



MIAMI-DADE COUNTY FINAL OFFICIAL MINUTES Charter Review Task Force

Board of County Commissioners
Main Library Auditorium, 1st Floor
101 West Flagler Street

Wednesday, December 12, 2007
As Advertised

Harvey Ruvlin, Clerk
Board of County Commissioners

Kay Madry Sullivan, Director
Clerk of the Board Division

Judy Marsh, Commission Reporter
(305) 375-1967



**CLERKS SUMMARY AND OFFICIAL MINUTES
CHARTER REVIEW TASK FORCE MEETING
DECEMBER 12, 2007**

The Charter Review Task Force convened in a meeting on December 12, 2007, at 10:00 a.m. in the Main Library Auditorium, First Floor, 101 West Flagler Street. The following members were present: Chairman Victor M. Diaz, Jr. and members Mr. Miguel De Grandy; 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; Mr. Robert Holland; Mr. Jorge Luis Lopez; Mr. H. T. Smith; Ms. Yvonne Soler-McKinley and Mr. Ignacio Vazquez; (Ms. Lynn Dannheiser; Ms. Elizabeth Hernandez; Mr. Francois Illas; Mr. Richard Kuper, Mr. Larry Handfield; Mr. John Hogan; and Raul L. Martinez, former Mayor of the City of Hialeah were absent).

1. Call to Order

Chairman Diaz called the meeting to order at 10:20 a.m.

2. Roll Call

The following staff members were present: County Manager George Burgess; Assistant County Manager Susanne M. Torriente; Assistant County Attorneys Monica Rizo, Oren Rosenthal and Wifredo Ferrer; Assistant to the County Manager Maggie Fernandez; and Deputy Clerks Diane Collins and Judy Marsh.

3. Approval of Minutes

A. Approval of November 20, 2007 meeting minutes

It was moved by Mr. Vazquez that the minutes of the November 20, 2007 Charter Review Task Force meeting be approved. This motion was seconded by Mayor Gibson, and upon being put to a vote, passed by a unanimous vote of those members present.

B. Approval of November 28, 2007 meeting minutes

Chairman Diaz requested approval of the minutes of the November 28, 2007 Charter Review Task Force meeting be deferred. He noted he would work with staff to correct discrepancies within the minutes and the minutes would be redistributed.

4. Old Business

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

Chairman Diaz summarized the discussion and requests for additional information regarding the study of initiative, referendum, petition and recall which occurred at the November 28, 2007 Charter Review Task Force meeting. He noted pursuant to Commissioner Gimenez' request on November 28th, a memorandum was distributed by staff today (12/12) regarding the composition of the State Constitution Revision Commission and the State Taxation and Budget Reform Commission.

Assistant County Attorney Monica Rizo provided an overview of the State Taxation and Budget Reform Commission, and the State Constitution Revision Commission. She noted both Commissions had authority to place proposals directly on the ballot, however, the State Taxation and Budget Reform Commission was required to have a two-thirds vote consensus in order to place proposals on the ballot.

Following discussion among the Task Force members, it was moved by Mr. Lopez that the Task Force recommend to the County Commission, that the Charter be amended to provide that future Charter Review Task Forces be comprised in the same manner as the existing Task Force, and have the authority, upon a two-thirds vote of the members present, to place Charter amendments on the ballot. This motion was seconded by Mayor Diaz-Padron.

Mr. Holland offered a friendly amendment to the foregoing motion limiting the Charter Review Task Force to placing no more than two questions on the ballot at any one time. This amendment was not accepted by Mr. Lopez.

Mr. Lopez noted he felt the proposed Charter amendment would be a legacy of the Task Force and he suggested if the amendment was not placed on the ballot, that it be proposed as an initiative by the Task Force members.

Mayor Ferre expressed concern regarding commissioners appointing themselves to serve on the Charter Review Task Force, and asked that this issue be addressed.

Mr. Smith offered a friendly amendment to the motion made by Mr. Lopez to provide that designees of the County Commissioners be appointed to the Charter Review Task Force. This amendment was accepted by Mr. Lopez and Mayor Diaz-Padron.

