



MIAMI-DADE COUNTY FINAL OFFICIAL MINUTES Charter Review Task Force

Stephen P. Clark Government Center
Commission Chambers
111 N.W. First Street
Miami, Florida 33128

November 13, 2017
As Advertised

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**MIAMI-DADE CHARTER REVIEW TASK FORCE
CLERK'S SUMMARY AND OFFICIAL MEETING MINUTES
NOVEMBER 13, 2017**

The Miami-Dade Charter Review Task Force (the Task Force) convened its eighth meeting on November 13, 2017, at the South Dade Regional Library, Auditorium, 10750 SW 211th Street, Cutler Bay, Florida, 33189 at 6:12 p.m. Upon roll call, the following Task Force members were present: Chair Robert Cuevas, Mr. Jeff P. H. Cazeau, Mr. Carlos Diaz-Padron, Mr. Alfredo J. Gonzalez, Mr. Marlon Hill, and Mr. Mike Valdes-Fauli. Vice Chair Maria Lievano-Cruz, Ms. Alice Burch, Ms. Anna-Bo Emmanuel and Mr. Eric Zichella arrived late. Mr. Maurice Ferre, Mr. Luis E. Gonzalez, Mr. Neisen Kasdin and Mr. William H. Kerdyk Jr. were absent. The Commission District 10 seat remains vacant.

County Commissioner Daniella Levine Cava was also present.

In addition to Task Force members, the following staff members were present: Assistant County Attorneys Oren Rosenthal, and Mike Valdes; Ms. Patricia Flor, Senior Policy Analyst, Office of the Mayor; Mr. Christopher A. Agrippa, Director, and Mr. Alan Eisenberg, Deputy Clerk, Office of the Clerk of the Board.

Chairman Robert Cuevas called the meeting to order and led the Pledge of Allegiance.

Commissioner Levine Cava welcomed everyone to tonight's (11/13) meeting in District 8. She said she and County Commission Chairman Esteban Bovo sponsored the legislation creating the Task Force and she was grateful to Task Force members for their service. Commissioner Levine Cava recognized her appointee to the Task Force, Robert Cuevas, for rising to the Chair of this body. She commented on the importance of meetings held in the community to facilitate public involvement and proud to see her most active constituents present at tonight's meeting and was looking forward to hearing their suggestions. Commissioner Levine Cava noted she provided refreshments for meeting guests. She added that the meeting was being broadcast on Facebook Live and recognized the County Communications and Library staff for their assistance as well as Library Director Ray Baker.

PUBLIC HEARING FOR MEMBERS OF THE PUBLIC TO SUGGEST CHANGES OR AMENDMENTS TO THE HOME RULE CHARTER

Chair Robert Cuevas opened the reasonable opportunity for the public to be heard.

Mr. Wilfredo Fleites, 8401 SW 97 Road, Miami, noted County employees must forfeit employment to run for elected office, pursuant to Section 1.05 of the County Charter. He said it should be a citizens' constitutional right to run for office and it should be up to the voters to decide. Mr. Fleites indicated he previously submitted written proposals for changing the Charter. He mentioned that there were individuals working for other local cities who were currently allowed to hold elected office in the State or other municipalities. He said there

were mechanisms designed to take care of conflicts of interest that may arise as an elected official.

Mr. Fleites read the following proposed language into the record; "Any appointed official or employee of Miami-Dade County may seek and if elected hold public office outside of Miami-Dade County government provided that it does not interfere with his/her ability to discharge the duties of his/her Miami-Dade County position.

Mr. Zachariah Cosner, 7180 SW 114 Terrace, Miami, discussed the privatization of water utilities, noting this could result in rate increases and it may become a commodity impacting the everglades and Biscayne Bay. He urged the Task Force to develop language to address the process by which County utilities can be privatized.

Mr. Gustavo Chacon, 1051 NW 18 Avenue, Miami, indicated that the Citizens' Bill of Rights was not being enforced; that the Truth In Government was not upheld; that Public Records were excessively priced and took up to thirty days to receive. He questioned the appropriate body charged with enforcing the Citizens' Bill of Rights.

Chair Cuevas reported that a citizen may bring a cause of action alleging a violation of the Citizens' Bill of Rights and the Commission on Ethics and Public Trust was responsible for enforcement.

