

MEMORANDUM

Agenda Item No. 10(A)(9)

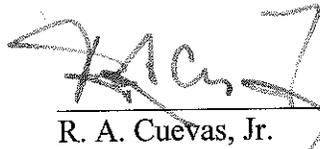
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: August 23, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution calling a special
election for the purpose of
submitting to the electors the
question of whether to amend
the Home Rule Charter
regarding County franchise fees
and utility tax revenues

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.



R. A. Cuevas, Jr.
County Attorney

RAC/smm



MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: August 23, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 10(A)(9)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 10(A)(9)
8-23-12

RESOLUTION NO. _____

RESOLUTION CALLING A COUNTYWIDE SPECIAL ELECTION IN MIAMI-DADE COUNTY, FLORIDA, TO BE HELD IN CONJUNCTION WITH A GENERAL ELECTION ON TUESDAY, NOVEMBER 6, 2012 FOR THE PURPOSE OF SUBMITTING TO THE ELECTORS OF MIAMI-DADE COUNTY THE QUESTION OF WHETHER TO AMEND THE HOME RULE CHARTER REGARDING COUNTY FRANCHISE FEE AND UTILITY TAX REVENUES

WHEREAS, the Board of County Commissioners pursuant to Section 9.07 of the Miami-Dade County Home Rule Charter desires to place the attached Charter amendment before the electors of Miami-Dade County on the November 6, 2012 General Election ballot,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. A countywide special election is hereby called and shall be held in Miami-Dade County, Florida in conjunction with a General Election on Tuesday, November 6, 2012, for the purpose of submitting to the qualified electors of Miami-Dade County the proposal for amendment to the Home Rule Charter in the form attached hereto and made a part hereof.

Section 2. Notice of such election shall be published in accordance with Section 100.342, Florida Statutes.

Section 3. The result of such election shall be determined by a majority of the qualified electors of Miami-Dade County voting upon the proposal. The polls at such election shall be open from 7:00 a.m. until 7:00 p.m. on the day of such election. All qualified electors of Miami-Dade County, Florida shall be entitled to vote at said election. The County registration books shall remain open at the Office of the Miami-Dade County Supervisor of Elections until twenty-nine (29) days prior to the date of such election, at which time the registration books will

close in accordance with the provisions of general election laws. The question shall appear on the ballot in substantially the following form:

CHARTER AMENDMENT REGARDING
COUNTY FRANCHISE FEE AND UTILITY TAX REVENUES

SHALL THE CHARTER BE AMENDED TO REQUIRE CERTAIN COUNTY FRANCHISE FEE AND UTILITY TAX REVENUES FROM AREAS SUBSEQUENTLY ANNEXED OR INCORPORATED INTO A MUNICIPALITY BE PAID TO THE MUNICIPALITY AND PROVIDE THAT ANY SUCH MUNICIPALITY SHALL HAVE THE EXCLUSIVE RIGHT TO NEGOTIATE A NEW ELECTRIC FRANCHISE WITHIN ITS MUNICIPAL BOUNDARIES WHEN THE CURRENT COUNTY ELECTRIC FRANCHISE AGREEMENT EXPIRES?

YES
NO

Section 4. The form of the ballot shall be in accordance with the requirements of general election laws.

Section 5. Early voting shall be conducted in accordance with the requirements of general election laws.

Section 6. Absentee paper ballots may be used by qualified electors of Miami-Dade County for voting on this question. The form of such absentee ballot shall be in accordance with the requirements prescribed by general election laws.

Section 7. A sample ballot showing the manner in which the question or proposal aforesaid will appear at this election shall be published and provided in accordance with the applicable provisions of general election laws.

Section 8. This special election on the proposal aforesaid shall be held and conducted in accordance with applicable provisions of the general laws relating to elections and the

provisions of the Miami-Dade County Home Rule Charter. The County Mayor or his or her designee, the Finance Director, and the Clerk of the County Commission are hereby authorized and directed to take all appropriate actions necessary to carry into effect and accomplish the provisions of this resolution. This election shall be a nonpartisan election. Election officials in connection with this election shall be appointed in accordance with the provisions of general election laws.

Section 9. This election shall be canvassed by the County Canvassing Board, in accordance with the provisions of Section 3.07 of the Home Rule Charter.

The Prime Sponsor of the foregoing resolution is Commissioner Sally A. Heyman. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 23rd day of August, 2012. This resolution shall become effective upon the earlier of (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Cynthia Johnson-Stacks

MIAMI-DADE COUNTY HOME RULE CHARTER

ARTICLE - 6¹

MUNICIPALITIES

SECTION 6.01. CONTINUANCE OF MUNICIPALITIES.

The municipalities in the county shall remain in existence so long as their electors desire. No municipality in the county shall be abolished without approval of a majority of its electors voting in an election called for that purpose. Notwithstanding any provision of the Charter, the Board of County Commissioners shall have the authority to abolish a municipality by ordinance where such municipality has twenty or fewer electors at the time of adoption of the ordinance abolishing the municipality. The right of self determination in local affairs is reserved and preserved to the municipalities except as otherwise provided in this Charter.

SECTION 6.02. MUNICIPAL POWERS.

Each municipality shall have the authority to exercise all powers relating to its local affairs not inconsistent with this Charter. Each municipality may provide for higher standards of zoning, service, and regulation than those provided by the Board of County Commissioners in order that its individual character and standards may be preserved for its citizens.