Upon concluding their discussion, the Task Force voted on Mr. Lopez' motion that the Task Force recommend to the County Commission that the Charter be amended to provide future Charter Review Task Forces with the power to place proposed Charter amendments directly on the ballot if supported by a two-thirds vote of the Task Force members present; and to provide that the appointment process for future Task Force members be the same as contained in Sections 1 and 2 of the enacting resolutions that created the current Charter Review Task Force, with the exception of that portion that allowed a Commissioner to appoint him or herself to the Task Force, which was deleted. This motion was seconded by Mayor Diaz-Padron and upon being put to a vote, passed by a vote of 13-1, (Mr. Vazquez voted "no") (Ms. Dannheiser, Mr. Handfield, Ms. Hernandez, Mr. Hogan, Mr. Illas, Mr. Kuper and Mayor Martinez were absent).

Chairman Diaz referred to discussion at the meeting of November 28, 2007 relating to a motion made by Mayor Dermer proposing a charter amendment removing the power of the Board of County Commissioners to pass legislation relating to initiative referendum petitions. He noted the motion was subsequently modified to provide that the Board's power be in accordance with State law, and then tabled, with a direction that staff report on State law currently regulating the initiative reform process. Chairman Diaz stated the focus of the Task Force's discussion had been on the ability of the County Commission to burden the process of citizen initiative, other than as provided for in the Charter, or to regulate what could be said in the process of citizen initiative.

Assistant County Attorney Oren Rosenthal advised the Task Force that the petition content and the petition gathering process was not governed by State law; however, constitutional initiatory petitions were governed by State law through the Division of Elections Rules and Regulations. He noted general State laws also addressed issues relating to fraud.

Chairman Diaz noted the State had not regulated in any way, what could or could not be said in the citizen initiatives process as a matter of State Constitutional law or State Statutory law.

Mayor Dermer withdrew his motion which was tabled at the November 28th Task Force meeting.

It was then moved by Mayor Dermer that the Task Force recommend to the County Commission that the Charter be amended to provide that the Board of County Commissioners shall make no law limiting the petition process as defined in the Charter. This motion was seconded by Mayor Ferre.

Mr. Ginsburg offered a friendly amendment to the foregoing motion to change the word “limiting” to “regulation.” This amendment was accepted by Mayor Dermer and Mayor Ferre.

Chairman Diaz noted he felt the intent of Mayor Dermer’s motion was to state that the right of the people to initiate petitions to amend both the Charter and ordinances shall be restricted to provisions contained in the Charter.

Discussion ensued regarding whether the foregoing motion should also apply to recall petitions.

Mr. Greenberg spoke in support of the foregoing motion and recommended that it apply to initiative, referendum, recall and charter amendment petitions.

Mayor Ferre withdrew his second in order to allow Mr. Greenberg the opportunity to second the motion as amended. Whereupon the amended motion was seconded by Mr. Greenberg.

Chairman Diaz restated the amended motion on the floor was to recommend to the County Commission that the Charter be amended to provide that the County Commission shall make no law regulating the petition process as defined in Article 8 and Sections 9.06, 9.07 and 9.08 of the Charter.

Mr. Ginsburg noted he had no problem with the motion as it related to Section 8.01 of the Charter; however, he felt a separate motion might be necessary for Charter amendments under Section 9.07A because this section only addressed the certification of petitions, not the entire petition process.

Mr. De Grandy offered a friendly amendment to the foregoing motion that the County Commission shall adopt no ordinances or resolutions regulating Articles 8.01, 8.02, 9.06, 9.07 and 9.08 as defined in the Charter. This amendment was accepted by Mayor Dermer and Mr. Greenberg.

Following discussion, the amended motion as moved by Mayor Dermer and seconded by Mr. Greenberg, that the Task Force recommend to the County Commission that the Charter be amended to provide that the Board of County Commissioners shall adopt no resolutions or ordinances regulating the petition process as defined in Sections 8.01, 8.02, 9.06, 9.07 and 9.08 of the Charter, upon being put to a vote, passed by a vote of 14-0, (Ms. Dannheiser, Mr. Handfield, Ms. Hernandez, Mr. Hogan, Mr. Illas, Mr. Kuper and Mayor Martinez were absent).

