

**CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: City Commission

FROM: Craig E. Leen, City Attorney
Yaneris Figueroa, Assistant City Attorney

RE: Proposed Changes by Charter Review Committee

DATE: April 7, 2016

The following seven proposals have been recommended by the Charter Review Committee to the City Commission to be submitted for a referendum. Proposals #1, #3, and #7 are new Charter provisions. The other proposals are amendments to existing Charter provisions. Each Proposal is presented on its own page. I have added a brief description of the principal, intended legal effect of each proposal. A more extensive description will be provided verbally in the presentation.

Proposal #1: Addition of run-off election procedures (new section)

Proposed New Section:

Sec. 2. Run-off Elections

The candidate receiving a majority of the votes in each group shall be considered elected. In any election for Groups One through Five, if a majority of the vote is not received by any one candidate of a group, a run-off between the two candidates receiving the most votes in the respective group shall be held two weeks after the general election, on a Tuesday. The candidate receiving the most votes in the run-off shall be considered elected. The Mayor and Commissioners shall take office at noon on the third Friday after the general election. No run-off election shall be required when a candidate receives a majority of the vote or if a candidate is unopposed in the run-off election. Run-off and all other dates related thereto may be adjusted by Ordinance. This provision shall take precedence over any conflicting provision in this Charter.

Legal Effect: Presently, the Mayor or a Commissioner may be elected with a plurality vote (the most votes) even if this does not constitute a majority. This proposed amendment would require a runoff between the two candidates with the highest vote totals where no candidate received a majority. The runoff would be held two weeks after the general election. Also, a newly elected Mayor or Commissioner would now take office 17 days after the general election to provide for the possibility of a runoff. Finally, no run-off will be held when one of the candidates concedes, thus leaving an unopposed candidate.

Proposal #2: Modify procedures regarding expulsion of members of the Commission (amending section)

Proposed Amended Section:

Sec. 5. Rules of Procedure; Removal, and Quorum.

The Commission may determine its own rules of procedure, censure its own members for misconduct, and may compel the attendance of its members. A majority of all the members of the Commission will constitute a quorum to do business, but a smaller number may adjourn from time to time. On a unanimous vote of the other sitting members of the Commission, the Commission may remove a member on any of the grounds provided by general law for the Governor's suspension or removal of a municipal officer. But no member will be removed unless he or she is notified in writing fifteen days before any action is taken on the charge against the member and the member is given an opportunity to be heard in his or her own defense. If the Governor suspends a member before the Commission votes to expel the member, the Commission may not act further to remove the member unless and until the member is restored to office. After any restoration of the member to office, however, the Commission in its discretion may then proceed to remove the member upon notice and hearing as provided herein. The Commission's authority to remove a member hereunder is intended to supplement and not to supersede general law, as amended, regarding the suspension or removal of a municipal officer, including any provisions of general law for the member's entitlement to full back pay and such other emoluments or allowances to which the member would have been entitled for the full period of time of any suspension by the Governor.

Current Section:

Rules of procedure; expulsion, quorum.

The Commission may determine its own rules of procedure. May punish its own members for misconduct and may compel the attendance of members, and on a four-fifths vote may expel a member for misconduct in office or for neglect of duty. But no member shall be expelled unless notified in writing seven days before any action is taken of the charge against him and given an opportunity to be heard in his own defense. A majority of all members of the Commission shall constitute a quorum to do business, but a smaller number may adjourn from time to time.

Legal Effect: The Charter presently allows a member of the Commission to be removed by a four-fifths vote for misconduct in office or neglect of duty. The proposed amendment ties the removal procedure to the Governor's suspension procedure under state law, although it retains the City Commission's independent authority to remove one of its members. The authority of the Commission to censure a member has been added as well.

Proposal #3: Suspension of members of the Commission for incapacity (new section)

Proposed New Section:

Sec. 6. Suspension for Incapacity.

Upon a good faith belief that a member of the City Commission is temporarily incapacitated and unable to perform the duties of office, with reasonable accommodations, a vote of four members of the Commission may suspend the incapacitated Commissioner. The City Commission may appoint a replacement during the time of the suspension.

Legal Effect: The proposed amendment would allow for a temporary suspension of a member of the Commission for incapacity. This situation is not presently provided for in the Charter, which only provides for removal. The proposed amendment allows the City Commission to appoint a replacement for the time of the suspension.

Proposal #4: Appointment of Vice Mayor and presiding officer (amending section)

Proposed Amended Section:

Sec. 8. Duties of Mayor.

