerk's Office staff, announced, for the record, that Rafael E. Granado, City Clerk, is attending a seminar, and introduced Assistant City Clerk Maria Martinez, who is present on his behalf. Roll call taken. All members are present.

1. **Accept Minutes Of The June 10, 2013 Charter Review & Revision Board Meeting.**

Chair Zack stated that there were amendments submitted by the City Attorney's Office.

Member Fernandez stated that on Page 13 of the minutes regarding City Commission vacancies, he requested clarification on the motion. His motion was that in the event of resignation of the City Commission, the vacancy is immediate upon tendering the resignation, and a replacement person who may be eligible for appointment, and will stand for election at the next regularly scheduled election. He also asked for a point of clarification in the event that there is a Resign To Run situation, that the resignation be effective no later than the night before the election, so that vacancy as well may be filled at an election.

Chair Zack explained that what he is referring to is an item that will be discussed at future meetings.

MOTION TO ACCEPT AMENDMENTS

Motion made by Vice-Chair Perry to accept the amendments as submitted by Legal; seconded by Ms. Lalonde. Voice-vote: 7-0.

MOTION TO APPROVE MINUTES AS AMENDED

ACTION: Motion made by Vice-Chair Perry to approve the minutes as amended by Legal; seconded by Member Fernandez. Voice-vote: 7-0.

ANNOUNCEMENT

Mr. Zack announced that the next meeting is scheduled on July 1, 2013 and he will announce the topics for discussion before adjournment.

He also announced that he will be in Paris on July 1, 2013, but will be able to attend by telephone. Vice-Chair Perry will chair the meeting at that time.

2. Report by Ms. Sylvia Crespo-Tabak of all types of compensation that are received by executive staff and Charter Officials.

Sec. 2.02. - Term and compensation

Mr. Zack introduced the item. (See Handouts and Reference Materials)

Sylvia Crespo-Tabak, Human Resources Director, distributed fictional samples for comparison (*Exhibit A and Exhibit B*), and stated that the City Manager and City Attorney's salaries are addressed in an ordinance, which Ms. Turner had presented at the last meeting. She spent time differentiating salary, compensation and total compensation.

Exhibit A

Exhibit A is a sample of a young Commissioner, without dependents, earning a salary of \$6,000, \$6,006 for car allowance, parking decal of no monetary value; single membership to the City's Golf Courses valued at \$3,500 a year, the City's Retirement Plan with a contribution of 10% or \$600, and the City contributes \$1,790 per year. There is a five-year vesting period and benefits are based on the four-year final average monthly earning. Health insurance coverage, which is voluntary, pays a premium of \$1,617 per year, and the City pays a premium of \$3,958.

Member Lalonde stated that having served on the Health Oversight Subcommittee of the Budget Advisory Committee (BAC), a recommendation was made, which may be adopted, which would prohibit any full-time working Commissioner or any other employee from using the City's health insurance, if they carry health insurance at their primary job(s).

Chair Zack suggested focusing on Section 2.02, which is Terms and Compensation for Commissioners and the Mayor. They have also previously discussed Section 3.01, Compensation for the City Attorney, and Section 4.01, which is the City Manager's compensation. Compensation, as used by this Board, means total benefits, and that is what they are trying to discern to make the record clear.

Ms. Crespo-Tabak concluded that for *Exhibit A*, the total compensation would be \$21,354.00.

Discussion held regarding membership for Golf Courses and other benefits.

Member Kendle asked Ms. Crespo-Tabak if the golf membership is approved by the City Manager or is it approved by ordinance or resolution. **Sylvia Crespo-Tabak and City Attorney's Office to research, and bring back to the July 1st Board meeting.**

Member Kendle asked if the issue to discuss, for anything considered compensation, is approved by ordinance or resolution, or is it something that is approved during budget meetings. Ms. Crespo-Tabak answered that except for the golf membership, all other benefits listed on both *Exhibits A and B* are available to all City's non-bargaining union employees. Discussion continued on the issue and there was discussion on car allowance. **Sylvia Crespo-Tabak to research how car allowances are approved and bring back to the July 1st Board meeting.**

Chair Zack stated that, in reference to the golf course membership, \$20,000 is paid to the golf course for the six Commissioners, whether or not they used the golf course. Discussion continued and he requested to have information on the following: 1) Does the City pay for the membership; and 2) Voluntary versus mandatory health coverage. **Sylvia Crespo-Tabak to handle.**

Member Fernandez stated that this information is very important because the intent of this Board is to promote transparency. He asked Debora Turner, First Assistant City Attorney, if the reason they are having this discussion is to define what salary is.

Debora Turner, First Assistant City Attorney, stated that the Board needs to define what compensation is, because salary is set forth in the City Charter currently. In answering Member Fernandez's question, she added that all benefits, except for salary, or in addition to salary, are compensation. She explained that if their desire is to amend or clarify the section, they can either change the word "compensation" in the title of Section 2.02 to say "salary," and that will conform to what is set forth in the Charter. She suggested in reference to annual salary: "the annual salary for the Commissioners shall be \$6,000 and \$10,000 for the Mayor."

Member Fernandez asked if it is appropriate to present as part of their recommendations, but also with a question to the voters asking, "Shall Section 2.02 of the City Charter be amended to define all compensation, in addition to salary allotted to the Office of the Mayor and Commissioners?" If the voters say "yes" to define all compensation in the City Charter, then by resolution this Board can place the information in the City Charter. Discussion continued regarding compensation versus salary.

Exhibit B

Sylvia Crespo-Tabak, Human Resources Director, stated that *Exhibit B* is a fictitious scenario of a 50 to 54 male with a dependent spouse and two dependent children. While the benefits available are exactly the same as *Exhibit A*, in *Exhibit A*, Commissioners spent \$2,300 per year for benefits, and in *Exhibit B* he/she spent \$27,000 on those benefits. That Commissioner earned a salary of \$6,000, but the total compensation was \$40,550, based on the choices and the contributions the City makes towards health insurance and other benefits. Discussion continued regarding benefits and compensation, including car allowance.

Chair Zack stated that there must be a definition of compensation. An inclusion in the Charter can read: "compensation includes salary and all benefits...and shall be set forth in City Ordinance." That ordinance would provide for the reporting on those benefits. Discussion continued.

Member Lalonde clarified that *Exhibit B* will not be true if the recommendation of the BAC is adopted. They are reviewing those benefits and are looking at reducing those benefits for City Commissioners and other employees. Discussion continued regarding the difference between *Exhibits A* and *B* and golf course membership.

MOTION REGARDING COMPENSATION AND SALARY:

Chair Zack asked for a consensus and made a motion to add a sentence to the section to read: "compensation shall include salaries and benefits. Benefits will be defined by City ordinance." He recommended, as an Advisory Board to the Commission, preparing an ordinance to the City Commission, wherein it sets forth compensation, to read as follows: "include all benefits, planning days, vacation days, and any other compensation of monetary value." Discussion continued.

Member Kendle stated that there should not be a dollar amount set for salary, and salary and benefits should be set by ordinance. Discussion continued.

Chair Zack explained to Mr. Kendle that he wants to deal with the motion on the table, and he can make another motion to delete the salary cap and to allow the Commissioners to set their own salaries, but he does not think there is support for this.

Member Fernandez asked in regards to benefits, do they include stipends, car allowances, etc. Ms. Lalonde stated that stipend is not a benefit. It is a cost of doing business and there is no personal benefit on the stipend. Discussion continued regarding stipend.

Sylvia Crespo-Tabak, Human Resources Director, stated that the stipend is not set by the City Manager. The City Manager proposes a budget to the City Commission and they approve it or amend it. Discussion continued.

Chair Zack added that, technically, when someone receives money from a third person, it has to be documented as how it is spent, or it is considered compensation. Discussion held regarding what is a stipend and compensation. Member Lalonde objected to the mischaracterization of the stipend and its implementation. Discussion continued. Member Lalonde is in favor of full disclosures requiring receipt and documentation of those expenses.

Chair Zack gave examples of stipend situations considered compensation. There is some method of documenting that the stipend is going to the purpose that it was intended to. Discussion continued regarding the use of stipend and its reporting.

MOTION REGARDING STIPEND:

Member Kendle made a motion that City Commissioners shall receive a stipend for expenses incurred in connection with official duties, as approved by ordinance or resolution. No second offered. **Motion dies for lack of second.**

FINAL MOTION REGARDING COMPENSATION AND SALARY:

Motion by Chair Zack to add a sentence to the section as follows:

- Compensation shall include all benefits (Planning Days, vacations, etc.)
- Benefits shall be determined by ordinance
- All benefits shall be documented and disclosed

Motion seconded by Vice-Chair Perry. Voice-vote: 7-0

Chair Zack requested a draft ordinance amending Section 2.02 to present to the City Commission for their consideration. Such ordinance will include everything the Charter Review Board thinks should be in the City Charter, and the Board can recommend what should be considered in the ordinance to effectuate the Charter changes. **City Attorney's Office to handle.**

Member Lalonde is under the impression that at the meeting of June 3, 2013, what the Board asked for was the compensation of the City Manager and the City Attorney. She requested the report, and explained that they requested to look at the compensation level of the City Manager because of the recent outrage of the community since there were items not included on the past manger's contract.

Sylvia Crespo-Tabak apologized and stated that she presented what she understood was her assignment.

Donald Papy, Chief Deputy City Attorney, stated that the issue of compensation for the City Manager and the City Attorney are addressed in the Charter, but both sections state that they will be contained in an ordinance. There is an existing ordinance in the City that reflects the items that are included. In addition to that, the Charter also states that those officers may have contracts with the City, which are publicly disclosed and publicly available. The new City Manager and the City Attorney both have contracts that list all the items.

Member Lalonde stated that they may be fully disclosed, but the public was upset because there was no value associated with those benefits at that time.

Member Fernandez suggested sending a recommendation to the City Commission that, in the future, when they discuss the contracts of the City Manager and the City Attorney, the ordinance should contain a line item breakdown, so upon consideration they can have a valuation for approval. The list of the items should be part of the ordinance. Discussion continued regarding disclosure of all benefits in an ordinance.

Sylvia Crespo-Tabak, Human Resources Director, in answering questions, stated that the documents distributed were not intended to be all-inclusive; it was for illustration purposes only, to give an example of the differences between salary and total compensation.

Mr. Zack stated that the minutes are clear, and it is the intent of this Board to include in benefits all benefits of any value, which will include vacations, planning days, stipend and anything of any value. They are asking for transparency, so the public can see what the values of the benefits are in addition to salary. There was consensus among all members. Chair Zack commended Ms. Crespo-Tabak for a job well done.

3. Presentation by the City Attorney's Office regarding the role and power of an Inspector General and the Independent Auditor.

Per Aleksandr Boksner, Senior Assistant City Attorney's request, this item was deferred to July 1, 2013.

4. Discussion of term limits- Section 2.02.

Chair Zack read the following from the existing Charter:

Sec. 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 (excluding individuals holding City of Miami Beach elective office prior thereto for their unexpired terms), the term limit for Miami Beach Commissioners shall be eight consecutive years and the term limit for Miami Beach Mayor shall be 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.

The question is whether an officer who is term limited, can take a hiatus and come back. This language is nonexistent in the Charter. He suggested deleting the word "*consecutive*," thereby amending to read a term limit maximum of eight (8) years for Commissioners and six (6) years for Mayor. Discussion held regarding term limits.

MOTION TO AMEND SEC. 2.02 Term Limits

Motion made by Member Diffenderfer; seconded by Member Kendle to delete the word "*consecutive*" from Section 2.02. No vote taken.

Debora Turner, First Assistant City Attorney, distributed a proposed ballot question with the word "consecutive" stricken. She explained that this item was referred from the City Commission to the Board in April 2013 by Commissioner Tobin. Discussion held regarding term limits.

Member Kendle asked Ms. Turner if the actions taken today would affect the current Mayor if she runs for Commissioner. Ms. Turner clarified that these changes would not affect the November election this year, but the next General Election. Discussion continued.

Member Fernandez stated that in considering this issue, they need to take individuals out of the issue; this is an important issue and the goal is to set good government and good policy for the future. Discussion continued regarding taking politics out of the issue.

Chair Zack stated that it may not affect the next election, but it could affect future elections, unless they are clear that this would not apply to any current Commissioner or Mayor. If you want it not to be political at all, it will not apply to this election, but do it in the future. Discussion held.

Debora Turner, First Assistant City Attorney, in answering Member Lalonde, stated that currently there is language in the Charter that reads: "Commencing with the General Election in November 1997 (excluding individuals holding City of Miami Beach elective office prior thereto for their unexpired terms.) There was discussion regarding Mayor Bower's term limits.

Member Fernandez asked if it is the will of the Board to change the number of term years for the Mayor. Member Lalonde offered to make a motion.

Member Preira stated that it would be unfortunate for this Body to consider or pursue the political agenda of any one appointed. All members of the Board have been appointed by members of the City Commission, and the actions taken here should not affect them.

Discussion continued and Member Lalonde asked why the inequity as far as term limits between the Mayor and Commissioners.

Jorge Gomez, Assistant City Manager, explained that in the mid 1990's the addition of term limits and staggered terms were added to the Charter. One of the reasons was that every two years they wanted to have four (4) members of the City Commission up for election every two years, to have the opportunity to create a majority every two years. That is one of the reasons in the difference in terms.

Mr. Zack asked if the existing term limits have worked or not. Member Lalonde stated that there is a sense that the terms may be short on the Mayor's side. She suggested dealing with this issue separate, and allowing for an extension of the Mayor's term, but maybe capping the time limit taking into account that new extended term of three years.

Member Diffenderfer has a motion on the table, and asked the CRB members if they think that 14 years in total is not long enough.

Member Lalonde suggested increasing the length of Mayor services to five (5) years and discussion continued. Member Kendle explained that if the City wants a leader, it should be a four (4) year term, as in other cities. Discussion continued.

Member Lalonde recommended reverting to two term limits for Mayor, four years per term.

Member Fernandez stated that two-year elections have been done for many years, and there is a perception that a Mayor's position is powerful and influential as far as the operations of the City. He clarified that the voters should have the right to vote every two years for a Mayor; and this is no reflection on anyone running for office or in office at the present time. Discussion continued.

Member Kendle stated that they really do not have the time to govern, as they have fundraising events and meetings, and he thinks they need four (4) years to do a good job.

There was a discussion between Member Lalonde and Chair Zack regarding recall. Chair Zack explained that a recall is a different standard, and there must be some sort of wrongdoing.

Vice-Chair Perry stated that he does not want to take away the opportunities to give people the right to vote; the current process has been working. The campaign is part of the process, but to deny citizens the opportunity to revisit the Mayor's performance every two years, he thinks it is a great opportunity. Discussion continued.

Chair Zack asked for a vote.

Motion by Member Diffenderfer to keep the term limits as they are presently in the Charter; seconded by Member Fernandez; Voice-vote: 5-2; Opposed: Members Lalonde and Kendle.

Debora Turner, First Assistant City Attorney, suggested that if the Board wants 14 years lifetime services, the word "consecutive" should be stricken. Discussion continued. She added that the combined lifetime service cannot exceed 14 years. Discussion held between Member Kendle and Ms. Turner on this issue. Ms. Turner stated that after this November

election, is the Charter Proposal being discussed passed, Commissioners would have a lifetime ban serving that cannot exceed 14 years.

FINAL MOTION ON TERM LIMITS:

Motion made by Member Diffenderfer; seconded by Member Lalonde, to strike the word "consecutive" so the combined lifetime total service cannot exceed 14 years. Voice-vote: 7-0.

Chair Zack suggested tying the Commission salary to 15% of what the City Manager makes; that way with seven Commissioners the formula adds up to about 100%. He added that every time this issue has come up, it has been rejected. This might be a logical solution acceptable to the voters.

Member Lalonde stated that the Chair's suggestion is a brilliant idea, and added that in reading the League of City study, wherein the proper compensation for Commissioners is based on a formulary presented based on population and budget. Based on that study, the Miami Beach City Commissioners should receive compensation in the range of \$45,000 to \$48,000. Discussion continued.

Don Papy, Chief Deputy City Attorney, stated that this could present some problems with increasing salaries, and there are a number of conflicting issues with that idea. Discussion held.

Member Kendle thinks people would vote for it if the salary is kept at a reasonable figure, approximately \$40,000. Discussion continued regarding salary based on the percentage as compared to the study.

Member Fernandez is concerned that future City Commissions, in terms of ethics, may alter the figures. He added that it is a great idea.

6:12:17 p.m.

Chair Zack stated that currently the maximum salary is \$262,000; the total range of difference is \$100,000 and 15% of this figure is \$15,000; that is the maximum difference and they will get a good City Manager. This will also depend on the City, and again they need to convince the citizens that they are not taking a risk. They do not want to lose the credibility of the Charter Review Board.

Member Lalonde asked if anyone knew the County Commission salaries.

Joe Gimenez, Assistant City Manager, stated that it is approximately \$80,000 all-inclusive, with a salary is \$6,000.

Member Lalonde suggested the salary be \$45,000 at a minimum.

Member Fernandez stated that as results of his research, in May 2011, the Home Rule Charter amendment went to the voters, to change the salary to that of a full-time position, and increasing the Commission's salary to \$92,000, based on the State formula for the County, and they would have to serve no more than three consecutive (4) year terms in office. This was rejected by Miami Beach voters. However, in January 2012, the question went to voters to increase salary to \$92,000, based on the State formula, but they could serve no more than two consecutive 4-year terms, and the voters of Miami Beach voted in favor. He suggested doing something similar.

Discussion held.

Motion made by Member Fernandez to present to voters an amendment to the Charter that the salary of the City Commissioners shall be provided by State formula and adjusted annually by population. No second offered.

Discussion held regarding a salary cap and Chair Zack stated that it is important to keep the Board's credibility on the proposals to be submitted to the City Commission. Member Kendle stated that the salary should be adjusted for Consumer Price Index.

Vice-Chair Perry stated that the formula that Chair Zack came up with is clever, by dividing the City Manager's salary by seven, but if they can apply to something based on population or other principles, there may be a better chance to pass it. Discussion continued.

Chair Zack stated that item will be continued for discussion at the next meeting, and further requested to have the following information by the July 1st Charter Review Board Meeting: 1. What the salary figure would be if one takes \$6,000 whenever it was adopted and adjusted for CPI to the present date? 2. What the salary figure would be using The League of Cities formula? 3. What do other municipalities in South Florida pay their City Commissioners? **Sylvia Crespo-Tabak to handle.**

Debora Turner, First Assistant City Attorney, gave the deadlines for submission to the City Commission for this November election. The next election is August 2014.

BILL OF RIGHTS UPDATE

Chair Zack explained that the issue requested by the Homeowners Association will have to be discussed at a Special Charter Review Board meeting. This would be perfect for the Board to have their jurisdiction extended. He also asked if there is a revised resolution from the HOA's for the Board to consider. **Special CRB Meeting to be announced at the July 1st CRB meeting.**

Christine Florez, Miami Beach United, stated that a separate meeting was going to define what an association is, and there were changes to what they presented. She was under the impression that the Board would come up with the definition of an association, and upon Member Lalonde's request she added that the HOA will meet and come up with the definition of association.

TOPICS FOR DISCUSSION FOR THE JULY 1, 2013 AGENDA

- a. Continuation of salary commissioners
- b. City Auditor
- c. Subpoena Powers
- d. Election versus Appointment and vacancies
- e. Beach Preservation

Meeting adjourned at 6:27:44 p.m.

Handouts or Reference Materials:

1. *Exhibit A* - Example of salary versus total compensation
2. *Exhibit B* - Example of salary versus total compensation
3. Ordinance Proposed Ballot Question deleting the word "consecutive"

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PRESENTATION

Florida League of Cities Salary Survey

THE STATE OF TEXAS

Chapter 145 County Official Salary Calculation

2011 Population		88,349
Salary Group III is for counties with 50,000-99,000 population		
Group III Base Salary	\$	9,000.00
Group III Rate		0.06
Initial Factor		1.2920
Certified Annual Factor		1.0000
Certified Cumulative Annual Factor		3.1681
Base Salary	\$	9,000.00
Population Above Group Rate		38,349
X Group Rate		0.06
	\$	2,300.94
+ Base Salary	\$	9,000.00
	\$	11,300.94
X Initial Factor		1.2920
X Certified Annual Factor		1.0000
X Certified Cumulative Annual Factor		3.1681
2011 Salary	\$	46,256.84

FORMULA:

Salary = [Base Salary + (Population Above Group Minimum x Group Rate)] x
Initial Factor x Certified Annual Factor x Certified Cumulative Annual Factor



**Florida League of Cities & FPPA
Salary Survey**

Fiscal Year 2011

Job Category: Exec. / Admin Mgmt

Benchmark Job: Commissioner

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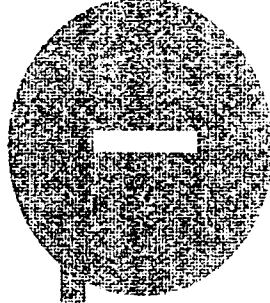
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Participating Agencies

Part



Participating Agencies

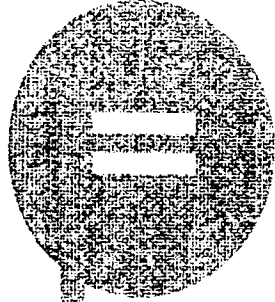
Agency	# of Employees	Jurisdiction Population	County	State	Agency	County	State	# of Employees	Jurisdiction Population	County	State
Alachua County BOCC	1000	238000	Alachua	FL	Eustis	Lake	FL	246	17766	Lake	FL
Altamonte Springs	419	41500	Seminole	FL	Fort Lauderdale	Broward	FL	2350	180000	Broward	FL
Atlantic Beach	120	14079	Duval	FL	Fort Myers Beach	Lee	FL	51	7000	Lee	FL
Belleair	76	3890	Pinellas	FL	Frostproof	Polk	FL	24	2975	Polk	FL
Biscayne Park	32	3200	Miami-Dade	FL	Gainesville	Alachua	FL	2200	120000	Alachua	FL
Bonita Springs	60	46681	Lee	FL	Green Cove Springs	Clay	FL	90	6500	Clay	FL
Bowling Green	23	3084	Hardee	FL	Gretna, Florida	Palm Beach	FL	193	32267	Palm Beach	FL
Boynton Beach	820	66000	Palm Beach	FL	Haines City	Gadsden	FL	22	1700	Gadsden	FL
Bradenton	495	53871	Manatee	FL	Hernando County BOCC	Polk	FL	247	19000	Polk	FL
Brevard County BOCC	2271	500000	Brevard	FL	Highland Beach	Hernando	FL	675	185000	Hernando	FL
Bunnell	72	2600	Flagler	FL	Highlands County BCC	Palm Beach	FL	46	7200	Palm Beach	FL
Callaway	87	15000	Bay	FL	Hillsborough Co. Civil Service Board	Highlands	FL	402	89038	Highlands	FL
Cape Canaveral	51	10526	Brevard	FL	Holly Hill	Hillsborough	FL	10600	1200000	Hillsborough	FL
Chiefland	43	2228	Levy	FL	Indian Rocks Beach	Volusia	FL	90	12864	Volusia	FL
Clearwater	1700	110000	Pinellas	FL	Interlachen	Pinellas	FL	40	5072	Pinellas	FL
Clermont	264	21986	Lake	FL	Key Colony Beach	Putnam	FL	12	1500	Putnam	FL
Cocoa Beach	200	13000	Brevard	FL	Key West	Monroe	FL	13	850	Monroe	FL
Collier County BOCC	1584	250000	Collier	FL	Kissimmee	Monroe	FL	452	27000	Monroe	FL
Crescent City	39	1776	Putnam	FL	Lady Lake	Osceola	FL	868	61036	Osceola	FL
Crestview	238	23294	Okaloosa	FL	Lake County BOCC	Lake	FL	106	14254	Lake	FL
Crystal River	40	3737	Citrus	FL	Lake Mary	Lake	FL	738	251037	Lake	FL
Dade City	87	6133	Pasco	FL	Lee County BOCC	Seminole	FL	199	13922	Seminole	FL
Davie	687	83639	Broward	FL	Leesburg	Palm Beach	FL	71	8155	Palm Beach	FL
Daytona Beach	838	65000	Volusia	FL	Leesburg	Highlands	FL	38	2224	Highlands	FL
Daytona Beach Shores	77	5461	Volusia	FL	Lakeland	Polk	FL	2400	85000	Polk	FL
DeBary	21	18913	Volusia	FL	Lauderdale Lakes	Broward	FL	130	32000	Broward	FL
Deerfield Beach	568	78575	Broward	FL	Lee County BOCC	Lee	FL	2500	585608	Lee	FL
DeFuniak Springs	97	5500	Walton	FL	Leesburg	Lee	FL	532	41096	Lee	FL
Delray Beach	743	65000	Palm Beach	FL	Leon County BOCC	Leon	FL	800	254000	Leon	FL
Deltona	320	85484	Volusia	FL	Lynn Haven	Bay	FL	150	16000	Bay	FL
Dunedin	360	36000	Pinellas	FL	Madeira Beach	Pinellas	FL	70	4500	Pinellas	FL
Dunneleon	46	2031	Marion	FL	Maitland	Orange	FL	214	16786	Orange	FL
Eagle Lake	26	2732	Polk	FL	Manatee County BOCC	Manatee	FL	1742	318361	Manatee	FL
Escambia County Board of County Commission	1250	330000	Escambia	FL	Mascotte	Lake	FL	47	5000	Lake	FL

Participating Agencies

Agency	# of Employees	Jurisdiction Population	County	State	Agency	# of Employees	Jurisdiction Population	County	State
Miami Gardens	559	103000	Miami-Dade	FL	Seminole County BOCC	1288	495000	Seminole	FL
Miami-Dade County Human Resources Dept	31000	2350000	Miami-Dade	FL	South Miami	191	11700	Miami-Dade	FL
Milton	140	7519	Santa Rosa	FL	South Pasadena	39	5890	Pinellas	FL
Minneola	46	9440	Lake	FL	St. Augustine	350	13031	St. Johns	FL
Mount Dora	220	10600	Lake	FL	St. Petersburg	3708	250000	Pinellas	FL
Nassau County BOCC	300	71000	Nassau	FL	Starke	100	5500	Bradford	FL
New Smyrna Beach	211	23000	Volusia	FL	Sunrise	1193	90081	Broward	FL
North Port	569	57000	Sarasota	FL	Tallahassee	2755	150581	Leon	FL
Ocean Ridge	25	2600	Palm Beach	FL	Tamarac	412	59151	Broward	FL
Okaloosa County Board of County Commissioner	772	170498	Okaloosa	FL	Treasure Island	141	7500	Pinellas	FL
Okeechobee	63	6379	Okeechobee	FL	Venice	300	21585	Sarasota	FL
Oldsmar	150	13968	Pinellas	FL	Vero Beach	505	18000	Indian River	FL
Orange City	94	10599	Volusia	FL	Wauchula	100	4500	Hardee	FL
Orlando	3196	212000	Orange	FL	West Palm Beach	1800	102000	Palm Beach	FL
Ormond Beach	320	39000	Volusia	FL	Williston	95	2768	Levy	FL
Osceola County BOCC	1600	250000	Osceola	FL	Winter Garden	287	30987	Orange	FL
Palatka	158	10804	Putnam	FL	Winter Haven	484	33000	Polk	FL
Palm Bay	850	106638	Brevard	FL	Winter Park	500	26000	Orange	FL
Palm Beach Gardens	583	49387	Palm Beach	FL					
Palm Coast	415	72000	Flagler	FL					
Palmetto	154	13500	Manatee	FL					
Panama City	520	37408	Bay	FL					
Pembroke Pines	1276	150000	Broward	FL					
Pensacola	797	56255	Escambia	FL					
Pinellas County	3500	1000000	Pinellas	FL					
Pinellas Park	567	48000	Pinellas	FL					
Plant City	417	33500	Hillsborough	FL					
Plantation	937	84000	Broward	FL					
Ponce Inlet	48	3267	Volusia	FL					
Port St. Lucie	950	153000	St. Lucie	FL					
Punta Gorda	265	17000	Charlotte	FL					
Santa Rosa County	545	150000	Santa Rosa	FL					
Sarasota	630	53000	Sarasota	FL					
Sebastian	194	22924	Indian River	FL					

Average Salaries

Part

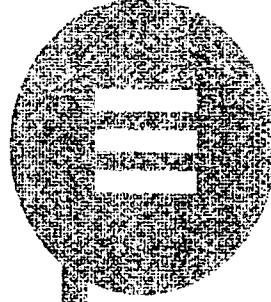


Average Salaries

Benchmark Job	Minimum	Midpoint	Maximum	Average
Commissioner	10,192	10,206	13,609	22,390

Individual Salary Data

Part



Individual Salary Data

Agency	Job Title	Match	Min	Mid	Max	Avg	No. of Positions	Annual Hours	FLSA	BB
Alachua County BOCC	County Commissioner	S	-	-	-	70,990	5	2080	E	N
Altamonte Springs	Commissioner	S	-	-	-	6,000	4	2080	E	N
Atlantic Beach	City Commissioners	S	-	-	-	5,716	4	2080	E	N
Belleair	Commissioner	S	-	-	-	300	4	1040	E	N
Biscayne Park	Commissioner	H	2,000	-	-	-	4	480	N	N
Bonita Springs	City Council Member	S	-	-	-	16,453	6	2080	E	N
Bowling Green	Commissioner	S	-	-	-	1,800	4	2080	N	N
Boynton Beach	City Commissioner	S	-	-	-	15,675	4	2080	E	N
Bradenton	Council Member	S	-	-	-	27,834	5	2080	E	N
Brevard County BOCC	County Commissioner	H	-	-	-	58,308	5	2080	E	N
Bunnell	Commissioner	S	9,600	9,600	9,600	9,600	4	2080	E	N
Callaway	Commissioner	S	-	-	-	8,200	4	2080	E	N
Cape Canaveral	Council Member	S	-	-	-	2,400	4	2080	N	N
Chiefland	Commissioner	S	-	-	-	4,800	4	2088	E	N
Cleawater	Councilmember	S	-	-	-	19,828	4	2080	E	N
Clermont	Council Member	H	-	-	-	3,600	-	2080	E	N
Cocoa Beach	Commissioner	H	6,000	6,000	6,000	6,000	300	300	E	N
Collier County BOCC	Commissioner	S	-	-	-	75,705	5	2080	E	N
Crescent City	City Commissioner	H	-	-	-	8,739	4	2080	E	N
Crestview	City Council	S	5,020	5,020	5,020	5,020	5	2080	E	N
Crystal River	Council/Mayor	S	6,328	6,328	6,328	6,328	5	502	E	N
Dade City	City Commissioner	S	-	-	-	1,200	-	2080	N	N
Dave	Council Members	S	-	-	-	10,031	-	2080	E	N
Daytona Beach	City Commissioner	S	-	-	-	16,599	6	2080	E	N
Daytona Beach Shores	City Council Member	S	-	-	-	11,268	-	2080	E	N
DeBary	Council Member	S	4,800	-	4,800	4,800	4	2080	E	N
Deerfield Beach	Commissioner	S	-	-	-	27,979	4	2080	E	N
DeFuniak Springs	Councilman	H	6,000	6,000	6,000	-	5	2080	E	N
Delray Beach	Commissioner	H	9,974	-	9,974	-	5	2080	E	N
Deltona	Commissioner	S	-	-	-	8,780	6	2080	E	N
Dunedin	Commissioner	S	-	-	-	8,000	-	2080	E	N
Dunnellon	Council Member	H	1,800	1,800	1,800	-	100	100	E	N
Fagles Lake	Commissioner	H	-	-	-	1,272	4	48	N	N

Individual Salary Data

Agency	Job Title	Match	Min	Mid	Max	Avg	No. of Positions	Annual Hours	FLSA	BB
Escambia County Board of Commissioners	County Commissioner	H	-	-	-	74,505	5	2080	E	N
Eustis	City Commissioner	S	-	-	-	5,400	4	2080	E	N
Fort Lauderdale	Commissioner	S	-	-	-	30,000	4	2080	E	N
Fort Myers Beach	Council Member	S	14,400	-	-	-	-	2080	E	N
Frostproof	City Council Member	S	-	-	-	1,200	6	2080	E	N
Gainesville	City Commissioner	S	-	-	-	30,403	4	2080	E	N
Green Cove Springs	City Council Member	S	4,950	-	-	4,950	4	2080	E	N
Greenacres	City Council Member	S	-	-	6,000	6,000	5	2080	E	N
Gretna, Florida	Commissioner	H	-	-	11,000	10,300	5	2080	E	N
Haines City	City Commissioner	S	6,000	-	-	-	4	2080	N	N
Hernando County BOCC	County Commissioner	S	60,932	-	-	60,932	5	2080	E	N
Highland Beach	Commissioner	S	12,000	12,000	12,000	-	4	2080	E	N
Highland's County BCC	Commissioner	S	-	-	42,732	-	5	2080	E	N
Hillsborough Co. Civil Service Board	Co. Commissioner	S	-	-	-	92,799	-	2080	E	N
Holly Hill	Commissioner	S	-	-	-	8,000	4	2080	E	N
Indian Rocks Beach	Commissioner	S	-	-	-	5,100	4	2080	E	N
Interlachen	Town Council Member	H	3,600	-	-	-	-	2080	E	N
Key Colony Beach	Commissioner	S	9,285	-	-	12,380	5	1000	E	N
Key West	Commissioner	S	-	-	-	8,500	6	2080	E	N
Kissimmee	City Commissioner	S	-	-	-	24,776	5	1040	E	N
Lady Lake	Commissioner	H	-	-	-	6,480	-	2080	E	N
Lake County BOCC	County Commissioner	S	-	-	-	73,186	5	2080	E	N
Lake Mary	City Commissioner	S	-	-	725	-	4	2080	E	N
Lake Park	Commissioner	H	-	-	9,384	-	4	100	E	N
Lake Placid	Council Member	S	1,200	1,200	1,200	1,200	5	2080	E	N
Lakeland	City Commissioner	S	-	-	-	14,847	7	2080	E	N
Lauderdale Lakes	Commissioner	H	-	-	-	9,000	6	2080	E	N
Lee County BOCC	Commissioner	S	-	-	-	79,241	-	2080	E	N
Leesburg	City Commissioner	S	-	-	-	8,633	4	2080	E	N
Leon County BOCC	County Commissioner	S	-	-	-	72,172	7	2080	E	N
Lynn Haven	Commissioner	S	-	-	-	6,480	4	2080	E	N
Madeira Beach	Commissioner	S	4,800	4,800	4,800	4,800	360	360	E	N

Individual Salary Data

Commissioner

Agency	Job Title	Match	Min	Mid	Max	Avg	No. of Positions	Annual Hours	FLSA	BB
Matland	City Council	S	-	-	-	3,830	4	2080	E	N
Manatee County BOCC	County Commissioner	H	-	-	-	74,807	7	2080	E	N
Mascotte	Council Member	S	4,297	-	4,913	-	4	2080	E	N
Miami Gardens	Council Member	S	12,004	12,004	12,004	-	5	5	E	N
Miami-Dade County Human Resources Dept	Mid-Commissioner	S	6,000	-	6,000	6,000	13	2080	E	N
Milton	Council Member	S	-	-	-	5,629	8	2080	E	N
Minneola	Council Member	H	4,800	-	4,800	-	6	2080	E	N
Mount Dora	Councilman	S	-	-	-	6,110	6	2080	E	N
Nassau County BOCC	County Commissioners	S	-	-	-	42,386	5	2080	E	N
New Smyrna Beach	Commissioner	S	-	-	-	15,380	4	2080	E	N
North Port	Commissioner	H	27,783	-	28,983	-	5	2080	E	N
Ocean Ridge	Town Commissioner	S	1,200	1,200	1,200	1,200	5	2080	E	N
Okaloosa County Board of County Commissioners	Commissioner	S	-	-	-	66,830	5	2080	E	N
Okeechobee	City Council Member	S	6,799	-	6,800	6,800	4	1040	E	N
Oldsmar	Council Member	S	-	-	-	8,400	5	2080	E	N
Orange City	Council Member	S	-	-	-	4,800	6	2080	E	N
Orlando	City Commissioner	S	23,271	78,478	145,000	47,944	6	2080	E	N
Ormond Beach	City Commissioner	S	-	-	-	11,254	4	2080	E	N
Osceola County BOCC	County Commissioner	S	-	-	-	72,007	5	2912	E	N
Palatka	Commissioner	S	11,995	-	17,722	15,309	4	1040	E	N
Palm Bay	Council Member	S	-	-	-	4,000	4	2080	E	N
Palm Beach Gardens	Council Member	S	-	-	-	25,269	5	2080	E	N
Palm Coast	Council Member	S	-	-	-	9,600	4	2080	E	N
Palmetto	Commissioner	S	7,723	7,723	7,723	7,723	5	2080	E	N
Panama City	Commissioner	S	-	-	-	20,358	4	2080	E	N
Pembroke Pines	Commissioner	S	-	-	-	23,386	4	2080	E	N
Pensacola	Council Member	S	-	-	-	13,998	9	2080	E	N
Pinellas County	County Commissioner	S	-	-	-	90,837	7	2080	E	N
Pinellas Park	Council Member	H	-	-	-	16,377	4	2080	E	N
Plant City	Commissioner	S	-	-	-	9,526	4	150	E	N
Plantation	Council Members	S	-	-	-	29,773	5	2080	E	N
Ponce Inlet	Council	S	-	-	-	8,395	8	2080	E	N

Individual Salary Data

Commissioner

Agency	Job Title	Match	Min	Mid	Max	Avg	No. of Positions	Annual Hours	FLSA	BB
Port St. Lucie	City Council Member	S	30,930	-	-	-	5	2080	E	N
Punta Gorda	Council Member	S	3,165	5,150	7,321	-	4	2080	E	N
Santa Rosa County	County Commissioner	H	-	-	-	56,881	5	2080	E	N
Sarasota	Commissioner	S	-	-	-	25,085	5	1040	E	N
Sebastian	City Council Member	S	3,600	3,600	-	3,600	5	2080	E	N
Seminole County BOCC	County Commissioner	S	-	-	-	80,358	5	2080	E	N
South Miami	Commissioner	H	12,000	-	12,000	-	4	1040	E	N
South Pasadena	Commissioner	S	6,136	-	6,136	-	4	2080	E	N
St. Augustine	Commissioner-Part Time	S	-	-	-	14,768	4	2080	E	N
St. Petersburg	Council Member	S	-	-	38,914	38,914	8	1560	E	N
Stark	Commissioner	H	13,421	-	13,872	-	5	960	E	N
Sunrise	City Commissioner	S	32,056	-	40,033	-	4	2080	E	N
Tallahassee	Commissioner	S	-	-	-	36,067	3	1872	E	N
Tamarac	Commissioner	S	-	-	-	27,000	6	2080	E	N
Treasure Island	City Commissioner	S	-	-	5,400	5,400	3	2080	E	N
Venice	City Councilmember	H	-	-	-	10,200	6	2080	E	N
Vero Beach	Council Member	S	10,800	-	-	-	7	2080	E	N
Wauchula	City Commissioners	H	-	-	5,160	5,160	7	2080	E	N
West Palm Beach	City Commissioner	S	2,400	2,400	3,000	30,000	5	2080	E	N
Williston	Commissioner	H	-	-	-	-	4	2080	E	N
Winter Garden	Commissioner	S	-	-	-	7,200	4	2080	E	N
Winter Haven	City Commissioner	H	-	-	-	11,706	4	2080	E	N
Winter Park	Commissioner	L	2,400	-	-	-	4	1040	E	N

Surveyed Job Descriptions

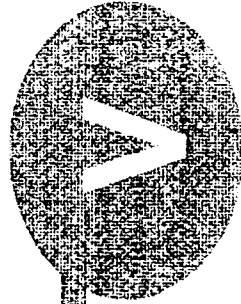
Part IV

Job Descriptions

Benchmark Job	Description	Qualifications
Commissioner	NO DESCRIPTION FOR THIS. CITIES HAVE THEIR OWN	

Glossary & Index

Part

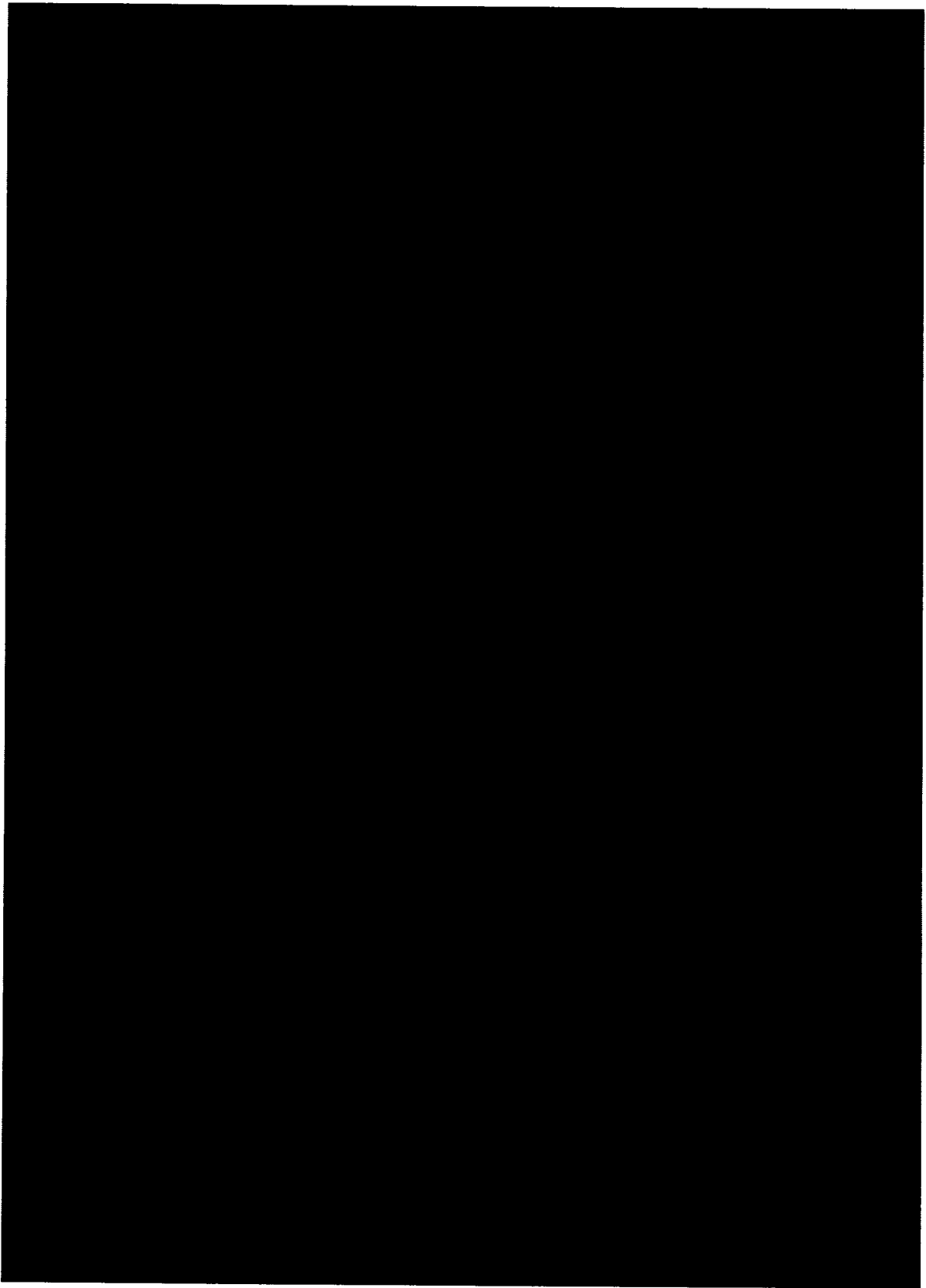


Glossary of Terms

- Benchmark**
The benchmark title represents a generalized job description and minimum qualifications. Participants match their job positions to the closest relevant universal benchmark. (See H/S/L below)
- Title**
This field refers to the title of the position being reported by the participant.
- High/Same/Low (H/S/L)**
This level describes how closely an particular participants job matches the universal benchmark
- Reports To**
This field indicates who the position reports to directly.
- # Pos.**
This field indicates the number of incumbents employed by the reporting agency.
- Min**
This field indicates the minimum salary range reported by the participating agency.
- Mid**
This field indicates the midpoint salary range reported by the participating agency. Some agencies will report a "control point" instead of a mathematical midpoint.
- Max**
This field indicates the maximum salary range reported by the participating agency.
- Avg**
This field indicates the "actual average" salary range reported by the participating agency.
- Hrs**
This field indicates the number of hours the reported position works annually.
- FLSA**
This field whether the position is FLSA exempt or no-exempt.
- BB**
This field indicates that the reported position uses "roadbanding", a practice or collapsing multiple pay grades.

