



MIAMI-DADE COUNTY FINAL OFFICIAL MINUTES Charter Review Task Force

Board of County Commissioners
Vizcaya Village "Garage"
3250 South Miami Avenue

Wednesday, November 28, 2007
As Advertised

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Board of County Commissioners

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**CLERKS SUMMARY AND OFFICIAL MINUTES
CHARTER REVIEW TASK FORCE MEETING
NOVEMBER 28, 2007**

The Charter Review Task Force convened in a meeting on November 28, 2007, at 10:00 a.m. on the Vizcaya Village "Garage", 3250 South Miami Avenue. The following members were present: Chairman Victor M. Diaz, Jr. and members David Dermer, former Mayor of the City of Miami Beach; Carlos Diaz-Padron, former Mayor of the City of West Miami; Maurice Ferre, former Mayor of the City of Miami; City of Miami Gardens Mayor Shirley Gibson; Commissioner Carlos Gimenez; Mr. Robert A. Ginsburg; Mr. Murray Greenberg; Ms. Elizabeth Hernandez; Mr. Robert Holland; Mr. Francois Illas; Mr. Richard Kuper; Mr. Jorge Luis Lopez; and Mr. Ignacio Vazquez; (Ms. Lynn Dannheiser; Mr. Miguel De Grandy; Mr. Larry Handfield; Mr. John Hogan; Raul L. Martinez, former Mayor of the City of Hialeah; Mr. H. T. Smith and Ms. Yvonne Soler-McKinley were absent).

1. Call to Order

Chairman Diaz called the meeting to order at 10:21 a.m.

2. Roll Call

The following staff members were present: County Manager George Burgess; Assistant County Manager Susanne M. Torriente; Assistant County Attorneys Cynthia Johnson-Stacks, Oren Rosenthal, Wifredo Ferrer and Monica Rizo; Assistant to the County Manager Maggie Fernandez; Ms. Jennifer Glazer-Moon, Director, Office of Strategic Business Management; and Deputy Clerks Doris Dickens and Judy Marsh.

3. Approval of Minutes

A. Record of Statements of the November 15, 2007 Workshop

B. Review of Draft Motions of November 20, 2007 Task Force Meeting

Chairman Diaz noted completed minutes of the November 20, 2007 Task Force meeting were not yet available; however, a record of the votes taken at that meeting were included in today's agenda package.

4. Old Business

A. Discussion of Issue 6 – Study of Initiative, Referendum, Petition & Recall

- County Attorney's Office Legal Opinion (oral report)

Chairman Diaz noted today's meeting would begin with discussion on the following motion made by Mayor Ferre on November 20, 2007 regarding Issue 6 – Study of Initiative, Referendum, Petition & Recall:

It was moved by Mayor Ferre that the Task Force recommend that amendments to the Charter may be proposed by petition of electors numbering not less than ten (10%) percent of the total number of electors in Miami-Dade County; that the time period to collect valid signatures be extended to 120 days in lieu of 60 days, provided that five (5%) percent of the total number of required signatures be collected in 60 days, followed by a public hearing; and that 60 days following the public hearing, the petitioner gathers the remaining five percent of required signatures; and that a valid petition be placed on the ballot for the next general election. This motion was seconded by Mr. Hogan.

Assistant County Attorney Oren Rosenthal noted as instructed at the November 20, 2007 Task Force meeting, he had reviewed the legal implications of Mr. De Grandy's proposed amendment on Mayor Ferre's motion that this Task Force recommend to the County Commission that a source document that specifically states the nature of the ballot question and its intent be attached when a petitioner submits a petition to amend the Charter or that a redlined Charter be attached to the petition.

Assistant County Attorney Rosenthal explained that adding Mr. De Grandy's proposed amendment as a specific requirement within the Charter would crystallize the issues that were before the voters and potentially before the Courts and to make it easier for people to successfully challenge an initiatory petition.

Mr. Lopez questioned whether the strong mayor initiative had a different text that was ultimately implemented.

In response to Mr. Lopez' inquiry, Chairman Diaz noted there was a change in what was initially attached to the petition and what was ultimately attached to the County Commission's memorandum calling for a special election on the strong mayor proposal. He noted the attachment to the County Commission's memorandum was what was implemented.