SECTION 6.03. MUNICIPAL CHARTERS.

A. Except as provided in Section 5.04, any municipality in the county may adopt, amend, or revoke a charter for its own government or abolish its existence in the following manner. Its governing body shall, within 120 days after adopting a resolution or after the certification of a petition of ten percent of the qualified electors of the municipality, draft or have drafted by a method determined by municipal ordinance a proposed charter amendment, revocation, or abolition which shall be submitted to the electors of the municipalities. Unless an election occurs not less than 60 nor more than 120 days after the draft is submitted, the proposal shall be submitted at a special election within that time. The governing body shall make copies of the proposal available to the electors not less than 30 days before the election. Alternative proposals may be submitted. Each proposal approved by a majority of the electors voting on such proposal shall become effective at the time fixed in the proposal.

B. All municipal charters, amendments thereto, and repeals thereof shall be filed with the Clerk of the Circuit Court.

¹ ¹Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

SECTION 6.04. CHANGES IN MUNICIPAL BOUNDARIES.

A. The planning director shall study municipal boundaries with a view to recommending their orderly adjustment, improvement, and establishment. Proposed boundary changes may be initiated by the Planning Advisory Board, the Board of County Commissioners, the governing body of a municipality, or by a petition of any person or group concerned.

B. The Board of County Commissioners, after obtaining the approval of the municipal governing bodies concerned, after hearing the recommendations of the Planning Advisory Board, and after a public hearing, may by ordinance effect boundary changes, unless the change involves the annexation or separation of an area of which more than 250 residents are electors, in which case an affirmative vote of a majority of those electors voting shall also be required. Upon any such boundary change any conflicting boundaries set forth in the charter of such municipality shall be considered amended.

C. No municipal boundary shall be altered except as provided by this Section.

SECTION 6.05. CREATION OF NEW MUNICIPALITIES.

The Board of County Commissioners and only the Board may authorize the creation of new municipalities in the unincorporated areas of the county after hearing the recommendations of the Planning Advisory Board, after a public hearing, and after an affirmative vote of a majority of the electors voting and residing within the proposed boundaries. The Board of County Commissioners shall appoint a charter commission, consisting of five electors residing within the proposed boundaries, who shall propose a charter to be submitted to the electors in the manner provided in Section 5.03. The new municipality shall have all the powers and rights granted to or not withheld from municipalities by this Charter and the Constitution and general laws of the State of Florida. Notwithstanding any provision of this Charter to the contrary, with regard to any municipality created after September 1, 2000, the pre-agreed conditions between the County and the prospective municipality which are included in the municipal charter can only be changed if approved by an affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

SECTION 6.06. CONTRACTS WITH OTHER UNITS OF GOVERNMENT.

Every municipality in this county shall have the power to enter into contracts with other governmental units within or outside the boundaries of the municipality or the county for the joint performance or performance by one unit in behalf of the other of any municipal function.

SECTION 6.07. FRANCHISE >>FEES<< AND UTILITY TAXES.

Revenues realized from franchise >>fees<< and utility taxes imposed by municipalities shall belong to municipalities.

>>Upon annexation of a portion of the unincorporated area of the County, franchise fees and utility taxes imposed by the County which are attributable to an area annexed into a municipality shall first be used by the County to pay the annexed area's annual pro-rata share of debt service payments secured by such franchise fee or utility tax revenues, which annual pro-rata share shall be determined, at the time of the annexation, with the balance to be paid to the municipality to be used for municipal services. Upon incorporation of a portion of the unincorporated area of the County, franchise fees and utility taxes imposed by the County which are attributable to a newly created municipality shall first be used by the County to pay such municipality's annual pro-rata share of debt service payments secured by such franchise fee or utility tax revenues at the time of the approval of the newly created municipality's charter, with the balance to be paid to the municipality to be used for municipal services.

The annual pro-rata share of debt service payments attributable to the annexed area or the newly created municipality shall be determined by multiplying the total debt service on the outstanding debt in the fiscal year prior to the annexation or creation of the municipality by the annexed area's or the newly created municipality's percentage share of revenues pledged by the County to the repayment of the debt in such fiscal year. Notwithstanding the foregoing sentence, if the bond ordinance in effect at the time of the incorporation or annexation authorizing the issuance of the debt requires the calculation of the annual pro rata share to be made in another manner, then the formula set forth in the bond ordinance shall be used instead.

After the annexation of an area into a municipality or the incorporation of a new municipality, the County shall not secure any debt with revenues derived from franchise fees or utility taxes imposed in the annexed area or the new municipality, unless the debt is for the purpose of refunding debt secured by such revenues and so long as such refunding will realize an interest cost savings and will not extend the original term of the debt being refunded. Nothing herein shall be deemed to preclude or prohibit the County from issuing debt secured by revenues derived from franchise fees or utility taxes imposed in the unincorporated area of the County.

This section shall not affect any interlocal agreement in effect as of November 1, 2012, which provides for the distribution of franchise fees or utility tax revenues to the County and a municipality.

Any municipality created or any municipality that has annexed unincorporated areas of the County during the term of the County's electric franchise agreement shall have sole authority, upon the expiration of such agreement, to negotiate and enter into a new electric franchise agreement granting the privilege to provide electricity within the boundaries of the municipality as of the expiration of such agreement and construct, maintain or operate in, under, on, over and across the present and future streets, alleys, bridges, easements and other public places throughout the municipality.<<