Index

Commissioner B.10.15



TO: Rafael Granado, City Clerk
FROM: Robert Rosenwald, Sr. Asst. City Attorney
DATE: June 28, 2013
RE: Commissioner Gongora's Charter Review Proposed Submissions

Commissioner Gongora, after consultation with the LGBT Committee, suggests that the Charter Review and Revision Board consider the following suggested changes to the Citizen's Bill of Rights at its meeting on Monday, July 1, 2013. Commissioner Gongora would like the Board's input for a proposed ballot question to be considered at the July 17, 2013 City Commission meeting:

A(16). *Nondiscrimination.* No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, gender identity, disability, marital status, familial status, or age.

A(17). ~~Reserved.~~ Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach shall discriminate in employment practices and benefits offered based upon an employee or applicant's gender identity, race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.

A(18). The City of Miami Beach shall make reasonable or best efforts to recruit applicants for employment or contracts with the City from people of color, women, lesbian, gay, bisexual, or transgender, and the disabled.

A(18). 19.

The underlined is new proposed text to an existing section. **bold underlined** represents a new charter section rather than an amendment to an existing section.

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July 15, 2013

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Jose Smith, City Attorney
Debora Turner, First Assistant City Attorney
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Meeting Agenda

Monday, July 15, 2013 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. **Accept Minutes Of The July 1, 2013 Charter Review & Revision Board Meeting.** (See Item 1)
2. **Discuss scheduling of additional Charter Review & Revision Board meetings.**
3. **Discussion of Proposed Charter Amendments** – Debora Turner, First Assistant City Attorney to present. Continued from June 24, 2013; Discussed at the July 1, 2013.
 - a. Compensation For Mayor And City Commissioners To Include Salary And Benefits.
 - b. Election Versus Appointments When Vacancies Occur.
 - c. Term limits, and removing the word "consecutive."
4. **Discussion of Section 2.04 – Induction And Meetings** - Donald Papy, Chief Deputy City Attorney, to present.
 - a. Continued Discussion of the following clause: "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."

5. Discussion of the Citizens' Bill of Rights –

- a. Miami Beach United – Proposed Charter amendment to the Miami Beach Citizens' Bill of Rights (including definition of HOA), Mark Needle and Christine Florez, Miami Beach United, to present. (See item 2)
- b. Proposed Ballot Question(s) For July 17, 2013 – Requested by Commissioner Góngora – Amending Charter Adding A(17) and A(18). (See item 3)

A(16). *Nondiscrimination.* No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, gender identity, disability, marital status, familial status or age.

A(17). Reserved. Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach shall discriminate in employment practices and benefits offered based upon an employee or applicant's gender identity, race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.

A(18). The City of Miami Beach shall make reasonable or best efforts to recruit applicants for employment or contracts with the City from people of color, women, lesbian, gay, bisexual, or transgender, and the disabled.

A(18). **19.**

The underlined is new proposed text to an existing section. **Bold underlined** represents a new Charter section rather than an amendment to an existing section.

- c. Preservation Of Beaches – Proponent Rick Preira

6. Discussion regarding report to Commission by LTC from the City Clerk.

PENDING ITEMS

- Discussion of Charter provisions – one by one.
- Mandate That Employees Should Be Courteous To Citizens In The Bill Of Rights - Proponent Stephen Zack, Chair
- Ethics In Government / Code Of Conduct - Proponent Stephen Zack, Chair
- Over Scale Development In Residential Areas – Proponent Stephen Zack, Chair
- Preserving The Historical Value Of Miami Beach - Proponent Terry Bienstock
- Electing Officials By Open Seats - Proponent Scott Diffenderfer

MIAMI BEACH

CITY OF MIAMI BEACH PUBLIC NOTICE CHARTER REVIEW BOARD

NOTICE IS HEREBY given that a meeting of the Miami Beach Charter Review Board will be held in the City Manager's Large Conference Room, Fourth Floor, City Hall, Miami Beach, Florida, on **July 15, 2013 at 4:30 p.m.**

Pursuant to Section 8.01 of the Miami Beach City Charter, review of the Charter shall occur every ten years. The 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.

TOPICS FOR DISCUSSION:

1. Citizens' Bill of Rights
2. Miami Beach United - Proposed Charter Amendments
3. Preservation Of Beaches
4. Nondiscrimination provision of the Citizens' Bill of Rights
5. Section 2.04 – Induction And Meetings
6. Review of Proposed Ballot Title and Ballot Summary
 - a. Compensation For Mayor And City Commissioners To Include Salary And Benefits
 - b. Election Versus Appointments When Vacancies Occur

INQUIRY may be directed to the City Clerk at 305.673.7411. Please visit the Charter Review Board's website at <http://www.miamibeachfl.gov/scroll.aspx?id=72572> for the latest meeting information and agendas.

INTERESTED PARTIES are invited to appear at these meetings, or be represented by an agent, or to express their views in writing addressed to CharterReview@miamibeachfl.gov, or by mail to 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. This meeting or any of the items herein may be continued, and under such circumstances additional legal notice will not be provided.

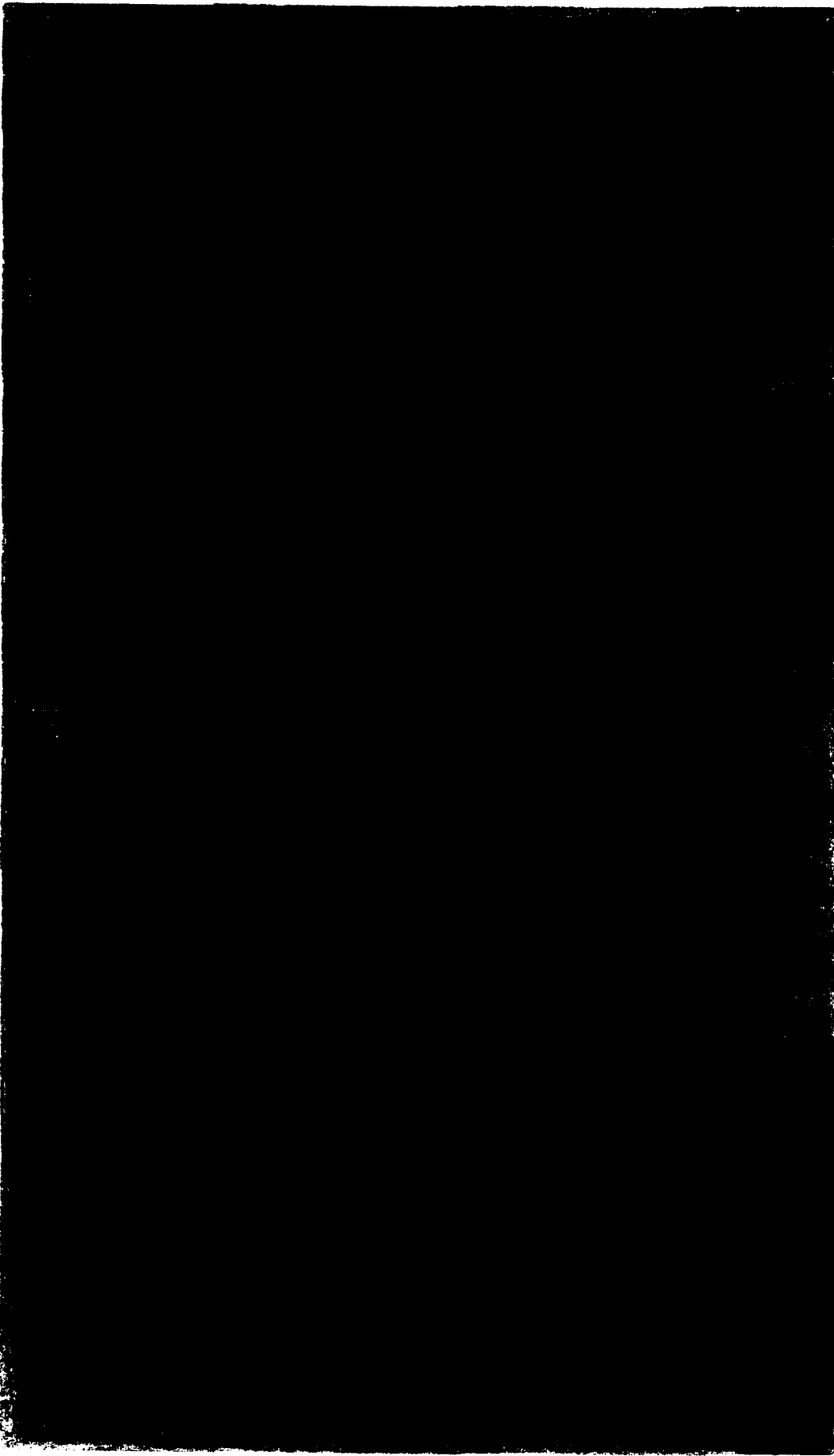
Members of the City Commission may be in attendance.

Rafael E. Granado, Esq., City Clerk
City of Miami Beach

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 its meeting or its 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 #792)



ITEM 1

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MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair	-	Absent	
Aaron Perry, Vice Chair	-	Present	
Scott Diffenderfer	-	Absent	
Jacqueline Lalonde	-	Present	
Rick Kendle	-	Present	Came in at 4:39 p.m.
Alex Fernandez	-	Present	
Richard "Rick" J. Preira	-	Present	

Staff:

Donald Papy, Chief Deputy City Attorney	-	Present
Debora Turner, First Assistant City Attorney	-	Present
Rafael E. Granado, City Clerk	-	Present
Liliam Hatfield, OAV, City Clerk's Office	-	Present

MINUTES

Monday, July 1, 2013 at 4:38:07 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 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.

Meeting called to order at 4:38 p.m., by Vice-Chair Perry in the absence of Chair Zack. Several attempts were made by Chair Zack and City Clerk staff to establish communication by telephone, as he was out of the Country, but a connection could not be established despite various attempts.

Roll call taken by Rafael E. Granado, City Clerk; Absent: Member Diffenderfer and Chair Zack. Member Kendle came in at 4:39 p.m.

Vice-Chair Perry informed the Board that an Amended Agenda was distributed.

1. **Accept Minutes Of The June 24, 2013 Charter Review & Revision Board Meeting.**

Motion by Member Fernandez to approve the minutes; seconded by Member Lalonde, with the amendments as submitted by the Legal Department; Voice-vote: 4-0. Absent: Chair Zack and Members Diffenderfer and Kendle.

Member Fernandez made a recommendation in the past that future agendas be discussed in order by Charter section. He asked if there was consensus. Member Lalonde added that today they should focus on the Citizens Bill of Rights, but she agrees that going forward discussion items should be by Charter section.

Discussion held regarding public participation. Member Lalonde asked the City Clerk if there are time sensitive items due to deadlines, in order to adopt changes to the Charter at the November election. City Clerk Granado explained that the actual deadline, as far as the Miami-Dade County Department of Elections to put an item on the November 5, 2013 ballot is September 6; however, the last City Commission meeting scheduled before that is the July 17, 2013 Commission meeting deadline, and that any proposed questions would need to be submitted to the City Commission for the July 17, 2013 agenda as that is the last regularly scheduled Commission meeting for submission of proposed ballot questions for the November 5, 2013 ballot. Discussion continued. The Board discussed that it did not recommend any ballot questions at this time.

Mark Needle, Miami Beach United Board Member, stated that the proposed Charter amendments for the Miami Beach Citizens Bill of Rights has been discussed and they have received input from the Commissioners, the public and neighborhood associations, and he agrees that other residents would like to see the proposed ideas and comments on them.

Member Fernandez suggested that to do it right they need a representation of the public; he is hesitant to take the Bill of Rights piece meal. Other people may have some good input to contribute to this. Member Lalonde asked if they could delay the Bill of Rights meeting, in order to notify the public. Discussion continued regarding the definition of Neighborhood Association.

Vice-Chair Perry stated that the Citizens' Bill of Rights is a priority and the Board is motivated, but the public needs to weigh in.

Member Kendle requested the latest proposal of the Miami Beach United. Mark Needle distributed copies to the Board.

MOTION REGARDING CITIZENS' BILL OF RIGHTS:

Motion made by Member Lalonde to discuss this item at the July 15, 2013 CRB Meeting; seconded by Member Fernandez; Voice-vote: 5-0; Absent: Chair Zack and Member Diffenderfer.

Motion by Member Fernandez to discuss the Charter section by section for organizational purposes. Member Preira stated that since the Chair is absent today, he suggested deferring the item and Vice-Chair Perry agreed. Motion died for lack of second. Discussion continued.

Member Lalonde thanked Mr. Needle for attending the meeting and suggested notifying other neighbors to attend the July 15 meeting.

2. Report by Ms. Sylvia Crespo-Tabak of all types of compensation that are received by executive staff and Charter Officials.

Sec. 2.02. - Term and compensation

Vice-Chair Perry introduced the continuation of the item from June 24, 2013.

Sylvia Crespo-Tabak, Human Resources Director, referred to Page 3 of the minutes, she was asked to find out about the Golf Membership, and she found Resolution 2005-26016, in which the issuance of an annual resident single membership to the City's Golf Course is for sitting members of the City Commission. No hard costs are associated with this. The car

allowances are part of the budget process, which is where they are entered and accounted for; it is a line item in the budget. Discussion held regarding transparency of public process.

Ms. Crespo-Tabak, Human Resources Director, also added that the only mandatory coverage today is basic life insurance; there is no mandate regarding health care coverage until January 1, 2014, when the Affordable Health Care Act goes into effect. In regards to salary being adjusted for the CPI to the present date, she explained that May 24, 1966 is when the current salaries became effective. Until 1981, the Bureau of Labor was keeping the CPI according to larger regions, such as the Southern Region, and it was not as specific as today. The numbers between 1967 and 1981 are a bit off, as they are based on the Southern Region. Subsequent numbers are based on the CPI for the Miami-Fort Lauderdale area. If Commissioners' salary were to be adjusted for CPI, today's earnings would be \$43,863 and the Mayor's salary would be \$73,105.

There was discussion between Members Fernandez and Lalonde regarding changes in CPI and its calculation.

Motion by Member Lalonde to accept the CPI methodology as suggested by Ms. Crespo-Tabak. Discussion continued.

Member Fernandez suggested ballot question language: Shall the salary of the Mayor and Commissioners of the City of Miami Beach be based on the Consumer Price Index?

Member Lalonde added language including: The salary of Mayor and Commissioners was established in May 1966. Shall the salary be based on the CPI?

Member Fernandez suggested providing direction to the City Attorney's Office to draft proposed language regarding CPI, and for the Board to review before it is presented to the City Commission.

Member Kendle is in favor of this item, as he is the one that brought up the CPI.

Donald Papy, Chief Deputy City Attorney, clarified that legally Chapter 145 of the Florida Statutes concerns County Commissioners and does not directly apply to the City. In answering Member Lalonde, Mr. Papy stated that using the State formula, the salary would be \$92,000.

Motion made by Member Lalonde to accept the CPI adjusted number as provided by Human Resources, including specific language with reference as when it was established in May 1966, and including adjustments and calculations going forward.

Vice-Chair Perry asked if going in the future this would cause any problems with the salary provisions found in the labor contracts. Donald Papy, Chief Deputy City Attorney, stated that the City traditionally has addressed the issue with five collective bargaining units in addition to unclassified employees on an individualized basis and an annual basis. It does not directly affect what the City does.

Discussion held regarding drafting proposed ballot.

Debora Turner, First Assistant City Attorney, in answering Member Kendle's question, stated that she drafted ballot questions in response to direction at the last meeting. Proposed Ballot Title and Ballot Summary were distributed.

Discussion held regarding two ballot questions combined into one. Member Lalonde asked that this item be deferred until the new language regarding CPI is added.

For clarification, Vice-Chair Perry stated that the Board is requesting one question with both adjustment in salary and terminology regarding compensation.

Debora Turner, First Assistant City Attorney, stated that there is a 75-word limit to each ballot question. Discussion continued regarding drafting the proposed ballot.

Member Lalonde stated that there should be no reason, going forward, to have an increase other than what is required by CPI, and suggested rewriting the ballot questions in its entirety and incorporating the new language. Discussion continued.

MOTION REGARDING PROPOSED BALLOT QUESTION

Motion by Member Lalonde to direct Legal Department to draft a proposed ballot to include current recommendation for compensation, which will bring salary from 1966 at \$6,000 to current level of \$_____ for Commissioners, and \$10,000 to current level of \$_____ for Mayor, and include adjustments and calculations going forward; Legal to bring back to the Board for review; seconded by Member Fernandez. Voice-vote: 7-0. **Debora Turner, First Assistant City Attorney, to prepare and bring back to the July 15, 2013 Charter Review Board Meeting.**

Discussion continued.

Sylvia Crespo-Tabak, Human Resources Director, continued her presentation in reference to Page 28.

Vice-Chair Perry expressed their gratitude, on behalf of the Board, to Ms. Crespo-Tabak, for her thorough research on the subject.

3. City Auditor/Inspector General

Presentation made by Aleksandr Boksner, Senior Assistant City Attorney. Item deferred from June 24, 2013.

Mr. Boksner introduced the item and explained the authority of Inspector General to subpoena records. He explained that the previous Administration sought to make a contractual agreement with the Miami-Dade County Inspector General's Office; with that they sought to create a department by contract to have authority to take action on all things, important or not. The City Attorney's Office position was that it may be problematic to grant them such authority, as they would be perpetuating themselves and justify their own existence. The Miami-Dade County School Board has contracted with the Inspector General, but the City Attorney's position is that an Inspector General, who is in existence as a separate stand-alone department and would not fall under the City Manager's authority, is not a prudent course of action to follow. Mr. Boksner stated that the City Attorney's Office recommendation is to provide for a Special Investigator or Special Prosecutor, which would be approved by 5/7 vote of the City Commission. Subsequently, a resolution will be passed

identifying their authority, which may include subpoenaing records, documents and/or individuals.

Discussion held regarding process to get it to Commission, and regarding the 5/7 vote.

Mr. Boksner provided the example of the debarment procedure, in which the City Attorney's Office forwarded a Memorandum to the City Manager, and the City Manager forwarded the Memorandum to the City Commission, requesting the initiation of debarment proceedings.

Discussion continued regarding process.

Member Fernandez added that ten years ago the subpoena authority was removed from the Charter because it was a power that they could not do much with.

Mr. Boksner explained whether the information derived from that subpoena could ultimately be turned over to the US Attorney's Office, or the State Attorney's Office. Discussion continued.

Vice-Chair Perry is in agreement with the Legal Opinion and asked for further discussion regarding the 5/7 vote brought up by Member Lalonde.

Mr. Papy stated that this should be an extraordinary situation, where there is a wide degree of support, and that is the theory of it. That is the thinking and the logic of it.

Discussion continued regarding Inspector General.

Member Fernandez stated that the City needs a mechanism where they can ensure whether people are doing their job in an ethical, moral and legal manner, that they are not doing anything illegal during the performance of their duties. He referred to the incident of corruption in the City of April 11, 2012 that grabbed media attention.

Vice-Chair Perry agreed that there needs to be a checks and balance within the City.

Discussion held regarding majority vote. Member Lalonde discussed lobbying and her concern with the supermajority.

Member Kendle asked what is being done currently when employees come to work at 10 a.m. and leave at 2 pm. An Inspector General is there to do performance review and identify fraud. Discussion continued regarding appointment of Inspector Generals.

Member Fernandez suggested that an Inspector General should not be appointed by the City Commission, but instead by judges and other ethical professionals, to remove the political aspect from it.

Vice-Chair Perry stated that his concern is that they live in a unique City that they love, and that is why they are here volunteering their time. The City Manager is aggressively looking at each department and creating systems.

Joe Jimenez, Assistant City Manager, on behalf of Jimmy L. Morales, City Manager, informed the Board that since there is no Inspector General in the City, he was asked to take over the ethics and internal compliance if any issues arise. They discussed the idea, and perhaps, in

the future, bring it to the City Commission for the creation of a department. He agrees with the necessity due to the City's history, but he suggested not solidifying it in the Charter, but rather in the City Code.

Discussion held regarding Internal Auditor. Mr. Boksner explained that the City has a False Claims Act that has never been utilized.

Member Fernandez requested a Memorandum of recommendation from the City Attorney and the City Manager's Office with both suggestions; and to bring it back to this Board for review

Joe Jimenez, Assistant City Manager, reiterated that they do not recommend including it in the Charter, but rather try baby steps and do it by Code, via the City Manager.

Member Lalonde recommended a report as to how they are going to reorganize the division, including a whistle blower telephone line, online, and by telephone, visible to the public, so that they can incorporate the entire plan.

Mr. Jimenez stated that some of this action requires Commission approval, due to budget funding issues. Discussion continued regarding resources and funding.

Member Fernandez requested to bring back for Board's review the planning of the creation of the department, as well as the fiscal impact. **City Manager's Office to handle.**

4. Subpoena Powers

See Item 3. Proponent Alex Fernandez.

5. Election Versus Appointment When Commission Vacancies Occur – Referred at the May 19, 2012 Commission Retreat.

Member Fernandez stated that this section of the Charter might need to be bifurcated into two areas; what happens when someone resigns in the middle of their term for any reason, and what happens if someone resigns to run for another seat. They discussed the Resign to Run situation, but he would like to hear what they have in the Charter today, and what has been approved to date on this issue.

Debora Turner, First Assistant City Attorney, explained that she researched several Charters around the State and locally, and found one from North Miami Beach that she distributed to the Board.

Per Member Fernandez's request, Ms. Turner read Section 2.07 into the record:

Sec. 2.07. - Vacancies in city commission.

Any vacancy occurring in the City Commission 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 succeeding general City election and with any further remainder of said unexpired term to be filled by a Commissioner elected at said general election; if the remaining members of the City Commission shall fail or refuse to fill such vacancy within 30 days after it 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 to elect a Commissioner to fill such vacancy for the remainder of the unexpired term.

She presented for consideration language from North Miami Beach, which reads as follows:

Sec. 19. - Vacancies.

Vacancies in elective offices of the City of North Miami Beach shall be filled by the city council pending the next general election, at which an election to fill the vacancy shall be held for the unexpired term. Provided, however, that should any vacancy occur more than one year prior to the next general election, the council shall have no power to fill the same; it shall be filled by a special election to fill the vacancy for the unexpired term, to be held not less than 35 days nor more than 60 days after such vacancy has occurred. When a vacancy is filled by the city council, it shall be done in such manner as shall be provided by the rules of the council, or as provided by separate ordinance.

Vice-Chair Perry asked about the fiscal impact of calling a Special Election, and the City Clerk stated that if it is a Special Election, not held in conjunction with a County Election, it would be approximately \$225,000; if it were an election held in conjunction with County or State Election it would be approximately \$25,000. Discussion held.

Member Kendle stated that in the League of Cities, when there is a vacancy, they are considering offering the seat to the person that had the third most vote in that election.

Member Lalonde stated that she is concerned about the cost of Special Election, but also is concerned about the free will of the people. Discussion continued regarding election cycles in any given year, and subsequently she proposed that elections be tied to the County or State.

Vice-Chair Perry asked what is the requirement for approving a temporary appointment. Discussion continued regarding what occurs if the Commission fails or refuses to fill a vacancy within 30 days after it occurs.

MOTION REGARDING ELECTION VERSUS APPOINTMENTS WHEN VACANCIES OCCUR

Member Lalonde made a motion to incorporate language in the City's Charter as follows:

- Vacancy to occur by appointment
- Appointee can serve until the next Election cycle (County, State or City)
- Extend period of time if failed to appoint to **60 days** instead of 30 days
- After 60 days, if failed to appoint, then a Special Election will be held
- There will be no prohibition on that person running

Motion seconded by Member Kendle. Voice-vote: 5-0; Absent: Chair Zack and Member Diffenderfer. Ms. Turner to bring back proposed language to Section 2.07, per Member Fernandez's request, regarding a Resign to Run situation being effective no later than the night before the election, so that the vacancy can be filled at the same election taking place the following day. **Debora Turner to draft proposal and bring back at the July 15, 2013 Meeting.**

City Clerk Granado reminded the Board members that July 15 is the last scheduled meeting, and he suggested scheduling more meetings.

Member Kendle recommended removing from future Charters the last paragraph of Section 2.04 as follows:

Sec. 2.04. - Induction and meetings.

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. (Res. No. 2012-27903, approved by electorate Aug. 14, 2012)

Discussion was held regarding the meaning of this paragraph.

Donald Papy, Chief Deputy City Attorney, stated that it is a very problematic paragraph. He researched the U.S. Constitution, and it seems to have developed from the notion of creating positions within the government by people who are in the position to create the position, it does not apply to anyone already in office, but he does not know exactly where it came from. Member Fernandez requested for Legal to research further. Discussion continued. **Donald Papy to look at this paragraph to see what the intention of the language was used for and bring back at the July 15, 2013 meeting.**

Member Lalonde explained that there are people that improperly use this paragraph for political purposes.

Member Kendle explained that in reading the paragraph, one can interpret that some of the people running for office will not qualify, and the City Clerk will have to make that decision.

MOTION REGARDING AMENDMENT OF SECTION 2.04

Motion by Member Lalonde to remove the last paragraph in its entirety, pending language review by Legal; seconded by Member Fernandez; Voice-vote: 4-1; Opposed: Member Preira.

6. Preservation of Beaches – Proponent Rick Preira

Item deferred to the July 15, 2013 meeting to be discussed with the Citizens' Bill of Rights.

7. Discussion regarding possible referral of proposed ballot question(s) to the City Commission for the July 17, 2013 City Commission Meeting.

Debora Turner, First Assistant City Attorney, introduced the item regarding term limits, and removing the word "consecutive." There was consensus to defer item to the July 15, 2013 meeting. **Debora Turner to bring back at the July 15, 2013 meeting.**

Discussion held.

Member Kendle explained that there is no rush to discuss this item, and if they were to do it now, it could look political, and everyone is excluded, because people in office are excluded. He suggested deferring it in order not to make it look "political."

Discussion continued.

Vice-Chair Perry stated that they had taken the "politics" out, by not having this apply to any current City officials.

Ms. Turner stated the proposed draft language would commence with the General Election of 2015. Discussion continued.

Member Kendle stated that there was discussion regarding term limits for the Mayor, and they try to keep that separate, because once it is put on the ballot, it may not look right; he suggested putting all items regarding commission salary and term limits all together.

Member Fernandez agreed that this Board should be above any politics and above individuals, they are looking at policies and government documents for the next ten years and perhaps surpass the services of individuals that are being spoken about. He does not see why this should be on this ballot. He thinks it may look as if "politically" induced, when it is not the nature or the spirit of this Board to put items like this before the voters as a "political" operative or agenda.

8. Handout

a. Florida League of Cities & FPPA 2011 Salary Survey Results (See Item 7a.) – Requested to be distributed by Jacqueline Lalonde

9. Issue Requested to be discussed on July 1, 2013, by Commissioner Michael Góngora.

Member Preira suggested that perhaps the language in A(17) should read: "there is no basis to justify discriminating against a person, on any basis whatsoever, and depriving them of the right conferred upon them by law."

Member Fernandez is in support of the item.

Donald Papy, Chief Deputy City Attorney, understands what Member Preira is stating, and explained that the word discrimination is anchored by the categories included. Discussion continued.

Member Preira recommended including more inclusive categories in addition to what Commissioner Góngora proposed, and that the City of Miami Beach does not tolerate any discrimination on any basis whatsoever.

Mr. Papy stated that the key is to identify those categories that are improper or illegal in order to have meaning.

MOTION AMENDING BILL OF RIGHTS, A(16) - DISCRIMINATION – Requested by Commissioner Góngora

Motion made by Member Lalonde to approve the item A(17) and A(18) in the Bill of Rights; seconded by Member Fernandez. No vote taken and discussion continued.

Member Kendle stated that this item has not been discussed enough, and thinks language should be clarified.

Member Fernandez read existing Charter language A(16) into the record.

"16. *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. "

New proposed language reads:

A(17). Reserved. Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach shall discriminate in employment practices and benefits offered

based upon an employee or applicant's gender identity, race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.

A(18). The City of Miami Beach shall make reasonable or best efforts to recruit applicants for employment or contracts with the City from people of color, women, lesbian, gay, bisexual, or transgender, and the disabled.

Discussion continued. Member Kendle stated that they should discuss the consequences of additional language, and since the Bill of Rights will be discussed at the next meeting, he suggested that this item be also included.

Member Lalonde, referring to Paragraph A(18), asked what the terms "reasonable or best efforts" mean or what legal requirement it contains.

Donald Papy, Chief Deputy City Attorney, stated that he does not know the legal intention, but he thinks it is appropriate to think about all the people who may be qualified, including all those covered in the categories. It is a nondiscrimination principle.

There was consensus to defer the item to the July 15, 2013 meeting and include within the Bill of Rights amendments.

Member Fernandez requested notifying United Coalition, Aqua Foundation and any other diverse organizations to participate.

Meeting adjourned at 6:35:21 p.m.

TOPICS FOR DISCUSSION FOR THE JULY 15, 2013 AGENDA

Citizens' Bill of Rights – Deferred from the July 1, 2013 CRB Meeting.

- a. Miami Beach United – Definition Of HOA – Terry Bienstock to present
- b. Section 2.04 – Induction And Meetings – Donald Papy to present
- c. Preservation Of Beaches – Proponent Rick Preira - Deferred 07/01/2013
- d. Proposed Ballot Question(S) For July 17, 2013 – Requested by Commissioner Góngora – Amending Charter Adding A(17) and A(18).

Proposed Ballot Title and Ballot Summary – Presentation by Debora Turner, First Assistant City Attorney. Continued from June 24, 2013; Discussed at the July 1, 2013.

- a. Compensation For Mayor And City Commissioners To Include Salary And Benefits
- b. Election Versus Appointments When Vacancies Occur

Meeting adjourned at 6:27:44 p.m.

Handouts or Reference Materials:

1. Miami Beach UNITED Proposed Charter Amendment for the Miami Beach Citizens' Bill of Rights
2. Sec. 19 – Vacancies – from the City of North Miami Beach
3. Proposed Ballot Title and Ballot Summary

ITEM 2

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Strengthening Resident Rights

Proposed charter amendment for the Miami Beach Citizens' Bill of Rights

Shall Sections (A) and (C) of the Miami Beach Charter, the Citizens' Bill of Rights, be amended to enhance truth and ethics in government; to enhance notice and hearing rights for all residents; to create a right of fair enforcement of city laws; to define rights and courtesies to be provided to neighborhood resident associations; and to create non-judicial remedies for violations of the Citizens' Bill of Rights?

Proposed new language indicated by underscore.

(A) 2. **Truth in government.** All residents shall have the right to expect and receive prompt, courteous, informed responses to all questions regarding city business, including timely access to requested documents. No municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.

(A) 5. **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. For matters affecting a substantial number of neighborhood residents, a reasonable and convenient time certain should be provided and reasonably adhered to or continued to a subsequent time certain. Nothing herein shall prohibit the City or any agency thereof from imposing reasonable time limits for the presentation of a matter. All residents shall have the right to fundamental fairness and due process in connection with any city hearing, board or committee meeting, or public workshop, or related non-public meetings with city staff and individual commissioners, board, or committee members. Residents shall not be required to secure counsel to exercise these rights.

(A) 6. **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. Prior to any zoning or other quasi-judicial hearing, applicants shall make available to the public copies of presentation documents at least 15 days prior to the hearing (including plans, diagrams, renderings, or models, or written legal briefs in an appeal from a prior city hearing). Material changes shall cause the subject to be rescheduled to comply with this requirement unless waived in writing by affected parties.

(A) 8. **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. In any zoning or other quasi-judicial hearing related to land use, affected parties and neighborhood resident associations proximate to the subject property shall have adequate time to address and present evidence and to reasonably cross-examine witnesses, and shall not be required to secure counsel to exercise these rights.

(A) 17. Neighborhood resident association rights. Every organized, inclusive, and officially recognized association of residents for a defined neighborhood, as further elaborated in city code, has the right to expect and receive the following from city officials, employees and agencies:

- All rights afforded to individual residents under the Citizens' Bill of Rights or any other city law;
- The same rights as affected residents for a matter having potential impact within or proximate to any part of the neighborhood;
- Advance courtesy notification, even when formal notice is not required, on matters having potential direct impact within or adjacent to any part of the neighborhood, including public works or utility projects, proposed land use or legislative actions, or similar matters where specific notice to affected neighborhood associations can effectively supplement general public notices.
- Advance courtesy invitation to participate in the planning and design of new or amended ordinances directly affecting any part of the neighborhood, or publicly funded projects within or adjacent to any part of the neighborhood, including review of detailed plans prior to implementation.

(A) 18. Right of fair enforcement. All residents have the right to expect and receive active, fair, and efficient enforcement of all city laws and regulations by city officials, employees, and agencies. Decisions to enforce or not to enforce shall be impartial, objective, and subject to public record review.

(A) 19. 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 and board or committee members shall abide by applicable codes of ethical conduct, shall be provided this Citizens Bill of Rights in the official agenda for all public meetings, and shall sign to indicate compliance upon election, employment, or appointment and on an annual basis, and be subject to all penalties provided for in such regulations.

(C) Remedies for violations. Any resident alleging a violation of this Bill of Rights shall first pursue redress through non-judicial means by submitting the allegation in writing to the City Clerk, who may seek to resolve the matter administratively within a reasonable period of time and shall place unresolved violations on the City Commission agenda for public hearing, with further resident right of judicial appeal or the option of mediation and binding arbitration in lieu of court. In any suit by a citizen alleging a violation of this Bill of Rights filed in the Dade County circuit 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.

ITEM 3

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TO: Rafael Granado, City Clerk
FROM: Robert Rosenwald, Sr. Asst. City Attorney
DATE: June 28, 2013
RE: Commissioner Gongora's Charter Review Proposed Submissions

Commissioner Gongora, after consultation with the LGBT Committee, suggests that the Charter Review and Revision Board consider the following suggested changes to the Citizen's Bill of Rights at its meeting on Monday, July 1, 2013. Commissioner Gongora would like the Board's input for a proposed ballot question to be considered at the July 17, 2013 City Commission meeting:

A(16). *Nondiscrimination.* No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, gender identity, disability, marital status, familial status, or age.

A(17). ~~Reserved.~~ Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach shall discriminate in employment practices and benefits offered based upon an employee or applicant's gender identity, race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.

A(18). The City of Miami Beach shall make reasonable or best efforts to recruit applicants for employment or contracts with the City from people of color, women, lesbian, gay, bisexual, or transgender, and the disabled.

A(18). 19.

The underlined is new proposed text to an existing section. **Underlined** represents a new charter section rather than an amendment to an existing section.

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August 5, 2013

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Jose Smith, City Attorney
Debora Turner, 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, August 5, 2013 at 4:30 p.m.
Commission Chambers, 3rd 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. **Accept Minutes Of The July 15, 2013 Charter Review & Revision Board Meeting.** (See Item 1)
2. **Continuation of Discussion of the Citizens' Bill of Rights**
 - a. Preservation Of Beaches – Proponent Rick Preira
 - b. Mandate That Employees Should Be Courteous To Citizens - Proponent Stephen Zack, Chair
3. **One by One Discussion/Review of Existing Charter Provisions**
4. **Informational item on ballot and Charter Questions for November 5, 2013 –** Materials will be provided on the dais.
5. **Schedule of upcoming Elections –** Alex Fernandez
6. **Unfinished Business**
7. **New Business**

PENDING ITEMS

- Ethics In Government / Code Of Conduct - Proponent Stephen Zack, Chair
- Over Scale Development In Residential Areas – Proponent Stephen Zack, Chair
- Preserving The Historical Value Of Miami Beach - Proponent Terry Bienstock
- Electing Officials By Open Seats - Proponent Scott Diffenderfer

NEIGHBORS CALENDAR

MIAMIBEACH

CHARTER REVIEW AND REVISION BOARD MEETING NOTICE

NOTICE IS HEREBY given that the Miami Beach Charter Review and Revision Board will meet as follows:

DATE	TIME	LOCATION
Monday, August 5, 2013	4:30 PM	Commission Chambers, 3rd Floor, City Hall
Monday, August 19, 2013	4:30 PM	Commission Chambers, 3rd Floor, City Hall

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

Meeting dates, times and locations are subject to change. Please visit the Charter Review Board's website at <http://www.miamibeachfl.gov/central.aspx?id=72572> for the latest meeting information and agendas.

INTERESTED PARTIES are invited to appear at these meetings, or be represented by an agent, or to express their views in writing addressed to CharterReview@miamibeachfl.gov or by mail to 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.

For any and/or all of the above meetings, 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 218.0105, 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 these meetings or its hearings, 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 #798

MIAMIBEACH

HORARIOS DE LA JUNTA DE REVISION DE LA CARTA CONSTITUCIONAL DE LA CIUDAD DE MIAMI BEACH

POR ESTE MEDIO invitamos al público a las próximas reuniones de la Junta de Revisión de la Carta Constitucional de Miami Beach:

DIAS	HORA	LOCALIDAD
Lunes, 5 de agosto del 2013	4:30 P.M.	Cámaras de la Comisión, 3er Piso, Ayuntamiento
Lunes, 19 de agosto del 2013	4:30 P.M.	Cámaras de la Comisión, 3er Piso, Ayuntamiento

El Ayuntamiento Municipal está localizado en el 1700 Convention Center Drive, Miami Beach, Florida, 33139.

Los días, fechas y horarios pueden ser sujetos a cambios. Para la más reciente información en relación con las reuniones y agendas, favor de visitar la página electrónica de la Junta de Revisión de la Carta Constitucional de Miami Beach: <http://www.miamibeachfl.gov/central.aspx?id=72572>.

LAS PERSONAS INTERESADAS pueden participar en esta reunión, o ser representadas por un agente, o pueden expresar sus puntos de vista por escrito a CharterReview@miamibeachfl.gov, o por correo a la Junta de Revisión de la Carta Constitucional, c/o Secretario Municipal, 1700 Convention Center Drive, Primer Piso, Ayuntamiento Municipal, Miami Beach, Florida 33139. Para más información, llame al 305.673.7411.

Uno o más miembros de la Comisión de la Ciudad de Miami Beach puede estar presente y participar en las discusiones.

Rafael E. Granada, City Clerk

De acuerdo a la Sección 218.0105, Estatutos de la Florida, la Ciudad por la presente informa al público que si una persona decide apelar cualquier decisión tomada por la Junta de Revisión de la Carta Constitucional con respecto a cualquier asunto considerado en estos reuniones o en sus audiencias, dicha persona debe asegurarse de que se haga un acta literal de los procedimientos, registro que incluye los testimonios y pruebas que la apelación debe contener. Este aviso no constituye el consentimiento de la Ciudad para la introducción o la admisión de pruebas de lo contrario inadmisibles o irrelevantes, o para desafiar o los retos o apelaciones no permitidos por la ley.

Para solicitar este material en formato accesible, intérpretes de lenguaje de señas, información sobre el acceso para personas con discapacidades o cualquier otro elemento para revisar cualquier documento o participar en cualquier procedimiento por la ciudad, póngase en contacto con nosotros con cinco días de anticipación al 305.673.7411; o los usuarios de TTY también pueden llamar al servicio de transmisión de Florida al 711.

ITEM 1

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MIAMIBEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair	-	(Via telephone at 4:50 p.m.)
Aaron Perry, Vice Chair	-	Present
Scott Diffenderfer	-	Absent
Jacqueline Lalonde	-	Present
Rick Kendle	-	Present
Alex Fernandez	-	Present
Richard "Rick" J. Preira	-	Present

Staff:

Donald Papy, Chief Deputy City Attorney	-	Present
Debora Turner, First Assistant City Attorney	-	Present
Gary Held, First Assistant City Attorney	-	Present
Robert Rosenwald, Esq., First Assistant Attorney	-	Present
Joe Jimenez, Assistant City Manager	-	Present
Rafael E. Granado, City Clerk	-	Present
Liliam Hatfield, OAV, City Clerk's Office	-	Present

PUBLIC

Terry Bienstock, MB United	(Via telephone)
Dr. Morris Sunshine	
Mark Needle, MB United	
Christine Florez, MB United	

MINUTES

Monday, July 15, 2013 at 4:38:07 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.

Meeting called to order at 4:41 p.m., by Vice-Chair Perry in the absence of Chair Zack, who was present via telephone.

Roll call taken by Rafael E. Granado, City Clerk; Absent: Member Diffenderfer.

1. **Accept Minutes Of The July 1, 2013 Charter Review & Revision Board Meeting.**

Motion by Member Fernandez to approve the minutes; seconded by Member Lalonde; Voice-vote: 5-0. Absent: Member Diffenderfer.

Discussion of the Citizens' Bill of Rights – Ballot Question(s) Proposed by Commissioner Góngora for July 17, 2013.

Vice-Chair Perry explained that this meeting will be dedicated in its entirety to discuss the Citizens' Bill of Rights, but asked if they could discuss the language in Commissioner

Góngora's Charter submission regarding the GLBT committee. He introduced Rob Rosenwald, Esq. (See attached Exhibit "A" distributed.)

Rob Rosenwald, Esq., Senior Assistant City Attorney, explained that Commissioner Góngora met with the Gay, Lesbian, Bisexual and Transgender (GLBT) Committee to discuss adding people in protective categories; the first provision amending A(16) adds gender identity to the categories. The additional proposed change to A(17) adds to the Charter language regarding non-discrimination in employment contracting practices. The City's ordinances do not currently require contractors to have a non-discrimination policy; only to offer domestic partner benefits. The Procurement Department normally includes in the contracts that a contractor must agree not to discriminate based on the respective categories, at least with the people they are using to perform the duties for a Miami Beach contract, but it is not in any ordinance, it is just a practice; this codifies it at the Charter level. The proposed ballot question A(18) concerns recruitment and lists the categories. He understood from prior meetings that there was concern from this Board that no one was excluded, and this has been re-written taking that into account. Commissioner Góngora suggested that at an appropriate place in the Charter, any revisions of Section 62 of the City Code, Human Relations, must be approved by a majority of the voters in a Citywide election.

