

Table of Contents:

TAB:

- 1. Agenda**
- 2. Meeting Minutes**
- 3. Charter Officers**
- 4. Absenteeism**
- 5. Powers of the City**



CHARTER REVIEW COMMITTEE MEETING AGENDA

CITY OF NORTH MIAMI BEACH
City Hall, Conference Room, 4th Floor
17011 NE 19th Avenue, North Miami Beach, FL 33162

WEDNESDAY, JANUARY 27, 2016 6:00 PM

Charter Review Committee Members:

Charles Asarnow, Chair
Norman Edwards, Vice-chair
Chuck Cook
William Dean Esq.
McKenzie Fleurimond
Bruce Lamberto
Larry Thompson

Appointed by:

Mayor George Vallejo
Councilman Anthony F. DeFillipo
Councilwoman Beth E. Spiegel
Vice-Mayor Phyllis S. Smith
Councilman Frantz Pierre
Councilwoman Barbara Kramer
Councilwoman Marlen Martell

Staff:

Jose Smith, City Attorney
Sarah Johnston, Assistant City Attorney
Jean Olin, Outside Counsel
Pamela L. Latimore, City Clerk
Lynetta Jackson, Deputy City Clerk

1. ROLL CALL OF COMMITTEE MEMBERS.**2. APPROVAL OF MEETING MINUTES.**

- November 16, 2015.
- December 10, 2015.

3. CHARTER OFFICERS.**A. CITY MANAGER**

- A. Existing Provision.
- B. Proposed Provision.

B. CITY CLERK

- A. Existing Provision.
- B. Proposed Provision.

C. CITY ATTORNEY

- A. Existing Provision.
- B. Proposed Provision.

4. ABSENTEEISM.

- Existing provision.
- Proposed Provisions.
- Memorandum on Vacancy/Forfeiture of Office.

5. POWERS OF THE CITY.

- Existing Provision.
- Proposed Provision.

6. UPCOMING MEETING TOPICS/UPCOMING MEETING DATE.

- Civil Service Board, Groups/Districts, Summary of those topics reviewed and remaining topics.
- February 11, 2016, 6pm

7. ADJOURNMENT.

NOTE: In order to ensure adequate consideration, if necessary, the members of the Charter Review Committee may move any agenda item to another meeting date and, at their discretion, may adjourn the meeting without reaching all agenda items.

All interested parties are invited to attend and participate in the Public Hearing(s). The items are on file and available for examination at the City Clerk's Office, 17011 N.E. 19 Avenue, North Miami Beach, Florida 33162, Monday through Friday 8:00AM-5:00PM. Questions and written comments can be made by calling 305.787.6001.

Any person who receives compensation, remuneration or expenses for conducting lobbying activities is required to register as a Lobbyist with the City Clerk prior to engaging in lobbying activities before City Boards, Committees, or the City Council.

Upon recommendation by the Committee, the items will be scheduled for City Council consideration. Should any person desire to appeal any decision of the Committee with respect to any matter considered at this meeting, that person must insure that a verbatim record of the proceedings is made, including all testimony and evidence upon which any appeal may be based (See Florida Statutes 286.0105).

In accordance with the Americans with Disabilities Act, persons needing special accommodation to participate in this proceeding should contact the City Clerk no later than two (2) days prior to the proceeding. Telephone 305.787.6001 for assistance, if hearing impaired, telephone our TDD line 305.948.2909 for assistance.

One or more members of other City Boards, Committees, or City Council may attend this meeting.



CITY OF NORTH MIAMI BEACH
Charter Review Committee Meeting
City Hall, Conference Room, 4th Floor
17011 NE 19th Avenue
North Miami Beach, FL 33162
Monday, November 16, 2015
6:00 PM

Charter Review Committee Members:

Charles Asarnow, Chair
Norman Edwards, Vice Chair
Chuck Cook
William Dean
McKenzie Fleurimond
Bruce Lamberto
Larry Thompson

Appointed by:

Mayor George Vallejo
Councilman Anthony F. DeFillipo
Councilwoman Beth E. Spiegel
Vice Mayor Phyllis S. Smith
Councilman Frantz Pierre
Councilwoman Barbara Kramer
Councilwoman Marlen Martell

Staff:

Jose Smith, City Attorney
Sarah Johnston, Assistant City Attorney
Jean Olin, Esq., Outside Counsel
Pamela L. Latimore, City Clerk
Lynnetta Jackson, Assistant City Clerk

Charter Review Committee Meeting Minutes

Roll Call of the Committee Members

The meeting was called to order at 6:00pm. Present at the meeting were Chairman Charles Asarnow, Vice Chairman Norman Edwards, Chuck Cook, William Dean, McKenzie Fleurimond (arrived a few minutes late), Bruce Lamberto, and Larry Thompson. Also present were City Attorney Jose Smith, Assistant City Attorney Sarah Johnston, Assistant City Clerk Lynnetta Jackson, and Jean Olin, Esq. Outside Counsel.

Pledge of Allegiance was led by the Charter Review Committee.

Chairman Asarnow announced that it is very important to realize that the committee will be making recommendations not just for the current City Council members, staff, and residents, but for future generations in North Miami Beach to live by. He also stated that simplicity should be the goal.

Item #1 - Mayor's Authority/Vacancies in Office

Existing Provision: Charter Officers are appointed by the City Council and committees are established in the Charter and any vacancies shall be filled by the City Council.