Mr. Ginsburg noted he was opposed to the main motion and Mr. De Grandy's proposed amendment. He said imposing more requirements meant more citizens groups would not be able to meet those requirements. Mr. Ginsburg noted he supported extending the time period to

collect signatures to 120 days, in lieu of 60 days, and he also supported the proposal to place the petition on the ballot for the general election.

Mr. Greenberg noted it might not be feasible to impose more obstacles on the citizens. He pointed out that whenever the Charter was finally written it must be in legal form, and the language in the petition needed to be reviewed and at some point, the petition needed to be reviewed by the County Commission. Mr. Greenberg said he felt that to require the petition to be legal and in final form before collecting the signatures, presented one more obstacle for the petitioners. He noted he felt the bifurcation would prolong the process of people trying to effectuate change. Mr. Greenberg noted if the petition was placed on the general election ballot, it could take another two years before anything was done.

Following Mr. Ginsburg's and Mr. Greenberg's comments, Mayor Ferre stated that Mr. De Grandy's proposed amendment was unacceptable.

Mayor Ferre noted the Task Force members appeared to have reached a consensus on the 120 days and on placing the petition on the general election. He explained the reason for the bifurcation and asked that the public hearing and the second process must begin within 30 days after the public hearing.

Mr. Greenberg noted the concern was that 120 days would now include a 30-day gap, making it 150 days.

It was moved by Mayor Ferre that the Task Force recommend to the County Commission that the certification of signatures and public hearing occur within 30 days. This motion was seconded by Ms. Hernandez.

Mayor Ferre noted, in light of the County Manager's concerns regarding the time, he would offer an alternate motion.

It was then moved by Mayor Ferre that the time period for collection of valid signatures be extended to 120 days without the bifurcation; that the required ten (10%) percent of signatures for a Charter amendment be gathered; and that any proposed Charter amendments must be placed on the ballot for a general election. This motion was seconded by Commissioner Gimenez.

Following discussion on the public hearing process, it was moved by Mayor Ferre that once the petition was approved as to form, the County Commission must hold a public hearing on the proposed petition pursuant to the Charter requirement, and after the public hearing the petitioners

would have 120 days to gather the required signatures before the question was placed on the ballot for the general election. This motion was seconded by Ms. Hernandez.

Mr. Lopez suggested the Task Force discuss the new Florida law as it pertains to the “opt out” provision.

Commissioner Gimenez spoke in support of the proposal to extend the period to collect signatures to 120 days and to place the petition on the ballot for the general election.

Chairman Diaz concurred with the intent of Mayor Ferre’s motion. He noted although he understood that the County Commission might not be receptive to the proposed citizen initiative, he would like to see all Charter questions guided by the kind of discussion that had occurred among members of this Task Force.

Mayor Dermer noted the initiative process was the last method people had to fight a hostile government and to require anything other than a ministerial task of the County Commission after the signatures were certified was not good for the process.

Pursuant to the members’ comments, Mayor Ferre requested the foregoing motion be bifurcated in order to vote separately on the public hearing requirement.

The Task Force voted on the foregoing motion made by Mayor Ferre and seconded by Ms. Hernandez, which recommended that the time period in the Charter to collect signatures for proposed Charter amendments be expanded to 120 days and that Charter amendments must be placed on the ballot during a general election. This motion, upon being put to a vote, passed by a vote of 14-0, (Mayor Martinez, Mr. Smith, Ms. Soler-McKinley, Ms. Dannheiser, Mr. De Grandy, Mr. Handfield and Mr. Hogan were absent).

It was moved by Mayor Ferre that with regard to Charter changes, the public hearing be held on the day the County Commission approved the petition as to form. This motion was seconded by Mr. Lopez.

Mayor Ferre and Mr. Lopez accepted a friendly amendment proposed by Mayor Dermer that the ministerial act of certifying the petition be done at a public hearing.

Commissioner Gimenez asked that the issues be placed as two separate questions on the ballot.

Upon being put to a vote, the foregoing motion passed by a vote of 14-0, (Mayor Martinez, Mr. Smith, Ms. Soler-McKinley, Ms. Dannheiser, Mr. De Grandy, Mr. Handfield and Mr. Hogan were absent).

Chairman Diaz called for additional amendments to the Charter provisions regarding citizen initiatives.

In response to Mr. Lopez, Chairman Diaz said a motion was adopted by the Task Force on November 20, 2007 that recommend to the County Commission that the provision of the Charter that addresses the need for periodic Charter review be amended to provide that the Charter Review Task Force, once appointed by the County Commission, will have the power to put recommendations directly on the ballot, unless vetoed by a 2/3 super majority vote of the County Commission.