Dr. Morris Sunshine, resident, agreed with the moral thrust behind the statement, and agreed that Section 62-31 should be as inclusive as possible. He submitted a short statement urging the Board to include homelessness to the class of protected citizens. (See Exhibit B).

Member Fernandez stated that this is all about offering opportunity, not taking away opportunity, so it takes it to the next level, and he is in favor of the proposed language as is.

Board Member Lalonde stated that this is a noble discussion regarding the homelessness, but Commissioner Góngora's submission should not be amended to include the homeless issue at this time, but at some point the Board should discuss it, and asked that they reach out to Committees dealing with the issue.

4:51 p.m.

Vice-Chair Perry gave a brief overview of the discussion up to this point to Chair Zack who became available over the telephone.

Member Lalonde made a motion not to include homelessness as a protective class at this time, but requested to have Committees present to the Board. **Rafael E. Granado to handle.**

Member Kendle stated that adding gender identity to the Charter in that paragraph is good, but he reminded that the Charter is to be kept as clear and concise as possible, and he is concerned that religious groups that discriminate may put the City at risk, when this can be included in an ordinance. There are many protective classes including veterans and homelessness, but other cities do not have this language in the Charter.

Chair Zack stated that there are specific laws on this. There is a wealth of law regarding homelessness. He agrees that everyone should have the right to be protected and they should not start naming people in the Bill of Rights.

Discussion continued regarding diversity inclusion and contracting policies.

Member Fernandez shared a working experience when he engaged in business with an entity, and they decided to terminate their business with him because he is homosexual. He does not believe that a government agency should contract or give money to people and companies that engage in these practices.

Discussion continued.

Vice-Chair Perry asked if a company had other companies underneath it, and one of the companies did not comply, but the City wanted to do business with one of the companies, how would that work?

Rob Rosenwald, Esq., explained that staff in Procurement ensures compliance.

Board Member Lalonde asked what are the benefits of having the language in an ordinance rather than in the Charter?

Rob Rosenwald, Esq., explained that the reason the proposed ballot questions were given by the GLBT members was that this could be changed by future Commissions or challenged, and raised to the Charter level increases its effectiveness.

Discussion continued.

Board Member Fernandez stated that in this day and age, are they going to allow a Commission, on a 4-person vote, to change basic human rights. Discussion continued.

Don Papy, Chief Deputy City Attorney, stated that A(17) and A(18) are general statement of aspiration. It could theoretically present issues because of the enforcement arm in the Bill of Rights that would not take into account exemptions and specific ordinances. There are exceptions for religious institutions.

Board Member Fernandez asked that if language was added to the Citizens' Bill of Rights, can this be cured in Court? He read Miami-Dade County's "Remedy for Violations," and explained that if there is an issue of an executed Bill of Rights, it can be corrected by taking it to Court.

Don Papy, Chief Deputy City Attorney, explained that there is an existing ordinance, specific and narrow with certain qualifications, whereas this is a general statement, and theoretically, there can be issues with enforcing this, as it does not have the status the ordinance has.

Discussion continued.

Member Kendle explained that it is unlikely that someone will take this to Court, and his other issue is with groups not covered such as the veterans, but they have State law rights, and he thinks they are taking an aspirational type of document and the language belongs somewhere else in the Code. Discussion continued.

Board Member Lalonde asked Mr. Papy if these protective clauses can be quickly overturned with a majority vote; and if this is included in the Charter, will it prohibit that from happening?

Don Papy, Chief Deputy City Attorney, explained that, as a Charter provision, they cannot be overturned by a Commission vote.

Board Member Preira is concerned about addressing these; he has a concern with A(18) on a couple of levels: 1) categories identified are different from A(16) and A(17) and he is concerned with language uniformity; 2) he is not aware of any historical practice in the parts of the City of Miami Beach not to engage in reasonable efforts to recruit the categories listed in A(18) but on the contrary, Miami Beach is at the forefront. He has a problem with segregating out classes against whom there is no historical pattern of discrimination by the City with respect to recruiting applicants and then granting them special status. How do we comply with A(18)?

Rob Rosenwald, Esq., explained that during his research in the Human Resources Department, the answer was that they do not recruit any minority groups including GLBT. The way it is written, the City would comply if they do recruit, for example, if they retain a recruiter and there are job-listing sites that are aimed at these protective classes, and they should engage in a gay newspaper, and on disabled websites, and all others.

Discussion held regarding recruitment process.

Board Member Fernandez stated that these categories and protective classes are not part of the diverse community, and they need to make sure when recruiting that they reach all-inclusive categories for all to have an equal opportunity.

Chair Zack, stated as a point of information, that this issue was not taken in an orderly fashion, and asked if the other issues had been discussed, as he did not understand the procedure followed.

Member Lalonde explained that they did a bit of both; this issue came up out of order, which they all agreed, but he missed that part of the meeting.

Vice-Chair Perry stated that he understands his point and asked that they move forward and discuss the Citizens' Bill of Rights.

Discussion continued regarding procurement procedures on contracting and discrimination on Miami Beach.

Board Member Kendle suggested that A(17) and A(18) be included in an ordinance. Discussion continued.

Board Member Lalonde stated that if the members wanted to revise the language to include A(17) in its entirety, the paragraph below, and exclude A(18) at this time, they can compromise on this. Discussion continued regarding religious groups. Member Kendle stated that this is a "feel good" thing to have in the Charter.

Don Papy, Chief Deputy City Attorney, clarified that A(17) addresses contracting, and he is not familiar with contracting provisions. At this time, the City has a practice, but this is not codified.

Member Lalonde suggested revised language as follows:

A(17) ~~Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach~~ shall not discriminate in employment practices and benefits offered based upon an employee or applicant's gender identity, race, color, national origin, religion,

gender, sexual orientation, disability, marital status, familial status, or age; and removing A(18) in its entirety.

MOTION 1 REINSTATED

Motion made by Member Lalonde to add A(16) as is, A(17) to the Charter, as amended, and amendment shall be: *The City of Miami Beach shall not discriminate in employment practices and benefits offered based upon an employee or applicant's gender identity, race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age*; and including A(18); seconded by Member Fernandez; No voice vote taken.

Motion by Member Kendle to remove A(18); no second offered. Motion dies.

Mark Needle spoke.

Discussion was held regarding A(18) and the reasons Member Kendle opposes adding A(18). He stated that this should be in an ordinance and not in the Charter. Discussion continued.

Chair Zack stated there is no need for the last paragraph that proposes an amendment to the Charter because that is in the City Code, and he cannot imagine someone trying to change it.

Rob Rosenwald, Esq., explained that the proposed amendment to the Charter (unnumbered) is to prevent a diminution in rights or duties established in City Code Chapter 62 unless done so by referendum.

Discussion continued.

Chair Zack explained that there are certain basic principles, such as non-discrimination, in the Charter, and if anyone tried to do that or if someone is discriminated again, they can bring action against the City.

Rob Rosenwald, Esq., explained that the language is general and requires some interpretation. Commissioners have carved specific rights and responsibilities towards employees and public accommodations and have created committees and have given these committees tasks to protect people; the ordinance gives specific things that the Charter does not, to people that have fought to get them. The last paragraph says that the things that people have fought for and won cannot be taken away by the Commission.

Chair Zack is all for nondiscrimination but still believes that it does not belong in the Charter. Discussion continued regarding domestic partners benefits.

Member Kendle expressed his opposition. Discussion continued.

Final Motion 1:

Motion made by Member Lalonde to add A(16) and A(17) to the Bill of Rights and the unnumbered proposed Charter amendment regarding changes to Chapter 62 requiring referendum, as amended; seconded seconded by Member Fernandez; Voice-vote: 4-1; Opposed: Member Kendle. **Debbie Turner and Rob Rosenwald, Jr. to handle.**

Debora Turner, First Assistant City Attorney, explained that in order for this item to get to the Agenda at this time, it would be as an addendum item. Discussion held.

Rafael E. Granado, City Clerk, stated that perhaps Rob Rosenwald can verbally communicate to the City Commission the recommendations of the Charter Review Board and its proposed language. **Rob Rosenwald to handle.**

Discussion of the Citizens' Bill of Rights –

- a. Miami Beach United – Proposed Charter amendment to the Miami Beach Citizens' Bill of Rights (including definition of HOA), Mark Needle and Christine Florez, Miami Beach United, to present.

Terry Bienstock, via the telephone, introduced himself.

Mark Needle, Miami Beach United Board Member, distributed a sample ordinance from St. Johns County (Exhibit C) and introduced the item. He is here with Christine Florez and Terry Bienstock. He suggested that they discuss the remedies, how they function and what the focus is. He explained that the idea is to provide more enforcement before going to Court and provide a mechanism for citizens to bring those violations to the attention of the City, so that practices can be modified and strengthened over time or air them at Commission level.

Vice-Chair Perry asked about the status of a neighborhood association.

Member Kendle explained that the enforcement is the most important issue.

Discussion continued regarding definition.

Christine Florez spoke and discussion continued.

Joe Jimenez, Assistant City Manager, agreed that the remedies are important, but should be left to the end, since until they know what the duties are, this could cause someone to be fired.

Member Fernandez stated that associations are seeking rights given to residents, but in a different way; through the Code, not the Charter, and that is where he sees some of these things might fit better in the Code.

Gary Held, First Assistant City Attorney, stated he is concerned with ambiguity and vagueness, which would create unintended or unexpected consequences for many people. As this language is aspirational, greater writing precision is required.

Mark Needle stated that comments from the Board were that the pieces coming from the neighborhood rights should be for every citizen, and those points that were in the initial association rights have been added to the other part of the Charter where they fit. What is left of the neighborhood piece, is that if one is registered with the City, then you get benefits; the City can define how that happens and boundaries are defined. The remedy is to start providing notices to an association and there is no real consequence any longer. There are two things left: under Section 17, courtesy notice, and under Section 17 hearing notices, where there is an affected neighborhood association, or one that meets the City standards, and requires advanced notification and invitations to participate in the process. He read the definition (Exhibit C): "Neighborhood Association" or "Association" shall be any formal or informal association of persons that voluntarily join to register as a Neighborhood Association with the Administration, using a form for purpose of acquiring the benefits of this ordinance

under the Charter. Such registrations must include a geographic Neighborhood Association boundary reasonably described in the registration by the Neighborhood Association. The area must be limited to an area within the City that is characterized by a substantial commonality of interest and a history of identification as a neighborhood separate from others." He stated that the intent is not to create something that privileges neighborhood association over individuals, but gives them equal rights when qualified. This is an issue for the Charter Review Board to decide.

Board Member Fernandez explained that this is for the City Commission to approve.

Discussion continued.

Chair Zack stated that there are two different things; one is the ability to exercise certain rights and the other one is to notice. What rights does the notice give you?

Member Preira mentioned that before a remedy is devised, there has to be an injury, and he perceives that these associations are composed of residents, and residents already have the rights that we are trying to convey on the entity; and those associations come before a Commission or a Board in the City they have power; he does not understand the necessity of conveying legal identity.

Ms. Florez spoke and discussion continued regarding association standing.

Member Lalonde explained that Terry Beinstock and she live on Sunset Islands III and IV and they had a developer building a project out of scale, inconsistent in the neighborhood as it was adjacent to a single family home; they had no legal standing in the association, even though they were impacted, the only person with standing did not even live there, and that is what the concern is.

Discussion held.

Gary Held, First Assistant City Attorney, clarified that incorporated associations for appeal reasons cannot be represented by individuals that do not have standing in Court.

Mr. Bienstock explained that they are trying to accomplish having certain notification rights for neighborhood associations and a voice to participate in zoning, planning and land use issues as they come up, which directly affect the association or residents of that association. If an individual can stand and speak, a Neighborhood Association should be able to have the same right to stand up and speak, provide witnesses and cross-examine as individuals within the association. It is the practice of the City, but not a requirement, so there have been inconsistencies.

Chair Zack asked if there has been a legal determination by a Court that has been appealed that a Neighborhood Association has no standing to object to a building that would change the character of a neighborhood. He suggested finding out if the City has a problem or not with this situation.

Discussion continued.

Mr. Bienstock explained, that over time, there have been many problems, and they want to correct it in a uniform fashion once and for all. Discussion continued. There is much

misinformation and they want to provide a set of rules to ensure that the association has no more, but the same, rights that an individual has to participate.

Discussion continued.

Chair Zack asked if any association that qualifies under State law, does it not have to receive notice and have standing before the Commission, is that acceptable?

Mr. Held explained that they still need a registration process.

Mark Needle explained that not all associations are homeowners associations, the rules that need to be drafted need to account for that, and they should have a voice in the City process. Discussion continued. He urged the committee to adopt the basic principles for inclusion in the Charter and the definitions can be legislatively done subsequently. Discussion continued.

Member Fernandez suggested that they are giving rights and due process for people that may not need them.

Joe Jimenez, Assistant City Manager, explained that the problem is, if an ordinance is passed, he cannot interpret to staff what "approximate to the subject property is", or "adequate time", or "reasonably cross-examine", "advance courtesy notification on matters having potential direct impact", and "advance courtesy invitation to participate in planning and design"; if two associations come in with their points/views, and they do not agree, does he have to invite both? He has met with both individuals present on this issue separately many times in the few weeks he has been with the City, which shows that they have direct access to participate in the planning.

Member Kendle still believes this does not belong in the Charter; and they are going way beyond the aspirational Bill of Rights.

Gary Held, First Assistant City Attorney, stated that there is a difference between giving the opportunity for notice and the right to speak, but given the same rights as in any City law, that would require a review of the entire City Code to see the implications of that, and that may create complications that are unworkable.

Member Fernandez stated that the group is better served if this goes in front of the City Commission, to formalize the name of the association and codify. The proposed language does belong in the Charter, and they should discuss other ways of doing remedies, but he thinks the Association has to be an established entity. Discussion continued.

Member Kendle suggested they meet with the City Attorney's Office to rewrite the definition of a Neighborhood Association.

Gary Held, First Assistant City Attorney, stated that he is able to work with after August.

Motion made by Member Lalonde to send back to the City Attorney's Office to draft language; seconded by Member Kendle; Voice-vote: 5-0; **Gary Held to handle.**

Discuss scheduling of additional Charter Review & Revision Board meetings.
Vice-Chair Perry and Board members agreed to meet on the following days:

Monday August 5 and
Monday August 19

Meeting adjourned at 6:30 p.m.

TOPICS FOR DISCUSSION FOR THE JULY 15, 2013 AGENDA

Citizens' Bill of Rights – Deferred from the July 1, 2013 CRB Meeting.

- b. Section 2.04 – Induction And Meetings – Donald Papy to present
- c. Preservation Of Beaches – Proponent Rick Preira - Deferred 07/01/2013

Handouts or Reference Materials:

1. Memorandum from Robert Rosenwald, Esq, to Rafael Granado, City Clerk (Exhibit "A")
2. Proposal from Morris Sunshine, Ph.D., on homelessness as protected class (Exhibit "B")
3. Miami Beach UNITED Sample Ordinance from St. Johns County (Exhibit "C")

RECEIVED
2013 JUL 15 PM 3:59
CITY CLERK'S OFFICE

TO: Rafael Granado, City Clerk
FROM: Robert Rosenwald, Sr. Asst. City Attorney
DATE: July 15, 2013
RE: Commissioner Gongora's Charter Review Proposed Submissions

Commissioner Gongora, upon resolution of the LGBT Committee, suggests that the Charter Review and Revision Board consider the following suggested changes to the Citizen's Bill of Rights at its meeting on Monday, July 15, 2013. Commissioner Gongora would like the Board's input for a proposed ballot question to be considered at the July 17, 2013 City Commission meeting:

A(16). *Nondiscrimination.* No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, gender identity, disability, marital status, familial status, or age.

A(17). ~~Reserved.~~ Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach shall discriminate in employment practices and benefits offered based upon an employee or applicant's gender identity, race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.

A(18). The City of Miami Beach shall make reasonable efforts to recruit applicants for employment or contracts with the City from all those qualified, including, but not limited to, people of color, women, lesbian, gay, bisexual, or transgender persons, and the disabled.

A(18). 19.

Commissioner Gongora also suggests that the Charter Review and Revision Board consider the following suggested addition to the appropriate Charter article and section:

Any revision to Section 62 of the Code of the City of Miami Beach, entitled Human Relations, that repeals, diminishes, or otherwise negatively impacts a right or duty established in that section that inures to the benefit of a member of the classification categories as defined by section 62-31 must be approved by a majority of the voters in a citywide election.

The underlined is new proposed text to an existing section. **Underlined** represents a new charter section rather than an amendment to an existing section.

EXHIBIT A

Proposal from Morris Sunshine, Ph.D.

The city shall review all of its anti-discrimination ordinances and add homelessness to the class of protected citizens. (Now, race, nationality, ethnicity, gender, sexual orientation and age.)

Proposed Amendment:

The City of Miami Beach shall consider homelessness a protected class.



Section 1. Definitions.

For purposes of this Ordinance, the following definitions shall apply:

"Applicant" shall mean the applicant for any land use change as described in Section 2.D.

"Neighborhood Association" or "Association" shall be any formal or informal association of persons that voluntarily join to register as a Neighborhood Association with the St. Johns County Administrator or his/her designee on an application form provided by the County Administrator or his/her designee, for purpose of acquiring the benefits of this Ordinance. Such registrations must include a geographic Neighborhood Association boundary reasonably described in the registration by the Neighborhood Association. The area within such boundary must be limited to an area within the County which is characterized by a substantial commonality of interest and history of identification as a neighborhood separate from others within St. Johns County.

Section 2. St. Johns County Neighborhood Association Bill of Rights.

Each "Neighborhood Association" in St. Johns County properly and currently registered according to the terms of this Ordinance shall be accorded the following rights which it shall be the duty of the St. Johns County Administrator and his designees to provide:

- A. Prompt and courteous responses to all reasonable County business questions, document requests, and meeting requests submitted to the County Administrator or his/her staff. The time of response may vary depending on the attendant circumstances, but the County shall endeavor to make at least a preliminary response of an appropriate type within two business days of the initial inquiry. This right pertains to all persons.
- B. A timely personal response of its BCC district Commissioner or designee to questions directed to the County Commission office. This right pertains to all persons.
- C. Advance notification and a reasonable opportunity to provide input to the County of any substantial County initiated or permitted public works or utility projects. Such notification shall include the day(s) and probable length of any street closures, utility interruptions, or other adverse impacts on the neighborhoods, and the name and phone number of the County representative most knowledgeable and able to immediately answer questions during the course of the project.
- D. Notification of the submission of any application or pre-application for County approval of a Special Use, Temporary Use, Variance, Vesting, Rezoning, Development of Regional Impact, PUD, PRD, Comprehensive Plan change, or other significant land use change application¹, or change or amendment thereof.

¹ For the purposes of this Ordinance, each of these applications is deemed to be a "land use change."

MIAMIBEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Jose Smith, City Attorney
Debora Turner, 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, August 19, 2013 at 4:30 p.m.
Commission Chambers, 3rd 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. **Accept Minutes Of The August 5, 2013 Charter Review & Revision Board Meeting.**
(See Item 1)
2. **Review/Discussion Of Letter To Mayor Bower And City Commissioners Relating To Resolutions 2013-28302 And 2013-28303.** Version A and Version B, incorporating changes requested by Jacqueline Lalonde (See Item 2)
3. **Continuation Of Discussion Of The Citizens' Bill Of Rights**
 - a. Homeless Bill of Rights – Proponent Dr. Morris Sunshine (See Item 3 a)
 - b. Preservation Of Beaches – Proponent Rick Preira
 - c. Preserving The Historical Value Of Miami Beach - Proponent Terry (*Requested to be Deferred by Mr. Bienstock*) (See Item 3 c)
4. **Electing Officials By Open Seats** – Proponent Scott Diffenderfer (See Item 4)
5. **Report of Items Approved, Pending and Rejected/Withdrawn by the Charter Review and Revision Board during previous meetings. Additionally, the Report includes a Report of Miscellaneous Requests by the Charter Review and Revision Board.** (See Item 4)
6. **Scheduling Future Charter Review & Revision Board Meetings**

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ITEM 1

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MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair	-	Present
Aaron Perry, Vice Chair	-	Present
Scott Diffenderfer	-	Present
Jacqueline Lalonde	-	Present
Rick Kendle	-	Present
Alex Fernandez	-	Present
Richard "Rick" J. Preira	-	Absent

Staff:

Donald Papy, Chief Deputy City Attorney	-	Present
Debora Turner, First Assistant City Attorney	-	Present
Rafael E. Granado, City Clerk	-	Present
Liliam Hatfield, OAV, City Clerk's Office	-	Present

PUBLIC

Dr. Morris Sunshine

MINUTES

Monday, August 5, 2013 at 4:40 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 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.

Meeting called to order at 4:40 p.m., by Chair Zack.

Roll call taken by Rafael E. Granado, City Clerk; Absent: Member Preira.

1. Accept Minutes Of The July 15, 2013 Charter Review & Revision Board Meeting.

Motion by Member Fernandez to approve the minutes as amended; seconded by Vice-Chair Perry; Voice-vote: 6-0. Absent: Member Preira. City Clerk Rafael Granado stated that minor revisions had been made by the City Attorney's Office and distributed on the dais.

Debora Turner, First Assistant City Attorney clarified that the revisions deal with Commissioner Góngora's proposals; the two amendments to the Bill of Rights, and the one amendment to the Charter, which was the unnumbered Charter amendment provided at the last meeting.

2. Continuation of Discussion of the Citizens' Bill of Rights

- a) Preservation Of The Resources Of The Beach – Proponent Rick Preira. - Item deferred.
- b) Mandate That Employees Should Be Courteous To Citizens - Proponent Stephen Zack.

Chair Zack suggested that the Administration include this mandate as part of the evaluation process, rather than in the Charter.

Member Fernandez suggested incorporating that citizens and taxpayers should have fair access to speak with City officials, as a basic right.

Vice-Chair Perry explained that it is a culture change that is needed; in private companies, an employee being courteous is a priority, and perhaps this Board can suggest to the City Manager to continue working in improving this culture in the City.

3. Discussion Regarding Neighborhood Association proposed by Terry Bienstock

Chair Zack asked if there were further discussions held with Mr. Bienstock and Miami Beach United. Debora Turner, First Assistant City Attorney, stated that there were to be discussions with Gary Held, Esq., as to how to define homeowners associations. Mr. Held is out for a few weeks, and it is expected that he and representatives of Miami Beach United will discuss this issue by the end of August.

Chair Zack stated that there is nothing this committee is responsible for voting on at this time. Member Lalonde agreed and suggested that this issue come back when there was additional information.

Member Fernandez explained that the City Manager's Office and City Attorney's Office had concerns with the existing language from Miami Beach United.

Rafael E. Granado, City Clerk, stated that the motion during the July 15, 2013 Charter Review Meeting was by Member Lalonde to send back the item to the City Attorney's Office for them to meet with members of Miami Beach United and draft revised language. The vote on that motion was 5-0. **Gary Held and Joe Jimenez, Assistant City Manager, to handle.**

4. New Business

Discussion held regarding meeting schedule and reporting to the City Commission. Chair Zack asked what did the City Commission needed from them as far as a report is concerned. City Clerk Granado explained that at the last meeting, the Board agreed to continue to work and possibly discuss schedule of upcoming elections. For that reason, he distributed the 2014 Election Cycle. He also noted that handouts were distributed, which include all the Resolutions with official ballot questions adopted by the City Commission at its Commission Meeting of July 17, 2013 pertaining to Charter amendments.

Debora Turner, First Assistant City Attorney, explained the ballot questions and read the Resolution titles:

2013-28296

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A Special Election To Be Held On Tuesday, November 5, 2013, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach An Advisory, Now Binding Straw Ballot Question Asking Whether The City Commission Should Adopt A Resolution Urging The Federal Government And The Florida Legislature To Decriminalize And Authorize The Medicinal Use Of Marijuana.

2013-28297

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A Special Election To Be Held On Tuesday, November 5, 2013, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach A Question Asking Whether City Charter Section 1.03(B) Requiring Majority Voter Approval Before The City's Sale, Lease Exceeding Ten Years, Exchange Or Conveyance Of Convention Center Parking Lots Should Be Changed To Require 60% Voter Approval Instead, And To Include Convention Center Campus" (All City-Owned Property Within Civic And Convention Center District Except Convention Center And Carl Fisher Clubhouse) Within The Category Of City-Owned Properties Subject To 60% Voter Approval Requirement, And Clarifying That This Charter Change Is Inapplicable To The Convention Center Project" Ballot Question (To Be Presented Simultaneously On The November 5, 2013 Ballot).

2013-28298

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A Special Election To Be Held On Tuesday, November 5, 2013, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach A Question Asking Whether The City Should Enter Into 99 Year Leases With South Beach Arts Culture Entertainment ("Tishman") Providing For Payment To The City Of Fair Market Rent On These City Properties:

- Convention Center Parking Lots;
- Convention Center Drive;
- Portions Of Convention Center, Center's Air Rights And Parking Spaces;
- 17th Street Garage Site's Ground Floor ("Garage");

For Tishman's Development Thereon Of:

- 800 Room Hotel;
- 20,000 Square Feet Retail/Restaurants North Of 17th Street;
- 70,000 Square Feet Retail/Restaurants In The Garage?

2013-28299

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A November 5, 2013 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether Paragraph A(17) Of The Miami Beach City Charter Citizens' Bill Of Rights Should Be Created Prohibiting Discrimination By The City Of Miami Beach In Its Employment Practices And Benefits Offered Based Upon An Employee Or Applicant's Race, Color, National Origin, Religion, Gender, Sexual Orientation, Gender Identity, Disability, Marital Status, Familial Status, Or Age.

2013-28287

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A November 5, 2013 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether Section 1.07 Of The Miami Beach City Charter Should Be Created Requiring A Majority Vote In A Citywide Election To Repeal, Diminish, Or Otherwise Negatively Impact A Right Or Duty Established In Miami Beach 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 Miami Beach City Code Section 62-31.

Chair Zack wants to understand what the effect on the current negotiations on the Convention Center would be, if these two ballot questions relating to the Convention Center pass (2013-28297 and 2013-28298).

Debora Turner, First Assistant City Attorney, informed the Board members that there is current litigation and an action was recently filed by the City on this matter. The City hopes that the Judge will answer the question as to what language will be on the ballot; how it would affect the Tishman group, and if the Let Miami Beach Decide ballot question passes (2013-28297), would the Tishman project be subject to it.

Vice-Chair Perry asked if Let Miami Beach Decide's ballot question (2013-28297) is approved by the voters, would it immediately affect the current Convection Center project, thus requiring 60% voter approval for the Tishman referendum to pass?

Donald Papy, Chief Deputy City Attorney, stated that this question is being litigated and will be sorted out in Court. Discussion continued. The City Attorney's Office has opined that the ballot question proposed by Let Miami Beach Decide (2013-28297) is prospective, and the change is inapplicable to the Convention Center project, but the final decision will be made by the Court.

Member Fernandez suggested that Chair Zack and Don Papy meet and discuss this issue in another forum. Discussion continued.

2013-28302

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A November 5, 2013 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether Paragraph A(20) Of The Miami Beach City Charter Citizens' Bill Of Rights Should Be Created To Acknowledge The Purpose And Duties Of The City's Administration As Assisting Condominium And Co-Op Owners To Navigate Through The City's Permitting Process; Facilitate Resolution Of Other Condominium-Related Issues With Other Outside Agencies; And Act As A Liaison Between Condominium Or Coop Owners, Management Firms And The City.

2013-28303

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A November 5, 2013 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether Paragraph A(19) Of The Miami Beach City Charter Citizens' Bill Of

Rights Should Be Created To Set Forth Therein The City Of Miami Beach's Policy To Cooperate With The Miami-Dade County Public Schools, And With Other Appropriate Governmental Agencies, Which Will Strive To Improve The Quality And Quantity Of Public Educational Facilities Available To The Citizenry Of The City Of Miami Beach, Florida.

Chair Zack stated that he is not sure the ballot questions in 2013-28302 and 2013-28303 should be in the Citizens' Bill of Rights. Member Lalonde explained that these Resolutions were adopted at the request of Commissioner Libbin.

Member Kendle stated that they should be mindful of the enforceability clauses that Miami Beach United is now bringing forward, because if such a clause passes, anyone can come forward and have a right of enforcement even with the two new proposals in 2013-28302 and 2013-28303.

City Clerk Granado announced that Rick Kendle, Alex Fernandez and Jacqueline Lalonde were at the Commission Meeting on July 17, 2013 where these proposed Charter amendments were discussed and provided their opinions and information.

Chair Zack asked what "public schools" (2013-28303) has to do with the Citizens' Bill of Rights? In his opinion, this is in the wrong place. He suggested that a letter be drafted to the Commission.

Debora Turner, First Assistant City Attorney, stated that Commissioner Libbin proposed the Resolution and it was adopted by the City Commission.

Discussion held.

Member Fernandez explained that some of these issues do not originate from an elected official, but rather from an advisory committee and it works its way up. He cited Resolution 2013-28287 and 2013-28299 as examples, which had been originally advocated by the Gay, Lesbian, Bisexual and Transgender (GLBT) Committee.

Chair Zack reiterated that this language (2013-28302 and 2013-28303) does not belong in the Citizens' Bill of Rights. Prohibiting discrimination belongs in the Bill of Rights. However, these two issues (2013-28302 and 2013-28303), although they may be appropriate for inclusion in the Charter, he recommends a different placement in the Charter, as the provisions of the Citizens' Bill of Rights are a listing of the fundamental rights of the citizens of Miami Beach and these two Resolutions do not rise to that level.

Discussion held regarding rescinding Resolutions and deadlines for submission to Elections.

Member Fernandez agreed with Member Kendle that during election years, when you have candidates running for office, any Charter changes should go through the Charter Review Board. However, the CRB only meets every ten years, and there may be important business to fix which cannot be delayed. Mr. Fernandez agreed that the Commission should not politicize the Charter.

Member Lalonde stated, for the record, that she asked Commissioner Libbin to bring this forward to the CRB, but her request was denied.

Chair Zack stated that this Board has received a number of questions for discussion, but these two these Resolutions (2013-28302 and 2013-28303) were not sent to this Board. He suggested writing a letter to the Mayor and City Commissioners stating that as the Charter Review Board, they would like to have the opportunity to review those questions, and give their input. It is clear that these ballots (2013-28302 and 2013-28303) may be appropriate for the Charter, but these should not be part in the Citizens' Bill of Rights.

Member Lalonde agreed with Chair Zack, and added that a friendly letter should be sent asking if in fact they were to have a special Commission Meeting prior to their regular September 11, 2013 meeting, would they take this issue up to refer to these two proposed Charter amendments (2013-28302 and 2013-28303) to the CRB. She seconded the motion.

Member Fernandez believes that the City Commission as a body should be able to send Charter Amendments directly to the ballot. This year the CRB is convened and he agrees that the City Commission should submit any proposed Charter amendment to the CRB, but in other years, when the CRB is not in place, the City Commission should be able to act as it deems necessary.

MOTION BY ACCLAMATION

Motion reiterated by Chair Zack, to draft a friendly letter to the Mayor and City Commission, and inform them that they will be please to discuss these items and any other items they might want to bring forth. He added that what is in the Citizens' Bill of Rights is of narrow focus, and these two provisions regarding Public Schools and Condominiums, should be considered in the Charter, not in the Bill of Rights. The Citizens' Bill of Rights is a fundamental right of the citizens of Miami Beach; these Resolutions as adopted are not. He asked that a letter be drafted and circulated for Board member's approval.

Chair Zack asked if there was a need for an extension of jurisdiction, and asked for a list of pending items for discussion. Member Fernandez also asked that the Clerk reference his memorandum from April 30, 2013 with his referrals in the next Agenda. **Rafael E. Granado, City Clerk, will provide a list of all items discussed, but that have not come to conclusion.**

Discussion held regarding additional scheduled meetings. No additional meetings were scheduled.

Request to add items at the August 19, 2013 Agenda

Chair Zack requested to have traffic representatives present at the August 19, 2013 CRB Meeting to discuss the severe traffic issues. He explained that during certain events, it is almost impossible to get to Miami Beach. He suggested that any event that is held on Miami Beach should have a traffic plan.

Member Fernandez stated that at times the event organizers have nothing to do with Miami Beach, as they are private events, such as the Memorial Day Weekend (Urban Beach Weekend).

Member Diffenderfer explained that the Transportation Committee (TPC) has discussed this for years, and the City issues permits and creates venues; the City has been very irresponsible with traffic planning. They are building parking structures everywhere, but they do not deal with traffic situation.

Member Lalonde stated that there does not seem to be a sound solution, because there is not enough information. She suggested having someone from the TPC present to the Board. Discussion continued.

Vice-Chair Perry believes that traffic is a concern and they need to look at it in a more global level; by looking at connectivity with Miami Beach and the cities across the bay, light rail, etc. He is concerned about creating rules; there are many special events going on at one time and perhaps there could be a fee that participants pay to fund a cure for this problem, but to have individual event owners have their own traffic plan, he does not think that is going to work.

Member Fernandez added that they could propose recommendations for the traffic situation not to get worse, but the City is building more and approving more clubs, and this is what brings more traffic; it is a growth that is out of scale for the City, and he does not know how to control that growth through the CRB. He feels that they cannot allow the City to keep increasing density until a viable solution for public transportation is found, and for public garages, and that is his frustration with this issue.

Member Lalonde reiterated that this is not in the purview of this Committee, and there is not enough information.

Chair Zack suggested adding language to the Citizens' Bill of Rights stating that the citizens of Miami Beach have the right to reasonable access to its road. This means that when a new project comes up, it has to show that it will not affect the roads and the City should issue permit for every event over 100 people and let the public know how this will affect the traffic. It seems that they are killing the "golden goose." Discussion continued.

Member Kendle explained that if they are talking about an event, that is one thing; if they are talking about the Planning Board, there is some regulation that the Law Department frequently cites that the Planning Board cannot consider traffic as a part of the project's review.

Member Fernandez would like to see in the Charter the powers that the Planning Board has, since this board approves projects with increased density that affect traffic. He requested to see the Charter and powers of the Planning Board having to do with density and what is their clear position. **Richard Lorber to handle.**

Member Diffenderfer stated that the City Commission makes decisions without consulting with the TPC committee. Discussion was held. The TPC suggested obtaining a traffic plan for the Convention Center project.

Member Kendle also requested that the TPC come forward and present to the Board with their recommendations. He also stated that the Planning Board approves plans that will bring more traffic to the City. Discussion held.

Donald Papy, Chief Deputy City Attorney, also suggested inviting the Administration, William Cary and Max Sklar to coordinate efforts in finding a solution to the problem. **Rafael E. Granado to handle.**

Discussion continued.

MOTION TO TABLE THE TRAFFIC ISSUE UNTIL SEPTEMBER

Motion by Member Lalonde; seconded by Member Fernandez to table the item at this time, and invite the Transportation and Parking Committee to make a formal presentation with their recommendations on the traffic issues facing the City at a September CRB meeting. Absent: Member Preira. **Rafael E. Granado to notify Mark Weithorn as suggested by Member Diffenderfer.**

Amendments

Members Fernandez and Kendle made friendly amendments to include the Planning Board, and ask Transit Miami to send some Charter recommendations. **Notify Gary Held, William Cary, Max Sklar.**

Chair Zack asked if anyone objected to adding to the Citizens' Bill of Rights "that citizens of Miami Beach have the right to reasonable access to roads." **Item to be placed in the September Agenda.**

5. Over Scale Development in Residential Areas – Proponent Stephen Zack, Chair

Member Fernandez explained that this item goes hand in hand with what he was talking about the power and authority of the Planning Board, and where the decisions should be made.

6. Preserving the Historical Value of Miami Beach – Proponent Terry Bienstock

Chair Zack requested that Mr. Bienstock be invited at the August 19, 2013 CRB Meeting.

Member Lalonde explained that she is concerned that 99% of the folks in the country rely on their homes to make sure they do not slip into poverty; a person's home is usually their largest asset. The current proposal to have the City involuntarily declare private homes as historic is very concerning to her, as it greatly interferes with property rights. The proposal calls that before a home is demolished it must go through the Design Review Board and the Historic Preservation Board for them to consider if the home is historic. She is concerned that they will rubberstamp every home as "historic," which will be a huge interference with personal property rights. The City has to be mindful that this is a potentially frightening leftist move, and she does not think that anyone should have his or her home involuntarily declared historic. Chair Zack is in agreement with her. Discussion continued.

Member Kendle explained that this should not be in the Charter. He wanted to have an Ordinance requiring deconstruction of homes, so that before a home is demolished, sustainable products are saved and that will also provide a tax incentive from the Federal government. Again, he believes this is better done by Ordinance. Discussion continued.

Member Lalonde stated that there are numerous issues that must be considered before such a Charter amendment is proposed. She wants to understand the issues involved, including architectural issues; she also wants to hear from all the parties involved. Ms. Lalonde explained that this subject is very serious and has a huge impact on homeowners. Discussion held.

Chair Zack suggested that they write a letter to Mr. Bienstock to submit his proposal to the Board. **City Clerk Granado to notify Mr. Bienstock.**

Member Fernandez recognized Dr. Sunshine in the audience, who wanted to speak regarding homeless issues.

Member Lalonde explained that this issue was discussed at the last CRB meeting, but she appreciates Dr. Sunshine's persistence.

Rafael E. Granado, City Clerk, announced that the handout e-mailed by Dr. Sunshine on Saturday, August 3, 2013, and subsequently forwarded to the CRB members via e-mail by Mr. Granado on August 5, 2013 at 10:27 a.m. were also on the dais.

Chair Zack mentioned that several times, they have received information at the dais, and the Board should have a rule that if a document is not received at least five days before the meeting, then the item will be placed at the next meeting.

Discussion held.

Member Lalonde does not want to have people attend meetings thinking that they will have an opportunity to speak when their item is not on the agenda. However, Dr. Sunshine's issue regarding inclusion of a Homeless Bill of Rights in the Citizens' Bill of Rights was discussed at the last meeting, and the Board asked to have more information. She understands Dr. Sunshine's passion for the issue, but the Board decided that they cannot hear the item at this time.

MOTION REGARDING HOMELESS ISSUE

Motion made by Member Lalonde that the issue is out of order; seconded by Member Fernandez; Voice-vote: 6-0; Absent: Member Preira.

Rafael E. Granado, City Clerk, reported that the Homeless Bill of Rights issue has travelled through other committees, such as the Committee on the Homeless and the Miami Beach Human Rights Committee, and the proposal was rejected. However, he stated that the Board may want to reach out to the Committee of the Homeless liaison, for additional information. Member Fernandez requested information from the Committee of the Homeless as to their reasons for rejecting. Item is to be placed at the August 19, 2013 CRB Agenda. **Rafael E. Granado to handle.**

Member Kendle stated that the City of Miami signed an agreement regarding homeless persons, and now the Miami Police is afraid to take any action with homeless individuals in the City of Miami. Mr. Kendle reported that this same agreement was not signed by the City of Miami Beach.

Member Fernandez stated that Miami Beach does a good job with the homeless, and the City goes above and beyond to assist homeless individuals. Including this item in the City Charter might imply that things are being done incorrectly and the homeless' rights are being violated; and this is far from the truth.

Motion made by Member Lalonde to defer and table the item until August 19, 2013 Meeting at a time certain; seconded by Member Fernandez; Voice-vote: 6-0; Absent: Member Preira. **Rafael E. Granado to place Item on the agenda.**

7. Electing Officials by Open Seats – Proponent Scott Diffenderfer

He clarified that he was proposing open seats. He is not prepared to present today, but explained that there are different types of open seats; in essence, how this works is that there are three seats open, and the three top vote getters fill the seats.

Member Lalonde expressed her concerns about open seats, and Member Diffenderfer explained that there are different methods, such as instant vote-off running, transferrable votes, differential voting, etc.; and these are legal in Florida.

Member Fernandez stated that he researched the preferential voting and transferrable votes methods, which he wanted to refer to CRB, and reached out to the Elections Department and apparently the i-Votronic machines that the County uses for elections at this time do not support the transferrable votes and the preferential voting. Some cities have adopted the method, pending the County to update the technology. He explained the transferrable votes method, and added that it is a more "democratic" way of holding elections, and the Good Government Institute prefer this as an alternative, as it does not deny anyone a vote. Discussion continued.

Chair Zack explained that there are books and organizations dedicated to changing the way elections are held today; he suggested deferring the item, and for Member Diffenderfer to prepare a document explaining the details of the issue. **Scott Diffenderfer to handle.**

Member Fernandez explained that there are two separate issues; 1) open seats, and 2) the way elections are handled, since the current system can be kept and at the same time use instant runoff, transferrable voting and preferential voting. He added that there are some YouTube videos that explain this issue, and he asked the City Clerk if a link could be sent to the City Clerk for distribution to all Board members. **Member Fernandez to provide the link.**

Discussion continued regarding groups and the perception people have about districts versus groups.

8. Ethics In Government Code of Conduct – Proponent Stephen Zack, Chair

Chair Zack asked if the City has an Ethics Code. Debora Turner, First Assistant City Attorney, explained that "ethics in government" is already codified in the City Code. **Chair Zack withdrew the item.**

9. Interim Report - Chair Zack requested to have an interim report, listing what has been voted on, what has been rejected, and what remains to be done, only for distribution for the Board Members in a few days before the next meeting. Rafael E. Granado to handle and a list will be provided for the August 19, 2013 Agenda.

10. Review of Existing Charter Provisions

Chair Zack suggested that each member take responsibility for the discussions of the Charter provisions each wants to review. He feels it is a waste of time to review the Charter generally and no one taking responsibility for suggesting ways to improve them. He asked each Member to look at the Charter by the next meeting, and if there are any provisions that they want to improve, along with suggested improvements. Members to submit to the City Clerk by August 9th. **All Board members to review and submit proposed changes.**

Items To Be Placed At The August 19, 2013 CRB Agenda:

Homeless Issue – proposed by Dr. Morris Sunshine

Preserving the Historical Value of Miami Beach – proposed by Terry Bienstock

Items For the September 2013 Meeting

Traffic Issues – Planning Board staff to present

Motion made to adjourn the meeting by Member Lalonde; seconded by Vice-Chair Perry; Voice-vote: 6-0. Absent: Member Preira. Meeting adjourned at 6:06:04 p.m.

Handouts and Reference Materials:

1. Email from Dr. Morris Sunshine dated August 3, 2013 RE: Protections for homeless people, with the following attachment: Chapter 356 2012 – S 2052 SUBSTITUTE B Enacted 06/20/12 "and An Act Relating to Property – Rhode Island Fair Housing Practices Act."
2. Resolutions 2013-28296, 2013-28297, 2013-28298, 2013-28299, 2013-28302 & 2013-28303
3. Election Calendar for 2014 Dates
4. List of Candidates for the November 5, 2013 City Election, as of August 5, 2013.