Proposed Provision Option "A": *Mayor, subject to Council approval, appoints City Council committees; Charter Officers appointed by City Council; and, Mayor's vacancy filled by Vice-Mayor until next general election or, if more than six months remain, in term of office then until a special election is held; and, a vacancy in a council member seat with less than 6 months in the term of office shall be filled by the nomination of the Mayor subject to confirmation of by City Council.*

Proposed Provision Option "B": *City Council appoints committees of City Council; Charter Officers; and, a vacancies in council member seats with less than 6 months in the term of office, or until a special election is held.*

City Attorney Smith explained the provision and gave examples of cities that have committees, such as finance, budget, and planning and zoning, which consist of members of the Council and are different than volunteer citizen boards. He also stated that Section 2 of the Code contains all of the committees currently in existence in North Miami Beach and if the City chose to establish a new board, it would be done by an ordinance. The fact that a council has never exercised the authority to make committees within the council was noted.

Motion to approve to retain the language of the existing provision regarding committees made by Mr. Cook, seconded by Mr. Asarnow.

MOTION PASSED 7-0.

Item #2 - Vice Mayor's Duties/Vacancy

Existing Provision: City Council elects a Vice Mayor to act and who shall exercise the powers of the Mayor; and vacancies shall be filled by the City Council pending the next general election, but if more than one year remains in the term of office, a special election to fill the vacancy shall be held.

Proposed Provision Option "A": *Vice-mayor will have all powers, authority, duties, and responsibilities of the Mayor and shall be designated by a resolution of the City Council; and, provides that if there is a vacancy in the Mayor's seat, the Vice-Mayor shall fill the Mayors seat unless there are more than 6 months remaining on the term of office and then a special election shall be held.*

City Attorney Smith explained the provision and noted other cities have decided that a one year vacancy was too long and voters should have the opportunity to fill the position. Mr. Fleurimond said that in cities where the Mayor has to run for office every two years, he would see it as a reasonable reason to consider the change, but because the city is under a four year term, one year is twenty-five percent (25%) of the term and that's not enough reason to make the change and put it in front of the constituents and citizens.

Motion to approve to retain the existing provision made by Mr. Lamberto, seconded by Mr. Asarnow.

MOTION PASSED 7-0.

On the subject of filling vacancies, City Attorney Smith asked the Committee whether they would prefer the Mayor bringing a nomination forward and having the Council vote for that person or allowing each council member the opportunity to nominate someone of their choice. Mr. Fleurimond explained the process that was in effect during his time on the Council. Councilwoman Beth E. Spiegel stated this issue was previously discussed and not amended by the former Charter Review Committee.

Motion to approve to leave the existing provision as is made by Mr. Lamberto, seconded by Mr. Asarnow.

MOTION PASSED 7-0.

Item #3 - Term of Office/Term Limits

Existing Provision: Mayor and Council limited to no more than eight consecutive years in office.

Proposed Provision Option "A": *No person shall be able to serve more than two terms as Mayor or Councilmember. This allows service as Mayor for two terms and Councilmember for two terms.*

Proposed Provision Option "B": *No person shall be able to serve more than two consecutive terms as Mayor or Councilmember. This would only place limits on consecutive service, an individual could serve more than two terms in any office so long as it was not consecutive.*

The Charter Review Committee discussed the allowable length of time to serve in office. The options discussed were whether to allow service as mayor for two terms and councilmember for two terms or to allow service for more than two terms as long as it was not consecutive. Mr. Dean expressed that changing this provision every couple of years is a disservice to the City. The issue of time served in office while filling a vacancy was determined not to count towards the consecutive years term limit.

Motion to approve to retain the existing provision (Section 22, Page 9) made by Mr. Lamberto, seconded by Mr. Dean.

MOTION PASSED 7-0.

Item #4 - Election Date

Existing Provision: Elections held biennially on the 1st Tuesday in May.

Proposed Provision Option "A": *Regular elections shall be held on the 1st Tuesday following the 1st Monday in November.*

Proposed Provision Option "B": *Regular elections shall be held on the day of the state primary election in August, if no state primary election is held then the election shall be held on the first Tuesday following the second Monday in September.*

Proposed Provision Option "C": *Keep the existing date-regular elections shall be held on the 1st Tuesday in May.*

The Charter Review Committee noted the low voter turnout and the cost involved in running city elections. The Committee discussed the differences between having elections at the same time as the

County and conducting stand-alone elections. The committee considered having elections concurrent with the County would significantly lower the cost, but being on a crowded and shared ballot wouldn't allow for control over placement and could cause voter fatigue. Councilwoman Phyllis S. Smith inquired about the current election schedule cycle. Jean Olin explained the timeline for Federal, State, and County elections. City Attorney Smith reminded the Committee that they can always come back and revisit this topic and that it wasn't a formal binding vote.

Motion to approve to move City elections to November, in conjunction with County elections, in even numbered years made by Mr. Lamberto, seconded by Mr. Cook.

MOTION PASSED 5-2 with Mr. Dean and Mr. Fleurimond opposed.

Item #5 - Quorum

Existing Provision: A quorum shall consist of 5 members.

Proposed Provision Option "A": *a majority of the City Council shall constitute a quorum.*

Proposed Provision Option "B": *Retain the existing quorum requirement of 5 members.*

The Charter Review Committee and City Attorney Smith discussed several possible examples when quorum can be lost, including excessive absenteeism, sickness, emergencies, and conflicts of interest. City Attorney Smith mentioned instances when maintaining quorum was an issue and informed the committee that most other cities and Robert's Rules of Order provide that a majority constitutes a quorum and 4 is the quorum under Florida State Law, but the City Charter TRUMPS the Statute.

Motion to approve to change quorum to consist of a majority (4) made by Mr. Lamberto, seconded by Mr. Asarnow.