It was moved by Mr. Ginsburg that the Task Force recommend to the County Commission that Section 9.07 of the Charter be amended to reflect that the certification and petition gathering

provisions of Section 8.01 of the Charter shall also govern initiatory petitions to amend the Charter. This motion was seconded by Ms. Soler-McKinley, and upon being put to a vote, passed by a vote of 14-0, (Ms. Dannheiser, Mr. Handfield, Ms. Hernandez, Mr. Hogan, Mr. Illas, Mr. Kuper and Mayor Martinez were absent).

Chairman Diaz noted at the November 28th Task Force meeting Mr. Ginsburg made a motion 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. He noted this motion, which was seconded by Mayor Gibson, was tabled after discussion.

Mr. Ginsburg clarified his motion was to recommend to the County Commission that Section 8.01(1) of the Charter be amended to provide that the Board shall approve initiative petitions as to form and legal sufficiency. The motion, upon being put to a vote, failed to carry by a vote of 11-3, (Mayor Diaz-Padron, Mayor Ferre, Mayor Gibson, Commissioner Gimenez, Mr. Greenberg, Mr. Holland, Mr. Smith, Ms. Soler-McKinley, Mr. Vazquez, Mayor Dermer and Chairman Diaz voted “no”) (Mr. Ginsburg, Mr. Lopez and Mr. De Grandy voted “yes”) (Ms. Dannheiser, Mr. Handfield, Ms. Hernandez, Mr. Hogan, Mr. Illas, Mr. Kuper and Mayor Martinez were absent).

It was moved by Mr. Ginsburg that the Task Force recommend to the County Commission that the Charter be amended to provide that initiative petitions shall be filed with the Clerk of Courts in the same manner as recall petitions, instead of coming before the County Commission. This motion was seconded by Mr. Lopez, and upon being put to a vote, passed by a vote of 13-0, (Ms. Dannheiser, Mr. Handfield, Ms. Hernandez, Mr. Hogan, Mr. Holland, Mr. Illas, Mr. Kuper and Mayor Martinez were absent).

B. Prioritization of Pending Issues of Study

Considered later in the meeting

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

Ms. Amy Horton-Tavera, Office of Strategic Business Management, noted in response to the Task Force’s request, staff studied 16 benchmark jurisdictions, three of which were the largest

“strong mayor” counties in Florida, five national strong mayor counties and eight national cities. She noted for each jurisdiction, staff looked at the respective powers of the Mayor or elected executive; the Chief Administrative Officer (CAO); the Council; and the Council Auditor.

Ms. Horton-Tavera noted with respect to the Mayor, staff found a lot of consistency across the jurisdictions and typical powers included managing the administration, appointing the Chief Administrative Officer and department directors. She noted in most cases, appointment of department directors was subject to confirmation by the Council or the appointment could be overridden by the Council by a super majority vote. Ms. Horton-Tavera said in most jurisdictions, the Mayor had the authority to dismiss the CAO, department directors and in some cases, this could be overridden by the Council. She noted in all the jurisdictions, the Mayor had the authority and responsibility to prepare and submit the proposed budget to the Council for approval. Ms. Horton-Tavera said typically, the Mayor had veto power over the Council’s action, however, in most jurisdictions this could be overridden by a super majority vote of the Council. She noted typically, the Mayor had the authority to determine the organization of the jurisdiction, however, in some cases, the Charter placed a restriction on the number of departments and in some cases, the Council had powers to create departments.

Ms. Horton-Tavera discussed two jurisdictions with a hybrid form of government, where the Mayor also served on the Council, either as a Council member (Orange County); or as a ceremonial head that presided over the Council meetings (Cook County).

Ms. Horton-Tavera noted most of the Charters studied provided that the Chief Administrative Officer could exercise powers delegated by the Mayor. She noted some jurisdictions had more than one such individual and some jurisdictions had specific Charter provisions which provided that the legislative or veto powers of the Mayor could not be delegated to be the CAO. Ms. Horton-Tavera said two jurisdictions had no provisions for a CAO in their Charter.

Ms. Horton-Tavera noted the Council in all jurisdictions was the chief legislative policy-making body over the jurisdiction and in some jurisdictions the Council had the ability to confirm or override appointments or dismissals of agency directors or chief administrative heads. She stated in some counties, the Councils had specific powers to create, abolish or restructure departments or to adopt certain administrative rules and regulations.