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ITEM 2

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MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

August 6, 2013

Mayor Matti Herrera Bower and
Members of the City Commission
Miami Beach City Hall
1700 Convention Center Drive
Miami Beach, Florida 33139

Dear Mayor Bower and City Commissioners:

At the August 5, 2013 Charter Review & Revision Board (CRB) meeting, the CRB was given information as to the Charter questions approved by Resolution by the City Commission at its July Commission meeting that will be on the November 5, 2013 ballot. With respect to the following two Resolutions, calling for a Special Election on November 5, 2013 to amend the Citizens' Bill of Rights, adopted by the City Commission on July 19, 2013:

2013-28302

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A November 5, 2013 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether Paragraph A(20) Of The Miami Beach City Charter Citizens' Bill Of Rights Should Be Created To Acknowledge The Purpose And Duties Of The City's Administration As Assisting Condominium And Co-Op Owners To Navigate Through The City's Permitting Process; Facilitate Resolution Of Other Condominium-Related Issues With Other Outside Agencies; And Act As A Liaison Between Condominium Or Co-op Owners, Management Firms And The City.

2013-28303

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A November 5, 2013 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether Paragraph A(19) Of The Miami Beach City Charter Citizens' Bill Of Rights Should Be Created To Set Forth Therein The City Of Miami Beach's Policy To Cooperate With The Miami-Dade County Public Schools, And With Other Appropriate Governmental Agencies, Which Will Strive To Improve The Quality And Quantity Of Public Educational Facilities Available To The Citizenry Of The City Of Miami Beach, Florida.

the CRB noted that neither of these two resolutions was referred to it prior to consideration by the City Commission on July 19, 2013. After briefly discussing these two Resolutions, it was the CRB's position that, although these suggested additions may be appropriate for inclusion in the Charter, it would have recommended a different placement in the Charter, as the provisions of the Citizens' Bill of Rights are a listing of the fundamental rights of the citizens of Miami Beach and these two resolutions were not deemed to rise to that level.

The CRB respectfully requests that during its term, which presently expires on January 1, 2014, that all future proposed Charter amendments be referred to it for its input prior to consideration by the City Commission. The CRB is working diligently to ensure that the Charter meets the current needs of our City and examining whether any changes should be made to meet the City's needs into the future.

Respectfully,

Stephen Zack, Chair
For Charter Review & Revision Board

M:\\$CMB\CITYCLER\0000 CHARTER 2013\2013 CHARTER REVIEW\Letter To Mayor Bower And City Commission Reg.Docx

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

August 6, 2013

Mayor Matti Herrera Bower and
Members of the City Commission
Miami Beach City Hall
1700 Convention Center Drive
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Dear Mayor Bower and City Commissioners:

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the CRB noted that neither of these two resolutions was referred to it prior to consideration by the City Commission on July 19, 2013. After briefly discussing these two Resolutions, it was the CRB's position that, although these suggested additions may be appropriate for inclusion in the Charter, it would have recommended a different placement in the Charter, as the provisions of the Citizens' Bill of Rights are a listing of the fundamental rights of the citizens of Miami Beach and these two resolutions were not deemed to rise to that level. If possible, the CRB request that these two Resolutions be rescinded and submitted to CRB for review.

The CRB respectfully requests that during its term, which presently expires on January 1, 2014, that all future proposed Charter amendments be referred to it for its input prior to consideration by the City Commission. The CRB is working diligently to ensure that the Charter meets the current needs of our City and examining whether any changes should be made to meet the City's needs into the future.

Respectfully,

Stephen Zack, Chair
For Charter Review & Revision Board

M:\\$CMB\CITYCLER\0000 CHARTER 2013\2013 CHARTER REVIEW\Letter To Mayor Bower And City Commission Reg.Docx

Hatfield, Liliam

From: Jacqueline Lalonde <jacquelineplalonde@gmail.com>
Sent: Thursday, August 08, 2013 6:47 PM
To: Granado, Rafael
Cc: Hatfield, Liliam; Granado, Rafael; Turner, Debora
Subject: Re: Letter to Mayor Bower and City Commission reg

I would like to add that if possible we recommend the items be withdrawn and submitted to Charter for review.

Jackie

On Aug 8, 2013, at 6:04 PM, "Granado, Rafael" <RafaelGranado@miamibeachfl.gov> wrote:

Good afternoon members of the Charter Review Board,

As instructed at the August 5, 2013 Charter Review meeting, we have drafted a letter to the Mayor and Commissioners regarding the two Charter amendment resolutions passed by the City Commission on July 19, 2013 without prior consideration by the Charter Review Board.

Please review the letter and provide your input as soon as possible.

When responding, please make sure you include Debbie Turner DeboraTurner@miamibeachfl.gov and myself rafaelgranado@miamibeachfl.gov in your response.

Regards,

MIAMI BEACH

Rafael E. Granado, Esq., *City Clerk*

CITY CLERK'S OFFICE

1700 Convention Center Drive, Miami Beach, FL 33139

Tel: 305-673-7411 www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

<Letter to Mayor Bower and City Commission reg.docx>

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ITEM 3 a

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Granado, Rafael

From: quality of life <qualityoflife@the-beach.net>
Sent: Saturday, August 03, 2013 3:43 PM
To: Granado, Rafael
Subject: Copies for members of the Charter Review Committee
Attachments: Sunshine.PDF

08.03.13

Dear Mr. City Clerk:

As you know, the Charter Review Board is meeting Monday at 4:30 p.m. At its last meeting, I brought up the topic of installing protections for homeless people in the city charter.

Would you arrange to send the six-page attachment to members of the committee and interested staff so it can be discussed at the meeting?

The first four pages are copies of a recently enacted (2012) Rhode Island law entitled "Homeless Bill of Rights." The last two pages are copies of a municipal ordinance that I drafted and which is modeled on the Rhode Island ordinance. It merits incorporation into the Miami Beach City Charter as part of the Citizens' Bill of Rights.

Thanks and best wishes,

Morris Sunshine, Ph.D.
Miami Beach

Chapter 356
2012 -- S 2052 SUBSTITUTE B
Enacted 06/20/12

A N A C T
RELATING TO PROPERTY - RHODE ISLAND FAIR HOUSING PRACTICES ACT

Introduced By: Senators Tassoni, Lynch, Jabour, Doyle, and DeVall
Date Introduced: January 11, 2012

It is enacted by the General Assembly as follows:

SECTION 1. Title 34 of the General Laws entitled "Property" is hereby amended by adding thereto the following chapter:

CHAPTER 37.1
HOMELESS BILL OF RIGHTS

34-37.1-1. Short title. – This chapter shall be known and may be cited as the "Homeless Bill of Rights."

34-37.1-2. Legislative Intent. – (1) At the present time, many persons have been rendered homeless as a result of economic hardship, a severe shortage of safe, affordable housing, and a shrinking social safety net.

(2) Article 1, Section 2 of the Rhode Island State Constitution states in part, that "All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws."

(3) Concordant with this fundamental belief, no person should suffer unnecessarily or be subject to unfair discrimination based on his or her homeless status. It is the intent of this chapter to ameliorate the adverse effects visited upon individuals and our communities when the state's residents lack a home.

34-37.1-3. Bill of Rights. – No person's rights, privileges, or access to public services may be denied or abridged solely because he or she is homeless. Such a person shall be granted the same rights and privileges as any other resident of this state. A person experiencing homelessness:

(1) Has the right to use and move freely in public spaces, including, but not limited to, public sidewalks, public parks, public transportation and public buildings, in the same manner as any other person, and without discrimination on the basis of his or her housing status;

(2) Has the right to equal treatment by all state and municipal agencies, without discrimination on the basis of housing status;

(3) Has the right not to face discrimination while seeking or maintaining employment due to his or her lack of permanent mailing address, or his or her mailing address being that of a shelter or social service provider;

(4) Has the right to emergency medical care free from discrimination based on his or her housing status;

(5) Has the right to vote, register to vote, and receive documentation necessary to prove identity for voting without discrimination due to his or her housing status;

(6) Has the right to protection from disclosure of his or her records and information provided to homeless shelters and service providers to state, municipal and private entities without appropriate legal authority; and the right to confidentiality of personal records and information in accordance with all limitations on disclosure established by the Federal Homeless

Management Information Systems, the Federal Health Insurance Portability and Accountability Act, and the Federal Violence Against Women Act; and

(7) Has the right to a reasonable expectation of privacy in his or her personal property to the same extent as personal property in a permanent residence.

34-37.1-4. Damages and attorneys' fees. – In any civil action alleging a violation of this chapter, the court may award appropriate injunctive and declaratory relief, actual damages, and reasonable attorneys' fees and costs to a prevailing plaintiff.

34-37.1-5. Definitions. – For purposes of this chapter, "housing status" shall have the same meaning as that contained in section 34-37-3.

SECTION 2. Sections 34-37-1 and 34-37-3 of the General Laws in Chapter 34-37 entitled "Rhode Island Fair Housing Practices Act" are hereby amended to read as follows:

34-37-1. Finding and declaration of policy. -- (a) In the State of Rhode Island and Providence Plantations, hereinafter referred to as the state, many people are denied equal opportunity in obtaining housing accommodations and are forced to live in circumscribed areas because of discriminatory housing practices based upon race, color, religion, sex, sexual orientation, gender identity or expression, marital status, country of ancestral origin, disability, age, familial status, or on the basis that a tenant or applicant, or a member of the household, is or has been, or is threatened with being, the victim of domestic abuse, or that the tenant or applicant has obtained, or sought, or is seeking, relief from any court in the form of a restraining order for protection from domestic abuse. These practices tend unjustly to condemn large groups of inhabitants to dwell in segregated districts or under depressed living conditions in crowded, unsanitary, substandard, and unhealthful accommodations. These conditions breed intergroup tension as well as vice, disease, juvenile delinquency, and crime; increase the fire hazard; endanger the public health; jeopardize the public safety, general welfare and good order of the entire state; and impose substantial burdens on the public revenues for the abatement and relief of conditions so created. These discriminatory and segregative housing practices are inimical to and subvert the basic principles upon which the colony of Rhode Island and Providence Plantations was founded and upon which the state and the United States were later established. Discrimination and segregation in housing tend to result in segregation in our public schools and other public facilities, which is contrary to the policy of the state and the constitution of the United States. Further, discrimination and segregation in housing adversely affect urban renewal programs and the growth, progress, and prosperity of the state. In order to aid in the correction of these evils, it is necessary to safeguard the right of all individuals to equal opportunity in obtaining housing accommodations free of discrimination.

(b) It is hereby declared to be the policy of the state to assure to all individuals regardless of race, color, religion, sex, sexual orientation, gender identity or expression, marital status, country of ancestral origin, or disability, age, familial status, housing status, or those tenants or applicants, or members of a household, who are, or have been, or are threatened with being, the victims of domestic abuse, or those tenants or applicants who have obtained, or sought, or are seeking, relief from any court in the form of a restraining order for protection from domestic abuse, equal opportunity to live in decent, safe, sanitary, and healthful accommodations anywhere within the state in order that the peace, health, safety, and general welfare of all the inhabitants of the state may be protected and insured.

(c) The practice of discrimination in rental housing based on the potential or actual tenancy of a person with a minor child, or on the basis that a tenant or applicant, or a member of the household, is or has been or is threatened with being, the victim of domestic abuse, or that the tenant or applicant has obtained, or sought, or is seeking, relief from any court in the form of a restraining order for protection from domestic abuse is declared to be against public policy.

(d) This chapter shall be deemed an exercise of the police power of the state for the protection of the public welfare, prosperity, health, and peace of the people of the state.

(e) Nothing in this section shall prevent a landlord from proceeding with eviction action against a tenant who fails to comply with section 34-18-24(7).

34-37-3. Definitions. -- When used in this chapter:

- (1) "Age" means anyone over the age of eighteen (18).
- (2) "Commission" means the Rhode Island commission for human rights created by section 28-5-8.
- (3) "Disability" means a disability as defined in section 42-87-1.
Provided further that the term "disability" does not include current, illegal use of or addiction to a controlled substance, as defined in 21 U.S.C. section 802.
- (4) "Discriminate" includes segregate, separate, or otherwise differentiate between or among individuals because of race, color, religion, sex, sexual orientation, gender identity or expression, marital status, country of ancestral origin, disability, age, housing status, or familial status or because of the race, color, religion, sex, sexual orientation, gender identity or expression, marital status, country of ancestral origin, disability, age, housing status, or familial status of any person with whom they are or may wish to be associated.
- (5) The term "domestic abuse" for the purposes of this chapter shall have the same meaning as that set forth in section 15-15-1, and include all forms of domestic violence as set forth in section 12-29-2, except that the domestic abuse need not involve a minor or parties with minor children.
- (6) (i) "Familial status" means one or more individuals who have not attained the age of eighteen (18) years being domiciled with:
 - (A) A parent or another person having legal custody of the individual or individuals; or
 - (B) The designee of the parent or other person having the custody, with the written permission of the parent or other person provided that if the individual is not a relative or legal dependent of the designee, that the individual shall have been domiciled with the designee for at least six (6) months.
 (ii) The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.
- (7) The terms, as used regarding persons with disabilities, "auxiliary aids and services," "reasonable accommodation," and "reasonable modifications" have the same meaning as those terms are defined in section 42-87-1.1.
- (8) The term "gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self image, gender-related appearance, or gender-related expression; whether or not that gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.
- (9) "Housing accommodation" includes any building or structure or portion of any building or structure, or any parcel of land, developed or undeveloped, which is occupied or is intended, designed, or arranged to be occupied, or to be developed for occupancy, as the home or residence of one or more persons.
- (10) "Otherwise qualified" includes any person with a disability who with respect to the rental of property, personally or with assistance arranged by the person with a disability, is capable of performing all the responsibilities of a tenant as contained in section 34-18-24.
- (11) "Owner" includes any person having the right to sell, rent, lease, or manage a housing accommodation.
- (12) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, labor organizations, mutual companies, joint stock companies, trusts, receivers, legal representatives, trustees, other fiduciaries, or real estate brokers or real estate salespersons as defined in chapter 20.5 of title 5.
- (13) "Senior citizen" means a person sixty-two (62) years of age or older.
- (14) The term "sexual orientation" means having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the status of persons and does not render lawful any conduct prohibited by the criminal laws of this state nor impose any duty on a religious organization. This definition does not confer legislative approval of said status, but is intended to assure the basic human rights of persons to hold and convey property and to give and obtain credit, regardless of such status.

(15) The term "victim" means a family or household member and all other persons contained within the definition of those terms as defined in section 12-29-2.

(16) The term "housing status" means the status of having or not having a fixed or regular residence, including the status of living on the streets or in a homeless shelter or similar temporary residence.

SECTION 3. This act shall take effect upon passage.

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LC00059/SUB B
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Chapter _____

Sec. 1.0. Short title. This chapter shall be known as the Miami Beach Homeless Bill of Rights.

Sec. 1.1. Legislative intent. Home foreclosures, stagnant wages, high unemployment and a severe shortage of affordable housing have increased the number of homeless people. This ordinance is designed to ensure that no homeless person shall be discriminated against or denied due process of law and equal protection of the laws because such persons do not have a home.

Sec. 2.0. No child or adult's rights or privileges may be denied or abridged solely because he or she is homeless. Such a person shall be granted the same rights and privileges as any other resident of this city. These rights shall include but are not limited to:

(a) to freely enter and use public spaces including public buildings, public parks, public beaches, public transportation, public streets and sidewalks;

(b) to enjoy equal access to public services provided by the City;

(c) to receive fair and equal treatment by city agencies and employees;

(d) to enjoy fair and equal access to city job opportunities;

(e) to have access to city-provided emergency medical services;

(f) to enjoy the right to privacy of personal information that others enjoy;

(g) to possess property free from the threat of arbitrary search and seizure;

(h) to have fair and equal access to affordable public housing subsidized by or under the control of the city or any of its agencies;

(i) to have fair and equal access to jobs made available by businesses fulfilling city contracts; and,

(j) to have fair and equal access to goods and services conveyed by any enterprise licensed by the city of Miami Beach.

Sec. 3.0. The City Manager shall ensure that city departments review their policies and programs to take into account the provisions of the Miami Beach Homeless Bill of Rights.

Sec. 3.1. All city ordinances that forbid unequal treatment based on race, color, religion, creed, gender, sexual orientation, gender identity or expression, age, ancestral origin, disability or family status shall be amended to include housing status.

Sec. 3.2. The city shall, within the limits of its resources, aid and assist homeless persons to obtain documentation that is essential to the full enjoyment of the Miami Beach Homeless Bill of Rights.

Sec. 4.0. The City Manager, with the support of the Human Rights and Homeless Committees, shall submit such reports as the city commission may desire, describing the city's success in implementing this ordinance.

Sec. 4.1. The City Manager, with professional advice, shall ensure that the this city collaborates with other local communities and divisions of government whenever necessary to implement the Homeless Bill of Rights.

Sec. 4.2. The City Manager, with the consent of the City Commission, shall explore ways and means to identify financial resources that may be essential to implementing this ordinance. Furthermore, the City Manager is authorized to establish new departments, divisions or bureaus to more efficiently implement provisions of this ordinance.

Sec. 4.3. In the event that the issue of amending this ordinance to weaken its legal protections for the homeless arises, the City Manager shall take effective measures to alert homeless persons as well as private and public bodies that serve their interests and to ensure that they are noticed in a timely manner.

Sec. 4.4. The City Manager shall have 90 days from the date of its adoption to fully implement this ordinance.

Sec. 4.5 Affected parties, deprived of their rights under this ordinance by willful or indifferent city officials, shall have legal standing to seek enforcement of this ordinance in appropriate courts of law.

[INSERT SEVERABILITY CLAUSE.]

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Hatfield, Liliam

From: terry bienstock <tbienstock@tbienstock.com>
Sent: Friday, August 09, 2013 8:44 AM
To: Hatfield, Liliam
Subject: RE: August 19, 2013 Charter Review Board

I have been tied up with the moratorium/code revisions for new construction and incentives for renovation of architecturally significant home. These issues are moving rapidly at the City and may eliminate the need for a Charter amendment on the subject. So I think we should defer the issue for 2 months to see what happens.

From: Hatfield, Liliam [<mailto:LiliamHatfield@miamibeachfl.gov>]
Sent: Friday, August 09, 2013 8:31 AM
To: 'tbienstock@tbienstock.com'
Subject: August 19, 2013 Charter Review Board

Good morning, Terry,

Can you please send a note by email, per our conversation yesterday, regarding the reason for deferring the item "Preserving the Historical a Value of Miami Beach? This email will be part of the agenda for August 19th.

Regards,

MIAMIBEACH

Liliam Hatfield, Office Associate V
CITY CLERK'S OFFICE
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7411/ Fax: 305-673-7254 / www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

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ITEM 4

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Granado, Rafael

From: Scott Diffenderfer <scott@scottdiff.com>
Sent: Tuesday, August 13, 2013 5:46 PM
To: Granado, Rafael
Cc: Hatfield, Liliam
Subject: Surfside Election Process and Instant Runoff Voting

Per our discussion, please forward to all members of the Charter Review Committee for discussion at our next meeting.

In Surfside, they have a Mayoral group, and a Commission group. The person with the most votes in the Mayoral group becomes Mayor. The person with the most votes in the Commission group becomes Vice-Mayor, and the people with 2nd, 3rd, and 4th most votes in this group become the remaining commissioners. When voting, voters choose 1 choice in the Mayoral group, and 4 choices in the Commission group. There is only a runoff election in the event of a tie among 2 or more people for 4th place on the Commission. They also have 2 year terms, instead of 4 year terms.

For Reference:

<http://library.municode.com/index.aspx?clientID=10940&stateID=9&statename=Florida> section 8 in Article II and sections 97-109 of Article VI of the surfside charter include relevant information.

I am also including the Wikipedia article on Instant Runoff Voting, as well as a short YouTube video explaining how it could work in an election where multiple people win.

Instant-Runoff is used in several cities in the United States, as well as other places around the world.

http://en.wikipedia.org/wiki/Instant_runoff_voting

<https://www.youtube.com/watch?v=INxwMdl8OWw>

Thanks, Scott

Scott Diffenderfer
President, Belle Isle Residents Association
Licensed Real Estate Agent, Hahne Real Estate
1680 Michigan Ave., Suite 914
Miami Beach, FL 33139
O: 305.851.2222
C: 305.458.3334
F: 305.359.9256
www.BelleIsleRealtors.com

Sec. 8. Presiding officers.

The mayor shall be elected separately from his/her own group. The four commissioners shall run at-large and the commissioner receiving the highest number of votes in the general election shall, for a term of two years immediately following thereafter, have the title of vice-mayor. The commissioners receiving the second, third and fourth highest number of votes in the general election shall, for a term of two years immediately following thereafter, serve as the remaining commissioners.

(Ord. No. 1493, § 2, 7-8-08)

Editor's note--

The amendment to § 8 proposed by Ord. No. 1493 was approved by the voters at the election held on Nov. 4, 2008.

Surfside, Florida, Code of Ordinances >> PART I - CHARTER >> ARTICLE VI. NOMINATIONS AND ELECTIONS >>

ARTICLE VI. NOMINATIONS AND ELECTIONS

Sec. 97. Time of holding elections.

Sec. 97.1. Charter amendments.

Sec. 98. Qualifications of electors.

Sec. 99. Rules and regulations, supervision, etc., of elections.

Sec. 100. Electors qualified to vote.

Sec. 101. Nomination of mayor and commission members—Generally.

Sec. 102. Same—Qualifying fee.

Sec. 103. Ballots.

Sec. 104. Voting machines.

Sec. 105. General and special elections of commission members.

Sec. 106. Watchers at election of commissioners.

Sec. 107. Hours of voting.

Sec. 108. Canvass of returns.

Sec. 109. Commission to judge qualifications, etc., of members.

Sec. 109.1. Reserved.

Sec. 97. Time of holding elections.

The regular election for the choice of members of the commission shall be held on the third Tuesday in March of each even numbered calendar year. The commission shall order special elections on other dates to fill vacancies on the council when such elections are mandatory under sections 16 and 110 of this Charter. Special elections may also be called on thirty days notice at any time to validate general obligation bond issues, to initiate ordinances or secure an expression from the electors on referred ordinances in the manner prescribed in this Charter, or for any or all other lawful purposes. Special elections to replace or amend the Town's Charter shall be held in accordance with the requirements of the Charter of Metropolitan Dade County, Florida, adopted pursuant to the authority of section 11, Article VIII, Constitution of the State of Florida. Not less than fifteen days prior to a special charter amendment election, the town clerk shall mail a copy of the proposed amendment or amendments to each qualified elector of Dade County residing in the Town of Surfside whose name then appears upon the registration books.

(Res. No. 620, § 1uu, 4-14-64; Res. No. 867, Amd. No. 13, 3-20-74)

Sec. 97.1. Charter amendments.

Amendments to this Charter shall be proposed, presented or initiated and implemented in accordance with the requirements of section 5.03 of Article 5 of The Home Rule Charter for Metropolitan Dade County.

(Res. No. 620, § 1vv, 4-14-64)

Sec. 98. Qualifications of electors.

Any person who is at least eighteen years of age, or any person who will attain the age of eighteen prior to the next succeeding special or general election of the town, who is a citizen of the United States and a resident of the State of Florida and Town of Surfside, and who is registered to vote on the registration books of Dade County, Florida, shall be eligible to vote in Surfside elections.

(Ord. No. 398, § 1(j), 2-26-57; Res. No. 500, § 1(j), 12-17-58; Res. No. 504, 4-8-59, Rec. in Bk. 1360, p. 619, Pub. Recs. of Dade County; Res. No. 867, Amd. No. 14, 3-20-74)

Editor's note—

The provisions of § 98 are superseded by F.S. §§ 166.042, 97.041.

Sec. 99. Rules and regulations, supervision, etc., of elections.

The commission shall by ordinance establish such rules and regulations as it considers needful or desirable, not inconsistent with this Charter, governing the conduct of municipal elections, for the prevention of fraud in such elections, and for the recount of ballots in case of doubt or fraud. Municipal elections shall be supervised by the town clerk and conducted by an election board consisting of an election clerk and four or more qualified electors appointed by the mayor who shall act as inspectors of the election.

Sec. 100. Electors qualified to vote.

Qualified electors of Dade County, Florida, residing in the Town of Surfside, shall constitute the electors qualified to vote in Surfside elections; provided, however, that any person qualifying as an elector less than thirty days prior to the date of a Surfside election shall not be qualified to vote in such election.

(Res. No. 620, § 1ww, 4-14-64; Res. No. 744, § 1(p), 1-15-70; Res. No. 867, Am'd. No. 15, 3-20-74)

Editor's note—

The provisions of § 100 are superseded by F.S. §§ 166.042, 97.041.

Sec. 101. Nomination of mayor and commission members—Generally.

Any citizen who can qualify for the office of mayor or commissioner of the town, as provided in section 6 of this Charter, may nominate himself or herself or may be nominated for the commission by a petition for this purpose signed by not less than twenty-five qualified electors and filed with the town clerk not more than fifty-five days and not less than thirty-five days prior to the election date. No elector shall sign nominating petitions for more than one person for each office or group, and should an elector do so, his or her signature shall be void except as to the petition or petitions first filed.

The signatures on the nominating petition need not all be subscribed to one paper, but to each separate paper there shall be attached a signed statement of the circulator thereof, stating the number of signers of such paper and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. With each signature, including the signature of the circulator, shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify it. The form of the nominating petition shall be substantially as follows:

We, the undersigned electors of the Town of Surfside, hereby nominate
_____ for the office of commissioner.

Name _____
Street and Address _____
Date of signing _____

(spaces for signatures and required data)

Statement of Circulator

The undersigned is the circulator of the foregoing paper containing _____ signatures. Each signature appended thereto was made in my presence and is the genuine signature of the person whose name it purports to be.

	Signature of Circulator _____
	Address _____

Within five days after the filing of a nominating petition the town clerk shall notify through the United States mail the candidate and the person who filed the petition whether or not it is found to be signed by the required number of qualified electors. If a petition is found insufficient, the town clerk shall return it immediately to the person who filed it with a statement certifying wherein the petition is found insufficient. Such a petition may be amended and filed again as a new petition, or a different petition may be filed for the same candidate, not less than twenty-five days before election. Such petitions shall be preserved by the town clerk for two years from the date such petitions are filed.

(Res. No. 620, § 1jjj, 4-14-64; Res. No. 1389, § 2, 6-14-94)

Sec. 102. Same—Qualifying, fee.

The name of each nominee for commission, who has complied with all the requirements hereinbefore prescribed, shall be printed on the ballot as a candidate for the office of commissioner of the Town of Surfside upon such nominee paying to the Town of Surfside simultaneously with the filing of his nominating petition the sum of twenty-five dollars as a qualifying fee, and upon submitting concurrently therewith a sworn statement of his or her name, address, occupation and willingness to serve if elected. No refund shall be made of the qualifying fee.

(Res. No. 620, § 1kkk, 4-14-64)

Sec. 103. Ballots.

All ballots used in any general or special election of commissioners held under authority of this Charter shall be without party mark or designation and without any insignia or mark of any association or organization thereon and shall be substantially in the same form as the election ballot used in all general state elections. The following additional provisions with respect to ballots used in any general or special election of commissioners shall also apply:

- (a) The full names of all candidates nominated for the commission as hereinbefore provided, except such as may have withdrawn, died or become ineligible, shall be printed on the official ballots. If two candidates with the same surname, or with names so similar as to be likely to cause confusion, are nominated, the addresses of their places of residences may be placed with their names on the ballot.

- (b) The names of the candidates shall be arranged in the alphabetical order of their surnames.
- (c) Where voting machines are not used, commissioners shall be voted for on ballots separate and distinct from ballots used for any other office or question and the ballot boxes used for the election of commissioners shall be separate and distinct from ballot boxes used for any other office or question.
- (d) Absentee voting shall be as provided under the authority of F.S. § 101.70.
(Res. No. 620, § 1xx, 4-14-64)

Sec. 104. Voting machines.

When voting machines are used the laws of the State of Florida shall be applicable and the council may modify the form of the ballot, the method of expressing choices and the arrangements for conducting the election and the count, but no change shall be made which will alter or impair the principles of the voting or of the counting.

Sec. 105. General and special elections of commission members.

- (1) On the third Tuesday in March in every even numbered calendar year, all members of the Town Commission shall be elected for terms of TWO (2) years, provided, however, that Commission members elected for FOUR (4) year terms at the 1974 Election pursuant to the Charter provisions in existence prior to the adoption of this Amendment, shall remain in office until the expiration of the term to which they were elected under such prior provisions. At the Election to be held in the year 1976, and biennially thereafter, all members of the Town Commission shall be elected for terms of TWO (2) years; terms to begin at 8 o'clock P.M. on the day following the Election.
- (2) Should a vacancy on the commission be filled at a general municipal election, pursuant to Article II, section 13, [codified as section 16], the term of such vacancy shall be considered to have expired and the candidate elected to fill such vacancy shall be elected for a two year term. The commission may implement the provisions of this section or other provisions of this Charter governing the filling of vacancies, by ordinance, not inconsistent with the provisions of this Charter.
- (3) If two or more vacancies occur at approximately the same time they shall be filled separately in the order in which they occur. If all the places on the commission, or a majority of the places on the commission shall become vacant at once, the town manager shall within sixty days call a special election of members to serve for the remainder of the unexpired terms; the candidates receiving the highest number of votes shall be elected for the longest unexpired terms and the candidates receiving the next highest number of votes shall be elected for the shortest unexpired terms. Should the town manager fail or refuse to order an election as herein provided within the time required, such election may be ordered by any court of competent jurisdiction.
- (4) All elections held on the third Tuesday of March in even numbered calendar years, or any postponements thereof, for the election of commissioners shall be known as general municipal elections. All other elections shall be known as special municipal elections.
- (5) At the election held in 2010, except for the mayor who shall run in a separate group, all other Commissioners shall be elected in accordance with Section 8 hereinabove. A tie between two or more candidates for the fifth Commission seat shall be decided in a

run-off election to be held the first Tuesday of April following the general election. The runoff election shall be held in the same manner and form as the general municipal election.

- (6) All elections shall be conducted by secret ballot, with or without the use of voting machines as the commission by ordinance may direct, and under rules to be fixed by ordinance not inconsistent herewith.
- (7) No general or special election of the Town of Surfside shall be held on a national or state legal holiday. Should the third Tuesday in March in any even numbered calendar year be declared such a legal holiday, then the regular election scheduled for that day shall be postponed to the first day thereafter that is not a legal holiday, and the induction of commissioners into office shall be deferred to the next business day following such postponed election, but such deferred induction shall not change the expiration dates of the terms of office of the candidates elected.
- (8) If more than five (5) candidates qualify for the general Commission election, and if after the last date for qualifying and before the date of the election the number of candidates is reduced for any lawful reason to five (5) or less, the election shall be postponed by the Commission to a date not less than twenty-eight (28) days nor more than thirty-five (35) days from the scheduled date. Qualifying of candidates shall be reopened until fourteen (14) days before the new election date. The terms of all incumbent Commissioners shall be extended until their successors are duly elected.

(Res. No. 620, § 1yy, 4-14-64; Res. No. 930, § 1, 9-9-75; Res. No. 942, § 1, 1-13-76; Ord. No. 1172, § 1, 6-14-88; Ord. No. 1249, § 1, 2-12-91; Res. No. 1389, § 3A, 6-14-94; Ord. No. 1493, § 2, 7-8-08)

Editor's note—

An amendment to subsection 105(5) proposed by Ord. No. 1493 was approved by the voters at an election held on Nov. 4, 2008.

Sec. 106. Watchers at election of commissioners.

At each election of the commission any regularly nominated candidate shall be entitled upon written application to the town clerk at least five days before the election to appoint one person and one alternate to represent him as watcher and challenger at each polling place. Any person appointed shall have all the rights and privileges prescribed by law for other watchers and challengers at any election in the same place, but no watcher and his alternate shall have the right both to remain within the voting place at the same time.

Sec. 107. Hours of voting.

The polls shall open at seven o'clock a.m. and close at seven o'clock p.m., by whatever time is officially used by the town.

Sec. 108. Canvass of returns.

The result of the voting, when ascertained, shall be certified by returns in duplicate, signed by the Clerks and a majority of the inspectors of the election, one copy being retained by the Town Clerk and the other being delivered to the Canvassing Board. The Canvassing Board shall consist of the Town Manager, Town Clerk and one Commissioner, who shall be selected by the Town Commission at the time the election is called. If any of the foregoing are unable or unwilling to serve on the Canvassing Board, the Town Attorney shall serve as an alternate. However, two members of the Canvassing Board shall constitute a quorum for all purposes hereunder. The Canvassing Board shall meet after the polls close. At such meeting, the Canvassing Board shall canvass the returns

and shall declare the results of the election as shown by the returns made by the clerk and inspectors of said election.

(Ord. No. 1088, § 1, 5-8-84; Ord. No. 1283, § 1, 7-14-92)

Sec. 109. Commission to judge qualifications, etc., of members.

The commission shall be the judge of the election and qualifications of its members and for such purpose shall have power to subpoena witnesses and require the production of records, but the decision of the commission in any such case shall be subject to review by the courts.

Sec. 109.1. Reserved.

Editor's note—

Res. No. 867, Amd. No. 16, dated March 20, 1974, repealed former § 109.1, derived from Res. No. 620, § 1zz, dated April 14, 1964.

Instant-runoff voting

From Wikipedia, the free encyclopedia

(Redirected from Instant runoff voting)

Instant-runoff voting (IRV), **alternative vote (AV)**, **transferable vote**, **ranked choice voting**, or **preferential voting** is an electoral system used to elect a single winner from a field of more than two candidates. It is a preferential voting system in which voters rank the candidates in order of preference rather than voting for a single candidate.

Ballots are initially distributed based on each elector's first preference. If a candidate secures more than half of votes cast, that candidate wins. Otherwise, the candidate with the fewest votes is eliminated. Ballots assigned to eliminated candidates are recounted and assigned to one of the remaining candidates based on the next preference on each ballot. This process continues until one candidate wins by obtaining more than half the votes.

IRV has the effect of avoiding split votes and the need for electors to vote "strategically" for candidates who are not their first choice. For example, suppose here are two conservative candidates A & B, and a liberal candidate C, with raw popularity of 35%, 25% and 40% respectively. In a Plurality voting system, candidate C may win with 40% of the votes even though most electors prefer A or B. Alternatively, a conservative elector who likes B may decide to vote for A instead in order to prevent C from being elected. With IRV, the elector can allocate their preferences B, A, C and then A will win despite the split vote in first choices.

Instant runoff voting is used to elect members of the Australian House of Representatives and most Australian State Governments,^[1] the President of India, members of legislative councils in India, the President of Ireland,^[2] and parliaments in Papua New Guinea and Fiji.^[3] It is also used in Northern Ireland by-elections and for electing hereditary peers for the British House of Lords.^[4]

IRV is employed by several jurisdictions in the United States, including Portland, Maine; San Francisco^[5] and Oakland in California;^[6] Minneapolis and Saint Paul in Minnesota.^[5]

It is used to elect the leaders of the Labour Party and the Liberal Democrats in the United Kingdom and was used in elections in 2013 for the leader of the Liberal Party of Canada^[7] and in Canada's New Democratic Party leadership election, 2012. IRV is used to elect the mayor in cities such as London in the United Kingdom (in the variant known as supplementary vote)^[8] and Dunedin and Wellington in New Zealand.^[9]

Many private associations also use IRV,^[10] including the Hugo Awards for science fiction^[11] and the Academy of Motion Picture Arts and Sciences in selection of the Oscar for best picture.^[12]

Rank any number of options in your order of preference.

<input type="checkbox"/>	Joe Smith
1	John Citizen
3	Jane Doe
	Fred Rubble
2	Mary Hill

Example instant runoff voting ballot

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Terminology

Instant runoff voting derives its name from how ballot-count simulates a series of Two-round system runoffs except that voter preference do not change between rounds.^[13]

Australians, who use IRV for most single winner elections, and Canadians call IRV "preferential voting," as does Robert's Rules of Order. The British call IRV "the alternative vote." Americans in San Francisco, California and Minneapolis, Minnesota call IRV "ranked choice voting." IRV occasionally is referred to as Ware's method after its inventor, American William Robert Ware.

North Carolina law uses "instant runoff" to describe the contingent vote or "batch elimination" form of IRV in one-seat elections. A single second round of counting produces the top two candidates for a runoff election.^[14] Election officials in Hendersonville, North Carolina use "instant runoff" to describe a multi-seat election system that simulates in a single round of voting their previous system of multi-seat runoffs.^[15] State law in South Carolina^[16] and Arkansas^[17] use "instant runoff" to describe the practice of having certain categories of absentee voters cast ranked choice ballots before the first round of a runoff and counting those ballots in any subsequent runoff elections.

When the single transferable vote (STV) system is applied to a single-winner election it becomes IRV. Some Irish observers mistakenly call IRV "proportional representation" based on the fact that the same ballot form is used to elect its president by IRV and parliamentary seats by STV, but IRV is a winner-take-all election method.

History

Main article: History and use of instant-runoff voting

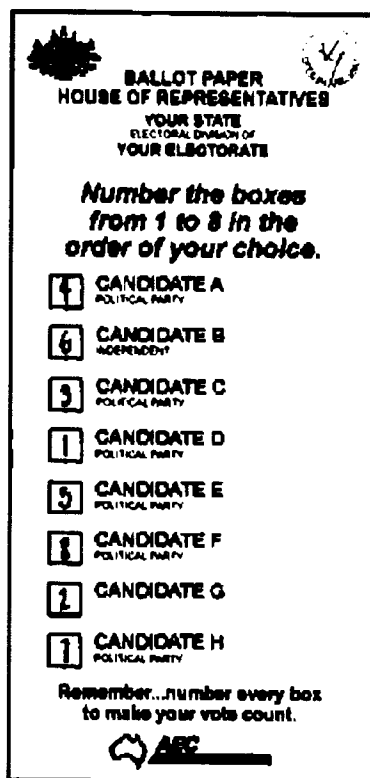
Instant runoff voting was devised in 1871 by American architect William Robert Ware,^[18] although it is, in effect, a special case of the single transferable vote system, which emerged independently in the 1850s. Unlike the single transferable vote in multi-seat elections, however, the only ballot transfers are from backers of candidates who have been eliminated.

The first known use of an IRV-like system in a governmental election was in 1893 in an election for the colonial government of Queensland, in Australia.^[19] The variant used for this election was a "contingent vote". IRV in its true form was first used in 1908 in a State election in Western Australia.

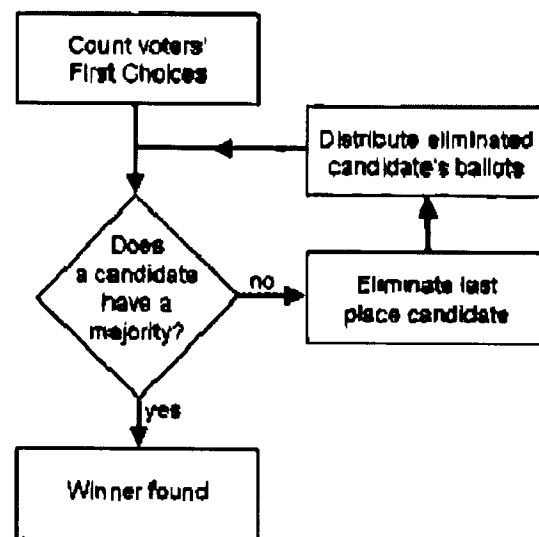
IRV was introduced nationally in Australia in 1918 after the Swan by-election, in response to the rise of the conservative Country Party, representing small farmers. The Country Party split the anti-Labor vote in conservative country areas, allowing Labor candidates to win on a minority vote. The conservative government of Billy Hughes introduced preferential voting as a means of allowing competition between the two conservative parties without putting seats at risk. It was first used at the Corangamite by-election on 14 December 1918.^[20] Thomas Hare and Andrew Inglis Clark had previously introduced it in the Tasmanian House of Assembly.

Election procedure

Process



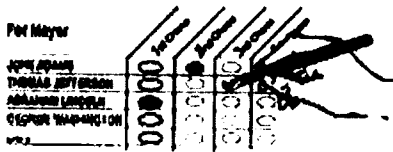
IRV counting flowchart



Flowchart for counting IRV votes

In instant runoff voting, as with other ranked election methods, each voter ranks the list of candidates in order of preference. Under a common ballot layout, the voter marks a '1' beside the most preferred candidate, a '2' beside the second-most preferred, and so forth, in ascending order. This is shown in the example Australian ballot above.

The mechanics of the process are the same regardless of how many candidates the voter ranks, and how many are left unranked. In some implementations, the voter ranks as many or as few choices as they wish, while in other implementations the voter is *required* to rank either all candidates, or a prescribed number of them.



Optical scan IRV ballot

In the initial count, the first preference of each voter is counted and used to order the candidates. Each first preference counts as one vote for the appropriate candidate. Once all the first preferences are counted, if one candidate holds a majority, that candidate wins. Otherwise the candidate who holds the fewest first preferences is eliminated. If there is an exact tie for last place in numbers of votes, tie-breaking rules determine which candidate to eliminate. Some jurisdictions eliminate all low-

ranking candidates simultaneously whose combined number of votes is fewer than the number of votes received by the lowest remaining candidates.

Ballots assigned to eliminated candidates are recounted and assigned to one of the remaining candidates based on the next preference on each ballot. The process repeats until one candidate achieves a majority of votes cast for continuing candidates. Ballots that 'exhaust' all their preferences (all its ranked candidates are eliminated) are set aside.

In Australian elections the allocation of preferences is performed efficiently at the polling booth by having the returning officer pre-declare the two likely winners. (In the event that the returning officer is wrong the votes need to be recounted.)

Ballots

As seen above, voters in an IRV election rank candidates on a preferential ballot. IRV systems in use in different countries vary both as to ballot design and as to whether or not voters are obliged to provide a full list of preferences. In elections such as those for the President of Ireland and the New South Wales Legislative Assembly, voters are permitted to rank as many (or as few) candidates as they wish. This is known in Australia as **optional preferential voting**.

Under optional preferential voting, voters may make only a first choice, known as "bullet voting". Allowing voters to rank only as many candidates as they wish may better reflect their preferences, but may result in ballot exhaustion (where all the voters preferences are eliminated before a candidate is elected).

One IRV variant requires voters to express an order of preference for every candidate and thus they consider ballots that do not contain a complete ordering of all candidates to be spoiled. In Australia this variant is known as 'full preferential voting'.^[21] This can become burdensome in elections with many candidates and can lead to 'donkey voting' in which the voter simply chooses candidates at random or in top-to-bottom order. [This variant is used in some Australian federal elections and some state elections].

Candidate order on the ballot paper

The common way to list candidates on a ballot paper is alphabetically or by random lot. In some cases candidates may also be grouped by political party. Alternatively, Robson Rotation involves randomly changing candidate order for each print run.

Party strategies

Where preferential voting is used for the election of an assembly or council, parties and candidates often advise their supporters on their lower preferences, especially in Australia where a voter must rank all candidates to cast a valid ballot. This can lead to "preference deals", a form of pre-election bargaining, in which smaller parties agree to direct their voters in return for support from the winning party on issues critical to the small party.^[*citation needed*] However, this relies on the assumption that supporters of a minor party will mark preferences for another party based on the advice that they have been given.

Counting logistics

Most IRV elections historically have been tallied by hand, including in elections to Australia's House of Representatives and most state governments. In the modern era, voting equipment can be used to administer the count either partially or fully.