MOTION FAILED 4-3 with Cook, Dean, Edwards, and Fleurimond opposed. Lamberto, Asarnow, and Thompson in favor.

UPCOMING MEETING TOPICS and MEETING DATE:

- Recusals
- Run-offs
- Attendance
- Flexible Meeting Schedule (1 or 2 a month)

Next Charter Review Committee Meeting is Thursday, December 10, 2015.

ADJOURNMENT

The meeting was adjourned at 7:38pm.



**CITY OF NORTH MIAMI BEACH
Charter Review Committee Meeting
City Hall, Conference Room, 4th Floor
17011 NE 19th Avenue
North Miami Beach, FL 33162
Thursday, December 10, 2015
6:00 PM**

Charter Review Committee Members:

Charles Asarnow, Chair
Norman Edwards, Vice Chair
Chuck Cook
William Dean
McKenzie Fleurimond
Bruce Lamberto
Larry Thompson

Appointed by:

Mayor George Vallejo
Councilman Anthony F. DeFillipo
Councilwoman Beth E. Spiegel
Vice Mayor Phyllis S. Smith
Councilman Frantz Pierre
Councilwoman Barbara Kramer
Councilwoman Marlen Martell

Staff:

Jose Smith, City Attorney
Sarah Johnston, Assistant City Attorney
Jean Olin, Esq., Outside Counsel
Pamela L. Latimore, City Clerk
Lynnetta Jackson, Assistant City Clerk

Charter Review Committee Meeting Minutes

Roll Call of the Committee Members

The meeting was called to order at 6:00pm. Present at the meeting were Chairman Charles Asarnow, Vice Chairman Norman Edwards, Chuck Cook, William Dean, McKenzie Fleurimond, Bruce Lamberto, and Larry Thompson. Also present were City Attorney Jose Smith, Assistant City Attorney Sarah Johnston, City Clerk Pamela L. Latimore, Assistant City Clerk Lynnetta Jackson, and Jean Olin, Esq., Outside Counsel.

Pledge of Allegiance was led by the Charter Review Committee.

Item #1 - Run-Off's

Existing Provision: Candidates must be elected to office by receiving the majority of the votes cast in the election.

Proposed Provision Option "A": Candidates must receive the highest number of votes of the ballots cast to be elected to office.

Proposed Provision Option "B": Retain existing language.

The Committee discussed the high cost of having a run-off election and the historically low voter turnout for such elections. The Committee inquired about the recent history of run-off elections in North Miami Beach. City Clerk Latimore stated that most, if not all, general elections featured a run-off election and the cost of a general election is about \$60,000 and a run-off is approximately the same amount. City Clerk Latimore also said run-off elections receive about half the voter turnout of a general election. Outside Counsel Jean Olin stated there is a pending State bill that will impact municipal elections and the City would not have the authority and ability to control the dates. The Committee mentioned that a run-off election could provide a clear and concise decision and avoid the situation of a winning candidate receiving as low as 25% of the total vote if there are 4 or more candidates. City Attorney Smith explained the difference between receiving the majority of the votes as opposed to receiving the highest number of votes.

Motion to approve to retain the existing language made by Mr. Fleurimond, seconded by Mr. Edwards.
Motion Failed 3-4 with Mr. Asarnow, Mr. Dean, Mr. Lamberto, and Mr. Thompson opposed.

Motion to approve to adopt Option "A" made by Mr. Thompson, seconded by Mr. Lamberto.
Motion Passed 4-3 with Mr. Cook, Mr. Edwards, and Mr. Fleurimond opposed.

Item #2 - Flexible Meetings

Existing Provision: Meetings shall commence at 7:30pm and be held on the first and third Tuesday of each month.

Proposed Provision Option "A": There shall be a minimum of 11 regular monthly meetings per year, which shall be prescribed by the Resolution.

Proposed Provision Option "B": Retain the existing language.

City Attorney Smith announced that City Manager Garcia would be speaking on this subject.

City Manager Garcia thanked the Committee for taking the time to volunteer and serve for such a worthy and significant endeavor. She explained that City staff is constantly in agenda and meeting mode, which doesn't always result in greater efficiency, productivity, and financial responsibility. She stated that when she was previously employed at another municipality so much more was accomplished when having monthly meetings. She expressed her favor in having fewer scheduled meetings and said it would not mean any less communication with residents. The Committee inquired if one meeting a month would be sufficient to deal with the amount of legislation and items that require Council approval. City Manager Garcia replied affirmatively and also mentioned that special meetings can always be called, along with Council conference workshops. City Clerk Latimore stated having fewer meetings would result in less of a rush for the Council. City Attorney Smith stated there is often not enough time to review bids, contracts, and ordinances from one meeting to the next, and also acknowledged that the city would save money having fewer meetings. The Committee was informed that meetings would be scheduled in advance through a Resolution once a year.

Mayor Vallejo appeared at the meeting and thanked the Committee for their service.

Motion to approve to adopt Option "A" made by Mr. Cook, seconded by Mr. Fleurimond.
Motion Passed 6-1 with Mr. Edwards opposed.

Item #3 - City Departments

Existing Provision: Provides for Finance, Personnel, Recreation, Police, and Fire Departments.

Proposed Provision Option "A": The City Manager shall direct and supervise the administration (including creation and elimination) of City Departments, excluding the City Attorney and City Clerk's departments.

Proposed Provision Option "B": Retain in whole or in part, the existing language, except for references to the Fire Department.