Mr. Johnny G. Farias, 13718 SW 283 Terrace, Homestead, expressed concern over County Commission salaries, noting a salary will bind them and hold them accountable to the job.

There being no other persons wishing to address the Task Force, the reasonable opportunity to be heard was closed.

1st ISSUE FOR CONSIDERATION: Whether the Charter should be amended as relates to the citizen petition process and for initiative to pass or repeal ordinances, or to amend the Charter, and, if so, what those amendments should be?

PRESENTATION: Five to ten minute presentation by the County Attorney's Office as to the current Charter provisions on this issue.

Assistant County Attorney Oren Rosenthal advised that State Constitution gives the County Charter and County electors the ability to create any procedure they want, noting the Task Force could create procedures to ask for initiatory ordinance or to amend the Charter. He advised there were currently three relevant provisions; Article 3 (elections), Article 8 (initiatives, referendum and recall) and Article 9 (charter amendments).

Assistant County Attorney Rosenthal mentioned the Charter can be amended by either the County Commission adopting a resolution or by a citizen initiatory petition, pursuant to Article 9, Section 9.07. He said ballot language and a petition must be submitted to the Clerk of the Circuit Court (COC) for approval as to form and then circulators must obtain ten

percent of the total registered electors in the County at the time of submission. Assistant County Attorney Rosenthal noted an election will then be held at the next general election (November of every numbered year). He indicated the circulation of petitions were the same as for initiatory petitions in Section 8.01.

Assistant County Attorney Rosenthal reported that initiatory petitions were to propose the adoption or repeal of an ordinance, noting they required circulators submit ballot language and a petition to the COC for approval as to form; that the approval be done in accordance with Section 1223 of the County Code; and that a public hearing before the County Commission would be scheduled at its next meeting to allow the petitioner to speak about the petition to the public. He said petitioners had 120 days to collect the required signatures, noting either four percent of registered electors were required to get the petition on the next countywide election or a special election would be scheduled with signatures of eight percent of registered electors. Assistant County Attorney Rosenthal stated that the County Commission would authorize the Supervisor of Elections to canvas the signatures.

In response to Mr. Mike Valdes-Fauli's inquiry about who was responsible for costs associated with reviewing petitions, Assistant County Attorney Rosenthal advised that the review was paid by the petition circulator at the Statutory rate of ten cents per page.

Assistant County Attorney Rosenthal proceeded to comment that after the petitions were reviewed by the Supervisor of Elections to ensure signatures and other form issues were compliant, the petition would return to the County Commission to determine legal sufficient to be placed on the ballot. He said the County Commission then had thirty days to adopt or repeal the ordinance or the item would be placed on the next countywide or general election. Assistant County Attorney Rosenthal indicated that it would go into effect immediately if adopted with the exception of petitions that would require a budget amendment. He advised that the item could not be changed or amended by the County Commission for a period of one year, once adopted.

In terms of legal sufficiency, Assistant County Attorney Rosenthal advised that Article 3.06 incorporated State law into County elections when there was no provision in conflict. He noted State Statute Section 101.161 required that every ballot must have a title of no more than fifteen words, a ballot question of no more than seventy five words and must state the chief purpose of the petition. Assistant County Attorney Rosenthal said the ballot must provide an adequate representation of what they were voting on since the entire ordinance would not be part of the ballot. He cautioned that you could mislead voters by telling them they were voting on something other than what was actually being done.

Assistant County Attorney Rosenthal reported the recall process was similar, except the COC reviewed the petition both at beginning and end of the process, taking the County Commission out of process. He noted a four percent of registered District voters for the representative being recalled were required and the election must be held between forty five and ninety days.

DISCUSSION AND VOTE: On whether any of the foregoing Charter provisions should be amended.

Discussion ensued between Mr. Marlon Hill, Ms. Alice Burch, Mr. Carlos Diaz-Padron and Assistant County Attorney Rosenthal about the petition, the circulation, the sworn affidavit and the notarization process requirements. There was additional discussion about the recall process and previous changes made to that process.

Vice Chair Maria Lievano-Cruz stated there was previously a situation where an initiatory petition was found to not be in the proper form after the required number of signatures was already obtained.