In Australia, the returning officer now usually declares the two candidates that are most likely to win each seat. The votes are always counted by hand at the polling booth monitored by scrutineers from each candidate. The first part of the count is to record the first choice for all candidates. Votes for candidates other than the two likely winners are then allocated to them in a second pass. The whole process of counting the votes by hand and allocating preferences is typically completed within a two hours on election night at a cost of \$7.68 per elector in 2010 to run the entire election.^[22]

(The declaration by the returning officer is simply to optimize the counting process. In the unlikely event that the returning officer is wrong and a third candidate wins then the votes would simply have to be counted a third time.)^[23]

Ireland in its presidential elections has several dozen counting centers around the nation. Each center reports its totals and receives instructions from the central office about which candidate or candidates to eliminate in the next round of counting based on which candidate is in last place. The count typically is completed the day after the election, as in 1997.^[24]

In the United States, California cities such as Oakland and San Francisco administer IRV elections on voting machines, with optical scanning machines recording preferences and software tallying the IRV algorithm.^[25] Cary, North Carolina's pilot program in 2007 tallied first choices on optical scan equipment at the polls and then used a central hand-count for the IRV tally.^[26] Portland, Maine in 2011 was due to use its usual voting machines to tally first choice at the polls, then a central scan with different equipment if an IRV tally was necessary.^[27]

Examples

Some examples of IRV elections are given below. The first two are fictional and depicts the principle of IRV. The others are the results of real elections.

Five voters, three candidates

A simple example is provided in the accompanying table: Voter "a" preferred Bob over Bill and Bill over Sue. Two voters selected Bob first, 2 selected Sue and only 1 selected Bill first. Bill is eliminated after the first round, and his vote is passed to the second choice of voter "c", who wanted Bill first. This gives Sue 3 votes, which is a majority of the 5 voting.

Candidate	voter					Number of first choices	
	a	b	c	d	e	round 1	round 2
Bob	1	2	3	1	2	2	2
Sue	3	1	2	3	1	2	3
Bill	2	3	1	2	3	1	x

Tennessee capital election

Most instant runoff voting elections are won by the candidate who leads in first choice rankings. Some IRV elections are won by a candidate who is second in the first round. Every now and then a candidate wins who starts off in third, but gains majority support in the final round. Here's an example of such an election.

Imagine that Tennessee is having an election to choose the location of the state capital. The candidates for the capital are, in alphabetical order:

- Chattanooga
- Knoxville
- Memphis
- Nashville

There are 10,000 eligible voters and, in an amazing fit of public spiritedness, voter turnout is 100%.

If there were only two cities as candidates, one would get a majority of the votes cast (unless the result were a tie). Here, there are four cities, so it is theoretically possible that each candidate might receive no more than a quarter of the vote.

Sure enough, when all of the votes are tabulated in the first round, we find that no candidate has received a majority :

Votes in round/ City Choice	1st
Nashville	3200 votes
Memphis	2700 votes
Knoxville	2600 votes
Chattanooga	1500 votes

If one of the candidates had achieved a majority vote (more than half) consisting of at least 5,001 votes on the first tabulation, the contest would end there. Likewise, in First Past the Post voting, the contest would be over, with Nashville winning with the largest number of votes. But IRV does not allow a candidate to win on the first round without having an absolute majority of the vote. With 32% of the electorate voting *for* Nashville – 68% of the electorate voted *against* Nashville in this first round.

So we move to the second round of tabulation to determine which of the front-running cities had broader support. Chattanooga received the fewest number of votes in the first round, so it is eliminated. The ballots that listed Chattanooga as “first-choice” are added to the totals of the second-choice selection on each ballot. Everything else stays the same.

Chattanooga’s 1500 votes are added to second choices as follows, according to the will of the voters for whom that city was first-choice:

Votes in round/ City Choice	1st	2nd
Memphis	2700	3390
Knoxville	2600	3310
Nashville	3200	3300
Chattanooga	1500	

In the first round, Nashville was first, Memphis was second and Knoxville was third. With Chattanooga eliminated and its votes redistributed, the second round finds Memphis now in first place, followed by Knoxville in second and Nashville has moved down to third place. No city yet has secured a majority of 5001 votes, so we move to the third round with the elimination of Nashville, and it becomes a contest between Memphis and Knoxville.

As in the second round with Chattanooga, all of the ballots currently counting for Nashville are added to the totals of Memphis or Knoxville based on which city is ranked next on that ballot.

The third round of tabulation yields the following result:

Votes in round/ City Choice	1st	2nd	3rd
Knoxville	2600	3310	5050
Memphis	2700	3390	4950
Nashville	3200	3300	
Chattanooga	1500		

Knoxville, which was running third in the first tabulation, has moved up from behind to take first place in the third and final round, with a majority of votes cast—of all the voters, a majority preferred Knoxville to Memphis. Knoxville is, thus, the winner.

2006 Burlington mayoral election

See also: Instant-runoff voting in the United States#2006 Burlington results

In 2006 the U.S. city of Burlington, Vermont, held a mayoral election using instant runoff voting. Progressive Bob Kiss won in two rounds with 48.6% of the first round ballots, defeating Democrat Hinda Miller who achieved 40.7%. 10.6% (1,031) of the ballots were exhausted before the final round, because those voters (largely backers of Republican candidate Kevin Curley) offered no preference between the final two candidates, Miller and Kiss.^[28]

Candidate	Round 1		Round 2	
	Bob Kiss	3,809	(38.9%)	4,761
Hinda Miller	3,106	(31.7%)	3,986	(40.7%)
Kevin Curley	2,609	(26.7%)	—	—
Other	254	(2.6%)	—	—
Exhausted ballots	10	(0.1%)	1,041	(10.5%)
Total	9,778	(100%)	9,778	(100%)

After the first round, all but two candidates were eliminated, as their combined vote total (2,863) was less than Miller's, so that none could pull ahead of Miller, even by receiving every vote from the other minor candidates. The votes for these candidates were recounted and redistributed between Kiss and Miller. After the second round count, Kiss was declared the winner as he had obtained a majority (54.4%) of the remaining unexhausted ballots.

1990 Irish presidential election

See also: Irish presidential election, 1990

The result of the 1990 Irish presidential election provides an example of how instant runoff voting can produce a different result than first-past-the-post voting. The three candidates were Brian Lenihan of the traditionally dominant Fianna Fáil party, Austin Currie of Fine Gael, and Mary Robinson, nominated by the Labour Party and the Worker's Party. After the first round, Lenihan had

Irish presidential election, 1990 ^[29]				
Candidate	Round 1		Round 2	
	Mary Robinson	612,265	(38.9%)	817,830
Brian Lenihan	694,484	(43.8%)	731,273	(46.2%)
Austin Currie	267,902	(16.9%)	—	—
Exhausted ballots	9,444	(0.6%)	34,992	(2.2%)
Total	1,584,095	(100%)	1,584,095	(100%)

the largest share of the first choice rankings (and hence would have won a first-past-the-post vote), but no candidate attained the necessary majority. Currie was eliminated and his votes reassigned to the next choice ranked on each ballot; in this process, Robinson received 82% of Currie's votes, thereby overtaking Lenihan.

Voting system criteria

Main article: Comparison of instant runoff voting to other voting systems#Voting system criteria

Scholars rate voting systems using mathematically derived voting system criteria, which describe desirable features of a system. No ranked preference method can meet all of the criteria, because some of them are mutually exclusive, as shown by statements such as Arrow's impossibility theorem and the Gibbard-Satterthwaite theorem.^[*citation needed*]

Many of the mathematical criteria by which voting systems are compared were formulated for voters with ordinal preferences. If voters vote according to the same ordinal preferences in both rounds, criteria can be applied to two-round systems of runoffs, and in that case, each of the criteria failed by IRV is also failed by the two-round system as they relate to automatic elimination of trailing candidates. Partial results exist for other models of voter behavior in the two-round system: see the two-round system article's criterion compliance section for more information.

The criteria that IRV meets, and those that it does not, are listed below.

Majority criterion

✓ The **majority** criterion states that "if one candidate is preferred by an absolute majority of voters, then that candidate must win". IRV meets this criterion.

Mutual majority criterion

✓ The **mutual majority** criterion states that "if an absolute majority of voters prefer every member of a group of candidates to every candidate not in that group, then one of the preferred group must win". IRV meets this criterion.

Later-no-harm criterion

✓ The **later-no-harm** criterion states that "if a voter alters the order of candidates lower in his/her preference (e.g. swapping the second and third preferences), then that does not affect the chances of the most preferred candidate being elected". IRV meets this criterion.

Resolvability criterion

✓ The **resolvability** criterion states that "the probability of an exact tie must diminish as more votes are cast". IRV meets this criterion.

Condorcet winner criterion

✗ The **Condorcet winner** criterion states that "if a candidate would win a head-to-head competition against every other candidate, then that candidate must win the overall election". It is incompatible with the later-no-harm criterion, so IRV does not meet this criterion.

IRV is more likely to elect the Condorcet winner than plurality voting and traditional runoff elections. The California cities of Oakland, San Francisco and San Leandro in 2010 provide an example; there were a total of four elections in which the plurality voting leader in first choice rankings was defeated, and in each case the IRV winner was the Condorcet winner, including a San Francisco election in which the IRV winner was in third place in first choice rankings.^[30]

Condorcet loser criterion

✓ The **Condorcet loser** criterion states that "if a candidate would lose a head-to-head competition against every other candidate, then that candidate must not win the overall election". IRV meets this criterion.

Consistency criterion

✗ The **consistency** criterion states that if dividing the electorate into two groups and running the same election separately with each group returns the same result for both groups, then the election over the whole electorate should return this result. IRV, like all preferential voting systems which are not positional, does not meet this criterion.

Monotonicity criterion

Further information: Monotonicity criterion#Instant-runoff voting and the Two-round system are not monotonic

✗ The **monotonicity** criterion states that "a voter can't harm a candidate's chances of winning by voting that candidate higher, or help a candidate by voting that candidate lower, while keeping the relative order of all the other candidates equal." IRV does not meet this criterion. Allard^[31] claims failure is unlikely, at a less than 0.03% chance per election. Some critics^[32] argue in turn that Allard's calculations are wrong and the probability of monotonicity failure is much greater, at 14.5% under the impartial culture election model in the three-candidate case, or 7-10% in the case of a left-right spectrum. Lepelly *et al.*^[33] find a 2%-5% probability of monotonicity failure under the same election model as Allard.

Participation criterion

✗ The **participation** criterion states that "the best way to help a candidate win must not be to abstain".^[34] IRV does not meet this criterion: in some cases, the voter's preferred candidate can be best helped if the voter does not vote at all.^[35] Depankar Ray^[36] finds a 50% probability that, when IRV elects a different candidate than Plurality, some voters would have been better off not showing up. In a large scale election, the issue is academic since the behaviors required of the electors to achieve it do not scale.^[citation needed]

Reversal symmetry criterion

✗ The **reversal symmetry** criterion states that "if candidate A is the unique winner, and each voter's individual preferences are inverted, then A must not be elected". IRV does not meet this criterion: it is possible to construct an election where reversing the order of every ballot paper does not alter the final winner.^[35] However, this is essentially an academic exercise.

Independence of irrelevant alternatives criterion

✗ The **independence of irrelevant alternatives** criterion states that "the election outcome remains the same even if a candidate who cannot win decides to run." IRV does not meet this criterion; in the general case, instant-runoff voting can be susceptible to strategic nomination; whether or not a candidate decides to run at all can affect the result even if the new candidate cannot themselves win.^[37]

Independence of clones criterion

✓ The **independence of clones criterion** states that "the election outcome remains the same even if an identical candidate who is equally preferred decides to run." IRV meets this criterion.^[38]

Comparison to other voting systems

Main article: Comparison of instant runoff voting to other voting systems

Comparison of mechanics

The elimination of the candidate with the most last-place rankings, rather than the one with the fewest first-place rankings, is called Coombs' method.

Universal assignment of numerical values to the ranks is used in the Borda count method. Individual assignment of numerical values to the ranks is used in range voting. Approval voting is range voting with only two available values.

The use of single transferable vote, a.k.a. Hare-Clark, in a single-member district is equivalent to IRV.

Resistance to tactical voting

Main article: Comparison of instant runoff voting to other voting systems#Tactical voting

The Gibbard–Satterthwaite theorem demonstrates that no voting system using only the preference rankings of the voters can be entirely immune from tactical voting unless it is dictatorial (there is only one person who is able to choose the winner) or incorporates an element of chance. This implies that IRV is susceptible to tactical voting in some circumstances.

Nonetheless, IRV is considered one of the less-manipulable voting systems, with theorist Nicolaus Tideman noting that, "alternative vote is quite resistant to strategy"^[39] and Australian political analyst Antony Green dismissing suggestions of tactical voting.^[40] James Green-Armytage finds the alternative vote to be second most resistant to tactical voting among the methods tested, only beaten by a class of AV-Condorcet hybrids, although the alternative vote resists strategic withdrawal by candidates less well.^[41]

By not meeting the monotonicity, Condorcet winner, and participation criteria, IRV permits forms of tactical voting when voters have sufficient information about other voters' preferences, such as from accurate pre-election polling.^[42] FairVote mentions that monotonicity failure can lead to situations

where "Having more voters rank [a] candidate first, can cause [them] to switch from being a winner to being a loser."^[43] That assessment is accurate, although it only happens in particular situations. The change in lower candidates is important: whether votes are shifted to the leading candidate, shifted to a fringe candidate, or discarded altogether is of no importance.

Tactical voting in IRV seeks to alter the order of eliminations in early rounds, to ensure that the original winner is challenged by a stronger opponent in the final round. For example, in a three-party election where voters for both the left and right prefer the centrist candidate to stop the "enemy" candidate winning, those voters who care more about defeating the "enemy" than electing their own candidate may cast a tactical first preference vote for the centrist candidate.

The 2009 mayoral election in Burlington, Vermont provides an example in which strategy theoretically could have worked but would have been unlikely in practice. In that election, most supporters of the candidate who came in second (a Republican who led in first choices) preferred the Condorcet winner, a Democrat, to the IRV winner, the Progressive Party nominee. If about 20% of the backers of the Republican candidate had insincerely raised the Democrat from their second choice to their first, the Republican would have dropped from first to third in first choices, and the Democrat would then have won the instant runoff.^[42] But given that the Republican was a strong candidate who nearly won in the instant runoff, few of his backers would have risked giving up on his candidacy based on a chance, unknown before the fact, to elect the compromise Condorcet winner.

Spoiler effect

Main article: Spoiler effect

The spoiler effect is where two or more politically similar candidates divide the vote for the more popular end of the political spectrum. That is, each receives fewer votes than a single opponent on the unpopular end of the spectrum who is disliked by the majority of voters but who wins from the advantage that, on that unpopular side, he or she is unopposed.

Proponents of IRV note that by reducing the spoiler effect, IRV makes it safe to vote honestly for marginal parties, and so discourages tactical voting: under a plurality system, voters who sympathize most strongly with a marginal candidate are strongly encouraged to instead vote for a more popular candidate who shares some of the same principles, since that candidate has a much greater chance of being elected and a vote for the fringe candidate is largely wasted.

An IRV system reduces this problem, since the voter can rank the marginal candidate first and the mainstream candidate second; in the likely event that the fringe candidate is eliminated, the vote is not wasted but is transferred to the second preference. However, in the event that the fringe candidate is not eliminated immediately, there is an increased chance for the mainstream candidate to lose, especially when multiple fringe candidates are running. If that happens, the opposing mainstream candidate has a much easier path to victory. As a result, voting honestly for a fringe candidate is unlikely to benefit the voter, and may backfire.

In Australia's national elections in 2007, the average number of candidates in a district was seven, and at least four candidates ran in every district; notwithstanding the fact that Australia only has two major political parties. Every seat was won with a majority of the vote, including several where results would have been different under plurality voting.^[44] While IRV reduces the severity of the spoiler effect compared to plurality voting, the problem still persists.

Proportionality

Main article: Comparison of instant runoff voting to other voting systems#Voting system results

IRV is not a proportional voting system. Like all winner-take-all voting systems, IRV tends to exaggerate the number of seats won by the largest parties; small parties without majority support in any given constituency are unlikely to earn seats in a legislature, although their supporters will be more likely to be part of the final choice between the two strongest candidates.^[45] A simulation of IRV in the 2010 UK general election by the Electoral Reform Society concluded that the election would have altered the balance of seats between the three main parties, but the number of seats won by minor parties would have remained unchanged.^[46]

Australia, a nation with a long record of using IRV for election of legislative bodies, has had representation in its parliament broadly similar to that expected by plurality systems. Medium-sized parties, such as the National Party of Australia, can co-exist with coalition partners such as the Liberal Party of Australia, and can compete against it without fear of losing seats to other parties due to vote splitting.^[47] IRV is more likely to result in legislatures where no single party has an absolute majority of seats (a hung parliament),^[citation needed] but does not generally produce as fragmented a legislature as a fully proportional system, such as is used for the House of Representatives of the Netherlands or the New Zealand House of Representatives, where coalitions of numerous small parties are needed for a majority.

Costs

Main article: Comparison of instant runoff voting to other voting systems#Cost

The costs of printing and counting ballot papers for an IRV election are no different from those of any other system using the same technology. However, the more-complicated counting system may encourage officials to introduce more advanced technology such as software counters or electronic voting machines. Pierce County, Washington election officials outlined one-time costs of \$857,000 to implement IRV for its elections in 2008, covering software and equipment, voter education and testing.^[48] In 2009 the auditor of Washington counties reported that the ongoing costs of the system were not necessarily balanced by the costs of eliminating runoffs for most county offices, because those elections may be needed for other offices not elected by IRV.^[49] Other jurisdictions have reported immediate cost savings.^[50]

Australian elections are counted by hand. The 2010 federal election cost a total of \$7.68 per elector of which only a small proportion is the actual counting of votes.^[22] Counting is now normally performed in a single pass at the polling center as described above.

The perceived costs or cost savings of adopting an IRV system are commonly used by both supporters and critics. In the 2011 referendum on the Alternative Vote in the UK, the NOtoAV campaign launched with a claim that adopting the system would cost £250 million; commentators argued that this headline figure had been inflated by including £82 million for the cost of the referendum itself, and a further £130 million on the assumption that the UK would need to introduce electronic voting systems, when ministers had confirmed that there was no intention of implementing such technology, whatever the outcome of the election.^[51] Automated vote counting is seen by some to have a greater potential for election fraud,^[52] IRV supporters counter these claims with recommended audit procedures,^[53] or note that automated counting is not required for the system at all.

Because it does not require two separate votes, IRV is accepted to cost less than two-round primary/general or general/runoff election systems.^[54]

Negative campaigning

Main article: Comparison of instant runoff voting to other voting systems#Political parties

John Russo, Oakland City Attorney, argued in the Oakland Tribune on 24 July 2006 that "Instant runoff voting is an antidote to the disease of negative campaigning.^[citation needed] IRV led to San Francisco candidates campaigning more cooperatively. Under the system, their candidates were less likely to engage in negative campaigning because such tactics would risk alienating the voters who support 'attacked' candidates", reducing the chance that they would support the attacker as a second or third choice.^{[55][56]}

No formal studies have been conducted in the United States. Internationally, Benjamin Reilly suggests instant runoff voting eases ethnic conflict in divided societies.^[57] This feature was a leading argument for why Papua New Guinea adopted instant runoff voting.^[58]

Critics allege there is a lack of evidence that such an effect occurs as often as suggested.^[59] Indeed, Lord Alexander's objections to the conclusions of the British Independent Commission on the Voting System's report (<http://www.archive.official-documents.co.uk/document/cm40/4090/chap-9.htm>) cites the example of Australia saying "their politicians tend to be, if anything, more blunt and outspoken than our own."

Plural voting

Main article: Comparison of instant runoff voting to other voting systems#Voter power

In Ann Arbor, Michigan arguments over IRV in letters to newspapers included the belief that IRV "gives minority candidate voters two votes," because some voters' ballots may count for their first choice in the first round and a lesser choice in a later round.^[60] The argument that IRV represents plural voting is sometimes used in arguments over the 'fairness' of the system, and has led to several legal challenges in the United States. The argument was addressed and rejected by a Michigan court in 1975; in *Stephenson v. the Ann Arbor Board of City Canvassers*, the court held "majority preferential voting" (as IRV was then known) to be in compliance with the Michigan and United States constitutions, writing:

Under the 'M.P.V. System', however, no one person or voter has more than one effective vote for one office. No voter's vote can be counted more than once for the same candidate. In the final analysis, no voter is given greater weight in his or her vote over the vote of another voter, although to understand this does require a conceptual understanding of how the effect of a 'M.P.V. System' is like that of a run-off election. The form of majority preferential voting employed in the City of Ann Arbor's election of its Mayor does not violate the one-man, one-vote mandate nor does it deprive anyone of equal protection rights under the Michigan or United States Constitutions.

—^[61]

Invalid ballots and exhausted ballots

Main article: Comparison of instant runoff voting to other voting systems#Ballot issues

Because the ballot marking is more complex, there can be an increase in spoiled ballots. In Australia, voters are required to write a number beside every candidate, and error rates can be five times higher than plurality voting elections^[62] Since Australia has compulsory voting, however, it is difficult to tell how many ballots are deliberately spoiled.^[63] Most jurisdictions with IRV do not require complete rankings and may use columns to indicate preference instead of numbers. In American elections with IRV, more than 99% of voters typically cast a valid ballot.^[64]

Robert's Rules of Order

Main article: Comparison of instant runoff voting to other voting systems#Rules of Order

The sequential elimination method used by IRV is described in *Robert's Rules of Order Newly Revised, 10th edition*.^[65] as an example of "preferential voting", a term covering "any of a number of voting methods by which, on a single ballot when there are more than two possible choices, the second or less-preferred choices of voters can be taken into account if no candidate or proposition attains a majority. While it is more complicated than other methods of voting in common use and is not a substitute for the normal procedure of repeated balloting until a majority is obtained, preferential voting is especially useful and fair in an election by mail if it is impractical to take more than one ballot. In such cases it makes possible a more representative result than under a rule that a plurality shall elect...."Preferential voting has many variations. One method is described ... by way of illustration."^[66] And then the instant runoff voting method is detailed.^[67]

Robert's Rules continues: "The system of preferential voting just described should not be used in cases where it is possible to follow the normal procedure of repeated balloting until one candidate or proposition attains a majority. Although this type of preferential ballot is preferable to an election by plurality, it affords less freedom of choice than repeated balloting, because it denies voters the opportunity of basing their second or lesser choices on the results of earlier ballots, and because the candidate or proposition in last place is automatically eliminated and may thus be prevented from becoming a compromise choice."^[68] Two other books on parliamentary procedure take a similar stance, disapproving of plurality voting and describing preferential voting as an option, if authorized in the bylaws, when repeated balloting is impractical: *The Standard Code of Parliamentary Procedure*^[69] and *Riddick's Rules of Procedure*.^[70]

Global use

Main article: History and use of instant-runoff voting

See also: Table of voting systems by country

Australia

See also: Australian electoral system and Electoral systems of the Australian states and territories

Instant-runoff voting is used for national elections in Australia to elect members of the Australian House of Representatives. The Australian Senate uses a modified form, combining it with a proportional representation system (the Single transferable vote); candidates are eliminated until the remaining parties can be said to have a sufficient proportion of the vote to earn a seat.^[1] Most state and council elections also use the system.

Canada

IRV is used to elect the leaders of two largest federal political parties in Canada, the Liberal Party of Canada^[71] and the Conservative Party of Canada. The New Democratic Party of Canada uses a multi-round system, with the option for advance voters of using a preferential ballot that operates for them as an IRV ballot. Canadian Prime Minister Stephen Harper won an IRV election to become party leader in the 2004 leadership election. In 2013, the Liberal Party picked Justin Trudeau with IRV in a national primary.^[72]

Fiji

Instant-runoff voting is used for national elections to elect members of the House of Representatives of Fiji.^[3] In Fiji, each voter casts ballots in two elections: one for the minority of seats that are elected by universal suffrage and the remaining in one of the communal constituencies reserved to different ethnic groups.

India

IRV is used in numerous electoral college environments, including the election of the President of India by the members of the Parliament of India and of the Vidhan Sabhas – the state legislatures.^[73]

Ireland

While most elections in the Republic of Ireland uses the single transferable vote (STV),^[74] in single-winner contests this reduces to IRV.^[75] This is the case in all Presidential elections^[75] and Seanad panel by-elections,^[76] and most Dáil by-elections^[75] In the rare event of multiple simultaneous vacancies in a single Dáil constituency, a single STV by-election may be held;^[77] for Seanad panels, multiple IRV by-elections are held.^[76]

New Zealand

IRV is used in the elections of mayors and councillors in single-member wards in some New Zealand cities such as Dunedin and Wellington. Multi-member wards in these cities use STV.^[9]

IRV, under the name Alternative Vote, was one of the four alternative systems available (alongside MMP, STV and SM) in the 1992 referendum on the voting method to elect MP's to the New Zealand House of Representatives. It came third of the alternative systems (ahead of SM) with 6.6% of the vote. IRV, under the name Preferential Vote, was one of the four alternative systems choices presented in the 2011 voting method referendum, but the referendum resulted in New Zealanders choosing to keep their proportional system of representation instead, while IRV came last with 8.34%.

Papua New Guinea

Since 2003 the national parliament of Papua New Guinea has been elected using an IRV variant called Limited Preferential Voting, where voters are limited to ranking three candidates.^{[78][79]}

United Kingdom

In the United Kingdom the system is commonly known as the alternative vote. It is used to elect the leaders of the Labour Party and the Liberal Democrats. (The leader of the Conservative Party is elected under a similar system, a variant of the exhaustive ballot.) It is also used for by-elections to the British House of Lords, in which hereditary peers are selected for that body.^[80] AV is also used by members of parliament to elect the chairmen of select committees and the Speaker of the House of Lords. The Speaker of the House of Commons is elected by the exhaustive ballot.

In 2010, the Conservative—Liberal Democrat coalition government agreed to hold a national referendum on the alternative vote,^[81] held on 5 May 2011.^[82] The proposal would have affected the way in which Members of Parliament are elected to the British House of Commons at Westminster. The result of the referendum was a vote against adoption of the alternative vote by a margin of 67.9 percent to 32.1 percent.^[83]

United States

Main article: Instant-runoff voting in the United States

IRV is used by several jurisdictions in the United States, including San Francisco^[5] and Oakland, California,^[6] and Minneapolis and Saint Paul, Minnesota.^[5] United States private associations that use IRV^[10] include the Hugo Awards for science fiction,^[11] the Academy of Motion Picture Arts and Sciences in selection of the Oscar for Best Picture,^[12] and more than fifty colleges and universities for student elections.^[84]

Similar systems

Runoff voting

The term *instant runoff voting* is derived from the name of a class of voting systems called runoff voting. In runoff voting voters do not rank candidates in order of preference on a single ballot. Instead a similar effect is achieved by using multiple rounds of voting. All multi-round runoff voting systems allow voters to change their preferences in each round, incorporating the results of the prior round to influence their decision. This is not possible in IRV, as participants vote only once, and this prohibits certain forms of tactical voting that can be prevalent in 'standard' runoff voting.

Exhaustive ballot

A system closer to IRV is the exhaustive ballot. In this system—one familiar to fans of the television show *American Idol*—one candidate is eliminated after each round, and many rounds of voting are used, rather than just two.^[85] Because holding many rounds of voting on separate days is generally expensive, the exhaustive ballot is not used for large scale, public elections.

Two-round systems

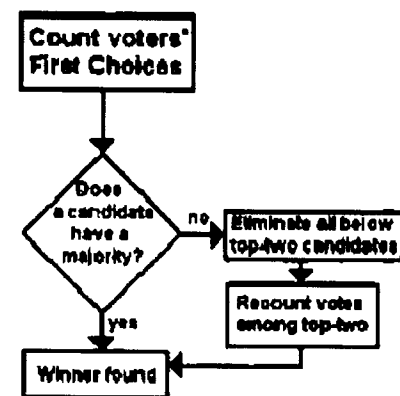
The simplest form of runoff voting is the two-round system, which typically excludes all but two candidates after the first round, rather than gradually eliminating candidates over a series of rounds. Eliminations can occur with or without allowing and applying preference votes to choose the final two candidates. A second round of voting or counting is only necessary if no candidate receives an overall majority of votes. This system is used in France and the Finnish presidential election.

Contingent vote

The contingent vote, also known as **Top-two IRV**, or *batch-style*, is the same as IRV except that if no candidate achieves a majority in the first round of counting, all but the two candidates with the most votes are eliminated, and the second preferences for those ballots are counted. As in IRV, there is only one round of voting.

Under a variant of contingent voting used in Sri Lanka, and the elections for Mayor of London in the United Kingdom, voters rank a specified maximum number of candidates. In London, the Supplementary Vote allows voters to express first and second preferences only. Sri Lankan voters rank up to three candidates for the President of Sri Lanka.

While similar to "sequential-elimination" IRV, top-two can produce different results. Excluding more than one candidate after the first count might eliminate a candidate who would have won under sequential elimination IRV. Restricting voters to a maximum



Top-two IRV

number of preferences is more likely to exhaust ballots if voters do not anticipate which candidates will finish in the top two. This can encourage voters to vote more tactically, by ranking at least one candidate they think is likely to win.

Conversely, a practical benefit of 'contingent voting' is expediency and confidence in the result with only two rounds. Particularly in elections with few (e.g., fewer than 100) voters, numerous ties can destroy confidence. Heavy use of tie-breaking rules leaves uncomfortable doubts over whether the winner might have changed if a recount had been performed.

Larger runoff process

IRV may also be part of a larger runoff process:

- Some jurisdictions that hold runoff elections allow absentee (only) voters to submit IRV ballots, because the interval between votes is too short for a second round of absentee voting. IRV ballots enable absentee votes to count in the second (general) election round if their first choice does not make the runoff. Arkansas, South Carolina and Springfield, Illinois adopt this approach.^[86] Louisiana uses it only for members of the United States Service or who reside overseas.^[87]
- IRV can quickly eliminate weak candidates in early rounds of an exhaustive ballot runoff, using rules to leave the desired number of candidates for further balloting.
- IRV allows an arbitrary victory threshold in a single round of voting, e.g., 60%. In such cases a second vote may be held to confirm the winner.^[88]
- IRV elections that require a majority of cast ballots but not that voters rank all candidates may require more than a single IRV ballot due to exhausted ballots.
- Robert's Rules recommends preferential voting for elections by mail and requiring a majority of cast votes to elect a winner, giving IRV as their example. For in-person elections, they recommend repeated balloting until one candidate receives an absolute majority of all votes cast. Repeated voting allows voters to turn to a candidate as a compromise who polled poorly in the initial election.^[65]

The common feature of these IRV variations is the one vote is counted per ballot per round, with rules that eliminate the weakest candidate(s) in successive rounds. Most IRV implementations drop the "majority of cast ballots" requirement.^[89]

See also

- Alternative Vote Plus (AV+) or Alternative Vote Top-up proposed by the Jenkins Commission (UK)
- Outline of democracy
- None of the above (NOTA) or Re-Open Nominations (RON)
- First-past-the-post voting

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External links

- 2010 articles from the Constitution Society (<http://www.re-constitution.org.uk/news/articles/37/>) and Electoral Reform Society (<http://www.electoral-reform.org.uk/article.php?id=55>) summarizing the proposed change in the United Kingdom to IRV/Alternative Vote

Practice

- Advantages and disadvantages of AV (<http://aceproject.org/ace-en/topics/es/esd/esd01/esd01d/esd01d01>) from the ACE Project (<http://www.aceproject.org/>) Electoral Design Reference Materials
- A Handbook of Electoral System Design (<http://www.idea.int/publications/esd/index.cfm>) from International IDEA (<http://www.idea.int/>)
- Australian Electoral Commission Web Site (<http://www.aec.gov.au/>)
- Preferential Voting in Australia (<http://www.australianpolitics.com/elections/features/preferential.shtml>) from Australian Politics.com
- San Francisco Department of Elections, California (<http://www.sfgov2.org/index.aspx?page=599>)
- Alameda County Registrar of Voters, California (<http://www.acgov.org/rov/rcv/>)
- City of Minneapolis, Minnesota (<http://www.ci.minneapolis.mn.us/elections/rcv.asp>)
- State of North Carolina (<http://www.ncsbe.gov/sampleballots/2010General/0GDURH04.pdf>)

Demos and simulations

- AmericanQuorum.com (<http://www.americanquorum.com>) A ranked choice ballot tool from the Indaba Application Network, including the animated display of an instant runoff.
- BBC: Would the alternative vote have changed history?, illustration of how the results of the last six general elections might have looked had the 'alternative vote' system been in place. (http://news.bbc.co.uk/1/hi/uk_politics/8506306.stm)
- OpenSTV – Open source software for computing IRV and STV (<http://www.openstv.org/>)
- *Favourite Futurama Character Poll* (<http://www.demochoice.org/dcballot.php?poll=Futurama1>)
- Voting System Visualizations (<http://zesty.ca/voting/sim/>) – 2-dimensional plots of results of various systems, with assumptions of sincere voting behavior.
- Simulation Of Various Voting Models for Close Elections (<http://bolson.org/voting/essay.html>) Opposition article by Brian Olson.

Advocacy groups and positions

- Yes to Fairer Votes (<http://www.yestofairervotes.org/>) campaign site for the Yes side of the 2011 UK electoral reform referendum
- Washington Post (http://www.washingtonpost.com/opinions/district-should-adopt-instant-runoff-elections/2013/04/24/71c581e2-ad19-11e2-b6fd-ba6f5f26d70e_story.html)
- Instant Runoff Voting (<http://www.fairvote.org/instant-runoff-voting>) at FairVote
- League of Women Voters of Vermont (http://www.lwvofvt.org/files/position_on_voter_rights_and_government.pdf)
- InstantRunoff.com (<http://instantrunoff.com/>)
- Ranked Ballot Initiative of Toronto, Canada (<http://www.123toronto.ca/main.htm>)
- Roosevelt Institution (<http://www.rooseveltcampusnetwork.org/policy/instant-runoff-voting-national-elections>)
- Citizens for Voter Choice :: Massachusetts (<http://www.voterchoicema.org/>)
- FairVote Minnesota (<http://www.fairvotemn.org/>)
- Common Cause Massachusetts (<http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4849119>)
- Brookings Institution's "Empowering Moderate Voters" paper (http://www.brookings.edu/papers/2007/0228electionreform_Opp08.aspx/)
- Does the Alternative Vote Bring Tyranny to Australia? - Antony Green ABC (<http://blogs.abc.net.au/antonygreen/2011/02/does-the-alternative-vote-bring-tyranny-to-australia.html>)

Opposition groups and positions

- AV 2011 (<http://www.av2011.co.uk/>) Anti-AV Referendum Site for the 2011 UK electoral reform referendum
- No to AV (<http://www.no2av.org/>) campaign site for the No side of the 2011 UK electoral reform referendum
- Fair Vote Canada paper (http://www.fairvote.ca/files/AV-backgrounder-august2009_1.pdf) on the Alternative Vote
- IRV page (<http://www.rangevoting.org/rangeVirv.html>) at the Center for Range Voting
- Instant Runoff Voting Report (http://www.ncvoter.net/downloads/Instant_Runoff_Voting_Value_and_Risks_Report.pdf) Values and Risks Report by the N.C. Coalition for Verified Voting

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Categories: Instant-runoff voting | Non-monotonic electoral systems | Preferential electoral systems | Single winner electoral systems

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ITEM 5

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APPROVED

1. Nondiscrimination

Motion made by Member Lalonde to add A(16) and A(17) to the Bill of Rights and the unnumbered proposed Charter amendment regarding changes to Chapter 62 requiring referendum, as amended; seconded by Member Fernandez; Voice-vote: 4-1; Opposed: Member Kendle.

A(16) *Nondiscrimination* – No person shall be deprived of any rights and privileges conferred by law because of race, color, national origin, religion, gender, sexual orientation, gender identity, disability, marital status, familial status, or age.

A(17) ~~Neither the City of Miami Beach nor any person, or organization contracting with the City of Miami Beach~~ shall not discriminate in employment practices and benefits offered based upon an employee or applicant's gender identity, race, color, national origin, religion, gender, sexual orientation, disability, marital status, familial status, or age.

Unnumbered Provision – Any revision to Section 62 of the Code of the City of Miami Beach, entitled Human Relations, that repeals, diminishes, or otherwise negatively impacts a right or duty established in that section that inures to the benefit of a member of the classification categories as defined by section 62-31 must be approved by a majority of the voters in a citywide election.

(Item discussed on July 1, 2013 and July 15, 2013.)

Note: The following two resolutions were approved by the City Commission on July 17, 2013 to be placed on the November 5, 2013 Special Election:

- a. A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A Special Election To Be Held On Tuesday, November 5, 2013, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach A Question Asking Whether City Charter Section 1.03(B) Requiring Majority Voter Approval Before The City's Sale, Lease Exceeding Ten Years, Exchange Or Conveyance Of Convention Center Parking Lots Should Be Changed To Require 60% Voter Approval Instead, And To Include Convention Center Campus" (All City-Owned Property Within Civic And Convention Center District Except Convention Center And Carl Fisher Clubhouse) Within The Category Of City-Owned Properties Subject To 60% Voter Approval Requirement, And Clarifying That This Charter Change Is Inapplicable To The Convention Center Project" Ballot Question (To Be Presented Simultaneously On The November 5, 2013 Ballot).
- b. A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Calling For A November 5, 2013 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether Paragraph A(17) Of The Miami Beach City Charter Citizens' Bill Of Rights Should Be Created Prohibiting Discrimination By The City Of Miami Beach In Its Employment Practices And Benefits Offered 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. Section 2.02 -Term And Compensation

- a. Motion by Member Lalonde to direct Legal Department to draft a proposed ballot to include current recommendation for compensation, which will bring salary from 1966 at \$6,000 to current level of \$_____ for Commissioners, and \$10,000 to current level of \$_____ for Mayor, and include adjustments and calculations going forward; Legal to bring back to the Board for review; seconded by Member Fernandez. Voice-vote: 7-0. **Debora Turner, First Assistant City Attorney, to prepare and bring back to the Charter Review Board Meeting. Including CPI calculations.**
- b. Motion by Chair Zack to add a sentence to the section as follows:
- *Compensation shall include all benefits (Planning Days, vacations, etc.)*
 - *Benefits shall be determined by ordinance*
 - *All benefits shall be documented and disclosed pursuant to ordinance.*
- Motion seconded by Vice-Chair Perry. Voice-vote: 7-0

Chair Zack requested a draft [resolution] ordinance amending Section 2.02 to present to the City Commission for their consideration. Such ordinance will include everything the Charter Review Board thinks should be in the City Charter, and the Board can recommend what should be considered in the ordinance to effectuate the Charter changes. **City Attorney's Office to handle.**

(Item discussed on May 6, 2013, June 3, 2013 and June 24, 2013, July 1, 2013.)

3. Section 2.07 – Vacancies In City Commission/Election Versus Appointment When Commission Vacancies Occur

Member Lalonde made a motion to incorporate language in the City's Charter as follows:

- *Vacancy to occur by appointment*
- *Appointee can serve until the next Election cycle (County, State or City)*
- *Extend period of time if failed to appoint to 60 days instead of 30 days*
- *After 60 days, if failed to appoint, then a Special Election will be held*
- *There will be no prohibition on that person running*

Motion seconded by Member Kendle. Voice-vote: 5-0; Absent: Chair Zack and Member Diffenderfer. Ms. Turner to bring back proposed language to Section 2.07, per Member Fernandez's request, regarding a Resign to Run situation being effective no later than the night before the election, so that the vacancy can be filled at the same election taking place the following day. **Debora Turner to draft proposal and bring back**

Motion by Mr. Fernandez that in the event of a resignation in the City Commission, the vacancy is immediate upon tendering the resignation, and the person who may be appointed will stand for election at the next regularly scheduled election. Seconded by Mr. Kendle. Voice Vote: *Approved 6-0 (Mr. Diffenderfer absent.) (Item discussed on June 10, 2013)*

(Item discussed on May 6, 2013, June 3, 2013, June 10, 2013 and July 1, 2013.)

4. Sec. 2.04. - Induction And Meetings

The last paragraph of Section 2.04 reads "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."

Motion by Member Lalonde to remove the last paragraph in its entirety, pending language review by Legal; seconded by Member Fernandez; Voice-vote: 4-1; Opposed: Member Preira. (July 1, 2013)

Donald Papy to look at this paragraph to see what the intention of the language was used for and bring back.

(Item discussed on June 10, 2013 and July 1, 2013.)

PENDING

1. Preservation Of The Resources Of The Beach – Proponent Rick Preira.

Item deferred on July 1, 2013 and August 5, 2013.

2. Miami-Beach United – Proposed Charter Amendment to the Miami Beach Citizen's Bill of Rights (including definition of HOA).

Motion made by Member Lalonde to send back the item to the City Attorney's Office for them to meet with members of Miami Beach United and draft revised language; seconded by Member Kendle; Voice-vote: 5-0.

(Item discussed on May 6, 2013, June 3, 2013, June 24, 2013, July 1, 2013, July 15, 2013 and August 5, 2013.)

3. Reasonable Access To Its Roads – Proponent Stephen Zack, Chair.

Chair Zack has proposed inclusion in the Citizens' Bill of Rights a provision that states that "the citizens of Miami Beach have the right to reasonable access to its road."

Motion by Member Lalonde; seconded by Member Fernandez to table the item and invite the Transportation and Parking Committee to make a formal presentation with their recommendations on the traffic issues facing the City at a September CRB meeting. Absent: Member Preira.

Members Fernandez and Kendle made friendly amendments to include the Planning Board, and ask Transit Miami to send some Charter recommendations.

(Item discussed on May 6, 2013 and August 5, 2013.)

4. Over Scale Development In Residential Areas – Proponent Stephen Zack, Chair

(Item Discussed on August 5, 2013)

5. Preserving The Historical Value Of Miami Beach – Proponent Terry Bienstock

Chair Zack suggested that they write a letter to Mr. Bienstock to submit his proposal to the Board.

In an e-mail dated August 19, 2013, Mr. Bienstock requested that the item be tabled for two months.

(Item discussed on August 5, 2013.)

6. Inclusion Of A Homeless Bill Of Rights In The Citizens' Bill Of Rights – Proponent Dr. Morris Sunshine.

Motion made by Member Lalonde to defer and table the item until August 19, 2013 Meeting at a time certain; seconded by Member Fernandez; Voice-vote: 6-0; Absent: Member Preira.

(Item Discussed on August 5, 2013)

7. Electing Officials By Open Seats – Proponent Scott Diffenderfer

Item to be discussed at the August 19, 2013 Meeting.

(Item Discussed on August 5, 2013)

8. Planning Board Powers – Proponent Alex Fernandez

Member Fernandez would like to see in the Charter the powers that the Planning Board has, since this Board approves projects with increased density that affect traffic. He requested to see the Charter and powers of the Planning Board having to do with density and what is their clear position.

(Item Discussed on August 5, 2013)

9. Inspector General/Subpoena Power – Proponents Rick Kendle/Alex Fernandez

Joe Jimenez, Assistant City Manager, on behalf of Jimmy L. Morales, City Manager, informed the Board that since there is no Inspector General in the City, he was asked to take over the ethics and internal compliance if any issues arise. They discussed the idea, and perhaps, in the future, bring it to the City Commission for the creation of a department. He agrees with the necessity due to the City's history, but he suggested not solidifying it in the Charter, but rather in the City Code.