City Attorney Smith explained the existing provision and the options available for proposed provisions. City Manager Garcia discussed her experiences in other cities, relating to organizational structure and the naming of specific departments. Outside Counsel Jean Olin stated that this provision could be deleted and removed from the City Charter and moved to the City Code. Assistant City Attorney Johnston explained that the removal of a City department in the City Code would require City Council approval. City Clerk Latimore explained the differences in making changes to items that are in the City Charter and the City Code. City Attorney Smith made a suggestion to the Committee to leave the Police Department in the City Charter. The Committee discussed whether having the Police Department remain in the Charter could affect union negotiations.

Motion to approve to keep the Police Department in the City Charter made by Mr. Fleurimond, seconded by Mr. Dean.

Motion Failed 3-4 Thompson, Cook, Edwards, Lamberto opposed.

Motion to approve to adopt Option "A" made by Mr. Edwards, seconded by Mr. Cook.

Motion Passed 6-1 with Mr. Dean opposed.

Item #4 - Recusals

Existing Provision: There is no existing language in the Charter addressing recusals.

Proposed Provision Option "A": Include a provision in the Citizens' Bill of Rights providing that council members shall make best efforts to vote unless they cannot vote due to a recusal pursuant to law.

Proposed Provision Option "B": Include a provision stating that a code of ethics shall be adopted and allow recusals to be addressed in the Code.

Proposed Provision Option "C": No change.

The Committee stated the reason for this subject is because certain issues have transpired in the past due to members of the Council choosing not to vote for a variety of reasons. City Attorney Smith expressed that inappropriate recusals are an ongoing concern, City Attorney Smith stated that when an elected public official or appointed board member leaves a meeting to avoid voting, they have to file a conflict of interest form. Outside Counsel Jean Olin mentioned that the County Ethics Commission has jurisdiction over the Municipal Ethics Code and the Municipal Citizens' Bill of Rights.

Motion to approve to adopt Option "A" made by Mr. Cook, seconded by Mr. Thompson.

Motion Passed 6-1 with Mr. Edwards opposed.

Item #5 - Absenteeism

Existing Provision: The existing Charter provides that if any council member fails to attend council meetings for 120 days, the seat shall become vacant.

Proposed Provision Option "A": Include a provision in the Citizens' Bill of Rights that council members shall make best efforts to attend all meetings.

Proposed Provision Option "B": Include a provision that after missing more than 3 council meetings per year, the salary and benefits (for the fiscal year) shall be forfeited to the City.

Proposed Provision Option "C": Retain existing language.

City Attorney Smith read and explained the existing provision. The Committee discussed issues related to absenteeism, including illness and reasons for missing meetings with good cause.

Motion to table this item until a future meeting was made by Mr. Lamberto, seconded by Mr. Cook.
Motion Passed 6-1 with Mr. Dean opposed.

North Miami Beach resident Mubarak Kazan was recognized and discussed the possibility of receiving the agenda for the Charter Review Committee meeting beforehand and suggested that citizens have access to a public email address to voice their questions and concerns.

Next Charter Review Committee Meeting is Thursday, January 14, 2016.

ADJOURNMENT

The meeting was adjourned at 7:58pm.

CHARTER REVIEW COMMITTEE MEETING AGENDA
CITY OF NORTH MIAMI BEACH
WEDNESDAY, JANUARY 27, 2016 6:00 PM

AGENDA TAB 3

CHARTER OFFICERS:

A. CITY MANAGER:

EXISTING PROVISION:

Article VI. - City Manager

Section 31. - Appointment and qualifications.

The city council shall appoint a city manager in the manner and at the time provided in this charter. The city manager shall be graduate of a recognized school of public administration with not less than three years experience in the administration of municipal affairs, or shall have not less than seven years experience in the administration of municipal affairs. He shall have such residency qualifications as may be established by the city council. In the event of a vacancy in the office of city manager, the city council may appoint an acting city manager until such time as a qualified manager may be selected, but no acting city manager may be appointed for a period exceeding three months.

Section 32. - Tenure.

The city manager shall be appointed by the city council, which appointment shall be provisional for the first six months thereof. Thereafter, the city manager shall be appointed for a period of one year and may be reappointed for successive periods of one year each, during which time he may be removed by a majority vote of the city council.

Section 33. - Compensation.

The compensation of the city manager shall be fixed by the city council in the annual budget and may not be reduced during the year for which budget [budget] is prepared.

Section 34. - Duties and powers.

The city manager shall be responsible for the proper administration of all affairs of the city, except as otherwise provided herein, and to that end his powers and duties shall be:

- (1) To see that the laws and ordinances are enforced.
- (2) To appoint all employees of the city, except as otherwise provided herein which appointments shall be made upon merit and fitness to perform the duties involved.
- (3) To remove employees in his discretion, except as otherwise provided in the establishment of a civil service for municipal personnel.
- (4) To exercise control and direct supervision over all divisions and departments of municipal government under this charter and over such others as may be created pursuant to the authority herein granted, including public utilities owned or operated by the City of North Miami Beach. Provided, however, the authority herein granted shall not extend to the legal department or the office of auditor employed or retained by the city council.
- (5) To see that all terms and conditions imposed in favor the City of North Miami Beach or its inhabitants in any public utility franchise are faithfully kept and performed.
- (6) To report any violation of the terms and conditions of any utility franchise to the city council and to the city attorney.

