

MEMORANDUM

Agenda Item No. 10(A)(3)

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
provisions pertaining to changes
in municipal boundaries &
creation of new municipalities

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Lynda Bell.



R. A. Cuevas, Jr.
County Attorney

RAC/smm



MEMORANDUM
(Revised)

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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)(3)
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 HOME RULE CHARTER PROVISIONS PERTAINING TO CHANGES IN MUNICIPAL BOUNDARIES AND CREATION OF NEW MUNICIPALITIES

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 PERTAINING TO
CHANGES IN MUNICIPAL BOUNDARIES AND
CREATION OF NEW MUNICIPALITIES

SHALL THE CHARTER BE AMENDED TO:

- REQUIRE A SUPER MAJORITY, RATHER THAN A MAJORITY VOTE, AS ONE OF THE CONDITIONS FOR COUNTY COMMISSION APPROVAL OF CHANGES IN MUNICIPAL BOUNDARIES,
- ESTABLISH ALTERNATIVE PROCEDURE FOR CREATION OF NEW MUNICIPALITIES IN UNINCORPORATED AREAS OF THE COUNTY BY PETITION WHICH CONSTRAINS OR LIMITS THE COUNTY COMMISSION'S ROLE AND ABILITY TO DISAPPROVE INCORPORATIONS, ELIMINATES PROVISIONS FOR PRE-AGREED CONDITIONS IN MUNICIPAL CHARTERS, AND IMPOSES RESTRICTIONS REGARDING URBAN DEVELOPMENT BOUNDARY?

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 Lynda Bell. 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 reserved 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 Words 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, >>with an affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners then in office. Changes that<< ~~[[unless the change]]~~ involve~~[[s]]~~ the annexation or separation of an area of which more than 250 residents are electors ~~[[, in which case]]~~ >>shall also require<< 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.

(A) 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.

>>(B) A new municipality may also be created by petition of electors residing in the area to be incorporated in accordance with the following process:

1. An incorporation committee composed of a minimum of five (5) electors from the proposed area of incorporation will initiate the process by filing with

the Clerk of the Circuit Court an initiatory petition on a form prescribed by the Clerk for such purpose. The form shall identify the names and addresses of the Incorporation Committee members and describe the proposed incorporation area. Within seven (7) days of receipt of the form, the Clerk will determine if the form is acceptable and if it is acceptable shall approve the form of petition and provide the Incorporation Committee the total number of the electors within the proposed incorporation area and the number of required signatures which shall be equal to ten percent (10%) of the electors in the proposed incorporation area and shall notify the Board of County Commissioners. If the Clerk determines that the form of petition does not comply with the requirements of this Charter or inaccurately describes proposed boundaries, the Clerk may disapprove the form of petition and provide notification to the Incorporation Committee and the Board of County Commissioners of the disapproval. The Clerk shall advise the Incorporation Committee as to the reasons for disapproval and the Incorporation Committee may submit a new petition at any time.

2. (a) No later than ninety (90) days from the date of approval of the above form by the Clerk, the Board of County Commissioners shall review the appropriateness of the petition for incorporation and recommend any changes to the boundaries of the proposed municipality to the Incorporation Committee at a public hearing.

(b) At such public hearing, the Board of County Commissioners shall approve the proposed incorporation petition, as presented in the petition or as revised by the Incorporation Committee, or reject the incorporation petition as presented or as revised by the Incorporation Committee, only upon its determination that the proposed incorporation will not have contiguous boundaries or will leave an unincorporated enclave area within its boundaries.

(c) The County Commission's failure to review the incorporation petition within the time required by this paragraph is subject to mandamus by a court of competent jurisdiction.

3. The Incorporation Committee will have six (6) months from the date by which the Board was required to have reviewed the incorporation petition to obtain signatures equal to ten percent (10%) of the electors in the proposed incorporation area, with signatures on a petition provided by the Clerk. The petition shall require the name, address and signature of the elector but such signatures shall not have to be notarized.

4. The signed petitions will be submitted to the Clerk, who shall have thirty (30) days to canvass the signatures contained therein.
5. Upon certification of the sufficiency of the signatures on the petition, the Clerk shall present the petition to the Board of County Commissioners at their next regularly scheduled meeting, at which time the Board shall call an election to authorize the creation of a municipality, which election shall occur no sooner than ninety (90) and no greater than one hundred twenty (120) days from the date the Clerk certifies the signatures. The election shall be held, whenever practicable, in conjunction with another election scheduled to occur within the proscribed time period. The election shall be decided by an affirmative vote of a majority of electors voting in the proposed incorporation area.
6. During the sixty (60) days following the certification of the petition, the Board shall complete a budgetary analysis in cooperation with the Incorporation Committee of and on the proposed incorporation area and schedule at least one public hearing prior to the incorporation election. The budgetary analysis, including a response by the incorporation committee if submitted, shall be provided to the resident electors of the proposed municipality by mail and shall be made available at locations within the proposed municipality. Such budgetary analysis shall at a minimum estimate all of the identifiable revenues generated by the proposed incorporation area prior to incorporation, and present the operating expenses of comparable small, medium and large municipalities providing typical municipal services.
7. Within 30 days after certification of the election, the Board of County Commissioners shall appoint, from a list proposed by the Incorporation Committee, a five member Charter Committee which shall, within ninety (90) days after appointment, create a Charter for the newly incorporated area setting forth at least the form of government and governing body of the newly incorporated area. The new municipality shall have all the powers and rights granted to or not withheld from municipalities by the County Home Rule Charter and the Constitution and general laws of the State of Florida; provided, however, any proposed municipality whose boundaries include any area outside the urban development boundary, as may be described in the County's Comprehensive Development Master Plan, shall abide by the permitted uses as set forth in such plan. Upon completion, the proposed Charter will be submitted to the electors of the municipality no sooner than 60 days and no later than 120 days after it is completed. Upon an affirmative vote of a majority of those electors within the municipality, the municipal charter shall become effective and the municipality shall be created at the time stated in the municipal charter.<<