Member Fernandez requested a Memorandum of recommendation from the City Attorney and the City Manager's Office with both suggestions; and to bring it back to this Board for review

Joe Jimenez, Assistant City Manager, reiterated that they do not recommend including it in the Charter, but rather try baby steps and do it by Code, via the City Manager.

Member Lalonde requested a report as to how they are going to reorganize the division, including a whistle blower telephone line, online, and by telephone, visible to the public, so that they can incorporate the entire plan.

Mr. Jimenez stated that some of this action requires Commission approval, due to budget funding issues. Discussion continued regarding resources and funding.

Member Fernandez requested to bring back for Board's review the planning of the creation of the department, as well as the fiscal impact.

(Item discussed on May 6, 2013, June 3, 2013, June 10, 2013, June 24, 2013 and July 1, 2013)

10. Term Limits

On June 24, 2013, motion made by Member Diffenderfer; seconded by Member Lalonde, to strike the word "consecutive" so the combined lifetime total service cannot exceed 14 years. Voice-vote: 7-0.

On July 1, 2013, Debora Turner, First Assistant City Attorney, introduced the item regarding term limits, and removing the word "consecutive." There was consensus to defer item.

Member Kendle explained that there is no rush to discuss this item, and if they were to do it now, it could look political, and everyone is excluded, because people in office are excluded. He suggested deferring it in order not to make it look "political."

Vice-Chair Perry stated that they had taken the "politics" out, by not having this apply to any current City officials.

Ms. Turner stated the proposed draft language would commence with the General Election of 2015.

Member Kendle stated that there was discussion regarding term limits for the Mayor, and they try to keep that separate, because once it is put on the ballot, it may not look right; he suggested putting all items regarding commission salary and term limits all together.

Member Fernandez agreed that this Board should be above any politics and above individuals, they are looking at policies and government documents for the next ten years and perhaps surpass the services of individuals that are being spoken about. He does not see why this should be on this ballot. He thinks it may look as if "politically" induced, when it is not the nature or the spirit of this Board to put items like this before the voters as a "political" operative or agenda.

(Item discussed on May 6, 2013, June 24, 2013 and July 1, 2013)

11. 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

(Item discussed on June 3, 2013.)

12. Section 1.03-Powers Of City

Ms. Turner explained that the Board might want to review the last sentence of the paragraph. Discussion held regarding management agreement and referendum requirements.

Subsection (b), entitled "Alienability of property," requires referendum approval for the "sale, exchange, conveyance or lease of ten years or longer" of certain City-owned properties. Should other City-owned properties be subject to this referendum requirement?

(Item discussed on June 3, 2013)

13. Items Requested To Be Discussed On May 6, 2013 By Alex Fernandez

(See Paragraphs 3 Through 18 of Mr. Fernandez's Memorandum of April 30, 2013 and Mr. Fernandez's Memorandum of May 7, 2013; Attached as Composite Exhibit "A".)

(Item not reached.)

14. Section 6.03 – Qualifying.

Currently a person must live at least one year in the City prior to qualifying, and the City Attorney's Office recommends for consideration the issue of a different qualifying time for residence in the City. Ms. Turner explained that for example, to qualify for a County commission seat, one must be a resident for six months in the district and 3 years in the County, and for the office of County Mayor, one must be a resident of the County for three years.

(Item discussed on June 3, 2013.)

15. Whistle Blowing Protection For Employees - Proponent Frank Del Vecchio

(Item Proposed on May 6, 2013.)

16. Citizens And Taxpayers Should Have Fair Access To Speak With City Officials, As A Basic Right – Proponent Alex Fernandez

(Item proposed on August 5, 2013.)

REJECTED/WITHDRAWN

1. **Ethics In Government Code Of Conduct – Proponent Stephen Zack, Chair**

Chair Zack asked if the City has an Ethics Code. Debora Turner, First Assistant City Attorney, explained that “ethics in government” is already codified in the City Code. **Chair Zack withdrew the item.**

(Item Discussed on May 6, 2013 and August 5, 2013)

2. **Mandate That Employees Should Be Courteous To Citizens - Proponent Stephen Zack.**

Chair Zack suggested that the Administration include this mandate as part of the evaluation process, rather than in the Charter.

Vice-Chair Perry explained that it is a culture change that is needed; in private companies, an employee being courteous is a priority, and perhaps this Board can suggest to the City Manager to continue working in improving this culture in the City.

3. **Nondiscrimination**

A(18) The City of Miami Beach shall make reasonable efforts to recruit applicants for employment or contracts with the City from all those qualified, including, but not limited to, people of color, women, lesbian, gay, bisexual, or transgender persons, and the disabled.

Proposal rejected on July 15 ,2013.

(Item discussed on July 15, 2013)

4. **Section 4.02 – City Manager – Functions And Powers – Appointment of Assistant City Manager, subject to the Consent of the City Commission.**

Motion by Rick Kendle that the CRB does not think that the City Commission should have power of appointment over Assistant City Managers. Seconded by Ms. Lalonde. Voice Vote: Approved 6-0 (Mr. Diffenderfer absent.)

(Item discussed on June 3, 2013 and June 10, 2013.)

5. **Sale, Exchange, Conveyance Or Lease Of Ten Years Or Longer Of Convention Center District Property – Proponent Frank Del Vecchio**

Frank Del Vecchio explained that he is requesting for the Board to consider and forward to the Commission for consideration a Charter amendment that will conform the official representations made by the City Commission and City Administration to the Charter.

Member Fernandez made a motion that the MBCC referendum issue is out of order for consideration by the CRB, but nothing that is being done by the Charter Review and Revision Board goes to the merit of Mr. Del Vecchio's proposal, and Mr. Del Vecchio

should seek another avenue to address this issue; seconded by Member Lalonde; 5-1; Opposed: Member Kendle; Absent: Member Preira.

Chair Zack made a friendly amendment, to add that nothing that is being done goes to the merit of this proposal and to allow Mr. Del Vecchio another avenue to which he can address this issue.

(Item discussed May 6, 2013)

6. Administrative Determinations Proposed And Published By The Planning Director
– Proponent Commissioner Jonah Wolfson.

Motion by Member Lalonde that this issue is out of order for consideration to the CRB, but encourage the Department to continue making the Determinations available publicly; 6-0; Absent: Member Preira.

(Item discussed on May 6, 2013)

MISCELLANEOUS ITEMS

1. **Mandate That Employees Should Be Courteous To Citizens** - Proponent Stephen Zack.

Chair Zack suggested that the Administration include this mandate as part of the evaluation process, rather than in the Charter.

(Item discussed on May 6, 2013 and August 5, 2013.)

2. **Stipends Received By Elected Official Need To Have Appropriate Documentation To Indicate How It Is Being Spent**

Motion by Rick Kendle that as a principle the Board agrees that stipends received by Elected Official need to have appropriate documentation to indicate how it is being spent. At a subsequent time, the Board can determine if this is an item that should be included in the Charter. Seconded by Mr. Fernandez. Voice Vote: Approved 6-0 (Mr. Diffenderfer absent.) Mr. Smith suggested that this may be accomplished by the Commission via resolution, and does not have to be via Ordinance, as they both have the same force of law.

3. **Commission Travel Policy**

Chair Zack inquired if there is a policy as to how the Commission travels, i.e. business or coach; how is that determined? Mr. Smith replied that the standard is that used in the County and approved by the Miami-Dade County Ethics Commission. It is coach, and there are guidelines as to mileage and how much you can spend per day. **City Attorney's Office to obtained Guidelines.**

COMPOSITE EXHIBIT "A"



MIAMI BEACH

RECEIVED
2013 APR 30 PM 4:33
CITY CLERK'S OFFICE

CHARTER REVIEW AND REVISION BOARD

MEMORANDUM

TO: Mr. Rafael Granado, City Clerk
FROM: Alex Fernandez, Charter Review Board Member
DATE: April 30, 2013
SUBJECT: Items for Discussion

At the our first meeting of the Charter Review Board I sponsored a motion requiring that, in the spirit of transparency, a three day rule be implemented making agenda items and referrals for discussion available to the public for their timely review prior to meetings of the CRB. As such, please accept this memorandum containing items which I believe merit the consideration of the CRB and which should be added to the referral tracking document.

Referrals

1. Motion requesting that the City Clerk advertise meeting notices, agendas, and CRB website address on Spanish publications.
2. Motion bifurcating recommended Charter amendments to the City Commission by two tiers:
 - a) Recommended Charter amendments of a time sensitive nature which should be included on the November, 2013 ballot and which shall be presented to the City Commission for their consideration, adoption, and submittal to the Miami-Dade County Elections Department no later than the ballot deadline of September 6, 2013; and,
 - b) Items that may not be time sensitive and which may merit extended debate. Such Items may be presented to the City Commission upon sunset of the Charter Review Board for the City Commission's consideration, adoption, and inclusion on the Miami-Dade County Primary Election scheduled for August 12, 2014.
3. Motion requesting that the City Commission consider amending City of Miami Beach resolution number 2012-28072 creating the Miami Beach Ad Hoc Charter Review

and Revision Board so as to enlarge its powers of review to include the City's Related Special Acts portion of the City Code.

4. Motion establishing that the Charter Review Board will give adequate consideration to all recommendations submitted by members of the public to the Charter Review Board.
5. Motion requesting that the City Manager direct the Management Team and Department Directors to submit to the Charter Review Committee any areas or items that pertains to their department which they would like for the Charter Review Board to review or discuss.
6. Amend the *Citizen's Bill of Rights, (c) Remedies for Violations* to include language to empower the Miami-Dade County Commission on Ethics and Public Trust with investigation and enforcement of the Citizen's Bill of Rights and empowering the Commission on Ethics and Public Trust to impose any penalty allowed by law.
7. Amend the *Citizen's Bill of Rights, Item 6 Right to Notice* to add new language providing that the agenda for land use boards and quasi-judicial proceedings be made available no later than fifteen (15) business day prior to the meeting or proceeding and that staff reports be made available no later than three (3) business days prior to the meeting or proceeding.
8. Amend the *Citizen's Bill of Rights, Item 12 Quarterly Budget Comparison* to add new language providing that in keeping with the City's commitment to transparency, reliability, and accountability to residents, the City shall make public on its homepage an online check registry.
9. Review of the *Citizen's Bill of Rights* to discuss adding new language establishing property owners' rights which shall establish that a property owner is entitled to the designation (or lack thereof) and the zoning of a property as was established at the time of purchase with the exception of reasonable zoning changes. Discuss inclusion of language that would require that:
 - a) any new historic designation of property be applicable only on prospective ownership unless the property owner provides consent for the designation; and,
 - b) the down zoning of a property beyond what is reasonable shall only be applicable on prospective ownership unless the property owner provides consent for the down zoning.

The City Commission shall establish the definition of ownership and reasonable as it would relate to this clause.

10. Review of *Article I – Corporate Existence, Form of Government, Boundary and Power, Section 1.03 – Powers of the City, (b) Alienability of Property* to discuss including new



language pertaining to the conveyance of air and underground easements for the construction of above ground or underground permanent structures (bridges, parking garages, basements, etc.) for uses other than utility (electric, water, gas, sewer, etc.) and to conclude whether conditions for such conveyance shall:

- a) be addressed in the City Charter;
- b) require a five seventh (5/7) vote of the City Commission and a majority vote of the Planning Board; and,
- c) the City Commission shall establish the value appraising method for above ground and underground easements being considered for conveyance.

11. Review of *Article I – Corporate Existence, Form of Government, Boundary and Power, Section 1.03 – Powers of the City, (b) Alienability of Property* to consider if in addition to the provisions set forth in the City Code (*Chapter B2 – Public Property, Article II Sale or Lease of Public Property, Section 82-37 Committee Review and Public Hearing*) shall public notice be served by mail (United States Postal Service) to every property owner within 375 feet from City-owned property which is being considered for conveyance when:

- a) the City-owned property falls within or adjacent to a residential neighborhood; and,
- b) the proposed main use of the City-owned property is different from its existing use.

12. Review of *Article II – City Commission, Section 2.03 – Powers of the City Commission* regarding new language establishing a non-interference clause which shall establish that with the exception for the purposes of inquiry and information, members of the City Commission are expressly prohibited from interfering with the performance of the duties of any employee who is under the direct or indirect supervision of the City Manager.

13. Review of *Subpart B - Related Special Acts, Article V. Health Plan for City Officers and Employees* to consider new language addressing the tax inequity of employees who elect to include their domestic partner in the City's health plan and establish that the City Commission shall enact policy to correct the inequality in taxation imposed by the Federal Government in keeping with the City's commitment to be free of all forms of discrimination and inequality.

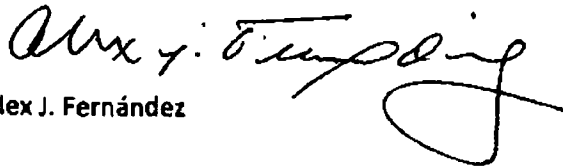
14. Discussion pertaining to the adoption of a Whistleblower Protection Act through which the City Commission shall establish protections for all City employees and appointees who report violations of any local, state, or federal law, regulation,

policy, or procedure with respect to an alleged abuse of authority, misuse of public funds, or the existence of a danger to the public health, safety, or welfare. The Commission shall establish a prohibition on any retaliatory conduct against anyone who acts as a whistleblower and reports a violation. Procedures shall be set by the City Commission.

15. Discussion pertaining to the adoption of language to require that any member of a land use board or of any board that engages in quasi-judicial hearings shall be required to resign from their appointed seat upon qualifying for elected office in the City of Miami Beach.
16. Discussion pertaining to the constitutionality of adopting recommendations regarding pension reform submitted to the City Commission by the Budget Advisory Committee.
17. Discussion pertaining to the recommendations submitted by Miami Beach United regarding the Citizen's Bill of Rights.
18. Discussion pertaining to Mr. Frank Del Vecchio's communication regarding "voter referendum approval for the sale or lease of any and all city-owned property in the 52-acre convention center redevelopment district."

I trust that the Chairman Zack will schedule the hearing of the above referral items timely and appropriately. Please ensure that the motions contained in items one (1) through five (5) are included on the May 6, 2013 agenda of the Charter Review Board. Other items will follow under separate cover to be included for future meetings. Please do not hesitate to direct any questions and/or concerns directly to me.

Thank you,



Alex J. Fernández



MIAMI BEACH

CHARTER REVIEW AND REVISION BOARD

MEMORANDUM

TO: Mr. Rafael Granado, City Clerk

FROM: Alex Fernandez, Charter Review Board Member

DATE: May 7, 2013

SUBJECT: Supplemental Memo:
Investigative and Enforcement Authority of the Miami-Dade County
Commission on Ethics and Public Trust pertaining to alleged violations of
Citizens Bill of Rights, Sunshine, Public Records, and Campaign Finance Laws.

City Clerk and Chairman Zack:

Please accept this memo in reference to the item for consideration which I proposed during yesterday's meeting of the Charter Review Board. Last year Miami-Dade County voters approved a charter amendment which empowered the Miami-Dade County Commission on Ethics and Public Trust to investigate, enforce, and levy penalties upon issues regarding the County's Citizen's Bill of Rights (CBR). While the County's CBR does apply to the City of Miami Beach and its residents, the Commission on Ethics and Public Trust currently does not have enforcement authority over the Miami Beach CBR. As a result, residents who feel that their citizen's rights may have been violated may only remedy the violation by litigating the issue in court if the same right is not contained within the Miami-Dade County CBR.

In communicating with Mr. Joe Centorino of the Miami-Dade County Commission on Ethics and Public Trust he expressed his agreement to my belief that it is indeed futile to have such rights on the Charter without an effective enforcement mechanism. Not including a provision within the Miami Beach CBR providing citizens with an accessible means for addressing violations of rights which are unique to our CBR could easily create the perception that certain rights contained within our CBR apply solely to those who can afford to retain an attorney for representation in court.

In recognizing the great financial disparity of this community, it is indeed proper to consider such alliance with the Miami-Dade County Commission on Ethics and Public Trust as we seek to protect the rights of all Miami Beach citizens regardless of their ability to retain counsel. Mr. Centorino assures me that his agency can assume this charge. Therefore, as

stated in Item six of my memo from April 30th, 2013, I would like for this Charter Review Board to consider including the Miami-Dade County Commission on Ethics and Public Trust as an option for those seeking remedies to violations of their citizen rights.

Expand Authority of Ethics Commission

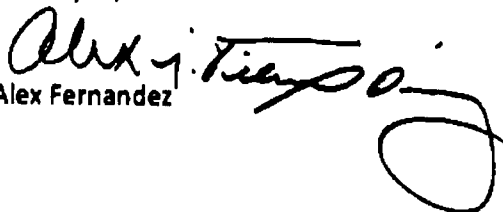
Furthermore, from time to time the Miami-Dade Commission on Ethics and Public Trust is approached to investigate alleged violations of laws pertaining to the State's sunshine provision, public records, and campaign law. Though the Commission on Ethics and Public Trust does look into these matters, they are eventually referred to law enforcement and/or state agencies for enforcement. Given the work load of law enforcement agencies, these violations become of low priority for law enforcement and are often neglected. Through my communications with Mr. Centorino he has shared his belief that it may be at times more practical to allow the Commission on Ethics and Public Trust to enforce such issues.

As such, I would like for this Charter Review Board to consider and discuss as to whether the Miami-Dade County Commission on Ethics and Public Trust should be engaged to investigate and enforce issues relating to sunshine, public record, and campaign laws.

Finally, during yesterday's meeting one of colleagues brought forth concerns pertaining to "bad experiences" which of some our elected officials may have had with the Miami-Dade Commission on Ethics and Public Trust. The board member mentioned that it was his opinion that the will of the City Commission will be not to adopt such proposal as a result of those negative experiences and that as such this Charter Review Board should not consider the issue. While the board member's statement may or may not reflect the position of all members of the City Commission, I believe that while conducting our business this Charter Review Board should attempt to insulate itself as much as possible from the political will and sentiments of the moment. It is not our task to consider what the will of the City Commission will be on any of the issues we will be discussing. Rather, the Commission has entrusted us with the review of the provision contained within our Charter to propose amendments which make it a better governing document for our City and it is the duty of the City Commission to determine if it is indeed their will to submit those proposals to the voters for adoption. Therefore, I respectfully request that this item to be given adequate consideration by this Charter Review Board on its merits of protecting our citizen's and their rights established within the Citizen's Bill of Rights.

Please direct any questions and/or concerns directly to me.

Thank you,


Alex Fernandez

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Jose Smith, City Attorney
Debora Turner, 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, September 9, 2013 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. **Accept Minutes Of The August 19, 2013 Charter Review & Revision Board Meeting.**
(See Item 1, Page 7)
2. **Promoting CRB issues in social media** – Nannette Rodriguez to present.
3. **Preservation Of Beaches** – Proponent Rick Preira
 - a. **Section 1.03 – Power of City** – Proponent Rick Kendle
4. **Section 2.02 – Term And Compensation** - Review the amendments to the Compensation Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.
5. **Section 2.07 – Vacancies in City Commission** - Review the amendments to the Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.
6. **Sections 3.01, 4.01 and 4.03 – City Attorney, City Manager and City Clerk** – Review cleanup language to the Sections proposed by the City Attorney's Office. Debora Turner to present.

7. **Discussion of Section 2.02 – Term And Compensation** - Item added to the agenda by acclamation during the August 19, 2013 CRB meeting.
 - a. Discussion of the Term of Office for the Mayor (currently it is two years).
 - b. Discussion of Term Limits
8. **Discussion of Section 6.03 – Qualifying**
 - a. Discussion of residency requirements - Proponent Jacqueline Lalonde
 - b. Discussion regarding adding a resign to run provision for Land Use Board Members who become candidates for elective office – Proponent Alex Fernandez
9. **Discussion of Section 2.07 – Vacancies In City Commission Relating To Succession For The Office Of The Mayor In The Event Of A Vacancy** – Proponent Alex Fernandez
10. **Whistle Blowing Protection for Employees** – Proponent Frank Del Vecchio. Item Withdrawn by Mr. Del Vecchio (See Item 10, Page 23).
11. **Items Requested By CRB Member Fernandez To Be Added To The List Of Discussion Item.** (See Item 11, Page 27).
12. **Schedule additional meeting dates.**

MIAMI BEACH

CHARTER REVIEW AND REVISION BOARD MEETING NOTICE

NOTICE IS HEREBY given that the Miami Beach Charter Review and Revision Board will meet as follows:

DATE	TIME	LOCATION
Monday, September 9, 2013	4:30 PM	Commission Chambers, 3rd Floor, City Hall

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

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

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 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.

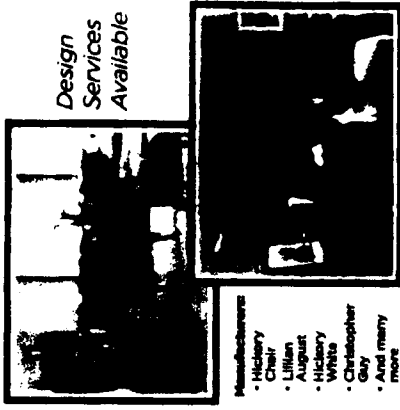
One or more members of the Miami Beach City Commission may be in attendance and participate in discussions.

Rafael E. Granada, Esq., City Clerk
 Pursuant to Section 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.

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 — Jennifer and Jordan Landsberg

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 Marsha Botkin, Executive Director
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 (US-1 across from UM)

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MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair	-	Present
Aaron Perry, Vice Chair	-	Absent
Scott Diffenderfer	-	Present
Jacqueline Lalonde	-	Present
Rick Kendle	-	Present
Alex Fernandez	-	Present
Richard "Rick" J. Preira	-	Absent

Staff:

Donald Papy, Chief Deputy City Attorney	-	Present
Debora Turner, First Assistant City Attorney	-	Absent
Rafael E. Granado, City Clerk	-	Present
Liliam Hatfield, OAV, City Clerk's Office	-	Present

MINUTES

Monday, August 19, 2013 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 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.

Meeting called to order at 4:35 p.m. by Chair Zack.

Rafael E. Granado, City Clerk, read into the record that Vice-Chair Perry and Member Preira were absent.

1. **Accept Minutes Of The August 5, 2013 Charter Review & Revision Board Meeting.**

Motion by Member Fernandez to approve the minutes; seconded by Member Lalonde; Voice-vote: 5-0. Absent: Vice-Chair Perry and Member Preira.

2. **Review/Discussion Of Letter To Mayor Bower And City Commissioners Relating To Resolutions 2013~28302 And 2013~28303.**

Chair Zack explained that the draft letter had been distributed amongst CRB members by the City Clerk, and asked if there were any suggested changes or revisions. Discussion was held regarding changes suggested by Member Lalonde on Page 2, second paragraph, last sentence.

Revised Language: ...to rise to that level. If there is any opportunity, the CRB requests that these two Resolutions be rescinded and submitted to CRB for review.

Rafael E. Granado, City Clerk, will finalize the letter and submit it for Mr. Zack's signature at the end of the meeting. **Rafael E. Granado to distribute to the Mayor and Commissioners via Letter to Commission. (See LTC 289-2013).**

Mr. Granado stated, for the record, that Maria Ruiz, Community Services Department Director and Lisa Ware, Chairperson for the Homeless Committee are in the audience to present and answer questions regarding the Homeless Bill of Rights.

3. Continuation Of Discussion Of The Citizens' Bill Of Rights

a. Homeless Bill of Rights - Proponent Dr. Morris Sunshine

Chair Zack introduced Dr. Sunshine.

Dr. Morris Sunshine addressed the Board members to advocate for the Homeless Bill of Rights. He introduced Jorge de la Paz, representative of the Miami Coalition of the Homeless and Elizabeth Regalado, Assistant Director of Miami-Dade County Homeless Trust, who will speak on behalf of Hilda Fernandez, former Assistant City Manager. He gave a brief biography of his educational background and explained that he uses his voice for those that cannot speak for themselves. He proposed the CRB to: 1) include "residency status" as a protective class in the Charter, and 2) for the CRB to recommend to the City Commission to pass the Homeless Bill of Rights as an ordinance. He referred to Section 16 of the City Charter, which deals with non-discrimination, and it lists several protected classes, (race, color, national origin, religion, sexual orientation, disability, marital status, familial status, age, etc.). He suggested having a "residency status" added for homelessness.

Chair Zack asked if there is a legal terminology titled "residency status," and added that this is a term without definition. Discussion continued.

Member Fernandez explained that the protected classes are set by the City Code, and not by the Charter. Dr. Sunshine agreed. Discussion held.

Dr. Sunshine referred to the Rhode Island ordinance and stated that he thinks this is an addendum to Judge Atkins' ruling in 1992 in the Pottinger case. That decision protected homeless people from having their property illegally seized. The biggest objection from the Homeless Committee and the Human Rights Committee to this proposal is that if this happens and the Charter is amended to protect homeless people, there will be many lawsuits against the City. He is not aware that with the Pottinger decision there were any lawsuits. He thinks this is a straight policy issue. The proposed ordinance and amendment only impose obligation on City officials. He is trying to uplift the social status of a "despised class."

Member Lalonde asked Dr. Sunshine to list the obligations imposed on City officials, for the record.

Chair Zack asked how the ADA affects homeless people.

Chief Deputy City Attorney Donald Papy explained that the ADA applies through public accommodations and various other entities; homelessness would not be included as it is not a disability. If a homeless individual has a disability, then that disability would be covered. Using illegal drugs presently is not considered a disability.

Member Kendle asked if there are homeless children in the City or any homeless families.

Member Fernandez explained that when families are about to become homeless, the City tries to find temporary housing in a hotel in close proximity to schools.

Chair Zack asked Dr. Sunshine, in reference to his statement "that there would be a flood of litigation," by who? By the homeless people?

Dr. Sunshine replied that it would be a flood of litigation by the homeless people. In addition, in answering Member Lalonde's prior question, he stated that obligations imposed on City officials are listed under Section 2c of his draft.

Chair Zack asked Dr. Sunshine if he knows of a City contractor who has refused to hire anyone due to their homelessness, and Dr. Sunshine stated that he did not know of any.

Maria Ruiz, Interim Housing Director, stated that the City funds, in conjunction with the Jewish Community Services, an employment program for homeless people who, after training, end up working in the South Beach Clean Team; the reality is that homeless individuals work in the City. In regards to families, in addition to the emergency funds available for this purpose, the City purchases shelter beds and prioritize placement of families, always. As compared to other cities of this size, in terms of contribution, the City of Miami Beach has a far more proportionately outreach for homeless persons than other cities.

Member Fernandez explained that one of the biggest issues in South Florida is having homeless people with mental illness, as there are no funds for treatment; by creating this Bill of Rights, which he believes is the right thing to do, and creating opportunities for the homelessness, if a potential employer chooses not to hire someone because of a mental illness or criminal background, are they creating standing under the Bill of Rights, for this person to potentially sue this employer?

Mr. Papy explained that Bill of Rights, in Page 77, reads, Section 16. "*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." In order to add homelessness, whatever rights that would impose for being deprived of any rights or privileges because of homelessness, that would be adding something; it is not clear what that may add, but when talking about the person having a mental illness or other disability, that is covered already under the disability clause, as well as the ADA. Discussion continued.

Member Lalonde asked if someone presented themselves as a homeless person and they have not bathed in months, and it is physically intolerable to be in the same space, does that confer a requirement on the employer that they present as such, all those things being equal, how does that affect in regards to employment discrimination?

Mr. Papy stated that the employer can point to the various characteristics for the reasons why they are not being hired, not for being homeless. Discussion continued. Member Kendle stated that there is now a differential treatment based on objective and reasonable justification, it is not viewed as discriminatory. He asked if this would apply if this passes.

Mr. Papy explained that this provision to him is aspirational; it does not add any additional rights. Dr. Sunshine suggested an ordinance be passed by the Commission, and backed by the CRB, as this could add some rights.

Discussion continued. Member Kendle stated that this issues dealing with homelessness, alcoholism and mental illness, could be included in the Bill of Rights by adding aspirational language such as: *"the City shall take measures to prevent and reduce homelessness with the intent of its gradual elimination."*

Maria Ruiz, Interim Housing Director, added that in the City's Key Intended Outcomes, eliminating homelessness is one of their goals, and it has been in place and a priority for many years. The services offered make it clear that not only is the City responsible, but very proactive. She added that they work in collaboration with shelters in Miami and health providers, and they apply the Customer Service Standards to every person that walks through the door.

Member Fernandez added that this is a very specific piece of document and legislation that addresses a problem that the City does not have.

Dr. Sunshine requested that the CRB drop his request and that they propose the passage of Miami Beach Homeless Bill of Rights on the grounds that perhaps the City Attorney's Office might be right that this may not be appropriate before the CRB, but he still urges the Board to amend Section 16 of the Citizens' Bill of Rights to add homelessness as a protective class.

Discussion continued. Chair Zack explained that homeless people have never been designated as a protective class under federal or any other law, but he understands the issue and appreciates his advocacy.

Elizabeth Regalado, Assistant Director of Miami-Dade County Homeless Trust, spoke on behalf of Hilda Fernandez, Executive Director, and at their next meeting on September 27, 2013, this issue will be discussed. Some of the services are already being provided.

Chair Zack clarified that there is no motion on the table by any of the members.

Member Lalonde clarified that in one hand City officials are telling them that they have a phenomenal outreach program that meets all the needs, and on the other hand, Dr. Sunshine who is asking for some form of legislation. Are we providing the services? She is struggling with what they are supposed to do. Discussion continued.

Chair Zack suggested that when asked about specific instances where a homeless person is not being allowed to exercise his/her rights, we have not been presented with that information; he believes that if it becomes evident that this is a problem that they need to address, other than the way is presently addressed, the issue can be discussed at that time. In general, he sat on a selection committee for a City Manager years ago for the City, and the first question asked of every applicant for City Manager is how they treat the homeless. The homeless issue has been around for a long time and the City has been extremely sensitive to the issue, much more than other cities. This will remain an open forum. **At this time, there is no motion because until there is a specific issue or problem that they need to address that has not been addressed;** they will proceed with the agenda.

Member Fernandez read Section 16 of the Bill of Rights and discussion continued.

b. Preservation Of Beaches- Proponent Rick Preira
Item deferred.

4. Electing Officials By Open Seats- Proponent Scott Diffenderfer (See Item 4)

Member Diffenderfer stated that there is a question why they have the seats by Groups if they do not represent districts, and he thinks many citizens do not understand why there are Commission seats or what they are for. He believes that traditionally these Commission seats have been used by incumbents to maintain power. He thinks the current system is severely limiting who can participate in government. Currently, for the November 2013 Election there are many people running for one seat, some of whom will be qualifying by vote, relatively less known than the incumbent, and then we have another seat that nobody else is running with an incumbent or another candidate, and this is done strategically for political gain, and they use the system to maximize seniority and popularity versus a more open seating. His choices are limited by who he votes for, because so many people may be running for the same seat. He asked why he can vote for the top three people he likes, and have the top vote getters get in the office. He does not see a valid reason, other than political manipulation, as to why the seats should stay that way.

Chair Zack stated that there is a federal law on incumbent protection, and he presumes there is nothing illegal about having seats, and asked if this applied to Miami Beach.

Donald Papy, Chief Deputy City Attorney, stated that he is not aware of any law against incumbent protection, but he will look into it. He added that the Surfside voting system has been in place for a long time. In discussing the matter with Jose Smith, City Attorney, Mr. Smith mentioned that these systems have been studied in the past and the decision was made to continue with the current system. Citizens seem to have been satisfied with the system; changes can always be considered, but what is the need for changing it if it is working. He added that whatever system that is in place, will always have its pros and cons.

Mr. Diffenderfer asked if there are any compelling reasons why the current system is better than the one that he is proposing; if there are any benefits to voters and to the democracy at large and added that he has heard arguments against the current system, but wants to hear a great argument about why it should stay this way.

Member Lalonde explained that currently there are three candidates running in Group III, and one of them is an incumbent. She has heard that some people like the mix in that race, because they may not like one or the both of the other people running against the incumbent; there are preferences for why people like the system, because there is more freedom to pick and choose which Group they want to be in, if they wish to run against an incumbent, and people are exercising their free will to select whichever Group they want to compete in.

Discussion continued.

Member Fernandez added that his biggest concern with the current system, and what he likes about what Member Diffenderfer is proposing, is that in the current system is easy to make the election about personal attacks against people. In the system that Member Diffenderfer is talking about, there are no specific opponents, makes the issue of personal attacks more difficult and make the candidates focus on the real issues, and this is the merit he sees on what is being proposed. The current system must have its merits and there were

compelling reasons when implementing the system, but they need to get the elections to the point where not about individual or personal attack, but perhaps this is a way where they can make elections about the issues that matter to voters.

Member Kendle asked if this new system would turn us into automatically having Run-offs, but agreed with Member Fernandez's comments. He added that to have it focused on the individual versus the opponent would be a better way to do it.

Member Lalonde respects what has been said, but she does not know if a change would necessarily solve anything. She is not a proponent or against it.

Member Fernandez is concerned about the current form, especially when someone may run and win in one race by gathering fewer votes to his/her favor than someone that lost in another race. Discussion continued.

Chair Zack stated that they need to be clear about what they are debating. 1) The present system where people run for specific seat; this is easy to understand and it has its inherent problems; then 2) a proposed system that would replace that, where there are no longer seats and people would run as a group, not by seats, and the highest vote getters are the people that are elected. If there was a motion to move to this "open seat" system, which has been studied over the year and there are a lot of good government organizations that promote this and it is in existence in other places, is not as simple to understand as the other systems, but this is a better system because you get the better people as opposed to the best person for a particular seat.

Member Diffenderfer clarified that in essence the proposed system would be a much more democratic system, where one is voting for something rather than voting against somebody, as the current system allows.

Member Lalonde asked what the estimated cost to implement the system is. Discussion continued. This would be a massive change.

Member Kendle stated that some cities restrict the people from having a slate and others are restricted to vote for one person. Discussion continued regarding different options of voting.

Donald Papy, Chief Deputy City Attorney, stated that there was a question on the issue about incumbents and how they are affected with the proposed system. One way to look at this is the suggestion that if everyone runs together could actually help the incumbents because of name recognition. He is not sure that it the affect is to help or hurt incumbents. Secondly, the system that is implemented now does in a way set up a sharper focus, because there are each individual race and people talk about issues and a more general debate. Mr. Papy made it clear that the City Attorney's Office is not taking a position against or in favor; he wants to point out the pros and cons of each system. He added that about 20 years ago, when the issue of districting was discussed, there were workshops on the various systems, and there are many experts, and each system has its pros and cons. He suggested having academic experts come to present the different voting options and systems.

Chair Zack explained that Victor Diaz filed a petition with the Federal Court asking that Miami Beach having seats by districts. He was retained as Counsel for the City, and they were successful in showing that districts would be bad for the City as opposed to Groups. He thinks in retrospect, that was the right decision. At that time, they reviewed many different

ways of electing officials and they decided to stay with the existing system. This Board would have to recommend the system, approved by the Commission, and then approved by the citizens.

ACTION:

Member Lalonde suggested having a workshop and to provide estimated costs. Chair Zack suggested asking the City Manager for experts that could assist with a presentation, and agreed that they need to know the fiscal impact to the City. **Donald Papy to handle.**

In answering Member Fernandez's question, Member Diffenderfer explained that in the Town of Surfside all elected officials including the Mayor have two-year terms instead of four-year terms; and when is election time, everyone runs, and the top four vote getters are elected to 1) Mayor, 2) Vice-Mayor and 3) Commissioners. He is not advocating implementing this system at all, but the last time this was discussed it was focused on districts, and this is a different scenario and would have a different outcome.

Discussion continued.

Chair Zack added that he will call Roger Carlton, recent City Manager of Surfside and former City Manager of Miami Beach to give his input. **Chair Zack to invite Mr. Carlton.**

ACTION ON VOTING SYSTEM PROPOSAL:

Motion made by Member Diffenderfer to study the current way of electing Commissioners and the alternatives available to the current way of electing officials; seconded by Member Fernandez and approved by acclamation with the following recommendations:

Recommendations

- Schedule a workshop
- Invite Roger Carlton
- Bring in experts on the voting options available
- Include a financial feasibility study (cost to create, market and educate programs; what outreach would the City need to have and what is the cost)

Discussion continued. Rafael E. Granado, City Clerk, explained that he will provide the estimates for this upcoming election. **Rafael E. Granado to send estimates.**

Discussion continued regarding costs.

5. Report of Items Approved, Pending and Rejected/Withdrawn by the Charter Review and Revision Board during previous meetings. Additionally, the Report includes a Report of Miscellaneous Requests by the Charter Review and Revision Board.

Rafael E. Granado, City Clerk, explained that Pages 84 through 86 of the CRB Agenda contain a list of items discussed, pending and those items withdrawn or considered out of order by the CRB.

Chair Zack asked the status of pending items for discussion and items already discussed, to schedule future meetings.

Mr. Granado stated that he is seeking direction from the Board as to how to proceed. Member Lalonde submitted for discussion Section 2.02.

Chair Zack reviewed the list of pending items.

PENDING ITEMS:

- 1) Preservation of Resources of the Beach – Proponent Rick Preira (**deferred to September**)
- 2) Miami Beach United – **Gary Held to handle.**
- 3) Access to roads – Proponent Chair Zack (**to be discussed in September**)
- 4) Over scale development in residential areas (City Workshop scheduled for September 23, 2013 to review changes to code) **Request item to be referred to CRB by the City Commission. Rafael E. Granado to handle.**

Mr. Granado explained that in regards No. 4 there is a moratorium until November; the item was referred to committee to allow Planning Board to discuss, and he will communicate to the Board. He suggested for the Board to have this item referred back to the CRB, to avoid mistakes made in the past. Chair Zack stated that this was an excellent idea. **Rafael E. Granado to handle.**

MOTION ON OVER SCALE DEVELOPMENT IN RESIDENTIAL AREAS:

Motion made by Member Lalonde that the City Commission sends this matter to the CRB for review and discussion prior to any action by the City Commission. **Rafael E. Granado to notify the Commission via an LTC.**

- 5) Preserving the Historical Value of Miami Beach - withdrawn
- 6) Homeless Bill of Rights- Proponent Dr. Morris Sunshine – Item withdrawn
- 7) Electing Officials by Open Seats – discussed at this meeting
- 8) ~~Planning Powers of Land Use Board Powers~~ – Proponent Alex Fernandez – Chair Zack suggested that this item be renamed to Powers of Land Use Boards – (to be discussed in the future)
- 9) Inspector General Subpoena Power – pending memorandum from Legal Department (**Alek Boksner and Joe Jimenez to handle**). **Rafael E. Granado to follow up on the pending memorandum.**

- 10) Term Limits – **to be discussed at the September agenda.**

Rafael E. Granado, City Clerk, suggested Legal to draft final language. **D. Turner to handle.**

Member Kendle stated that he worked with the League of Cities, and knows that Mayoral candidates like the four-year term, he thinks they need to readdress this issue; he does not think it is productive to have someone run for Mayor so many times (every two years).

Member Diffenderfer suggested combining the Terms for Mayor and Term Limits with the Election items and there was consensus among Board members. – **Terms for Mayor/Term Limits (consecutive and non-consecutive)/Elections. Rafael E. Granado to place items on the Agenda and Debora Turner to draft final language.**

Discussion continued.

- 11) Sections 3.01, 4,.01, 4.03 – Compensation and Salary of City Attorney, City Manager and City Clerk –Mr. Granado explained that no action was ever taken by the CRB. Discussion held.

Rafael E. Granado, City Clerk, in answering Chair Zack's question, stated that compensation is included. Ms. Lalonde requested that this be brought for at the next meeting, and there was a motion by Chair Zack that all compensation should be included, and that benefits should be determined by ordinance. He clarified that the word "salary" and "compensation" is used throughout, and the City Attorney's Office was asking for a clean-up language for uniformity and use the same word. **Rafael E. Granado and Debora Turner to handle. Item will be placed on the September agenda.**

Discussion continued.

- 12) Section 1.03 – Powers of City – Member Kendle explained that this might want to be addressed with the Preservation of Resources, as it deals with lease of parks and he had suggested amendments regarding blocking waterfront view of City property. There was consensus to add this item under Preservation of Resources at the **next September meeting**. Rafael E. Granado to combine Preservation of Resources, and Section 1.03 - Powers of City.

- 13) Items Requested to be discussed on May 6, 2013 by Member Fernandez – Exhibit A of the agenda, Page 88.

Member Fernandez explained that they should discuss adding a non-interference clause into the Charter

- 14) Section 6.03 – Qualifying – **Rafael E. Granado to add to the September Agenda.**

Motion made by Member Lalonde to adopt a three-year residency requirement. No second offered.

Chair Zack asked the City Clerk if this item was advertised for discussion. Mr. Granado stated it had not been advertised. Item is to be placed on the **September Agenda**.

- 15) Whistle Blowing Protection for Employees – Proponent Frank Del Vecchio **Rafael E. Granado to contact Mr. Del Vecchio to see if he has a specific proposal and invite him to the next meeting.**

Member Fernandez explained that Mr. Papy brought an expert to the Finance and Citywide Projects Committee, who has looked as to what the Federal, County And City have in terms of a whistle blower, and suggested having an expert present to the CRB.

Mr. Papy explained that at committee there was a discussion of the False Claims Act ordinance and attempts to strengthening it; this is not directed at City employees, it is a State Law, but the one Mr. Fernandez is referring to has to do with contractors, not for employees of the City.

Member Fernandez requested addressing in the Charter a whistle blower protection for employees and even for residents to prevent them from any sort of retaliation. **Don Papy to handle.**

Mr. Papy added that the issue of contractors defrauding the City is being addressed in the Finance committee and there is an ordinance in place. They are looking now at strengthening it. Member Fernandez requested Mr. Papy to send a copy of what the

State currently has to the City Clerk for distribution to the CRB. **Mr. Papy to handle. Rafael E. Granado to circulate.**

- 16) Citizens and Taxpayers should have access to speak with City officials, as a basic right – proponent Alex Fernandez. – **Item withdrawn**

Member Fernandez believes that residents should be treated with courtesy and all taxpayers should have reasonable access to City officials, to the people they elected.

Chair Zack stated that this is a very slippery slope and is not sure how to proceed with this issue. He suggested for the City Manager to tell us what his review process is, and if in his review process, responsiveness and courtesy are part of the reviews.

Member Lalonde explained that this is part of the process, as confirmed by Human Resources Director. Mr. Granado stated that this item had previously been withdrawn.

6. Scheduling Future Charter Review & Revision Board Meetings

The next meeting will take place September 9, 2013 at 4:30 p.m. in the Commission Chambers.

NEW BUSINESS:

Special Counsel

Member Kendle wants to discuss the need for a Special Counsel, and whether or not the City Commissioners have the right to hire Special Counsel when there are no experts in the City Attorney's Office or General Attorney's Office.

City Attorney Archives

Member Kendle stated that many cities include in their Charter that City Attorneys shall transmit archives to their successor. Discussion held.

Chair Zack stated that based on Sunshine Law all documents are public record except for notes.