Assistant County Attorney Rosenthal indicated that Accountable Miami-Dade submitted an initiatory petition process to the COC for approval as to form; that the COC approved as to form; and that the signature requirement was met. He noted that pursuant to Statute 101.161, the ballot title was limited to fifteen words and the ballot contained too many words. Assistant County Attorney Rosenthal also noted the ballot language was misleading asking voters to vote for something different from the ordinance. He said that the County Attorney's Office advised the County Commission that the ballot was not legally sufficient; and that the County Commission declined to place the petition on the ballot. Assistant County Attorney Rosenthal said that the County was sued by the circulator, challenging the County Commission's ability to make that decision; that the case went to a trial judge and then the 3rd District Court of Appeal who held the County was entitled to make the legally sufficient decision; and that the Florida Supreme Court denied review.

Vice Chair Lievano-Cruz proposed the legal sufficiency review be considered at the front end of the process, noting this would save citizens time and money.

Assistant County Attorney Rosenthal pointed out that the County Charter requires the initiatory petitioner provide both the ordinance to be adopted and the ballot language; however, municipalities only provide the initiatory ordinance and the municipality then drafts ballot language. He noted there could be a more detailed review of the initiatory petition for legal sufficiency at the front end rather than the back end, if desired. Assistant County Attorney Rosenthal said that the 2002 Charter Task Force Review process moved from having the County Commission determine legal sufficiency to giving the COC this responsibility.

Chair Robert Cuevas stated that there was no assurance that legislation adopted by the County Commission was legally sufficient, noting this legislation could be challenged in court. He said that just because a petition was reviewed does not prevent a judge from later determining not legal. Chair Cuevas stated that all legislation was subject to judicial review.

Mr. Jeff Cazeau pointed out that the organization presenting this petition should have been sophisticated enough to determine the title had too many words. He noted the County

Attorney should not be responsible to represent individuals/organizations presenting petitions.

Mr. Alfredo Gonzalez agreed with having a clearer front end review, noting individuals who ultimately signed the petition felt their voice was ignored.

Mr. Eric Zichella said it was important to note the County Attorney's office represented the County and should not represent anyone else. He noted it was up to those initiating a petition to ensure they met all legal requirements to do so. Mr. Zichella indicated that the County Attorney's Office was busy handling County legal business; that they were not readily available to drop their work to review petitions; and that this process would be costly to the public.

Ms. Burch further questioned the requirement that petition signatures be made in the presence of the petition circulator, noting this eliminated all but the best funded efforts.

Mr. Christopher Agrippa noted the sworn affidavit was part of the petition, noting it was one document. He said both the petitioner and circulator signed the same one page document.

Mr. Agrippa commented that the COC was well aware of concerns related to the petition approval process. He said the COC would appear before the Task Force at an upcoming meeting to present his suggestions. Mr. Agrippa noted the petitioner received a memorandum from the COC stating the petition was being approved as to form only and does not address the legal sufficiency of the document at the time the COC approves the petition. He also noted the petition was advised to review various laws concerning the petition process.

Mr. Zichella added that it should be a difficult process to change the law; that elected officials are elected to establish legislation; and that it should not be easy for one group of people to bypass the democratic process and pass their own laws. He also added that ballot language is often crafted to make it easy for people to want to sign the ballot; however, it does not fully inform the public as to what they were signing.

In response to Vice Chair Lievano-Cruz' request for modified language, Mr. Gonzalez suggested waiting to hear from the COC before making any changes.

It was moved by Mr. Eric Zichella to amend the County Charter to prohibit paying petition gathers for acquiring signatures for citizen's initiatives, unless associated with a grass roots organization.

Chair Cuevas asked Assistant County Attorney Rosenthal to prepare appropriate language for the amendment to be presented at the next meeting.

It was moved by Mr. Alfredo Gonzalez to table the foregoing discussion until after hearing from the COC.

Chair Cuevas stressed the importance for the COC to address the Task Force as quickly as possible.

2nd ISSUE FOR CONSIDERTION: Whether the Charter requirement that any appointed official or employee of Miami-Dade County who qualifies as a candidate for election to any federal, state or municipal office shall immediately take a leave of absence from his or her County position until the date of the election and shall, if elected, immediately forfeit his or her County position should be amended, and, if so, what those amendments should be?

