



CITY OF NORTH MIAMI BEACH
Charter Review Committee Meeting
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
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, McKenzie Fleurimond, 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. William Dean was absent.

Pledge of Allegiance was led by the Charter Review Committee.

Approval of Meeting Minutes

Motion to approve the Minutes of November 16, 2015 made by Mr. Edwards, seconded by Mr. Thompson. **MOTION PASSED 6-0** with Mr. Dean absent.

Motion to approve the Minutes of December 10, 2015 made by Mr. Edwards, seconded by Mr. Thompson. **MOTION PASSED 6-0** with Mr. Dean absent.

Outside Counsel Olin stated that if the City election date is changed, the issue of the qualifying period would need to be addressed. She explained the qualifying period is defined as the process by which a person who is interested in becoming a candidate for elected office must follow in order to become a candidate. If the City decides to move the election dates from May of odd numbered years to November of even numbered years, there would need to be a Charter Amendment changing the qualifying date. City Attorney Smith said the legal department will draft language concerning the qualifying date and attach it to the election date recommendation.

Charter Officers

City Manager

Proposed Provision:

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;

- 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.

City Attorney Smith stated that he is not in favor of the appointment, qualifications, and tenure provisions existing in the current City Charter. Director of Human Resources Nadine Lewis-Sevilla stated that the current wording in this section of the Charter makes recruiting extremely difficult. The Committee inquired as to when the current existing language was adopted (1957 was the response) and discussed the possible minimum and maximum amounts of severance pay. City Attorney Smith expressed that the City Manager has the power to hire and fire any employee within his/her chain of command, including the Chief of Police, department directors, and all employees working under them.

Motion to approve the Proposed Provision of City Manager, Sections 3.1, 3.1.2, and 3.2, made by Mr. Fleurimond, seconded by Mr. Thompson.

MOTION PASSED 6-0 with Mr. Dean absent.

City Clerk

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.

City Attorney Smith mentioned that the existing City Charter doesn't discuss the powers and duties of the position of City Clerk and City Clerk Latimore stated the proposed provision is consistent with other cities that she has viewed. Outside Counsel Olin observed that the language of the existing City Charter provision states that the City Council appoints the City Clerk, but there is no mention of who

can remove the City Clerk. City Attorney Smith stated it has always been understood that the three Charter officers are hired and fired by the City Council.

Motion to approve the Proposed Provision of City Clerk, Sections 3.4 and 3.4.1, made by Mr. Lamberto, seconded by Mr. Thompson.

MOTION PASSED 6-0 with Mr. Dean absent.

City Attorney

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 by this Charter.
- H. Appoint and remove all unclassified personnel in the Legal Department, including outside Counsel representing the City.

City Attorney Smith and the Charter Review Committee members discussed the possibility of a municipality employing a law firm in lieu of a City Attorney's Office. City Attorney Smith stated that the language in the proposed provision captures in general what most cities have done. He expressed his opinion that the City Attorney's office should not be politicized or take direction from the City Council, aside from adhering to the adopted budget. The Committee discussed that a City Attorney, if given the power to appoint outside legal Counsel, could hire a friend, family member, or any other individual or firm without the knowledge or consent of the City Council. City Attorney Smith described a city that has an Attorney's Oversight Committee, consisting of the Mayor and other elected officials,

that reviews expenditures to make sure there is no inappropriate conduct and suggested this be done by ordinance or resolution.

Motion to approve the Proposed Provision of City Attorney, Sections 3.5 and 3.5.1, with the addition of allowing the city the ability to employ a law firm, made by Mr. Lamberto, seconded by Mr. Cook. **MOTION PASSED 5-1** with Mr. Edwards opposed and Mr. Dean absent.

Absenteeism

Proposed Provisions:

- A. Option "A" Proposed Provision: Include a provision in the Citizens' Bill of Rights that council members shall make best efforts to attend all meetings.
- B. 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.
- C. Option "C" Proposed Provision: Retain existing language, which provides that if any council member fails to attend council meetings for 120 days, the seat shall become vacant.
- D. Option "D" Proposed Provision: See the Aventura language in the attached Memorandum.

Outside Counsel Olin explained the concept of Municipal Home Rule, which states that the City is authorized to legislate on any matter that affects a municipal purpose unless the city has been preempted. She stated that the City must provide notice and an opportunity to be heard before removing any member of the Council from office due to excessive absenteeism. She also presented the option of having any forfeiture language adopted being retroactive to present members of the Council or only applying to future elected officials. The Committee discussed the importance of elected officials physically attending and participating in City Council meetings.

Motion to approve Proposed Provision "D" made by Mr. Edwards, seconded by Mr. Cook. **MOTION PASSED 5-1** with Mr. Fleurimond opposed and Mr. Dean absent.

Powers of the City

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.

City Attorney Smith explained that the existing Charter contains over 60 paragraphs outlining every single power that the city can engage in, including many that are no longer relevant, and some that are illegal.

He stated that the Florida Legislature enacted the Municipal Home Rule Powers Act in 1973 which gives municipalities governmental, corporate, and proprietary powers to enable them to conduct

municipal government, perform municipal functions, and render municipal services and may exercise any power except where prohibited by law. He informed the Committee that every new city and all other cities that have amended or created a new charter since that time quoted the language in the act and eliminated any previous unnecessary language.

Motion to approve the Proposed Provision of Powers of the City, Section 1.4, made by Mr. Lamberto, seconded by Mr. Thompson.

MOTION PASSED 6-0 with Mr. Dean absent.

The meeting was opened for **PUBLIC COMMENT**.

There were no speakers.

The meeting was closed for **PUBLIC COMMENT**.

The next Charter Review Committee Meeting is scheduled for Thursday, February 11, 2016.

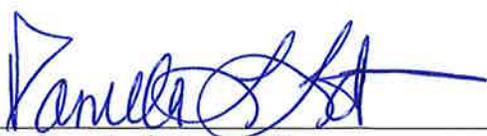
Outside Counsel Olin suggested that the Charter Review Committee conduct a televised town hall meeting in March and present the recommendations to the City Council soon after. She also informed the Committee that the City Council can only officially adopt the resolutions at the July 19, 2016 or August 2, 2016 City Council meetings to qualify for the November 2016 election ballot.

City Attorney Smith mentioned issues to place on the next agenda, including single member districts, the civil service board, and qualifying dates.

The meeting was adjourned at 8:06pm.

ATTEST:

(SEAL)



Pamela L. Latimore, CMC, City Clerk