Mr. Papy explained that under the State's Public Record Act, any document that is designed for public purpose is owned and will always be owned by the government entity. As to the power to hire attorneys, that is under the City Attorney under the Charter, which includes outside counsel. Discussion continued.

NON-INTERFERENCE CLAUSE:

Member Fernandez explained that the City has a City Manager form of government; the Manager receives direction from the Commission, and in turn he transmits that direction to his departments and staff; therefore, the interaction between the Commission and staff should not be one to provide direction, and he suggested for the CRB to add some sort of non-interference clause.

Chair Zack stated that the Commission is elected to represent their constituency; the Manager runs the City; if the Commissioner believes something is done by the Manager that affects their electorate, is it interference or fulfilling their obligations? Discussion held. The question is should all communication go through the City Manager.

Member Fernandez explained the current protocol.

Rafael E. Granado, City Clerk, suggested on this item when Member Fernandez has met with the Legal Department and finalized this one, it will be placed on the September agenda.

HOLDING DUAL OFFICE - Withdrawn

Member Fernandez spoke on the recent incident with Mayor Pizzi of Miami Lakes, and the issue of dual office holding. Pizzi was Mayor of Miami Lakes and Town Manager of Medley. He asked if this Board wants to limit Charter positions from holding other positions in other municipalities. Discussion held.

Item withdrawn by Member Fernandez at this time.

VACANCIES – OFFICE OF THE MAYOR

Member Fernandez stated that he sees some vagueness in the protocol in the Charter of how the City handles succession in the Office of the Mayor, should it unexpectedly happen.

Discussion held. There was consensus to discuss this item.

COMMISSION ON ETHICS & PUBLIC TRUST – ENFORCEMENT AUTHORITY OVER CITIZENS' BILL OF RIGHTS

Member Fernandez referred to Page 92-93 of the Agenda and suggested for the Miami-Dade County Commission on Ethics and Public Trust to be an enforcement authority for the City, since at times, the rights of those violated, are from the people who can afforded the least, and the Commission on Ethics can do it pro bono.

He asked for an update from Legal regarding making stricter regulations for Political Action Committees (PAC). **City Attorney's Office to reach out to the State.** There was consensus to discuss in the future.

Chair Zack explained that a PAC cannot contribute to any race in Miami Beach unless is duly registered and its officers and directors are disclosed. Discussion held.

Rafael E. Granado, City Clerk, explained recent changes to the Election Laws affecting monthly reporting for PAC's and ECO's. Review changes to Election Laws to be presented at the Charter Review Meeting in September.

RECOMMENDATION:

Chair Zack recommended presenting to the City Commission the issues accomplished, as well as presenting those issues that are pending, and suggest an extension of the December 31 end of jurisdiction. Further, he requested to know if the Commission will rank the order of items to be discussed first, and will they extend their jurisdiction.

Mr. Granado suggested placing the item in the December Commission Agenda. **Rafael E. Granado to handle.**

LAND USE BOARDS

Member Fernandez asked whether they should have a decide to run apply to people that sit on power boards, so they do not use their position and public service on these boards as a fundraising arm for candidacy.

Chair Zack explained that this would be a person who is determined to qualify for office must resign from any City board. They agreed this was an excellent suggestion. **To be added to a future agenda.**

RECOMMENDATIONS FOR MARKETING ISSUES FOR DISCUSSION BY THE CRB

Chair Zack recognized the work performed by the City Clerk in listing and tracking these items, but he added that there has not been a lot of media attention on these issues. He suggested that a City representative meet with the Board to find ways to bring awareness to the citizens on what this board has accomplished to date and future issues to be discussed.

LTC APPROVED BY CRB REGARDING LIST OF ITEMS:

Mr. Granado explained that the meetings are advertised in The Miami Herald Neighbor's Section and in El Nuevo Herald. He suggested drafting an LTC approved by the Legal Department, listing the items discussed and those pending for discussion. This was approved by acclamation. **Rafael E. Granado to draft LTC.**

Chair Zack suggested using social media or other type of media, and added that they need to figure out a way to provide adequate notice to give the public an opportunity to be heard on all the issues.

Member Lalonde explained that the City tweets and uses Facebook, and asked what the procedure for using these methods is. Mr. Granado suggested notifying the Communications Department to assist in the promotion aspect.

COMMUNICATIONS DEPARTMENT TO PRESENT AT THE SEPTEMBER MEETING

Chair Zack requested that the Communications Department be invited at the September meeting to discuss this issue. **Rafael E. Granado to notify the Communications Department Director to present at the September 9, 2013 CRB meeting, if available.**

Member Fernandez shared his frustration with the lack of media attention paid to the issues discussed by the CRB, which happen only every ten years; and even though they are unable to control what the media does on the outside, they can control what the media does within the City. Discussion continued.

ADD THE MIAMI HERALD REPORTER TO EMAIL DISTRIBUTION LIST

Rafael E. Granado, City Clerk, suggested adding The Miami Herald reporter to the Agenda Distribution List and approval was given by acclamation. **Rafael E. Granado to handle.**

SECTION 2.02 – TERM AND COMPENSATION PROPOSED BALLOT LANGUAGE

Member Lalonde referred to Page 78 of the CRB Agenda and asked Mr. Papy, in Ms. Turner's absence, if Item 2, Section 2.02 – Term and Compensation when they can expect Legal to get back to the CRB members with the ballot language draft.

Mr. Papy explained that Ms. Turner has the draft. Member Lalonde requested the draft to be distributed at the September meeting. **D. Turner to provide at the September Meeting.**

Meeting adjourned at 6:32 p.m.

Handout or Reference Materials:

1. LTC 289-2013 RE: Transmittal Letter From Members of the City of Miami Beach Charter Review Board

2. Letter to Mayor Matti Herrera Bower and Members of the City Commission, dated August 6, 2013, from Charter Review & Revision Board, RE: Resolutions 2013-28302 and 2013-28303.
3. Email from qualifyoflife@the-beach.net dated August 15, 2013 RE: Homeless Bill of Rights.
4. Email from qualifyoflife@the-beach.net dated August 16, 2013 RE: Homeless Bill of Rights.
5. Email from MDelaRosa@smcclaw.com dated August 19, 2013 RE: Richard J. Preira's Attendance at the 8/19/2013 Meeting.
6. Email from Rafael Granado dated August 20, 2013 RE: LTC 289-2013 Transmittal Letter from Members of the Charter Review Board
7. Sign-In Sheet

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Granado, Rafael

From: Frank Del Vecchio <fdelvecchio@atlanticbb.net>
Sent: Thursday, September 05, 2013 9:27 AM
To: Granado, Rafael
Cc: Hatfield, Liliam
Subject: Re: Charter Review

Thank you for your recollection and this notice. I appreciate your thoroughness. No, I will not be formulating and submitting proposed Whistle Blower Charter protections as I had initially intended.

Sincerely,

Frank Del Vecchio

At 08:42 AM 9/5/2013, Granado, Rafael wrote:

Good morning Mr. Del Vecchio,

I am in the process of developing the Agenda for Monday's Charter Review Meeting.

At the commencement of the Charter Review process, you proposed "Whistle Blowing Protection for Employees". Are you available to present this item on September 9, 2013 at 4:30 p.m.?

If not available on that day, I will be happy to provide you with an alternative date as soon as the Charter Review sets its future meeting dates.

Please let me know by 3:00 p.m. today, if at all possible, as that is when I will be sending the agenda out via e-mail.

Regards,

MIAMIBEACH
Rafael E. Granado, Esq., *City Clerk*
CITY CLERK'S OFFICE
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7411 www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

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MIAMI BEACH

2013 AUG 26 11:38

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Mr. Stephen Zach, Esq., Chairman
Mr. Ralf Granado, City Clerk

FROM: Alex J. Fernandez, CRB Member 

DATE: August 26, 2013

SUBJECT: Referral to Charter Review and Revisions Board

Gentlemen:

During the August 19th, 2013 meeting of the Charter Review and Revisions Board and I referred multiple items for discussion to which I would like to add the following:

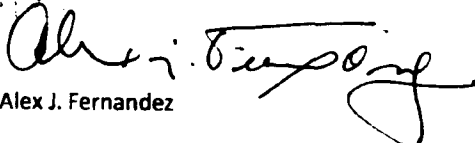
1. **Section 2.03 Powers of the City Commission**
Amend the Powers of the City Commission to require that all increases to the pension benefits require a 5/7 vote of the City Commission until unfunded pension liability is retired or reduced to a less than nominal amount.
2. **Section 3.01 City Attorney; Duties Generally; Appointment of Personnel**
Discuss the possibility, benefits and drawbacks, of amending Section 3.01(h) to require input and/or consent of the City Commission prior to the City Attorney's expenditure of funds on outside legal counsel representing the City.

As a reminder, I referred the following items for discussion during last Monday's meeting:

- Adding a non-interference clause to the City Charter for the day to day operations of the City.
- Clarify Section 2.07, Vacancies in the City Commission, to detail succession for the Office of the Mayor in the event of a vacancy.
- Providing the Commission on Ethics and Public Trust with enforcement authority over the Miami Beach Citizens Bill of Rights to provide a free alternative to residents who cannot afford counsel for litigation.
- Require stricter reporting requirements for political organizations that engage in local Miami Beach elections.
- Expanding upon the State's resign to run law to require members of the City's Land Use Boards to resign from their current office prior to qualifying as a candidate for the office of City Commissioner or Mayor.

Should you have any questions and/or concerns, please do not hesitate to contact me at extension 6528.

Thank you,



Alex J. Fernandez

We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Jose Smith, City Attorney
Debora Turner, First Assistant City Attorney
Donald Papy, Chief Deputy City Attorney
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Meeting Agenda

Wednesday, October 2, 2013 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. **Accept Minutes Of The September 9, 2013 Charter Review & Revision Board Meeting.**
(See Item 1, Page 7)
2. **Report: Promoting CRB Issues – Article That Will Appear In MB Magazine.** Rafael E. Granado, City Clerk, to present. (See Item 2, Page 15)
3. **Report Of Memorandum Presented By The City Attorney To The City Commission On September 30, 2013, Regarding The Florida Third District Court Of Appeal Decision In: Let Miami Beach Decide V. City Of Miami Beach And SBACE, LLC, Third District Court Of Appeal, Case #3D13-2243; Lower Tribunal Case No. 13-025234 CA13.** (See Item 3, Page 19)
4. **Section 2.02 – Compensation** - Review the amendments to the Compensation Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.
 - a. **Discussion Of Pensionable Benefits** – Don Papy, Chief Deputy City Attorney, to present

5. **Preservation of Beaches** – Proponent Rick Preira
 - a. **Section 1.03 – Power of City** – Proponent Rick Kendle
(Items deferred from September 9, 2013)
6. **Section 2.07 – Vacancies In City Commission** - Review the amendments to the Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.
(Item not reached on September 9, 2013)
7. **Discussion Of Section 2.07 – Vacancies In City Commission Relating To Succession For The Office Of The Mayor In The Event Of A Vacancy** – Proponent Alex Fernandez
(Item not reached on September 9, 2013)
8. **Discussion Of Section 2.02 – Term** - Item added to the agenda by acclamation during the August 19, 2013 CRB meeting.
 - a. Discussion of the Term of Office for the Mayor (currently it is two years).
 - b. Discussion of Term Limits
(Items not reached on September 9, 2013)
9. **Discussion Of Section 6.03 – Qualifying**
 - a. **Discussion of residency requirements** - Proponent Jacqueline Lalonde
 - b. **Discussion regarding adding a resign to run provision for Land Use Board Members who become candidates for elective office** – Proponent Alex Fernandez
(Items not reached on September 9, 2013)
10. **Items Requested By CRB Member Fernandez To Be Added To The List Of Discussion Item.** (See Item 10, Page 23).
(Item not reached on September 9, 2013)
11. **Schedule additional meeting dates.**

NEIGHBORS CALENDAR

• **CALENDAR, FROM 16NE**

of a nationwide celebration in the U.S.

6:30 p.m. Sept. 26. Colony Theater, 1040 Lincoln Rd., Miami Beach. Free. 305-433-5848. turkishfilmfestivals-usa.com.

IDENTITY Media's Fashion + Beauty Fix at Hoxton: Celebrates fashion and it's Hoxton Urban Beach House Ladies Night. Event is hosted by Andrea Chediak, fashion correspondent, who shares her industry secrets. Cocktails provided by Little Black Dress Vodka, manicures by celebrity manicurist Ingrid Burke, makeup makeovers by Melanie Rodriguez plus a music performance by Problem Kids plus shopping..

7 p.m. Sept. 26. The Hoxton, 1111 SW First Ave., Brickell. Complimentary RSVP Encouraged. 786-281-3259. fashionandbeautyfix-es2.eventbrite.com/?rank=1.

FASHION

Macy's Presents Fall's Five Essentials: Macy's presents Fall's Five Essentials-key pieces that say fall 2013! Our stylist will show you how easily these 5 essentials will update your wardrobe for fall. Plus learn fa.

2 p.m. Sept. 28. Macy's, 7303 SW 88th St., Free.

bit.ly/MacysFallFashion13.

Modelling Everglades National Park:

11:30 a.m. Sept. 26. 94 Th Aero Squadron Restaurant, 1395 N. Red Rd., Miami International Airport.

FILM

Clean Guys of Comedy Encore:

7:30 p.m. Sept. 26. Regal South Beach Stadium 18, 1120 Lincoln Rd., Miami Beach. 305-673-6766.

7:30 p.m. Sept. 26. Cinebistro at Dolphin Mall, 11471 NW 12th St..

7:30 p.m. Sept. 26. Movies @ The Falls 12, 9000 SW 136th St., Kendall. 305-255-5200.

7:30 p.m. Sept. 26. Cobb Miami Lakes 17, 6711 Main St., Miami Lakes. 305-558-3810.

Def Leppard Viva Hysteria Concert: Def Leppard plays at The Joint at the Hard Rock Hotel, Las Vegas.

8 p.m. Oct. 2. Regal South Beach Stadium 18, 1120 Lincoln Rd., Miami Beach. 305-673-6766.

8 p.m. Oct. 2. AMC Sunset Place 24, 5701 Sunset Dr. Suite 300, South Miami. 888-262-4386.

8 p.m. Oct. 2. AMC Aventura 24, 19501 Biscayne Blvd., Aventura. 305-466-0450.

8 p.m. Oct. 2. Cobb Dolphin 19 Cinemas, 11471 NW 12th St.. 305-591-0785.

Film Screening of "Tea" by Mario Garcia Torres: Pérez Art Museum Miami and Miami Beach Cinematheque present this film with an introduction by the artist. This film essay documents artist Torres'

journey to One Hotel in Kabu.

3 p.m. Sept. 28. Miami Beach Cinematheque at Historic City Hall, 1130 Washington Ave., Miami Beach. \$10; \$9 students and seniors; \$8 PAMM and MBC members. 786-345-5643. www.pamm.org/calendar/2013/film-screening-tea-mario-garcia-torres.

L'Estate di Martino Outdoor Screening: Monthly courtyard screening to celebrate 2013 as the Year of Italian Culture in the U.S. Film is an award-winning, romantic drama directed by Massimo Natale. In Italian English subtitles.

8 p.m. Sept. 28. Coral Gables Museum, 285 Aragon Ave., Coral Gables. Free. 306-603-8067. www.coralgablesmuseum.org.

Paragon Theaters Girl's Movie Night Out - "Don Jon": Grab your girlfriends and make a plan for Paragon Theater's Girl's Movie Night Out on Wednesday, October 2nd at 8 PM.

"Don Jon" stars Jon Martello (Joseph Gordon-Levitt) as.

8 p.m. Oct. 2. Paragon Grove 14 Theaters in Cocowalk, 3015 Grand Ave., Northeast Coconut Grove. \$15 includes ticket and medium popcorn. 305-446-6843. www.paragonteaters.com/p/girls-movie-night-out-donjon/.

Turkish Passport: Screening of Turkish Passport at Turkish Film Festivals-USA, Miami Beach.

7 p.m. Sept. 26. Colony Theater,

1040 Lincoln Rd., Miami Beach. FREE. 305-433-5848.

turkishfilmfestivals-usa.com/. **Unstoppable: A Live Event With Kirk Cameron:** Kirk Cameron discusses the moral origins of good and evil and their historical significance today.

7 p.m. Oct. 3. Regal South Beach Stadium 18, 1120 Lincoln Rd., Miami Beach. 305-673-6766.

Unstoppable: A Live Event With Kirk Cameron 2nd Showing: Actor Kirk Cameron investigates the moral origins of good and evil and their significance today. Includes an introduction by Cameron.

7 p.m. Oct. 3. Cobb Dolphin 19 Cinemas, 11471 NW 12th St.. 305-591-0785.

7 p.m. Oct. 3. AMC Aventura 24, 19501 Biscayne Blvd., Aventura. 305-466-0450.

7 p.m. Oct. 3. Cobb Miami Lakes 17, 6711 Main St., Miami Lakes. 305-558-3810.

FOOD & DINING

Ladies Night To Karaoke: Karaoke is hosted by South Florida performer Simona Popescu and features drink specials for the ladies: \$2 Miller Lite Drafts, Well Drinks & Frozen Margaritas from 7 p.m.-midnight.

9 p.m. Oct. 2. Brother Jimmy's BBQ Miami, 900 S. Miami Ave.,

• **TURN TO CALENDAR, 22NE**

MIAMI BEACH

CHARTER REVIEW AND REVISION BOARD MEETINGS NOTICE

NOTICE IS HEREBY given that the Miami Beach Charter Review and Revision Board will meet as follows:

DATES	TIMES	LOCATION
Wednesday, October 2, 2013	4:30 PM	City Manager's Large Conference Room, 4th Floor, City Hall
Monday, October 21, 2013	4:30 PM	Commission Chambers, Third Floor, City Hall

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

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 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 #843

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ITEM 1

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MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair	-	Present
Aaron Perry, Vice Chair	-	Present
Scott Diffenderfer	-	Absent
Jacqueline Lalonde	-	Present
Rick Kendle	-	Present
Alex Fernandez	-	Present
Richard "Rick" J. Preira	-	Absent

Staff:

Donald Papy, Chief Deputy City Attorney	-	Present
Debora Turner, First Assistant City Attorney	-	Present
Rafael E. Granado, City Clerk	-	Present
Liliam Hatfield, OAV, City Clerk's Office	-	Present

MINUTES

Monday, September 9, 2013 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 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.

Meeting called to order at 4:35:25 p.m. by Chair Zack.

Roll call by Rafael E. Granado, City Clerk. Member Diffenderfer notified the City Clerk by telephone that he will be late due to a conflict with another meeting; however, he was absent. Member Preira is also absent.

1. Accept Minutes Of The August 19, 2013 Charter Review & Revision Board Meeting.

Motion by Member Fernandez to approve the minutes; seconded by Vice-Chair Perry; Voice-vote: 5-0. Absent: Members Diffenderfer and Preira.

INFORMATIONAL ITEMS

Chair Zack asked when the traffic issue would be placed on the agenda, and City Clerk Granado explained that the Transportation & Parking Committee is meeting today, and since there were no future dates scheduled, the item is still pending.

Chair Zack informed that he met with Mayor Bower, at her request, to discuss the board's accomplishments, and the issue of whether the new Commission will extend jurisdiction until next year. A report will be given to the new Commission for their consideration. Mayor Bower expressed her gratitude to all CRB members for the work done.

2. Promoting CRB issues in social media – Nannette Rodriguez to present.

Chair Zack introduced the item.

Nannette Rodriguez, Communications Office Director, introduced the item and stated that they will include some articles on MB Magazine, on MBTV, and in addition, they will add something on the Employee Newsletter.

Vice-Chair Perry suggested promoting a synopsis of what the CRB has worked on and Ms. Rodriguez stated that users will be redirected to the CRB website, which already has a lot of information. Discussion held.

Ms. Rodriguez explained that traffic is a topic of interest for residents, especially in social media, and their department will share any comments made on social media.

Rafael E. Granado, City Clerk, added that a copy of the agenda is also sent to The Miami Herald.

Vice-Chair Perry suggested sending information to the Miami Beach News community newspaper.

Discussion continued.

Member Kendle suggested adding questions for future discussion on social media, and invite residents to attend meetings when discussed. She explained that they can definitely add this to the social media and report of any feedback received.

There was some discussion regarding the Charter Review email and that no recent correspondence has been received.

Member Fernandez stated, for the record, that the issue of getting more people to discuss these issues has come up many times, and the neighborhood associations are what bring people to the Chambers. He thinks they also need to do their part in speaking to sectors in the community that will help bring feedback and active members of the community to the Chambers.

Nannette Rodriguez explained that these meetings are televised and replayed.

Chair Zack stated that on average only 3% of people read the newspaper editorial pages and they get their communication through the Internet and the Social Media. How they communicate is problematic. The question is how to find a medium that will capture the public's attention. Nannette Rodriguez will promote meetings and CRB link on social media.

Announcement

Mr. Granado announced that there is a meeting scheduled after 6 PM in the Chambers.

Request from Member Fernandez

Member Fernandez explained that at previous meetings he had asked the City Manager to reach out to department heads to see if they had any recommendations for the CRB to take up as new items. He suggested following up on this item. **Rafael E. Granado to handle.**

3. Preservation Of Beaches – Proponent Rick Preira
Item deferred.

a. Section 1.03 – Power of City – Proponent Rick Kendle
Item not reached.

4. Section 2.02 – Term And Compensation - Review the amendments to the Compensation Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.

Debora Turner, First Assistant City Attorney, explained that the amendments proposed attempt to resolve the language issue with regard to compensation and salary, since there was compensation used in the title, and they defined it to mean salary and benefits, and also they have referred to the dollar amount that each Commissioner or the Mayor receives, they have referred to this as "the salary," and they have also provided that benefits shall also be provided via resolution or ordinance.

Discussion held. Chair Zack explained that compensation refers to salary and compensation, why should the language not be salary and benefits. Ms. Turner explained that the Mayor and Commission receive other types of benefits that are beyond the dollar value.

Chair Zack made a motion to replace language "salary" to "compensation." Discussion continued.

Member Lalonde explained that they need to include the disclosure of total compensation, and salary is a separate item. They want to vote on salary as being a dollar number and the rest is total compensation, in order to have a clear delineation of what salary is and a clear disclosure of compensation is, which will be salary plus benefits.

Discussion continued. Ms. Turner distributed Version 2 of the proposed text, which establishes based on today's dollars what the salary should be.

Ms. Lalonde asked if the annual disclosure for total compensation would be added in this paragraph, and Ms. Turner stated that it will be added. There was a lengthy discussion regarding language to define salary and compensation.

Ms. Turner clarified that the salary will be the same.

Member Lalonde suggested adding that the salaries will be approved via the budget process.

Chair Zack stated that they need two paragraphs: 1) defining compensation; "Compensation shall include salary and benefits; and benefits are defined as anything of value received by a Commissioner, including but not limited to expenses, travel, leave time, etc. All benefits must be approved by ordinance. This is one paragraph. Then 2) The annual salary of the Commission shall be \$6,000; two separate paragraphs might make it clear. Discussion continued regarding the definitions of benefits received and retained, stipends and salary/compensation.

Chair Zack explained that if a person receives a benefit, even if it is given away, it is received, either in the form of a charitable recognition or public relations promotion.

Discussion continued regarding expenses, receipt of tickets for events and "true" benefits and perks.

Discussion continued and Member Kindle suggested leaving the last paragraph that reads, "benefits and expenses for the Mayor and City Commission shall be approved by the City Commission by ordinance," and suggested including "that the salaries be kept at \$6,000 and adjusted retroactively at this date per CIP."

Member Lalonde agreed that the amended language should read, "the Office of Commissioners shall receive \$6,000 and adjusted retroactively based on CPI"; **Debora Turner, First Assistant City Attorney to provide draft of amended language.**

Discussion held about the definition of benefit (including allowances, stipend and/or expenses), and transparency issues.

MOTION ON BENEFITS AND COMPENSATION:

Motion by Member Kindle; seconded by Vice-Chair Perry, with amendments offered by Member Lalonde to amend language as follows: create two paragraphs to: 1) define compensation; "Compensation shall include salary, benefits and expense allowance; benefits are defined as anything of value received by a Commissioner, including but not limited to expenses, travel, leave time, etc. All benefits and allowance must be approved by ordinance; and 2) the annual salary of the Commission shall be \$6,000 retroactively adjusted to the annual CPI rate from 1966. Voice-vote: 5-0; Absent: Members Diffenderfer and Preira. **Don Papy, Chief Deputy City Attorney, to research pensionable benefits language.**

Question and answers period was held regarding pensionable allowance.

Don Papy, Chief Deputy City Attorney, stated that the way the Code is written, salary and other allowances language is broad.

Member Fernandez thinks that language should be added that "other allowances" are not pensionable. Discussion continued.

Mr. Papy explained that the pension ordinance requires amendment, and these are technical questions that require research. The pension calculation is made by the Pension Office.

Member Fernandez stated that they are proposing an increase based in CPI and also proposing that they approve benefits and allowances approved as part of the ordinances; he is requesting, regardless of what the Pension Ordinance reads, that these benefits are not going to be pensionable. Discussion continued. Don Papy

- 5. Section 2.07 – Vacancies in City Commission** - Review the amendments to the Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.

Item deferred by City Attorney's Office.

- 6. Sections 3.01, 4.01 and 4.03 – City Attorney, City Manager and City Clerk** – Review cleanup language to the Sections proposed by the City Attorney's Office. Debora Turner to present.

Debora Turner, First Assistant City Attorney, distributed copies of Sections discussed with proposed amendments. She suggested clean up language to match how the language will go in accordance with the City Manager and City Clerk context. She added similar language to state: "the City Attorney shall be appointed by the City Commission." In addition, there is no word for compensation in the City Attorney's Office, and to make it uniform all three sections will include similar language. Compensation, the City Attorney's provision language deals with salary and other benefits and total packages, and she has added that to the City Attorney section.

MOTION:

Motion by Member Fernandez, seconded by Member Kindle to approve clean-up language for Sections 3.01, 4.01 and 4.03. Voice-vote: 5-0; Absent: Members Diffenderfer and Preira.

7. Discussion of Section 2.02 – Term And Compensation - Item added to the agenda by acclamation during the August 19, 2013 CRB meeting.

- a. Discussion of the Term of Office for the Mayor (currently it is two years).
- b. Discussion of Term Limits

Item not reached.

8. Discussion of Section 6.03 – Qualifying

- a. Discussion of residency requirements - Proponent Jacqueline Lalonde
- b. Discussion regarding adding a resign to run provision for Land Use Board Members who become candidates for elective office – Proponent Alex Fernandez

Item not reached.

9. Discussion of Section 2.07 – Vacancies In City Commission Relating To Succession For The Office Of The Mayor In The Event Of A Vacancy – Proponent Alex Fernandez

Item not reached.

10. Whistle Blowing Protection for Employees – Proponent Frank Del Vecchio.

Item withdrawn by Mr. Del Vecchio.

11. Items Requested By CRB Member Fernandez To Be Added To The List Of Discussion Item. (See Item 11, Page 27).

Item not reached.

12. Schedule additional meeting dates.

The next meetings were scheduled as follows:

Wednesday, October 2 at 4:30 p.m. in the City Manager's Large Conference Room, and Monday, October 21, 2013 at 4:30 p.m. in the Commission Chambers, Third Floor, City Hall.

PENDING ITEMS:

Inspector General – Proponent Rick Kendle

Chief Zack announced that he will apparently be unavailable during the week through the end of December, as he will be out of the City. He will notify when the assignment is confirmed, and he will be available via Skype or by phone. He recognized Mayor Bower in the audience, and he stated that he met with them over the weekend and had an interesting and positive discussion regarding Mayor salaries. The question of a new Chair was raised, but Chair Zack cannot disclose any more at this time.

Mayor Bower recognized the work done by the Board and thinks that the new Commission group will extend their jurisdiction for the betterment of the community.

Handouts or Reference Materials:

1. Proposed Charter Text – Version 1
2. Proposed Charter Text – Version 2
3. Proposed Charter Text – Sec. 3.01
4. Proposed Charter Text – Sec. 4.01 and Sec. 4.03

ITEM 2

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YOUR SPACE

The City of Miami Beach Charter establishes the rules by which our city operates; serving as the city's constitution. It begins with a Citizens' Bill of Rights, which guarantees important rights to all city residents, including access to government, truth in government, the right to be heard, the right to a public hearing, adequate audits and ethics in government.

Every 10 years, the Charter is reviewed by seven board members appointed by the City Commission known as the Charter Review Board (CRB). The CRB reviews the City Charter for relevancy, fairness and efficiency to help ensure the best governmental system possible for our city. They ultimately present their recommendations to the Miami Beach City Commission.

Most recently, the CRB recommended having ballot questions number **x** and **x** on the upcoming elections. (*See election guide, page x*)

Recent discussion items by the CRB include the election of officials by open seats, preserving the historical value of Miami Beach and whistle blowing protection for employees. Upcoming discussions, among others, will include the preservation of beaches, commission salary/compensation and term limits for mayor.

To learn more about the current charter review process and to provide public input, visit **QR CODE HERE**
<http://web.miamibeachfl.gov/cityclerk/scroll.aspx?id=72572>.

You can express public views by sending an email to CharterReview@miamibeachfl.gov or contact the City Clerk's Office at 305.673.7411.

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ITEM 3

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MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

JOSE SMITH, CITY ATTORNEY

COMMISSION MEMORANDUM

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

FROM: Jose Smith, City Attorney

DATE: September 24, 2013

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

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

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

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

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

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

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

JS/RA/ld/mmd

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ITEM 10

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MIAMI BEACH


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2013 AUG 26 AM 11:38

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM
CITY CLERK'S OFFICE

TO: Mr. Stephen Zach, Esq., Chairman
Mr. Ralf Granado, City Clerk

FROM: Alex J. Fernandez, CRB Member 

DATE: August 26, 2013

SUBJECT: Referral to Charter Review and Revisions Board

Gentlemen:

During the August 19th, 2013 meeting of the Charter Review and Revisions Board and I referred multiple items for discussion to which I would like to add the following:

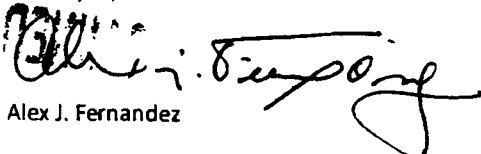
1. **Section 2.03 Powers of the City Commission**
Amend the Powers of the City Commission to require that all increases to the pension benefits require a 5/7 vote of the City Commission until unfunded pension liability is retired or reduced to a less than nominal amount.
2. **Section 3.01 City Attorney; Duties Generally; Appointment of Personnel**
Discuss the possibility, benefits and drawbacks, of amending Section 3.01(h) to require input and/or consent of the City Commission prior to the City Attorney's expenditure of funds on outside legal counsel representing the City.

As a reminder, I referred the following items for discussion during last Monday's meeting:

- Adding a non-interference clause to the City Charter for the day to day operations of the City.
- Clarify Section 2.07, Vacancies in the City Commission, to detail succession for the Office of the Mayor in the event of a vacancy.
- Providing the Commission on Ethics and Public Trust with enforcement authority over the Miami Beach Citizens Bill of Rights to provide a free alternative to residents who cannot afford counsel for litigation.
- Require stricter reporting requirements for political organizations that engage in local Miami Beach elections.
- Expanding upon the State's resign to run law to require members of the City's Land Use Boards to resign from their current office prior to qualifying as a candidate for the office of City Commissioner or Mayor.

Should you have any questions and/or concerns, please do not hesitate to contact me at extension 6528.

Thank you,



Alex J. Fernandez

We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

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October 21, 2013

MIAMIBEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
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

Wednesday, October 21, 2013 at 4:30 p.m.
Commission Chambers, 3rd 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. **Accept Minutes Of The October 2, 2013 Charter Review & Revision Board Meeting.**
2. **Discussion of Miami Beach United's proposed Amendment to the Bill of Rights.** Gary Held to present.
3. **Section 2.02 – Compensation** - Review the amendments to the Compensation Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner/Donald Papy to present.
 - a. **Discussion Of Pensionable Benefits** – Don Papy, Chief Deputy City Attorney, to present
4. **Preservation of Beaches** – Proponent Rick Preira
 - a. **Section 1.03 – Power of City** – Proponent Rick Kendle
5. **Section 2.07 – Vacancies In City Commission** - Review the amendments to the Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.

6. Discussion Of Section 2.02 – Term

- a. Continued Discussion of the Term of Office for the Mayor (currently it is two years). To be discussed in November.
- b. Continued Discussion of Term Limits – Review the amendments to Section 2.02 drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.

7. Discussion Of Section 6.03 – Qualifying

- a. **Discussion of residency requirements** – Proponent Jacqueline Lalonde - Review the amendments to Section 6.03 drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.
 - a. **Discussion regarding adding a resign to run provision for Land Use Board Members who become candidates for elective office** – Proponent Alex Fernandez. Report by Debora Turner as to Opinions from the Commission on Ethics, if any, on this issue. To be discussed in November.
- 8. Inspector General** – Joe Jimenez, Assistant City Manager, to present. To be discussed in November.
- 9. Schedule additional meeting dates.**

MIAMI BEACH

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

Rafael E. Granada, Esq., City Clerk

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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 #643

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MIAMIBEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower Absent
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson Absent

Staff:

Jose Smith, City Attorney Absent
Debora Turner, First Assistant City Attorney
Donald Papy, Chief Deputy City Attorney Absent
Rafael E. Granado, City Clerk
Lilliam Hatfield, OAV, City Clerk's Office Absent

Miami Herald Reporter Christina Veiga

Minutes

Wednesday, October 2, 2013 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.

Meeting called to order at 4:41:24 p.m. by Vice-Chair Perry.

Announcement:

Vice-Chair Perry congratulated Mr. Zack who received a Presidential appointment*. He will be out for the next two weeks, but continues to Chair the committee.

* Stephen N. Zack, of Florida, to be an Alternate Representative of the United States of America to the Sixty-eighth Session of the General Assembly of the United Nations.

Roll call taken by Rafael E. Granado.

City Clerk's Note: Commissioner Exposito was present as well as Vice-Mayor Tobin during parts of the discussions, but not at the same time.

- 1. Accept Minutes Of The September 9, 2013 Charter Review & Revision Board Meeting.**
MOTION: Motion made by Member Lalonde; seconded by Member Kendle to approve the minutes. Minutes approved unanimously; Absent: Chair Zack and Member Preira.
- 2. Report: Promoting CRB Issues – Article That Will Appear In MB Magazine.** Rafael E. Granado, City Clerk, to present.

Rafael E. Granado, City Clerk, introduced the item. He explained that The Miami Herald is being included in CRB emails, and receive the agenda.

Clerk's Note: Christina Veiga, Miami Herald Reporter, was present at the meeting.

Mr. Granado added that the item to include an article in MB Magazine was approved. A sample copy of article that will be in the MB Magazine was included in the Agenda. Mr. Granado added that public notices are being published for every meeting, and the CRB has its own website under the City Clerk's Office, with a tracking of meeting dates, audio, videos, etc.

Mr. Granado stated that at a previous meeting, Member Fernandez had requested the City Manager be contacted to obtain input from Department Directors about items the Directors would want the CRB to discuss. Mr. Granado reported that the City Manager contacted the Directors, and their input, if any, will be included in a future Agenda. **Rafael E. Granado to handle.**

3. **Report Of Memorandum Presented By The City Attorney To The City Commission On September 30, 2013, Regarding The Florida Third District Court Of Appeal Decision In: Let Miami Beach Decide V. City Of Miami Beach And SBACE, LLC, Third District Court Of Appeal, Case #3D13-2243; Lower Tribunal Case No. 13-025234 CA13. (See Item 3, Page 19)**

Discussion held regarding ballot the question having to do with the lease of Convention Center property that was removed by the Third District Court of Appeals from the November 5, 2013 Special Election. Mr. Granado explained that the Notice of General and Special Elections would be published this week and for the next five weeks. The sample ballot will publish the week before Early Voting. Discussion held regarding voting information and the creation of a Voters Guide.

Member Fernandez does not want to advocate for one position or the other, but asked if it would be appropriate for the Board to give information to establish facts to the City Attorney's Office regarding the ballot questions.

Ms. Turner explained that there will be a paragraph in the Voters' Guide but it has not been finalized yet. Member Fernandez requested that the Board review the guide, as he wants to ensure that voters understand.

Vice-Chair Perry added that there is a lot of confusion, people do not understand or know what impact the Convention Center question remaining on the ballot will have; they do not know if there will be another referendum, and he asked if this could be broken down and the issue be discussed as a group. Discussion continued.

Mr. Kendle read an advertisement from 2012 sponsored by the Miami Beach Chamber of Commerce and hotel associations, which he thought it was an official voters' guide. Discussion continued. Mr. Granado explained that the advertisement was not affiliated with the City of Miami Beach's City Clerk's Office.

Debora Turner, First Assistant City Attorney, clarified that the resolution creating the Charter Review Board does not provide the CRB with the power or responsibility to educate voters; this task was assigned by Commission Resolution to the Office of Communications,

to come up with the Voter's Guide and educate voters. The CRB powers and duties are very limited, and they are merely authorized to propose recommendations for Charter amendments to the City Commission.

4. **Section 2.02 – Compensation** - Review the amendments to the Compensation Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.

- a. **Discussion Of Pensionable Benefits –**

Debora Turner, First Assistant City Attorney, distributed a draft of the revised 2.02 language, and stated that Mr. Papy will bring the final form at the next meeting. She stated that the draft states what compensation shall be included pursuant to the Board's direction at the last meeting, and also incorporated therein is the language about the Consumer Index Price so that the salary may be adjusted retroactively from 1966 to the present. There may be additional tweaks once Mr. Papy provides his input. Discussion held. Ms. Turner explained that if adopted by the voters, the compensation for elected official could be published annually by the City Clerk, so the public is fully informed of the full compensation received by elected officials. **Don Papy to handle. Rafael E. Granado to place on the CRB Agenda of October 21, 2013.**

5. **Preservation of Beaches –** Proponent Rick Preira

Item deferred to the October 21, 2013 CRB Meeting.

- a. **Section 1.03 – Power of City –** Proponent Rick Kendle
(Items deferred from September 9, 2013)

Item deferred to the October 21, 2013 CRB Meeting.

6. **Section 2.07 – Vacancies In City Commission** - Review the amendments to the Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.
(Item not reached on September 9, 2013)

Debora Turner prepared a draft and would like to revise it. She suggested bringing the revised proposal at the October 21, 2013 CRB Meeting. **Debora Turner to handle. Rafael E. Granado to place on the October 21, 2013 CRB Agenda.**

Member Fernandez recommended that the proposed amendment be emailed by the City Clerk to the members for review before the meeting. Ms. Turner added that she will also incorporate some of the specific statutory language from the Resign to Run Statute.

7. **Discussion Of Section 2.07 – Vacancies In City Commission Relating To Succession For The Office Of The Mayor In The Event Of A Vacancy –** Proponent Alex Fernandez
(Item not reached on September 9, 2013)

Member Fernandez explained that in the Charter there is no specific protocol for the succession in the Office of the Mayor in the event of an unforeseeable vacancy. He thinks it should be well-defined in the Charter for the Mayor and Commissioners. He suggested that the Vice-Mayor "hold the office" if the Mayor seat is suddenly vacant. If there are no

upcoming regular elections, a Special Election should then be held. Discussion continued regarding length of time between elections necessary to require holding a special election.

Member Kendle explained that the Commission has the power of the Mayor for a certain number of days in some municipalities; in some instances the City Manager takes over the power; he can bring copies for distribution at the next meeting. It is an important issue and they need to know what protocol to follow. He suggested talking to the new Emergency Manager and he will provide what other cities have from the League of Cities. Discussion held.

Debora Turner, First Assistant City Attorney, explained that Section 2.04 reads "during the absence or disability of Mayor, the Vice-Mayor shall perform the duties of Mayor; and in absence or disability of both the Mayor and Vice-Mayor, the said duty shall be performed by another member appointed by the Commission. Rafael E. Granado to be notified as to when to place on the agenda.

8. Discussion Of Section 2.02 – Term - Item added to the agenda by acclamation during the August 19, 2013 CRB meeting.

- a. Discussion of the Term of Office for the Mayor (currently it is two years).
- b. Discussion of Term Limits

(Items not reached on September 9, 2013)

Member Kendle stated that he does not think is normal for the City to have a two-year term for the Mayor, as leaders cannot get anything done; he thinks it should be four years. The more elections the more possibility of corruption opined Mr. Kendle.

Member Fernandez explained that he thinks that there is a perceived power with the Office of Mayor, and believes it is healthy to require the Mayor to run every two years. He sees the merit of having the term for four years, but does not like the idea of being trapped with a Mayor for four years. Discussion continued.

Member Lalonde stated that in reality Miami Beach does not have a strong Mayor government; she thinks the term should be the same as for Commissioner. Discussion continued. She added that what is in front of them is a pragmatic system that prevents the Mayor for focusing on long term issues, as the Mayor is always focusing on running for reelection. A four-year term will allow the Mayor to do the right thing. Discussion was held on the recall issues.

Vice-Chair Perry asked if there is a reason why the City has a two-year term for the Office of Mayor. **Debora Turner stated that she would research the issue, and report.**

5:21 p.m.

Commissioner Exposito dropped by, and when asked, explained that he would prefer a four-year term for Mayor, as it keeps the Mayor focused and more in line with what needs to be done for the City.

Vice-Chair Perry requested that the Board be open to waiting for Chair Zack to return, as he has some perspective on the issue. Discussion continued. **Item to be deferred until Chair Zack returns.**

Motion made by Member Lalonde to defer; then motion was withdrawn.

Vice-Chair Perry suggested Ms. Turner research the issue of term limits for Mayor and bring back before the November 5, 2013 elections. **Debora Turner to handle** (deleting the word "consecutive." **Rafael E. Granado to place on the October 21 CRB agenda for review.**

9. Discussion Of Section 6.03 – Qualifying

a. Discussion of residency requirements - Proponent Jacqueline Lalonde

Member Lalonde believes the residency requirement should be at a minimum two years.

Rafael E. Granado, City Clerk, explained the current requirement of a one-year residency requirement.

Vice-Chair Perry asked if there are any requirements for the City Manager to be a resident, and was notified that there is no such requirement.

Mr. Granado in response to a question from Mr. Kendle explained the Office of the City Clerk does not have the authority to investigate residency issues. The duties of the City Clerk are ministerial as to that issue, and he must accept the veracity of the oath taken by candidates that states that they meet the residency requirement. It is up to someone else, usually an opponent to challenge that, it is not up to the City Clerk's Office.

Discussion continued.

Rafael E. Granado, City Clerk, read Section 6.03 as is: "the City Commission shall cause to be placed on the ballot to be used in the General Election the name of any **qualified elector** of the City **residing** within the City at least one year prior to qualifying, and who within the fourth consecutive days immediately following he/she shall register."

Motion made by Member Lalonde to change the one-year residency and one-year elector requirement to **two years**; seconded by Member Diffenderfer. Voice-vote: 4-1; Opposed: Member Kendle. After a brief discussion, Member Kendle changed his vote and the item was approved unanimously. Final Voice Vote 5-0.

5:42:51 p.m.

Vice-Mayor Tobin entered the conference room during the discussion, and in answering questions regarding term limits, he explained that there are challenges during elections, and he would prefer to see a Mayoral term of 4 years. He added that the problem the City is facing is lack of accountability; there are no evaluations for executive's performance, no matrix. Discussion held.