A. CITY MANAGER *continued...*

- (7) To attend all meetings of the city council and of its committees, with the right to take part in discussion, but without a vote.
- (8) To recommend to the city council for adoption such measures as he may deem necessary or expedient in the best interests of the City of North Miami Beach.
- (9) To keep the city council fully advised as to the financial condition and needs of the city, and to submit for its consideration an annual budget as herein further provided.
- (10) To act as purchasing agent for the city and have exclusive control over the purchase of all supplies.
- (11) To approve all vouchers for the payment for supplies purchased by him as purchasing agent.
- (12) [Reserved.]
- (13) [Reserved.]
- (14) To do and perform such other duties and acts as may be prescribed in this charter, or by ordinance or resolution of the city council not inconsistent herewith.
- (15) Notwithstanding the provisions of Section 34, subsection (12) hereof, a contract entered into by the city pursuant to competitive bids may be enlarged, changed, or extended; provided that the city manager shall find that the enlargement, change, or extension is in the best interests of the city and the interests of the city will best be served by contracting with the same person for such enlargement, change, or extension; and, provided further, that such enlargement, change, or extension shall not increase the total cost to the city by more than 10% of the original contract let pursuant to competitive bidding, or by fifty thousand dollars (\$50,000), whichever is the lesser. Provided, however, that the enlargement, change, or extension of any contract not in excess of \$2,000 may increase the total cost of the original contract let pursuant to competitive bidding by not more than 20%; and, provided further, that no change amounting to a material departure from the original purpose of the contract shall be authorized hereunder.

A. CITY MANAGER continued...

PROPOSED PROVISIONS:

Section 3.1. City Manager; Appointment, Removal.

There shall be a City Manager who shall be the chief administrative officer of the City. The City Manager shall be responsible to the City Council for the administration of all City affairs and for carrying out policies adopted by the City Council. The City Council shall appoint the City Manager to serve at the pleasure of the City Council. The City Manager shall be removed by a majority vote of the City Council at any time. The term, conditions, and compensation of the City Manager shall be established by the City Council.

Section 3.1.2 Powers and Duties of the City Manager.

The City Manager shall:

- A. Be responsible for the appointing, hiring, promoting, supervising and removing of all City employees, except the City Attorney, the City Clerk, and all employees of the Office of the City Attorney.
- B. Direct and supervise the administration of all departments and offices but not City boards or committees, unless so directed by the City Council;
- C. Attend City Council meetings and have the right to take part in discussion, but not the right to vote;
- D. Ensure that all laws, provisions of this Charter and directives of the City Council, subject to enforcement and/or administration by him/her or by employees subject to his/her direction and supervision, are faithfully executed;
- E. Prepare and submit to the City Council a proposed annual budget and capital improvement program;
- F. Submit to the City Council and make available to the public an annual report on the finances and administrative activities of the City as of the end of each fiscal year;
- G. Prepare such other reports as the City Council may require concerning the operations of City departments, offices, boards and committees;
- H. Keep the City Council advised as to the financial condition and needs of the City and make such recommendations concerning the affairs of the City as she/he deems to be in the best interests of the City; and
- I. Execute contracts and other documents on behalf of the City as authorized by the City Council;
- J. Perform such other duties as are specified in this Charter or as required by the City Council.

Section 3.2. Absence or Disability of City Manager.

To perform his/her duties during his/her temporary absence or disability, the City Manager may designate by letter filed with the City Clerk, a qualified administrative officer of the City. In the event of failure of the City Manager to make such designation, the City Council may by resolution appoint an officer of the City to perform the duties of the City Manager until she/he shall return or his/her disability shall cease.

B. CITY CLERK

EXISTING PROVISION:

Section 6. - Officers.

The affairs of the City of North Miami Beach shall be conducted by the city council and city manager with the assistance of officers who shall be selected as provided herein and whose powers and duties shall be as prescribed in this charter. The city council shall appoint a full-time city attorney to serve at the pleasure of the council. The city council shall appoint a city clerk and the city manager shall appoint the heads of such departments as are provided for herein, or as shall be created by ordinance pursuant to authority granted in this charter. The salaries of elected officers shall not be reduced during the terms for which they were elected.

PROPOSED PROVISION:

Section 3.4. City Clerk.

The City Council shall appoint the City Clerk to serve at the pleasure of the City Council. The City Clerk shall be removed by a majority vote of the City Council at any time. The term, conditions, and compensation of the City Clerk shall be established by the City Council.

Section 3.4.1 Powers and Duties of the City Clerk.

The City Clerk shall give notice of all City Council meetings to its members and the public, and shall keep minutes of the City Council's proceedings. The City Clerk shall perform such other duties as the City Council may prescribe. The City Clerk shall maintain the seal of the City and attest the Mayor's or City Manager's signature on all documents, if needed.

C. CITY ATTORNEY

EXISTING PROVISION:

Article VIII. - The Legal Department

Section 42. - City attorney.

The legal department of the City of North Miami Beach shall be under the supervision of a full time city attorney appointed by the city council to serve at the pleasure of the council. The city attorney shall be a member of the Florida Bar with at least five years experience in the practice of law in Florida, and shall not during his tenure of office engage in any private practice of law.

Section 43. - Compensation.

The compensation of the city attorney and all other personnel of the legal department shall be fixed by the council in the annual budget. It shall be paid by the city in the same manner as salaries of other city employees are paid.

Section 44. - Assistants.

The city attorney shall have such clerical, stenographic and legal assistance as shall be approved by the council. Employees of the legal department, other than the city attorney, may be placed under civil service at the option of the city council.

Section 45. - Duties.

