

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 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 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, 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 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.

ITEM 1.

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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 consider 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.

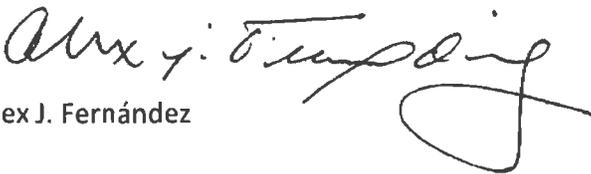
14. Discussion pertaining to the adoption of a Whistleblower Protection Act through which the City Commission shall establish protections for all City employees and appointees who report violations of any local, state, or federal law, regulation,

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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MIAMI BEACH

RECEIVED

2013 MAY -7 AM 11:18

CITY CLERK OFFICE

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

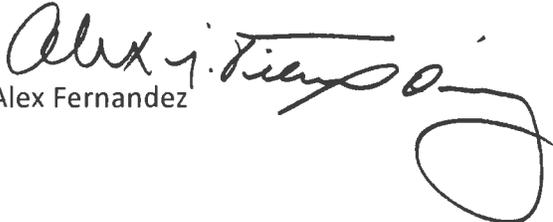
Furthermore, from time to time the Miami-Dade Commission on Ethics and Public Trust is approached to investigate alleged violations of laws pertaining to the State's sunshine provision, public records, and campaign law. Though the Commission on Ethics and Public Trust does look into these matters, they 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

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

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



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) 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.

AGREEMENT

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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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)

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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](#))