Discussion ensued among the Task Force members regarding the foregoing motion made on November 20th.

Mr. Greenberg said currently, the County Commission controls a majority of the appointments and if this Task Force wanted a future task force to have the ability to place recommendations directly on the ballot, the Task Force members might wish to consider the appointment of the members.

Chairman Diaz said he felt it was worth considering empowering the Charter Review process. He noted he was not sure the Task Force should include in the Charter the composition of the Charter Review in perpetuity; however, he felt clarification regarding the number of members appointed by the County Commission and the number of members appointed by outside groups would be appropriate. Chairman Diaz said he felt the super majority requirement would place checks and balances on the Commission.

Mayor Diaz-Padron noted that to empower a non-elected board with that kind of authority may not be well received, particularly when they had not been through the scrutiny of an election.

In response to Mayor Diaz-Padron, Mr. Greenberg said the Task Force appointees would not be given the power to change the County Commission. He noted this was done by the State Constitutional Revision Committee and in Broward County. Mr. Greenberg said although the Commission had significant input, it did not necessarily control where the thought originated from and he suggested a structure be established so that some people would not be beholden to the Commission.

Responding to Mr. Illas' inquiry whether the minutes of the November 20th meeting were amended, Chairman Diaz noted the minutes were not completed; however, the issue regarding the County Commission's veto power was discussed.

Mr. Illas said the current process allowed for those involved in government to have input on the appointment to County boards and brought people from different aspects. By engendering this he noted, a mix was achieved, but it was still in the hands of those who made the appointments.

Ms. Hernandez said the Task Force was charged with looking at the issues and she would hate to see this process change. She noted the responsibility remained with the County Commission.

Mr. Lopez said there were other ways by which the County Commission made appointments and he recommended the Task Force members bring back ideas at the next meeting on how to enhance this issue.

Mr. Holland suggested placing a limitation on the number of items emanating from the Task Force that could be placed directly on a ballot.

Commissioner Gimenez agreed with Mr. Lopez and noted he would like this issue discussed at the next meeting. He requested information on the composition of the State Revenue and Taxation Committee, which had the authority to place items directly on the State Constitutional Ballot without approval of the Legislature. Commissioner Gimenez said he felt it would be the legacy of this Task Force to leave behind a structure for the composition of future Charter Review Task Forces.

Mayor Ferre said the primary objective of the Task Force was to recommend to the County Commission, issues that should be placed on the ballot for approval/rejection by the electors. He noted he was not opposed to having a super majority vote or participation from the various municipalities.

Chairman Diaz noted the discussion regarding this issue would carry over to the December 12, 2007 Task Force meeting. He noted it was important to define the selection of a body that would be empowered with authority to place Charter amendments directly on the ballot with checks and balances on the power of that body, and whether the checks and balances should originate with the Mayor and County Commission or whether the checks and balances should be in a higher voting requirement of the body. Chairman Diaz said he was hopeful the Task Force would not lose the sense of consensus and empowerment by getting bogged down by the issue of whether they were insulting or bypassing the elected officials. He noted the Charter was a grant of authority to the people of Miami-Dade County, and the Task Force was seeking to empower the people to have more meaningful opportunities to vote. Chairman Diaz agreed that there should be an appropriate role for elected officials in the Charter Review process. He suggested the

members consider the role of the Commission in the selection of the members and the possibility of elected officials having a super majority veto power.

Discussion ensued among the Task Force members regarding Mayor Dermer's concern that the ordinances adopted by the County Commission regarding initiative, referendum, and recall infringed on freedom of speech for those advocating citizen initiatives and were in conflict with the Charter.

In response to Chairman Diaz' inquiry, Mr. Greenberg noted a Charter amendment could be made that would clarify the County Commission's role. He said there was a difference between being in conflict with a Charter provision and implementing a Charter provision. Over the years, the County Attorney's Office felt the County Commission had the power to enact ordinances to implement Charter provisions, but did not have the power to adopt ordinances that were in conflict with the Charter, Mr. Greenberg noted. He also noted he approved the ordinances for legal sufficiency during his tenure as County Attorney because he believed those ordinances were implementing a Charter provision.

Mr. Ginsburg noted the real question was whether the Task Force wanted to propose a Charter amendment stating that the County Commission could not adopt any ordinances relating to this issue.