It shall be the duty of the city attorney to act as legal advisor to the city council, the city manager, and department heads in the City of North Miami Beach. He shall prepare all ordinances, resolutions or regulations submitted for consideration of the council. He shall examine and approve as to legal sufficiency all contracts, franchises, deeds or other undertakings of the City of North Miami Beach. He shall represent the city in bond validations, condemnations under eminent domain, and other legal proceedings in which the City of North Miami Beach is a party. Provided, however, the city council may, in its discretion, associate other counsel in any matter in which the City of North Miami Beach has an interest, and pay the compensation of such associate counsel. The city attorney or a duly appointed assistant shall prosecute cases in the county or circuit court.

Section 46. - Tort claims.

No claims against the City of North Miami Beach, sounding in tort, shall be paid, and no action may be maintained thereon, unless notice of the circumstances under which the claim arose shall have been served on the mayor by certified mail with a copy to the city attorney. Notice shall be served within the time prescribed under the then current state statute as it exists on the date of the alleged claim.

Section 47. - Council meetings.

The city attorney shall attend meetings of the city council and shall perform such other duties as the council may by resolution or ordinance provide.

C. CITY ATTORNEY continued...

PROPOSED PROVISION:

Section 3.5. City Attorney.

There shall be a City Attorney who shall be the head of the Office of City Attorney. The City Council shall appoint the City Attorney to serve at the pleasure of the City Council. The City Attorney shall be removed by a majority vote of the City Council at any time. The term, conditions, and compensation of the City Attorney shall be established by the City Council.

Section 3.5.1 Powers and Duties of the City Attorney.

The City Attorney shall:

- A. Act as the legal advisor for the City and all of its officers in all matters relating to their official powers and duties.
- B. Prepare or review all ordinances, resolutions, contracts, bonds and other documents in which the City is concerned, and shall endorse on each his/her approval of the form, language, and execution.
- C. Prosecute or defend, for and in behalf of the City, all complaints, suits and controversies in which the City is a party, before any court, or other legally constituted tribunal.
- D. Attend all meetings of the City Council.
- E. Recommend to the City Council for adoption, such measures as he/she may deem necessary or expedient.
- F. Render opinions and/or reports on legal matters affecting the City.
- G. Perform such other professional duties as may be required by ordinance or resolution of the City Council or by this Charter.
- H. Appoint and remove all unclassified personnel in the Legal Department, including outside counsel representing the City.

AGENDA TAB 4

ABSENTEEISM:

EXISTING PROVISION:

- The existing Charter, Section 25 provides that if any council member fails to attend council meetings for 120 days, the seat shall become vacant.
- *SEE ATTACHED-Memo on vacancy/forfeiture of office.*

PROPOSED PROVISIONS:

- Option "A" Proposed Provision:** Include a provision in the Citizens' Bill of Rights that council members shall make best efforts to attend all meetings.
- Option "B" Proposed Provision:** Include a provision that after missing more than 3 council meetings per year the salary and benefits [for the fiscal year] shall be forfeited to the City.
- Option "C" Proposed Provision:** Retain existing language.
- Option "D" Proposed Provision:** See the Aventura language in the attached Memorandum.



Memorandum Charter Review Committee

City of North Miami Beach

17011 NE 19th Avenue
Phone: (305) 947-7581
Fax: (305) 787-6004

TO: Charter Review Committee Members

CC: Ana Garcia, City Manager
Pamela L. Latimore, City Clerk

FROM: Jose Smith, City Attorney
Jean Olin, Outside Counsel

DATE: January 27, 2016

RE: Charter Review Committee – Vacancy/Forfeiture of Office

Pursuant to your request, and as discussed at the North Miami Beach Charter Review Committee's December 10, 2015 meeting, I have researched the legality of City Charter section 25's language governing forfeiture of elected office due to excessive absenteeism, reading (in relevant part) as follows:

"...If any councilman has failed to attend a meeting of the city council for a period of one hundred and twenty (120) days, the seat of such councilman shall automatically become vacant."

As explained more fully below, this subject Charter provision is a legally-imposed qualification for maintaining elected office in the City of North Miami Beach, subject to the suggested additional provisions set forth below providing for a councilperson's notice and opportunity to be heard prior to a Council vote on forfeiture of office.

I. City's Per Se Power to Remove Officials: Municipal Home Rule.

A City's power to enact laws providing for the removal of its elected officials is subject to its power of municipal home rule, as recognized by the Florida Constitution and general law. See, Florida Constitution, Art. VIII, sec. 2(b): "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and *may exercise any power for municipal purposes except as otherwise provided by law....*"; and see, Florida Statutes, Chapter 166 "Municipal Home Rule

Powers Act". The State's Attorney General has similarly recognized that *unless prohibited by the Constitution*, a legislative body is permitted to: "...control, modify, or abolish [a City office] whenever such a course may seem necessary, expedient, or conducive to the public good...". Fla. AGO 03-47.

Accordingly, inasmuch as the issue of a City Councilperson's absenteeism serves a municipal purpose (i.e., the City's interest in ensuring the reliable attendance of its governing body in order to affect Commission action), the City has the power to determine an official's forfeiture from office due to such absenteeism so long as the City has not been preempted from regulating as such. Since neither State or County laws preempt the City from regulating in this area, and since the Florida Constitutional provisions relating to the disqualification of a person from office do not apply to municipal officers in the State of Florida, the City has not been preempted and thus MAY legislate on this area of forfeited office due to excessive absenteeism.