PRESENTATION: Brief presentation by the County Attorney's Office as to the current Charter provisions on this issue, and presentation by the Clerk as to any documents or records located indicating why these provisions were added to the Charter in 1962.

Assistant County Attorney Oren Rosenthal stated that the Clerk provided the requested research, noting this documentation was provided in the meeting materials. He said that the 1962 Task Force dealt with many of the same County and municipality issues currently being considered. He noted the 1962 Task Force recommended a prohibition on dual office holding as well as argued that "the County was entitled to the full time performance of its employees and that such could not be rendered if an employee undertook the campaign for political office while so employed. The decisions of the voters might be determined from the question; shall the Metropolitan charter be amended to provide that any appointed County official or employee shall forfeit his employment effective upon legal qualification as a candidate for any other office." Assistant County Attorney Rosenthal indicated that this decision then changed into the current provision that upon qualification for office the employee must take a leave of absence and forfeit their office upon election.

DISCUSSION AND VOTE: On whether any of the foregoing Charter provisions should be amended.

Chair Robert Cuevas commented that it was a difficult task for the Clerk to secure records from such a long time ago, noting those records were not computerized and commended Mr. Christopher Agrippa for the tremendous effort undertaken to conduct this research by hand.

Mr. Mike Valdes-Fauli stated that he agreed with Mr. Wilfredo Fleites' request to allow County employees run for public office with the exclusion of County office, unless there was a conflict of interest.

It was moved by Mr. Valdes-Fauli to amend the County Charter to allow County employees to run for public office with the exception of County office. This motion was seconded by Vice Chair Mari Lievano-Cruz.

Assistant County Attorney Oren Rosenthal mentioned that a supervisor currently approved outside employment. He noted that running for political office could also be considered by an employee's supervisor in the same manner. Assistant County Attorney Rosenthal indicated

that the current sentiment was for the Charter to affirmatively allow employees to run for public office.

Mr. Alfredo Gonzalez commented that the decision should not be left up to an employee's supervisor, noting employees should have the right as long as it did not interfere with their job.

Assistant County Attorney Rosenthal asked for clarification as to what Mr. Valdes-Fauli mentioned as excluding a conflict of interest.

Mr. Valdes-Fauli replied that the County would be considered the conflict and it was then up to the voters to decide on any additional conflicts.

Ms. Alice Burch noted great people were needed to run for municipal office; however, there were many County employees that were also civic activists who advised her they were continuously having to question their position and asked to do things at the County because of their employee relationship.

Mr. Eric Zichella suggested voting on the concept and allowing the County Attorney's Office to draft the language. He said this issue would only be discussed again if the language did not conform to the spirit of the discussion.

Mr. Marlon Hill stated it was a common sense judgement and it should be allowed as long as there were no conflicts.

Chair Cuevas said it was not in the best interest of the workforce or County citizens for employees to have a divided allegiance. He noted issues related to supervising, managing and maintaining personnel would become more complicated with issues relating to elected office. Chair Cuevas stated he did not believe there was a constitutional right that would allow employees to run for office.

Mr. Valdes-Fauli stated that perhaps it should be an employee's right to run for office but perhaps the employee should be required to resign, if elected.

Mr. Zichella stated that County employees had a tremendous amount of time to do other things in their lives. He questioned how their involvement in other community/civic activities could harm their performance as a County employee, if they were serving the County during designated hours and satisfactorily performing their responsibilities.

Chair Cuevas responded that it was difficult managing public employees and whether their actions out of the office brought disgrace to the County or the public.

Mr. Valdes-Fauli said employees holding outside office could also be fired if they did not perform as expected. He clarified that his motion remained to continue to allow County employees to keep their jobs as long as they obtained public office outside the County.

Mr. Gonzalez indicated that many other jurisdictions allowed employees to hold public office. He stated that it was a conflict to hold office at the same institution where you were currently working. Mr. Gonzalez said County employees should be given this opportunity.

Mr. Diaz- Padron questioned whether there was a prohibition against County employees holding outside employment.