It was moved by Mayor Dermer that the Task Force recommend that the County Commission shall not pass any legislation with respect to initiative, referendum, and recall; and the Charter should be the sole governing document setting forth initiative requirements. This motion was seconded by Ms. Hernandez.

In response to Commissioner Gimenez' comments that he would be more comfortable if the motion was to the effect that the petition gathering or initiative process would follow State law, Mr. Ginsburg said currently this was not addressed in State law.

Chairman Diaz noted if it was the consensus of the Task Force that the power of the County Commission be eliminated by enacting implementing legislation and diluting the initiative and referendum process, then a subsequent motion implementing State law could be made at the next Task Force meeting.

Commissioner Gimenez agreed with Mayor Dermer's comments regarding the petition process; however, he noted there were some abuses that needed to be looked at.

Chairman Diaz noted the Charter describes the initiative process and if the Task Force felt there were problems or wanted to empower citizen initiatives this was the forum and now was the time

to do so. He noted he was willing to discuss this further at the next Task Force meeting; however, this was an important section of the Charter as it explained how County government could be changed.

Commissioner Gimenez noted the State guidelines should be followed as Miami-Dade County was a subdivision of the State.

Chairman Diaz noted further discussion on the foregoing issue was tabled pending a report from the County Attorney regarding the provisions of State law governing citizen initiatives.

Chairman Diaz referenced a motion that passed unanimously regarding expanding the timeframe for citizens to amend the Charter. He noted the 60-day time limit was also in Article 8, Section 8.01(2) of the Charter, and it was the shortest time period of any jurisdiction that the Task Force studied. Chairman Diaz asked whether the Task Force members were comfortable leaving it at 60 days.

Mr. Ginsburg noted he would not support a motion to change the 60-day timeframe for citizens to amend the Charter.

It was moved by Mr. Ginsburg that the word “form” in Section 8.01(1) of Article 8 of the Charter be changed to “legality” as a petition could be in appropriate form but be illegal. This motion was seconded by Mayor Gibson.

Discussion ensued on the foregoing motion.

Ms. Hernandez agreed with Mr. Ginsburg noting that the County Attorney was the person who had to make that decision.

Chairman Diaz spoke in opposition to the foregoing motion. He noted he felt the intent of the motion was right but he did not wish to insert the County Attorney’s Office in a legal role of gatekeeper on whether a petition could go forward or not. Chairman Diaz said regardless of the County Attorney’s opinion, ultimately the gatekeeper’s role on the legality of a petition was the Court of law and including this within the Charter would not eliminate the ability of someone to go to Court and challenge the County Attorney’s opinion. He noted he did not wish this to be an additional infringement on the public’s right to petition through initiative and referendum.

Mr. Greenberg said the Court was the ultimate arbiter; not the ultimate gatekeeper and the law was clear that unless a provision was unconstitutional, it should be allowed to go forward.

Mr. Vazquez noted he felt that legal sufficiency was better than form because the County Attorney's Office would evaluate the question based on previous case law.

Commissioner Gimenez spoke in opposition to the foregoing motion. He noted the County Attorney's Office could not be the arbiter of what was legal and someone outside County government needed to determine if it was legal.

Mr. Lopez spoke in support of the motion. He noted the County Commission could not adopt ordinances without having legal sufficiency and he felt the public should have the same standard and consistency. Mr. Lopez said people's initiatives and thoughts should be structured and the electorate should be held to the same standard as the Commission on legality.

Mr. Illas noted the government needed to be restricted on its exercise of power while the public should have full exercise of power.

Chairman Diaz concurred with Mr. Illas' comments. He noted he would not shackle the people's basic rights to petition what they did not like about their government.

Mr. Lopez noted the proposed amendment was a clarification which provided a legal vehicle for people to petition their government.

Commissioner Gimenez disagreed with Mr. Lopez and noted he would vote against the motion. He noted when the County Attorney placed an item before the County Commission he could be held accountable by the Commission and therefore the County Attorney had a stake in the game.

Ms. Hernandez noted the County Attorney worked for the County Commission but she did not believe the County Attorney could act illegally as there was a higher body.

Mr. Ginsburg noted previously in his role as county attorney when an initiative petition came before the County Commission he did not represent the Commission at that time, but the people who were exercising their Charter rights to prepare an ordinance. Mr. Ginsburg said if the Task Force was afraid of interfering with the public's right to initiative it should take the County Commission out of the approval as to form. He noted the need to review it as to form because it established the starting date for collecting signatures and in his opinion, the ability to ensure that what was adopted by the County Commission was a valid County ordinance.