II. Charter Review Committee Question: Disenfranchisement of Voters.

Acknowledging that the City may legislate on areas concerning qualifications of a City Council member, we now turn to the issue raised by the Charter Review Committee asking whether such regulation amounts to a disenfranchisement of the voters in light of its arguable interference with the electorate's chosen candidate. While I have been unable to locate any cases directly on point, it is relevant to note that Florida law contains provisions similar to City Charter section 25, whereby the Governor has authority to remove from office elected city officials based upon certain specified disqualifying criteria: specifically, Florida Statute section 112.51 authorizes the Governor to remove an official based upon person's "malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform one's duties". The municipal home rule powers of the City to enact such legislation, coupled with the fact that State law provides as well for the removal of City officials without voter input, would appear to serve as valid legal grounds upon which the City's Charter language is based. **Any proposed amendments to City Charter Section 25 should thus retain language establishing specific narrowly tailored criteria for disqualification from office (i.e., excessive absenteeism), and express the City's reasoning for said disqualification (i.e., municipal purpose).**

III. Related Procedural Matters.

1. Due Process Required Prior to Forfeiture Vote.

If an elected official is elected for a fixed term and provision is made generally for his or her removal for cause, the officer is required to be accorded a hearing to defend the action. It is therefore recommended that Charter section 25 be amended to include a provision for pre-forfeiture notice and hearing.

2. Retroactive vs. Prospective Effect:

Should the City wish to amend its Charter section 25, a decision must be made as to whether said amendment should apply retroactively (i.e., to members of the City Council in office as of the amendment's effective date) or prospectively (to future members of the City Council). Inasmuch as a change to Charter section 25's forfeiture language would impose a new requirement on existing officeholders who presumably wish to complete their term of office, it is my recommendation that an amendment apply prospectively to new terms commencing as of the general election immediately following the Charter amendment approval.

IV. FYI: Aventura Charter Section 2.05. - Vacancies; forfeiture of office; filling of vacancies.

* * *

(b) (ii) *Forfeiture by absence.* A Commissioner shall be subject to forfeiture of his/her office, in the discretion of the remaining Commissioners, if s/he is absent without good cause from any six regular meetings of the Commission during any calendar year, or if s/he is absent without good cause from any four, or three as to the Mayor, consecutive regular meetings of the Commission, whether or not during the same calendar year.

(iii) *Procedures.* The Commission shall be the sole judge of the qualifications of its members and shall hear all questions relating to forfeiture of a Commissioner's office, including whether or not good cause for absence has been or may be established. The burden of establishing good cause shall be on the Commissioner in question; provided, however, that any Commissioner may at any time during any duly held meeting move to establish good cause for the absence of himself or any other Commissioner, from any past, present or future meeting(s), which motion, if carried, shall be conclusive. A Commissioner whose qualifications are in question or who is otherwise subject to forfeiture of his/her office shall not vote on any such matters. The Commissioner in question shall be entitled to a public hearing(s) on request regarding an alleged forfeiture of office. If a public hearing is requested, notice thereof shall be published in one or more newspapers of general circulation in the City at least one week in advance of the hearing. Any final determination by the Commission that a Commissioner has forfeited his/her office shall be made by resolution. All votes and other acts of the Commissioner in question prior to the effective date of such resolution shall be valid regardless of the grounds of forfeiture.

Note: Aventura Charter Section 4.01(a): “**The Commission shall hold at least 11 regular monthly meetings in each calendar year**, at such times and places as the Commission may prescribe by rule. Special meetings may be held on the call of the Mayor or City Manager or upon the call of four members of the Commission and upon no less than 24 hours' notice to each member and the public, or such shorter time as a majority of the Commission shall deem necessary in case of an emergency affecting life, health, property or the public peace.” (Emphasis added.)

AGENDA TAB 5

POWERS OF THE CITY:

EXISTING PROVISION:

Section 21. - Enumerated powers.

The City of North Miami Beach shall have all the powers granted municipal corporations by the Constitution and General Laws of Florida, and such powers as are incidental to the exercise of the powers granted herein and by general law, and in addition thereto shall have the following specific powers, as well as powers otherwise set forth in this charter:

- (1) To sue, and be sued in the manner provided by law and the provisions of this charter.
- (2) To exercise [exercise] the police power for the benefit of the health, convenience, safety, comfort and general welfare of the inhabitants of the City of North Miami Beach.
- (3) To acquire property, real and personal, for municipal purposes, and to dispose of property not needed for such purposes.
- (4) To define, prevent and abate nuisances.
- (5) To restrain and punish gambling or other disorderly conduct.
- (6) To prevent the running at large of cattle, horses, hogs, sheep, goats and other livestock as well as dogs or fowl and other animals or birds, on the streets of the city or within the city limits, and to impound the same and provide for their disposition.
- (7) To regulate the speed at which vehicles of any kind or description may be operated on the streets of the city.
- (8) To assess and collect taxes for municipal purposes.
- (9) To publicize and advertise the advantages of the City of North Miami Beach as a municipal purpose and to levy a tax for such purpose not exceeding 2 mills of the assessed valuation of the real and personal property subject to taxation.
- (10) To prohibit the sale of intoxicating liquors, wines and beers within the city.
- (11) To inspect gas, electric and water meters.
- (12) To enact ordinances in the exercise of the powers granted herein and provide punishment for the violation of same, not exceeding imprisonment in the city jail for a period of sixty (60) days or fine of five hundred dollars (\$500.00) or both.
- (13) To prevent and punish disturbances of the peace.
- (14) To establish rules and regulations respecting the poor, indigent, infirm [infirm] and insane; to provide for the support and care of such persons; and to fix the conditions upon which such person coming into the city shall be allowed to remain.
- (15) To inspect and regulate the sale of milk, meats, fish, produce, bread and other items offered for human consumption.
- (16) To provide for sanitary sewers and the compulsory use thereof by property owners.