Member Lalonde explained to Vice-Mayor Tobin that an evaluation system for Directors is being done, and there is a system in place described in the policies and procedures. Discussion continued.

Vice-Mayor Tobin suggested adding an all expenses (check registry) online with search criteria to search.

Member Fernandez stated that the TRAC, chaired by Commissioner Weithorn, addressed these issues, but apparently is not online. This item is to be discussed along with confidentiality issues. **Rafael E. Granado to place on the next CRB Agenda.**

b. Discussion regarding adding a resign to run provision for Land Use Board Members who become candidates for elective office – Proponent Alex Fernandez
(Items not reached on September 9, 2013)

Member Fernandez explained that he ran for office in 2009, and in Election years, the Land Use Boards are lobbied heavily, and he thinks it would be in the best interest of good government for someone who qualifies to run for office should resign from any power boards. Member Fernandez listed the following boards: Board of Adjustment, Design Review Board, Historic Preservation Board and Planning Board.

Vice-Chair Perry indicated that the Visitor Convention Authority could be considered as a power board. Discussion continued.

Member Lalonde asked Ms. Turner if there were any issues with board members running for office. Ms. Turner explained that the Commission on Ethics opinion on this issue, but no violations comes to mind. Member Kendle remembered Mr. Galbut filed a lawsuit years ago to stay on a board, but does not recall the details. He suggested researching the League of Cities for standards that apply in this case. Discussion continued. Debora Turner to check with the Florida Elections Commission as to whether contribution limitations can be imposed by the City on ECO's, PAC's etc. **Debora Turner to handle. Item to be added to the October 21, 2013 CRB Agenda, if ready.**

10. Items Requested By CRB Member Fernandez To Be Added To The List Of Discussion Item.

(Item not reached on September 9, 2013)

Member Fernandez suggested adding to the Charter a non-interfering clause; he believes it is important that the City Commission does not directly interfere with City staff. The commission should not reach out and provide direction directly to departmental staff; it is important to formalize this in the Charter, and provide a protection to avoid any abuse of power or interference.

Member Lalonde stated that the Mayor and Commissioners are elected by voters, and by including such a provision in the Charter, she is concerned that they will shut down or slowing down the problem solving capabilities of the elected officials. Discussion held.

Member Fernandez stated that the protocol is that there is one person in the City Manager's Office where these requests from the Mayor and/or Commissioners are routed. He does not think is wrong for the Commissioner or Mayor to go to the City Manager or Assistant City Manager, but there should be a layer of protection to avoid interference; there needs to be a threshold to avoid exceeding limits. Discussion continued.

Member Kendle explained that the Charter says that the Mayor does not have administrative or judicial powers as Mayor, but some Commissioners get in trouble and have had ethics complaints because they make a telephone call for a constituent. He suggested talking to the Assistant City Manager or give the Commissioners a procedure that they have responded to.

Member Fernandez wants to make sure that employees are protected. Discussion continued. Member Lalonde stated that employees have protections. **Don Papy will address the issue.**

Member Kendle explained that he thinks there should be a protective clause for the City Manager and the Commission to get a response. Vice-Chair Perry suggested that the City Manager address these issue and perhaps Assistant City Manager Joe Jimenez be invited to the November CRB Meeting. **Joe Jimenez to attend the November CRB meeting.**

Member Fernandez referred to the Bill of Rights, and explained that if a resident feels any of those rights have been infringed upon, the only remedy they have is to take it to court, which is costly. Therefore, these protections are only for those who can afford to bring a court action, not the average resident. He suggested that those individuals that cannot afford litigation be protected in the Charter, by allowing them to bring the alleged violation before the Commission on Ethics. **Member Fernandez to present samples of violations of this Bill of Rights.**

Member Fernandez recalled that most of the City's financial problems are because of the unfunded pension liability and this should be addressed. Mr. Fernandez will ask the Chief Financial Officer to present to the CRB members at a future meeting detailed financial reports relating to pension.

Member Kendle handed out public ethics documents regarding the Inspector General and requested that this item be placed on a future agenda. **Alex Boksner to handle.**

Discussion continued.

11. Schedule additional meeting dates.

October 21 at 4:30 p.m. in the Commission Chambers, Third Floor, City Hall, and
November 20, 2013, at 4:30 p.m. in the Commission Chambers, Third Floor, City Hall

Meeting adjourned at 6:31 p.m.

Handouts or Reference Materials:

1. Proposed Charter Text Section 2.02 Term and Compensation

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Miami Beach United proposed changes to Citizens' Bill of Rights
Proposed new language indicated by underscore.

(A) 2. **Truth in government.** No municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public. Municipal officials and employees shall respond to all residents' non-privileged questions regarding city business in a timely and courteous manner. Violations of this section, and the Florida Sunshine Law, i.e., Chapters 119 and 286, Florida Statutes, shall be considered violations of this Bill of Rights and may be enforced pursuant to the remedies provided herein.

(A) 5. **Right to be heard.** All residents shall have the right to fundamental fairness (due process) in connection with any city hearing, board or committee meeting, or public workshop. 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. When the mayor or chairperson of any committee or board determines that an item substantially affects a local neighborhood, a reasonable and convenient time certain shall be provided and reasonably adhered to, or the item should be continued to a subsequent time certain. Nothing herein shall prohibit the City or any agency thereof from imposing reasonable time limits for the presentation of a matter, City Commissioners, board and committee members, and staff, who meet outside of a publicly noticed meeting with persons associated with one side of a legislative issue or agenda item should provide a reasonable opportunity to meet with persons associated with the other side of an issue.

(A) 6. **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. Copies of materials for zoning or other quasi-judicial hearings filed with the City, either in advance or at a hearing, shall be made available for timely review by the public. A material change to an application not presented in advance of a hearing may be grounds for a request for continuance by a resident, and if not granted may be a basis for appeal to the City Commission. All materials provided to the Commissioners or members of any board or committee involving zoning or other quasi-judicial matters shall be made available on the City's web site within one day of being distributed. Failure to provide or post copies as provided herein shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing.

PROPOSED CHARTER TEXT:

10/21/13

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 terms (eight ~~consecutive~~ years) and the 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.

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 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 (excluding individuals holding City of Miami Beach elective office prior thereto for their unexpired terms), the term limit for Miami Beach Commissioners shall be eight consecutive years and the term limit for Miami Beach Mayor shall be six consecutive years respectively, measured retroactively from their first election 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.

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.

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.~~

PROPOSED CHARTER TEXT:

Sec. 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 succeeding 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 refuse to fill a the vacancy within 30 days after it 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 a 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.

PROPOSED CHARTER TEXT:

10/21/13

Sec. 6.03. Qualifying.

The City Commission shall cause to be placed on the ballot to be used in the general election the name of any qualified elector of the City residing within the City at least ~~one~~ two years prior qualifying and who, within the four (4) consecutive days immediately following the first Monday of September prior to said general election, shall have paid to the City Clerk of the City of Miami Beach the sum equal to seven and one-half percent (7½%) of the annual salary of the office to which he/she seeks election as a qualifying fee and shall have been photographed and fingerprinted by the identification bureau of the Police Department of the City, unless such person shall file with the City Clerk no later than noon of the 14th day prior to the first day of qualifying as a candidate for such office, a petition approving his candidacy signed by sufficient qualified and registered voters to constitute not less than two percent (2%) of this number of such voters as the same shall be on the date sixty (60) days prior to the first day of qualifying as a candidate for office, in the event the Miami-Dade County Elections Department has not issued its certificate verifying the required number of valid signatures on the subject qualifying petition by 5:00 p.m. on the second day of the City's four-day qualifying period, the City's 7½% qualifying fee shall be waived by the City in the event the subject candidate should otherwise qualify for office pursuant to this Charter section. All candidates qualifying for office shall have taken, signed and subscribed to an oath or affirmation in writing in which he/she shall state (1) the title of the office for which he/she is a candidate; (2) that he/she is a qualified elector of the City of Miami Beach, Florida, and has resided in the City at least one year prior to qualifying; (3) his/her legal residence, by street and number; (4) that he/she is qualified under the ordinances (including Miami Beach City Code Chapter 38 governing "Elections") and Charter of the City of Miami Beach, Florida, to hold the office for which he/she is a candidate.

Such oath or affirmation shall be substantially in the following form:

STATE OF FLORIDA)	
		SS:
COUNTY OF DADE)	

Before me, an officer authorized to administer oaths, personally appeared to me well known who, being sworn, says that he/she is a candidate for the office of City Commissioner (Group No. _____ (or Mayor) for the City of Miami Beach, Florida; that he/she is a qualified elector of said City residing within the City at least one year before qualifying for City of Miami Beach elected office; that his/her legal residence is: _____, Miami Beach, Dade County, Florida; that he/she is qualified under the ordinances (including Miami Beach City Code Chapter 38 governing "Elections") and Charter of said City to hold such office; and that he/she has paid the required qualification fee.

Signature of Candidate

Sworn to and subscribed before me this _____ day of _____ A.D.,
_____.

Authorized Officer

The City Commission shall, by ordinance, prescribe the manner of holding general and special elections not inconsistent with the provisions hereof, and shall, by ordinance or resolution, prescribe polling places in the various voting precincts in the City.

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
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

Wednesday, November 20, 2013 at 4:30 p.m.
Commission Chambers, 3rd 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. **Accept Minutes Of The October 21, 2013 Charter Review & Revision Board Meeting.**
2. **Discussion Of Miami Beach United's Proposed Amendment To The Bill Of Rights – Enforcement Issue.** Mark Needle.
 - a. **Ethics In Government; and**
 - b. **Remedies For Violations**
3. **Discussion Of Pensionable Benefits For Elected Officials – Rick Rivera, Pension Office Director to present.**
4. **Discussion Of Section 2.02 – Term – Debora Turner to present**
 - a. **Discussion Of The Term Of Office For The Mayor (Currently It Is Two Years).**
Reference Material: List Elected Officials – 1990 to Present
 - b. **Discussion Of Term Limits**
5. **Section 2.07 – Vacancies In City Commission – Debora Turner to present**

6. Discussion Of Section 6.03 – Qualifying

- a. **Discussion Of Residency Requirements** – Proponent Jacqueline Lalonde. Debora Turner to present.
- b. **Discussion Regarding Adding A Resign To Run Provision For Land Use Board Members Who Become Candidates For Elective Office** – Proponent Alex Fernandez. Report by Debora Turner as to Opinions from the Commission on Ethics, if any, on this issue.

7. Inspector General – Joe Jimenez, Assistant City Manager, to present.

8. Discuss Report To City Commission At December 11, 2013 Commission Meeting, Regarding Recommended Charter Amendments

9. Discussion Of Check Registry Website:

<https://secure.miamibeachfl.gov/apvendorviewer/vendor.aspx>

10. Preservation Of Beaches – Proponent Rick Preira

11. Section 1.03 – Power Of City – Proponent Rick Kendle

12. Schedule Additional Meeting Dates, If Needed – Next meeting is scheduled for December 4, 2013

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower via telephone
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora absent
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

Monday, October 21, 2013 at 4:30 p.m.
Commission Chambers, 3rd Floor, City Hall
Email: CharterReview@miamibeachfl.gov

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- 1. Accept Minutes Of The October 2, 2013 Charter Review & Revision Board Meeting.**
Motion to accept the minutes made by Member Fernandez; seconded by Member Kendle; 5-0; Absent: Member Lalonde. Chair Zack is present via telephone but unable to vote.
- 2. Discussion of Miami Beach United's proposed Amendment to the Bill of Rights.** Mark Needle to present.

Vice-Chair Perry introduced the item.

Debora Turner, First Assistant City Attorney, clarified, for the record that Chair Zack is appearing via telephone, but does not count for determining a quorum and is not voting.

Mark Needle spoke on behalf of Miami Beach United regarding a group of amendments to the Citizens' Bill of Rights. He last met with the CRB and they are focused on drafting proposed language to add to (A)2 Truth in government, (A)5; Right to be heard, and (A)6 Right to notice. They listened to the City's concerns and they plan to propose language that will address the residents' interests and are practical to administer. He requested direction from the CRB on the issues.

Discussion held.

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Joe Jimenez, Assistant City Manager, explained that progress has been made. Gary Held, First Assistant City Attorney, has been the primary drafter of the proposed language. He agrees with the proposal, but suggested further discussion, as he would like to identify the problems before they find solutions. The language is clear, aspirational, and easy to follow.

Member Kendle thinks they need to address the enforcement clauses in the future.

Mr. Jimenez explained that the solution is basically to give a Charter remedy to a violation of the Florida law as it already exists, to avoid going to Court, but instead dealing with City staff. The Charter does not demand anyone be fired, and the Manager's or designee's, interpretation would carry the stronger weight, as it is at the discretion of the Manager with regard to the employees that report to him. They are happy to work with the group, but they need to make sure those things can be done as defined.

Member Fernandez, regarding language (A)5 which reads: "City Commissioners, board and committee members, and staff, who meet outside of a publicly noticed meeting with persons associated with one side of a legislative issue or agenda item should provide a reasonable opportunity to meet with persons associated with the other side of an issue." asked if the word "reasonable" should be defined better, as it seems subjective rather than objective. Discussion held. Also, regarding (A)6, "material change to an application not presented in advance of a hearing may be grounds for a request for continuance by a resident, and if not granted may be a basis for appeal to the City Commission." he asked if "presented" means advertised or made available online.

Mr. Jimenez explained that regarding the word "reasonable," in (A)5, it is aspirational language and provides a reasonable opportunity to meet with both sides in front of the boards or Commission. On the proposed language for (A) 6, Right to Notice, he explained that applications are due 45 to 50 days before the day of the hearing on some of the land use boards, and architectural changes can be made the day of the hearing, and if it presents a material change, what MBU wants is to know in advance.

Gary Held, First Assistant City Attorney, clarified that the language that reads "material change" can be fine-tuned to ensure that it is appropriate. In the first sentence of (A)2, the word "courteous" is very subjective, although it is a fine aspirational goal. This is language that was discussed and agreed to present to the CRB for today.

Rafael E. Granado, City Clerk, stated that in reference to Chapter 119, (A)2 reads *"employees shall respond to all residents non-privileged questions..."* He added that public record Statutes do not require employees to answers questions; instead, employees respond to public records requests by providing records. Mr. Granado asked if the intent is to additional rights, not presently granted by the public records law, Chapter 119.

Mr. Jimenez explained that he believes MBU members are looking for answers to questions and they should get answers. He does not believe staff is to be giving opinions.

Mr. Needle stated that they are keeping in the requirements regarding the "timing" of responses; which does not mean on the spot, but it may mean that a staff member needs to go back and find the answer to a question which may take time; some of this is providing answers regarding the process and is loosely designed to allow for flexibility.

Mr. Kendle asked what it is that they are trying to correct. Mr. Needle answered that they cannot evaluate the impact of the proposed language, unless they talk about the enforcement piece. MBU is talking procedurally about the idea of changing the institutional culture to be responsive to the residents. Discussion continued.

Chair Zack asked how a group qualifies under this clause. What are the requirements applicable to associations?

Terry Bienstock, Esq., explained that the proposed language is intended to address only individual rights when they participate in the governmental process, and they are not ready to present on the associations issue. He explained that one of the biggest complaints they have with Design Review Board meetings is that some plans change at the last minute without giving residents the chance to look at the modifications. These are aspirational guidelines that tell the board members what they can and cannot do, and that the developers and architects should provide documents in advance so that the Boards can make the best decision possible. It is the practical thing to do. They want to come up with guidelines for all boards to follow.

Chair Zack asked what constitutes reasonable or adequate notice. Mr. Held explained that oftentimes material changes are made upon staff's recommendations; they are suggesting that the board be fair and provide reasonable notice of chances. Discussion held.

Member Fernandez suggested adding language to (A)6 regarding "reasonable time" in "may be grounds for a request for continuance..." Mr. Held gave preliminary language that reads after **material change**.... "as ascertained by the board or committee with jurisdiction over the application."

Chair Zack explained that this is too arbitrary and it should be consistent between all committees. Discussion continued.

Gary Held, First Assistant City Attorney, explained that often, even if a continuance is granted, they encourage the board to have a discussion about the application, since there are many other points that can be solved between applicants and citizens. The specificity Chair Zack is looking for, could be put in an ordinance rather than the Bill of Rights.

Dr. Morris Sunshine stated that he has appeared in front of many boards and is annoyed to discover that the boards have materials that he has never seen before. He agrees in amending the City Charter as MBU has suggested. He had requested police information about Memorial Day, but as of this date, he has not been able to get a response from the PIO (Public Information Officer). He added that the Planning Department serves all land use boards, and people submit information using DVD's, so everything is electronic, but yet he is unable to get an expert's report. He urged the CRB to consider these amendments.

Mr. Needle summarized that this is the first Truth in Government provision to comply with requests from residents and requests pursuant to law; also the Right to be Heard adds parity for residents and clarifies time certain provisions. He suggested adding the time certain to a more reasonable schedule than what is now in the Charter. It is unfair to residents. The Right to Notice adds parity to residents and is supportive of language proposals from City staff. He thanked City staff for their support and efforts.

Discussion held regarding process and amount of time to make public records available.
Discussion continued.

Enforcement item to come back to the November 20, 2013 CRB Meeting. Mark Needle to provide one week before the meeting.

3. **Section 2.02 – Compensation** a) Review the amendments to the Compensation Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner/Donald Papy to present.

ACTION:

Motion by Member Kendle to recommend Version 3 of proposed Charter; seconded by Member Fernandez; Voice-vote: 5-0; Absent: Member Lalonde. Chair Zack is unable to vote since he is participating via the telephone.

Debora Turner, First Assistant City Attorney, introduced the item and explained the definition of benefits (Proposed Charter Text – Revised Version #3):

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.

Ms. Turner recommended that the benefits be approved by the City Commission by ordinance or resolution and to add the word "or resolution" to the proposed language. She also explained the language amendment for salary for the Mayor and City Commissioners to be adjusted in the future using the same CPI rate.

Member Kendle explained that people do not like to vote for salary increases, and if it is increased for inflation, they have a better chance to get it approved.

Discussion continued.

Ms. Turner explained that voters will not see the actual text changes in the ballot question, which is limited to 75 words. The ballot question will summarize the proposed text amendments.

Discussion continued regarding keeping the Mayor's salary (Version 3) in the Charter and keeping the historical perspective. There was agreement from members to reference the original salaries in the proposed Charter language.

ACTION:

Motion made by Member Kendle to recommend Version 3 of the proposed Charter; seconded by Member Fernandez; Voice-vote: 5-0; Absent: Member Lalonde. Chair Zack is unable to vote since he is participating via the telephone.

b. Discussion Of Pensionable Benefits – Don Papy, Chief Deputy City Attorney, to present

Don Papy, Chief Deputy City Attorney, explained that pension benefits are determined by the pension ordinance adopted in 2006, which applies to non-police and non-fire employees, but there are special provisions that deal with elected officials. He read the language into the record. Earnings (this applies to elected officials, the city manager and city attorney), shall include total W2 compensation plus any other payments or allowances. This should be interpreted by the Pension Office.

Member Fernandez requested to make sure that none of the unused expense allowances or vehicles allowances unused were pensionable, and board members wanted to make sure that only salary is pensionable.

Discussion held.

Member Kendle suggested that the Commission review the ordinance, and if the salary is increased, to take into consideration all compensable benefits.

Member Fernandez requested information on criteria as to what qualifies as pension allowances. Discussion continued.

Member Kendle clarified that their objective is to increase the salary, make it reasonable and recommend this increase. Everything shall be transparent.

Rafael E. Granado, City Clerk, to notify the Pension Office to appear in front of the CRB at the November 20, 2013 CRB meeting. **Rick Rivera to handle.**

Member Fernandez clarified that they are proposing increasing the salaries of Mayor and Commissioners and therefore their pension; their compensation includes salary and benefits (which includes expense and vehicle allowances); although they cannot dictate if these allowances are pensionable or not, they can proposed that they be only entitled to non-pensionable benefits.

4. Preservation of Beaches – Proponent Rick Preira
Item deferred to the November 20, 2013 CRB meeting. **Rafael E. Granado to place on the board agenda.**

a. Section 1.03 – Power of City – Proponent Rick Kendle
Item deferred to the November 20, 2013 CRB meeting. **Rafael E. Granado to place on the board agenda.**

5. **Section 2.07 – Vacancies In City Commission** - Review the amendments to the Section drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.

Debora Turner, First Assistant City Attorney, introduced the item and explained the three scenarios. (See Proposed Charter Text: Sec. 2.07) which could occur if there is a current vacancy in the City Commission or a future vacancy due to an irrevocable written resignation.

No action taken on this. Item to be placed on the November 20, 2013 CRB agenda. **Rafael E. Granado to handle.**

6. **Discussion Of Section 2.02 – Term**

- a. Continued Discussion of the Term of Office for the Mayor (currently it is two years). To be discussed in November.

Vice-Chair Perry explained that this item was deferred from the last meeting to get Chair Zack's input. He introduced the item.

Discussion held regarding term limit of two years.

Member Fernandez stated that he has no problem with increasing to four-year term. Discussion held regarding deferring item.

Chair Zack stated that he prefers two-year terms. He requested to know how many two-year mayors have not been re-elected after two years. **Rafael E. Granado to provide information at the next meeting.**

- b. Continued Discussion of Term Limits – Review the amendments to Section 2.02 drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.

Ms. Turner introduced the item regarding the removal of the word "consecutive." (See Proposed Text).

Discussion held.

Member Fernandez asked if Mayor Bower presently runs for election, would this apply to her. Ms. Turner explained that this may prevent her from running again, as the proposed language has an effective date of 2015, and the Mayor would have served the amount of maximum years set forth in the proposed language.

7. **Discussion Of Section 6.03 – Qualifying**

- a. **Discussion of residency requirements** – Proponent Jacqueline Lalonde - Review the amendments to Section 6.03 drafted by the City Attorney's Office at the request of the CRB. Debora Turner to present.

Discussion held regarding residency requirement extension to two years. Member Kendle is opposed to it, but would prefer Member Lalonde to address the issue.

Item to be placed on the November 20, 2013 CRB agenda. Rafael E. Granado to handle.

- b. Discussion regarding adding a resign to run provision for Land Use Board Members who become candidates for elective office** – Proponent Alex Fernandez. Report by Debora Turner as to Opinions from the Commission on Ethics, if any, on this issue. To be discussed in November.

Item to be placed on the November 20, 2013 CRB agenda. Rafael E. Granado to handle.

- 8. Inspector General** – Joe Jimenez, Assistant City Manager, to present. To be discussed in November.

Item to be placed on the November 20, 2013 CRB agenda. Rafael E. Granado to handle.

- 9. Schedule additional meeting dates.**

November 20, 2013 at 4:30 p.m. in the Commission Chambers

December 4, 2013 at 4:30 p.m. in the Commission Chambers.

- 10. New Item**

Rafael E. Granado, City Clerk, stated for the record, that he emailed a copy of the transparency issue regarding the Check Registry. This is available online and he invited the members to access the link, give feedback to Information Technology and let the Clerk's Office know.

Vice-Chair Perry encouraged everyone to review the website.

6:13:51 p.m.

Ms. Turner suggested discussing at the next meeting the preparation of a Report to the City Commission with all the CRB's recommended proposals, and present the recommendations at the December 11 Commission Meeting, as the terms for the CRB members expire at the end of the year.

TO DO: CRB members to present their proposals discussed to the City Commission at the December 11, 2013 meeting.

Mr. Granado added that, at that time, perhaps they can request an extension, of the term of the CRB if needed.

Meeting adjourned at 6:15:29 p.m.

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Strengthening Resident Rights

Proposed charter amendment for the Miami Beach Citizens' Bill of Rights

Proposed new language indicated by underscore.

(A) **18-19. 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 and board or committee members shall abide by applicable codes of ethical conduct, shall be provided this Citizens Bill of Rights in the official agenda for all public meetings, and shall sign to indicate compliance upon election, employment, or appointment and on an annual basis, and be subject to all penalties provided for in such regulations.**

(C) **Remedies for violations.** **Any resident alleging a violation of this Bill of Rights shall first pursue redress through non-judicial means by submitting the allegation in writing to the City Clerk, who may seek to resolve the matter administratively within a reasonable period of time and shall place unresolved violations on the City Commission agenda for public hearing, with further resident right of judicial appeal or the option of mediation and binding arbitration in lieu of court.** In any suit by a citizen alleging a violation of this Bill of Rights filed in the Dade County circuit 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.

Rev. July 2013

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LIST OF ELECTED OFFICIALS 1990 TO PRESENT

1990 -1991

Mayor Alex Daoud
Commissioner Abe Resnick
Commissioner Stanley H. Arkin
Commissioner Abe Hirschfeld
Commissioner Martin Shapiro
Commissioner William E. Shockett
Commissioner Bruce M. Singer

1992 -1993

Mayor Seymour Gelber
Commissioner Sy Eisenberg
Commissioner Susan F. Gottlieb
Commissioner Neisen O. Kasdin
Commissioner David T. Pearlson
Commissioner Abe Resnick
Commissioner Martin Shapiro

1994 -1995

Mayor Seymour Gelber
Commissioner Sy J. Eisenberg
Commissioner Susan F. Gottlieb
Commissioner Neisen O. Kasdin
Commissioner Nancy Liebman
Commissioner David T. Pearlson
Commissioner Martin Shapiro

1996 -1997

Mayor Seymour Gelber
Commissioner Neisen O. Kasdin
Commissioner Sy J. Eisenberg
Commissioner Susan F. Gottlieb
Commissioner Nancy Liebman
Commissioner David T. Pearlson
Commissioner Martin Shapiro

1998-1999

Mayor Neisen O. Kasdin
Vice-Mayor Martin Shapiro
Commissioner Simon Cruz
Commissioner David Dermer
Commissioner Susan F. Gottlieb
Commissioner Nancy Liebman
Commissioner Jose Smith

2000-2001

Mayor Neisen O. Kasdin
Vice-Mayor David Dermer
Commissioner Matti Herrera Bower
Commissioner Simon Cruz
Commissioner Luis R. Garcia, Jr.
Commissioner Nancy Liebman
Commissioner Jose Smith

2002 – 2003

Mayor David Dermer
Vice-Mayor Richard L. Steinberg
Commissioner Matti Herrera Bower
Commissioner Simon Cruz
Commissioner Luis R. Garcia, Jr.
Commissioner Saul Gross
Commissioner Jose Smith

2004 -2005

Mayor David Dermer
Vice-Mayor Jerry Libbin
Commissioner Matti Herrera Bower
Commissioner Simon Cruz
Commissioner Luis R. Garcia, Jr.
Commissioner Saul Gross
Commissioner Richard L. Steinberg

2007 - 2008

Mayor Matti Herrera Bower
Jerry Libbin
Saul Gross
Richard Steinberg
Jonah Wolfson
Ed Tobin
Deede Weithorn

2009-2010

Mayor Matti Herrera Bower
Jerry Libbin
Jorge Exposito
Michael Góngora
Jonah Wolfson
Ed Tobin
Deede Weithorn

2011-2012

Mayor Matti Herrera Bower
Jerry Libbin
Jorge Exposito
Michael Góngora
Jonah Wolfson

Ed Tobin
Deede Weithorn

RESOLUTION TO BE SUBMITTED

MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora
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

Wednesday, December 4, 2013 at 4:30 p.m.
Commission Chambers, 3rd 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. **Accept Minutes Of The November 20, 2013 Charter Review & Revision Board Meeting.**
2. **Discuss Report To City Commission At December 11, 2013 Commission Meeting, Regarding Recommended Charter Amendments.**
3. **Discussion Of Pensionable Benefits For Elected Officials – Don Papy And Pension Attorney To Present.**
4. **Discussion Of Miami Beach United's Proposed Amendment To The Bill Of Rights – Enforcement Issue. Mark Needle To Present.**
 - a. **Ethics In Government;**
 - b. **Remedies For Violations;**
 - c. **Additional Items – Association, Enforcement And Hearing**
5. **Bill Of Rights Provision – Ethics In Government: Discussion Of Including A Provision In The Bill Of Rights Section That Prohibits Any Elected, Appointed Official Or Employee Of The City From Using Their Position For Personal Benefit. Debora Turner to present.**

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MIAMI BEACH

Charter Review & Revision Board

Members:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde
Rick Kendle
Alex Fernandez
Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower via telephone
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora absent
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson absent

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

Wednesday, November 20, 2013 at 4:30 p.m.
Commission Chambers, 3rd Floor, City Hall
Email: CharterReview@miamibeachfl.gov

The meeting was called to order by Vice-Chair Perry at 4:35 p.m.

Roll call made; Members Lalonde and Preira are absent, and Chair Zack is attending via telephone. City Clerk Granado announced that there was a quorum.

1. **Accept Minutes Of The October 21, 2013 Charter Review & Revision Board Meeting.**
ACTION: Motion made by Member Diffenderfer to approve the minutes; seconded by Member Kendle; 4-0; Absent: Members Lalonde and Preira. Chair Zack is present via telephone and thus unable to vote.
2. **Discussion Of Miami Beach United's Proposed Amendment To The Bill Of Rights – Enforcement Issue.** Mark Needle.
 - a. **Ethics In Government; and**
 - b. **Remedies For Violations**

ACTION:

Terry Bienstock gave an update of discussions with the Administration and explained the items presented. They will meet before December 4th on the HOA rights.

Mark Needle spoke.

Motion made by Member Fernandez to approve the proposals from MBU; seconded by Member Diffenderfer.

Member Kendle suggested reviewing the proposed language and keeping the same intention of the language, but to make it less cumbersome, as this is the Bill of Rights. He asked to amend the motion and simplify the language.

Member Fernandez amended his motion approving the intent of the language presented but making it less cumbersome; seconded by Member Diffenderfer; Voice-vote: 4-0; Absent: Members Lalonde and Preira. Chair Zack is present via telephone and thus unable to vote.

Mark Needle added that they will present draft of the three upcoming items (Association, Enforcement, and Hearings) at the December 4, 2013 CRB meeting.

Gary Held, First Assistant City Attorney, will provide language for form approval at the next meeting.

Vice-Chair Perry thanked the members of MBU and Gary Held for their hard work and efforts.

Rafael E. Granado, City Clerk, clarified that this entire item is to go back on the CRB agenda in December. **Rafael E. Granado to handle.**

3. Discussion Of Pensionable Benefits For Elected Officials – Rick Rivera, Pension Office Director to present.

ACTION: Rick Rivera, Pension Office Director, distributed documents related to pensionable benefits per Ordinance No. 206-3504, Article 5.01, Section B, Paragraph 6, and explained that all elected officials receive a multiplier per year of 4%, and when earnings are calculated, allowances and earnings are used. He mentioned a sample of a W2 compensation, and an additional compensation that goes into a 1099. For Commissioners, the annual pensionable earnings is \$30,000 and for the Mayor \$40,000.

Member Fernandez stated that one of the Board's recommendations is increasing the salaries for the Mayor and Commissioners, and since, in addition to salary, allowances are pensionable, he asked if they could classify the car allowances or any other allowances in a different category that is not pensionable.

Discussion held regarding pensionable benefits and retirement age. Vice-Chair Perry stated that this might be a question to direct to the City Attorney's Office. Discussion continued.

Member Kendle suggested adding the specific items that are not pensionable.

Member Fernandez asked if the word "allowance" can be classified in a different category (a stipend for example), so as not to qualify in the W2 compensation and making it a non-1099 item.

Don Papy, Chief Deputy City Attorney, stated that he cannot comment on taxability, but the issue arises because of the pension ordinance, which determines what is pensionable. The ordinance can always be amended to reflect the wishes of the Board if the City Commission approves the changes. Discussion continued.

Member Fernandez asked if the Charter supersedes the pension ordinance, to which Mr. Papy explained that the Charter is the City's Constitution. Discussion continued regarding increasing salaries and non-pensionable allowances language in the Charter.

Mr. Papy clarified that the pension ordinance can be amended, and he does not believe the Charter addresses any pension matters. The Charter could be amended and he added that he will consult with an expert on the subject.

Chair Zack agreed with Mr. Papy and suggested not wasting time in discussing the item until after an expert opines. The likelihood of changing the entire pension system for the City of Miami Beach to deal with this one issue is highly improbable. He added that if they are concerned about the additional pension amount, they should reduce the amount of the increase to include the additional pension the person is going to receive, but at least they need an expert's legal opinion. Discussion continued.

Member Fernandez asked if the Board members would like to pursue this issue. Member Kendle stated that they have to, as this is a transparency matter and suggested amending the ordinance. Discussion continued.

Vice-Chair Perry recommended adding this item to the next meeting, and suggested that an attorney expert in the subject be invited to present to the Board.

Don Papy, Chief Deputy City Attorney, recommended consulting with the Pension Attorney who deals with these issues in Tallahassee. He will discuss with him and find out options. He reiterated that the pension ordinance can be amended by the City Commission at any time, but his understanding is that this body recommends Charter amendments. **Don Papy to invite Pension Attorney at the December 4, 2013 meeting.**

Chair Zack explained that there are rules and regulations regarding pensions and they cannot be applied in a simple way, they usually have to be applied across the board as opposed to a targeted group of people. He is glad that a Pension Attorney will do the research, and added that whatever the CRB recommends, that someone does the accounting, and if the salary is increased, to find out the total compensation package. If they are concerned about too expensive of a package, they should reduce the amount of salary increase to account for the additional pensionable benefits.

Discussion continued.

Member Kendle thinks they need to determine how they are going to discuss the pension item with the new elected officials.

Handout or Reference Materials:

1. Pensionable Benefits – Elected Officials

4. **Discussion Of Section 2.02 – Term – Debora Turner to present**

a. **Discussion Of The Term Of Office For The Mayor (Currently It Is Two Years).**
Reference Material: List Elected Officials – 1990 to Present

ACTION:

Debora Turner, First Assistant City Attorney, explained the items.

Rafael E. Granado, City Clerk, stated that at the last meeting they requested to know if every Mayor since 1990 has been re-elected, and this was affirmative.

Ms. Turner explained the terms of the Mayors since 1990. Discussion held.

Motion made by Scott Diffenderfer to change the Mayor's term to four years. No second offered and discussion continued.

Member Fernandez thinks that it is good to have two-year terms for Mayor. Discussion continued.

Member Kendle suggested asking the newly elected officials how they feel about this issue.

Chair Zack stated that he shares the same concerns and this is a question raised around the country today; however, he is against the idea of bringing this question to the newly elected City Commission.

Vice-Chair Perry recommended tabling the item to the December 4, 2013 CRB meeting.

Member Kendle suggested asking the public for feedback.

Member Fernandez asked if it is the will of the CRB to present this issue to the City Commission and let them decide.

See action with #8.

Member Diffenderfer explained that in the last 23 years, Mayors have been re-elected, and this Board is trying to avoid the negativity of election campaigning.

Motion by Member Fernandez; seconded by Member Diffenderfer to present this item to the new City Commission. Unanimously approved. **Mayor's Terms to be included in the list of items for discussion at the December 11, 2013 Commission Meeting.**

b. **Discussion Of Term Limits**

ACTION:

Debora Turner, First Assistant City Attorney, explained that the word "consecutive" is removed regarding terms for the Mayor and Commissioners, so that the proposed language sets forth two four-year terms for Commissioners and three two-year terms for the Mayor.

Member Fernandez spoke on the possibility of a former elected official, after a hiatus period, to come back to serve if there is a need. Discussion continued regarding term limits. He will ask the City Attorney's Office to draft proposed language setting the limits to serve their term and then take a hiatus out of office before serving again. Ms. Turner explained that the current language allows members to serve again in the future after a hiatus.

Discussion held.

Chair Zack stated that there is a real danger for people to be in government "in exile" awaiting to resume power, and he is opposed to a certain number of terms. When term limits are up, it is time to move on.

Debora Turner, First Assistant City Attorney, stated for the record, that they are removing the word "consecutive" and the Mayor's term would be two (4) year terms.

Motion made by Member Kendle to remove the word "consecutive" and change to two terms of four years for the Mayor; seconded by Member Fernandez. Voice-vote: 4-0; Absent: Members Lalonde and Preira. Chair Zack is unable to vote as he is participating via telephone.

5. Section 2.07 – Vacancies In City Commission – Debora Turner to present

ACTION:

Debora Turner, First Assistant City Attorney, summarized the types of vacancies: 1) when there is a vacancy (out of office) due to death or illness; and 2) when someone resigns to run for office irrevocably. The options are as follows:

1) If there is a vacancy, and the remaining members of the City Commission refuse to fill the vacancy within thirty days after it occurs, there will be an immediate vacancy, and if there happens to be no General Election within 90 days after expiration of those 30 days, then a Special Election will be called to elect that member.

2) In the event of a future vacancy occurring due to an irrevocable written resignation, if a City General or Countywide Election is scheduled to be held within 30 days after the effective date of the written resignation, then that future vacancy shall be filled by that Election. If there will not be a General or Countywide Election scheduled within the 30 days after the effective date of resignation, and the remaining members fail or refuse to fill the vacancy within 30 days after the effective date of resignation, then a Special Election is to be held to fill the vacancy.

Qualifying period provision:

The qualifying period for a Special Election will be the first ten days after they call of the Special Election and any Run-Off Election shall be within 20 days of the Certification of Election Results requiring that Run-Off.

Discussion held. Ms. Turner announced that the proposed language regarding qualifying mirrors language in the County Charter.

Member Fernandez asked if language has been proposed regarding the vacancy of the Mayor. Discussion continued. Ms. Turner explained that the Mayor is a member of the City Commission. Discussion continued.

Motion made by Member Kendle to move forward with the issue of Vacancies in the Office of the Mayor Section 2.07 (for clarity in terms of duration), and bring to future meetings if jurisdiction is extended; seconded by Member Fernandez; Voice-vote: 4-0; Absent: Members Lalonde and Preira; Chair Zack is unable to vote. **Member Kendle to provide additional documents pertaining to this Section.**

Ms. Turner explained that the Vice-Mayor shall perform the duties of Mayor in his/her absence, but it does not specify a duration in that section.

Discussion held.

Member Fernandez suggested creating a subcommittee to work on specific issues and present language discussed to the CRB. Ms. Turner did not recommend the creation of subcommittees, they would be subject to the same Sunshine Law requirements and procedures.

6. Discussion Of Section 6.03 – Qualifying

- a. **Discussion Of Residency Requirements – Proponent Jacqueline Lalonde. Debora Turner to present.**

ACTION:

Debora Turner, First Assistant City Attorney, stated for the record, that research has been done and the City Attorney's Office does not recommend a change in residency requirements. The Attorney General and cases out of Florida address two-year residency requirements for local candidates and found them to be invalid.

Discussion held. Item withdrawn.

Motion made by Member Kendle to reject the proposal; seconded by Member Fernandez; Voice-vote: 4-0; Absent: Members Lalonde and Preira; Chair Zack was not able to vote.

- b. **Discussion Regarding Adding A Resign To Run Provision For Land Use Board Members Who Become Candidates For Elective Office – Proponent Alex Fernandez. Report by Debora Turner as to Opinions from the Commission on Ethics, if any, on this issue.**

ACTION:

Ms. Turner explained that this provision is not recommended for two reasons: 1) the Florida Statute section regarding resign to run laws does not apply to persons serving without salary as members of an appointed board or authority, and because of that, there are Attorney's General opinions that state that a municipality is not authorized to adopt an ordinance which prohibits conduct that is permitted by State Law.

Member Fernandez explained that Ms. Malakoff was a Land Use board member and unknowing whether she win or lose in the election, she resigned from service on the

Board. He thinks that if this proposed language is not legal to place in the Charter, Ms. Malakoff set an excellent example for others to follow that this is the right thing to do.

Discussion was held regarding compensation of board membership, including the value of parking decal, which is about \$600. Ms. Turner clarified that the State Resign to Run law exempts board members who do not recover a salary and City board members do not receive salaries, thus the State Resign to Run laws do not apply to them.

Chair Zack asked if it is an ethical violation of a board member to use their position on one of the boards to generate favoritism or political contributions. Ms. Turner stated that she will look into this further.

Discussion continued.

Chair Zack suggested making a general statement in the Charter that no official of the City, elected, appointed, or employed should use their office for personal benefit. That is the law. Discussion held.

Motion made by Member Fernandez to add in the Bill of Rights language that reads that no appointed or elected member of any board should use their office for personal gain. Chair Zack suggested adding "any elected, appointed official or employee of the City shall not use their position for personal benefit. Friendly amendment accepted. No second offered.

Member Kendle suggested looking into this and refer item to the next meeting with the Citizens' Bill of Rights item. **Rafael E. Granado to place on the December 4, 2013 agenda.**

Discussion was held regarding dual office holding.

7. **Inspector General** – Joe Jimenez, Assistant City Manager, to present.
ACTION: Member Kendle suggested bringing this item to the attention of the new City Commission.
8. **Discuss Report To City Commission At December 11, 2013 Commission Meeting, Regarding Recommended Charter Amendments**
ACTION: Chair Zack will present to the City Commission. See action with Item #4 a)

Discussion held.

Ms. Turner stated that members of the CRB can attend the December 11th Commission Meeting, but reminded them of the Sunshine Law and not to interact with each other at the meeting.

Chair Zack also suggested to include all the speakers at CRB meetings. This will be #1 item at the next agenda. **Rafael E. Granado to place on the committee agenda.**

9. Discussion Of Check Registry Website:

<https://secure.miamibeachfl.gov/apvendorviewer/vendor.aspx>

ACTION:

Member Fernandez asked if it is the intent of the committee to go forward with this. He explained the creation of the TRAC "Transparency, Reliability and Accountability Committee" which was online, and as technology evolves, there is a different expectation to access documents. He wants the CRB to consider.

Discussion held regarding check registry and compatibility issue problems.

Member Kendle suggested that in the remaining time of the Board's existence, there is not enough time to discuss this issue; it is a great idea, but he just does not think they have time. Discussion continued. Item to be placed for discussion on December 2014. **Rafael E. Granado to handle.**

10. Preservation Of Beaches – Proponent Rick Preira

ACTION: Item tabled.

11. Section 1.03 – Power Of City – Proponent Rick Kendle

ACTION: Item tabled.

NEW BUSINESS

The issue of extending Board's terms was discussed.

Debora Turner, First Assistant City Attorney, stated that under City Code Section 2-22, "the term of every board member who is directly appointed by a member of the city commission shall automatically expire upon the latter of: December 31 of the year the appointing city commissioner leaves office or upon the appointment/election of the successor city commission member." The newly elected Commission will have its first meeting on November 25, therefore, the CRB terms automatically expires on December 31, the latter of the two dates.

Member Kendle suggested reaching out to the City Commission and speak to them one on one.

Meeting adjourned at 6:20 p.m.

MIAMI BEACH

CHARTER REVIEW AND REVISION BOARD MEETINGS NOTICE

NOTICE IS HEREBY given that the Miami Beach Charter Review and Revision Board will meet as follows:

DATES	TIMES	LOCATION
Wednesday, November 20, 2013	4:30 PM	Commission Chambers, Third Floor, City Hall
Wednesday, December 4, 2013	4:30 PM	Commission Chambers, Third Floor, City Hall

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 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 Charter Review Board's website at <http://www.miamibeachfl.gov/scri/Leapx?id=72572> for the latest meeting information and agendas.

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 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 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 #853