It was moved by Ms. Hernandez that the foregoing motion be tabled. This motion was seconded by Commissioner Gimenez and upon being put to a vote, passed unanimously by those members present.

Chairman Diaz noted he had received numerous requests for further public hearings and he inquired whether the Task Force members wished to conduct additional public hearings between now and January 29, 2008, on prior recommendations or to solicit additional public comments on the remaining issues.

It was moved by Mr. Illas that one final public hearing be held at which written recommendations would be made available for public consideration prior to final presentation of the Task Force's recommendations and that the public hearing be held at one centralized location with interactive technology. This motion was seconded by Ms. Fernandez, and upon being put to a vote, passed by those members present (Mr. Ginsburg and Mr. Vazquez voted "no").

Chairman Diaz noted information regarding the public hearing would be posted on the Task Force's Website.

B. Prioritization of Pending Issues of Study

Chairman Diaz noted at the last meeting the Task Force members voted to reprioritize Issues 7 through 15. He asked that Task Force members reprioritize pending study issues, starting with Issue 8 and provide staff with their responses during the course of today's (11/28) meeting. Chairman Diaz said Issue 15 was governed by State Law. He noted staff would count the votes from the responses received and circulate an email to Task Force members indicating the order in which the issues would be considered at the remaining meetings.

C. Discussion on Sheriff's Powers & Department of Corrections

Chairman Diaz noted in some counties the Sheriff exercised control over the Department of Corrections. He noted prior to presentation of the Task Force's recommendations regarding the Public Safety Director, the County Attorney's Office requested clarification on whether it was the Task Force's intent to extend its recommendation regarding the Public Safety Director to include the Department of Corrections.

Chairman Diaz noted it was the consensus of the Task Force that it was not their intent to expand the recommendation regarding the Public Safety Director to include the Department of Corrections.

Assistant County Attorney Cynthia Johnson-Stacks noted in trying to draft the questions, staff realized that this issue should be brought to the Task Force for clarification. She noted after researching State law, staff concluded there was no legal requirement that Corrections functions or Fire Rescue functions be included within the definition of the Police Department. Ms.

Johnson-Stacks further noted staff also consulted with the legal department of the Broward County's Sheriff's Office and their conclusion supported staff's conclusion.

Mr. Vazquez noted he felt the Corrections Department should be excluded and be its own entity outside the scope of the Police Department. He further noted if the Task Force was considering the Sheriff as an elected constitutional office, he would recommend the Police Department, Corrections Department and Fire Rescue be under the overall functions and responsibilities of the Sheriff.

Assistant County Attorney Johnson-Stacks advised that in Broward County, those functions were added to the Police Department function via an interlocal agreement.

5. New Business

A. Discussion of Issue 7 – Study of Balance of Power between Mayor & Board of County Commissioners

- Review Functions of Mayor vs. County Manager
- Review Powers of Commission Auditor

Commissioner Gimenez requested information regarding the way in which government was structured between the Mayor, the Commission and the Manager in the following cities: Los Angeles, Chicago, New York, Atlanta and Houston.

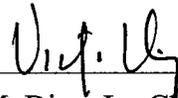
Chairman Diaz noted the Task Force would continue its consideration of the foregoing motion and Issue 7, study of balance of power between the Mayor and Board of County Commissioners, at the next meeting. He noted the following requests for information:

- Research regarding the composition of the State Constitutional Revision Committee;
- Research regarding the composition of the Tax Revision Committee;
- Research regarding the composition of Broward County's Charter Review Task Force and their enabling legislation;
- Research regarding the State law and petition gathering, and whether there had been other implementing ordinances relating to Section 8 of the Charter; and
- Research regarding the way in which government was structured between the Mayor, the Commission and the Manager in the City of Los Angeles, Chicago, New York, Atlanta and Houston.

In response to Mr. Vazquez' suggestion that the Task Force revisit and make a recommendation regarding the strong mayor issue, Chairman Diaz noted this issue could be discussed under Issue 7.

6. Adjournment

There being no further business to come before the Charter Review Task Force the meeting was adjourned at 12:44 p.m.



Victor M. Diaz, Jr., Chairman
Charter Review Task Force