- (17) To prohibit and suppress bawdy houses, disorderly houses and any exhibition, show, circus, parade or amusement contrary to good morals.
- (18) To prohibit and suppress the sale or distribution of obscene pictures and literature.
- (19) To regulate, restrain or prevent the carrying on of dangerous manufactures tending to increase or produce fires.
- (20) To license the sale of firearms.
- (21) To regulate the storage of gunpowder, tar, pith, rosin, salt-peter, coal oil, kerosene, gasoline, or other combustible, explosive or inflammable material.
- (22) To regulate the use of lights, candles, lamps and steam pipes in all places of business.
- (23) To regulate and suppress the sale of firecrackers and other fireworks, toy pistols, air guns and sling shots.
- (24) To inspect and regulate the sanitary conditions of dairies, butcher pens and slaughter houses.
- (25) To establish, maintain and regulate markets.
- (26) To prohibit vagrancy.
- (27) To regulate the use of sidewalks and other public ways.
- (28) To enclose, improve, or regulate public grounds of the city within or without its corporate limits.
- (29) To provide for the working of lawful prisoners of the City of North Miami Beach on the public streets, grounds and other property thereof, and for credits against fines and penalties for work performed.
- (30) To regulate, suppress or prohibit hawking or peddling upon the streets, sidewalks or other public places of the city.
- (31) To protect and preserve peace and order upon all property owned, leased, managed or controlled by the City of North Miami Beach outside its corporate limits.
- (32) To construct or purchase a telephone system.
- (33) To erect or purchase a city hall, hospitals for the care or detention of the sick, jails, market houses or other buildings for municipal purposes, and to equip and furnish the same.
- (34) To construct or purchase any street or local railway for the transportation of passengers or freight.
- (35) To have the general power of eminent domain and in addition thereto to have the power to condemn any water, ice, gas, power or light plant, telephone system, street or local railway, ship channel, canal basin, waterway, wharf, dock, warehouse, lands, submerged lands, riparian rights or buildings, or any part thereof, together with any and all franchises, rights and easements thereunto belonging or appertaining.
- (36) To destroy surface privies and cesspools or other forms of receptacles for sewage, other than sanitary service sewers.
- (37) To issue bonds for municipal improvements.

- (38) To zone property in the City of North Miami Beach in the manner provided in this charter, or as provided by state law.
- (39) To establish and operate gas and waterworks as herein provided and issue revenue certificates therefor.
- (40) To establish a civil service system for employees of the city as herein provided.
- (41) To designate a depository for municipal funds.
- (42) To license privileges, businesses, occupations and professions carried on or engaged in within the city, and fix the amounts of same.
- (43) To license the erection of signboards, placards and advertising signs, the fee for which shall not exceed five hundred dollars (\$500.00).
- (44) To establish quarantine and health regulations.
- (45) To establish a police department and a fire department for the protection of the city.
- (46) To construct, repair, grade, improve or vacate streets, alleys, avenues, lanes, wharves, landings, bridges, trenches, ditches, curverts, canals, streams, water courses, dock lines, sidewalks, curbs, viaducts and any and all thoroughfares.
- (47) To bulkhead waterways.
- (48) To establish storm sewers.
- (49) To require that utility lines, pipes or other service media be laid underground.
- (50) To construct tunnels under any waterway or railroad.
- (51) To establish and construct ship channels, canals, basins, waterways and harbors in Biscayne Bay within the city limits and to contract with the United States Government for such work.
- (52) To contract with Dade County or with any person, firm or corporation, for the payment of a portion of the costs of municipal improvements.
- (53) To levy assessments for special benefits and have and enforce a lien therefor.
- (54) To preserve the public peace and punish disturbances thereof.
- (55) To establish city dumps, incinerators or other methods of waste disposal.
- (56) To collect garbage and other waste and dispose of same or to grant franchises for such collection and disposal.
- (57) To establish and operate sewer treatment plants.
- (58) To prescribe and enforce standards of weights and measures in connection with any sale of commodities and inspect for compliance.
- (59) To establish and maintain a public library and provide for the support of same through taxation, gifts, grants, donations or other means.
- (60) To assess and collect reasonable fees for inspections or other services authorized or required by this charter.

- (61)(a) To enter upon improved or unimproved properties in the city and clean up the same of weeds, trees, debris, trash, or other unsightly or unsanitary matter, or to fill in excavations or depressions wherein water may accumulate, and other like matter whenever the owner or occupant of such property has neglected to do these things and has been given fifteen (15) days registered notice in which to do so and has failed.
- (b) To impose penalties for the non-payment of charges and fees incurred by it in cleaning up improved or unimproved property in the City of weeds, trees, debris, trash, or other unsightly or unsanitary matter, or to fill excavations or depressions wherein water may accumulate, and other like matter whenever the owner or occupant thereof has neglected to do such and has been given fifteen (15) days registered notice in which to do so and has failed.
- (c) To declare such unpaid charges and fees to be a lien against the property served.
- (d) To provide methods for collection of such fees and charges.
- (e) To have the right to declare such unpaid fees and charges a lien against the real and personal property of the owner and occupant of such property, collectible in the same manner as unpaid liens for special assessments are collectible.
- (f) To provide and declare that the powers granted in this subsection are cumulative in addition to any other powers which the City of North Miami Beach now has or may hereafter have.

POWERS OF THE CITY: *continued...*

PROPOSED PROVISION:

Section 1.4. Powers.

The City shall have all available governmental, corporate and proprietary powers and may exercise them except when prohibited by law. Through the adoption of this Charter, it is the intent of the electors of the City to grant to the municipal government established by this Charter the broadest exercise of home rule powers permitted under the Constitution and laws of the State of Florida.