Regarding the Commission Auditor, Ms. Horton-Tavera noted most of the jurisdictions either had a Council Auditor who was appointed by the Board and reported to the Board, or an elected comptroller who had audit responsibilities. She stated the duties of the Council Auditor were traditionally audit and financial responsibilities, and in some cases the Charter spelled out that the Auditor or Comptroller could provide analysis of the budget.

Mayor Ferre asked Ms. Horton-Tavera to determine who was responsible for procurement in other Florida cities, such as Jacksonville and Orlando. He noted he felt this Task Force and future Task Forces needed to look at procurement, zoning and lobbyists.

Chairman Diaz noted concern was expressed at the public hearings and by several County Commissioners regarding the need for a Charter provision that established a timeframe by which the Mayor must deliver the budget and a minimum timeframe for the budget to be considered by the County Commission.

County Manager George Burgess explained the current budget process and noted the budget must be submitted to the County Commission no later than July 15th. He stated staff preferred to submit the budget in June; however, this year staff was unable to do so because of the Special Session held in Tallahassee. Mr. Burgess noted the County Commission had until its final meeting in July to adopt tentative millages; two public budget hearings were held in September with the budget being adopted at the second hearing. He stated the County Commission had the months of July and August to digest the budget.

Chairman Diaz commented that in a strong mayor form of government, where the mayor had the power to administer county government, budget review was one of the most important functions that the County Commission could effectuate in order to shape policy. He commented on fiscal integrity and stated he felt it would be in the best interest of the people if commissioners had a longer timeframe to review the proposed budget.

In response to Chairman Diaz' inquiry, County Manager Burgess noted he felt the June 1st to July 15th range to submit the budget was reasonable.

Commissioner Gimenez noted the County Manager did not have to submit his budget until July 15th and the County Commission had to set the tentative millage at the last meeting in July. He noted the County Commission was in the process of drafting legislation regarding the timeframes to allow for time to review the budget, however, the Charter allowed for the July 15th date. Commissioner Gimenez stated he felt the County Commission should be more disciplined and spend more time working on the budget during the month of August.

Mr. Greenberg said he felt the issue regarding the timeframes could be addressed through ongoing dialogue. He noted commissioners had a difficult task in reviewing the budget.

Chairman Diaz noted he felt the Task Force needed to determine what could be done to minimize the conflicts between the County Commission and the Office of the Mayor in order to enhance County government. He stated not only did the County Commission need time to consider the Mayor's budget proposal but the people also needed time to comment on the proposed budget.

Mr. Ginsburg said transparency came at the County Commission level, not at the Executive level. He noted the County Commission's major role was through the budget process and perhaps the budget should originate with the County Commission instead of the Executive Office. Mr. Ginsburg agreed with Commissioner Gimenez that the Commission should be more disciplined; however, he disagreed that more should be done in August. He noted he felt there should be a committee dedicated to the budget that met regularly year round.

Commissioner Gimenez noted he was proposing legislation that would place more power in the Budget and Finance Committee to review the budget and put more discipline in the County Commission's role in the proposed budget throughout the year.

Mr. Lopez agreed with Mr. Ginsburg. He noted budget priorities were established by the Administration and the Commission's budget review was reactionary. Mr. Lopez stated he would like to see more public participation in future potential initiatives.

Chairman Diaz noted the Charter needed to be conformed in terms of defining the role of the Mayor and the County Administrator and he would like the terminology to clearly reflect that the strong Mayor was in charge. Chairman Diaz stated the County Manager could be called the Chief Administrative Officer or the Deputy Mayor for Administration.

Mr. Lopez asked for a breakdown of the issues.

Mayor Ferre noted the issue of the balance of power between the County Commission and the Mayor was the single most important issue before the Task Force. He stated the County Commission should have control over the budget and the budget process should be on a year round basis.

Mr. De Grandy asked Ms. Horton-Tavera to determine who provided the analysis for items to be placed on the agenda within the jurisdictions she had examined. He noted in the State Legislature, agencies would propose legislation but independent staff provided an analysis of the legislation.

Chairman Diaz noted Mr. De Grandy's suggestion would be added as an issue for discussion by the Task Force.

In response to Mayor Gibson's question, County Manager Burgess noted one of the Commission Auditor's responsibilities was to prepare an analysis of items that were presented to the County Commission. He said another responsibility of the Commission Auditor was to monitor, review and present recommendations to the Commission on the proposed budget that was submitted by