Assistant County Attorney Rosenthal advised that it was subject to the employees' supervisor's approval, noting the employees responsibility to the County must come first if there was a conflict.

Mr. Diaz-Padron further questioned whether a supervisor could deny or remove the employee's opportunity to serve, after the employee was elected.

Assistant County Attorney Rosenthal asked for clarification whether the prohibition would be eliminating the prohibition or providing the affirmative right.

Mr. Valdes-Fauli stated it would eliminate the prohibition. He said a supervisor should continue to have authority over their employees to make judgement calls.

Assistant County Attorney Rosenthal restated the motion language based upon his understanding of the discussion as follows; "may qualify and run for office and if elected may serve and may be eligible to serve in the same manner as other outside employment".

Ms. Anna-Bo Emmanuel mentioned that public service was time consuming and that being elected to serve would be considered a second job, even though voters who elect an individual expect their interest to come first. She noted this was a big issue; however, she believed there should be a way to allow people to serve.

Mr. Valdes-Fauli reiterated that the employees' supervisor now had the authority to make second employment determinations.

Ms. Emmanuel said that running a business was an employees' choice; however, when elected the employee was at the service of those who they were elected by.

Mr. Gonzalez stated the Task Force was trying to give County employees the ability to run for office and not to address conflict issues. He said that authority was not being taken away from the County department to determine whether the employee could serve, but the opportunity should be given to the employee to run or not. Mr. Gonzalez noted the elected office would be considered the secondary job.

Chair Lievano-Cruz recommended keeping Mr. Valdez-Fauli's original motion. She said many elected officials served in such capacity on a part time basis and held other full time employment. Chair Lievano-Cruz noted there was a disciplinary process for employees who were not performing their jobs.

Mr. Marlon Hill indicated that it was always difficult to prevent bad people from doing terrible things or good people from being bad. He said that he supported not allowing County employees to be elected to County office.

Mr. Zichella said there were currently Miami-Dade County Public School employees who were elected officials, noting he had not heard complaints that they did not perform their job responsibilities. He indicated that it was well known that serving on the County Commission required more than part-time service. Mr. Zichella pointed out that an employee had the right to make a decision whether to resign from their job or resign from being an elected official if they were asked by their supervisor to resign their position. He said that if it was included in the Charter that someone had the right to do something, it could be interpreted as the right to also serve, noting they did not necessarily have that right and must perform their job as a County employee.

Mr. Valdes-Fauli clarified that employees were now forbidden and he wanted this provision to be removed.

Assistant County Attorney Rosenthal added that the prohibition was currently for both appointed officials and employees. He said the discussion was related to employees and wanted to determine whether the motion was for both elected officials and employees or just for employees.

Mr. Valdes- Fauli said that it would be for both elected officials and employees.

Chair Cuevas commented that the County Attorney was required to devote his/her full time to represent the Board and the County, noting he believed employees should do so as well. He said being a County Commissioner was a full-time job and they also needed to raise money.

Further discussion ensued about the issue of employee responsibilities and ability to serve as an elected official.

Assistant County Attorney Rosenthal restated the motion to eliminate the prohibition on requiring a leave of absence to run for office and requiring forfeiture of your job if elected for all positions with the exception of a County position.

Upon being put to a vote, the motion passed by a vote of 6-4; Chair Robert Cuevas, Ms. Alice Burch, Mr. Jeff Cazeau and Ms. Anna-Bo Emmanuel voted "No".

APPROVAL OF THE CLERK'S SUMMARY OF MINUTES FOR THE OCTOBER 30 CHARTER REVIEW TASK FORCE MEETING

It was moved by Mr. Jeff Cazeau that the meeting minutes from the October 30, 2017 Charter Review Task Force meetings be approved. This motion was seconded by Mr. Alfredo Gonzalez, and upon being put to a vote, the motion passed unanimously by all members present.

ISSUES FOR UPCOMING MEETING

Chair Robert Cuevas mentioned three additional issues would be placed on the November 28, 2017 Task Force Meeting agenda; 1) the Parks amendment to the Charter, 2) municipal powers, and 3) utilities and the County's ability to operate utilities.

ADJOURNMENT

There being no further business, the Charter Review Task Force meeting adjourned at 7:47 p.m.


Robert Cuevas, Chair