The Mayor shall preside at the meetings of the Commission and perform such other duties consistent with the office and this Charter as may be imposed by the Commission. The Mayor shall be recognized as the official head of the City for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the Governor for military purposes. In time of public danger or emergency, the Mayor may, with the consent of the Commissioners, take command of the police and maintain order and enforce the laws. The Vice-Mayor shall be appointed by the Mayor, and, in the event of the Mayor's absence or disability, the Vice Mayor shall undertake these duties. In the event that the Vice Mayor is unable to undertake the Mayor's duties, the Mayor shall appoint a Commissioner to undertake the Mayor's duties.

Current Section:

Duties of mayor.

The Mayor shall preside at the meetings of the Commission and perform such other duties consistent with his office and this Charter as may be imposed by the Commission. He shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil processes, and by the Governor for military purposes. In time of public danger or emergency he may with the consent of the Commissioners take command of the police and maintain order and enforce the laws. During his absence or disability his duties shall be performed by another member appointed by the Commission.

Legal Effect: This proposed amendment establishes that the Mayor appoints the Vice Mayor and any replacement for the Vice Mayor. This is the present practice based on a Commission resolution, but it would now be required.

Proposal #5: Elimination of Trial Board (amending section)

Proposed Amended Section:

Sec. 15. Authority Over Officers and Employees; Removal, Suspension, Reduction.

Officers and employees appointed by the City Manager or under his or her authorization may be removed, suspended, laid off, or reduced in grade by the City Manager, or by the officer by whom appointed, at any time for any cause which will promote the efficiency of the City. Such action, if by a department head, shall be subject to the approval of the City Manager.

Current Section:

Authority over officers and employees; removal, suspension, reduction; requests for cause and hearing; trial board.

Officers and employees appointed by the City Manager or under his authorization may be removed, suspended, laid off, or reduced in grade by the City Manager, or by the officer by whom appointed, at any time for any cause which will promote the efficiency of service. Such action, if by a department head, shall be subject to the approval of the City Manager. Any such officers or employees, except common laborers and officers and employees in the service of the city for less than six months, or police officers or firemen in the service of the city for less than 12 months, continuously, may within five days after such action file with the City Manager a written request for a written statement of the reasons for such action, which written statement shall be furnished to him by the City Manager within five days after such request; a sworn reply to such statement of reasons may be filed with the City Manager by such officer or employee within five days thereafter, accompanied by a demand for a hearing thereon. The failure of any such officer or employee to request such written statement of reasons or to reply thereto, within the period provided therefor, shall constitute a full waiver of any further rights. In the event of such request and reply thereto the matter shall then be referred to the special trial board hereinafter authorized, which trial board shall thereupon investigate and determine the propriety of such action, and, at the conclusion of its investigation shall render a decision or verdict which shall be final. The trial board may, in its discretion, conduct hearings, summon witnesses and hear evidence. In its decision the trial board may determine whether such officer or employee is entitled to any compensation, allowance or adjustment, which decision shall likewise be final.

For the purpose of effectuating this section the Commission shall by ordinance provide for the establishment of a special trial board to be composed of five citizens of the City of Coral Gables, none of whom shall be officers or employees of the city; two of whom shall be appointed or elected by the city employees; two of whom shall be appointed or elected by the City Commission and the fifth of whom shall be selected by the four members so chosen, as provided for and prescribed in said ordinance. In the event that the four members shall fail to agree on the fifth member, such member shall be appointed by the County Judge of Dade County, Florida.

Legal Effect: This proposed amendment eliminates the Trial Board and the related procedure. The amendment would not affect employees in bargaining units as they have collectively bargained for an arbitration process.

Proposal #6: Removal of certain authority of the Commission to direct or require hiring, discharge, or reduction in grade; modification of forfeiture provision (amending section)

Proposed Amended Section:

Sec. 16. Lines of Authority Between Manager and Commission.

None of the Commissioners may direct or request the appointment of any person to or his or her removal from the service of the City by the City Manager or any of his or her subordinates. Except for the purpose of inquiry to obtain information, the Commission and its members shall otherwise deal with that portion of the administrative service for which the Manager is responsible solely through the Manager, and neither the Commission, except in open session, nor any member thereof shall give orders to any subordinate of the Manager. Provided, however, the Commission may direct staff at a public meeting. Any willful violation of the provisions of this Section by a member of the Commission, as determined by the Commission, shall result in a forfeiture of the office of such member.

Current Section:

Lines of authority between manager and commission.

The Commission, by resolution duly adopted, may direct or require appointments, suspensions, or discharges of city officers or employees by the City Manager. But none of the commissioners may otherwise direct or request the appointment of any person to or his removal from, the service of the city by the City Manager or any of his subordinates. Except for the purpose of inquiry, the Commission and its members shall otherwise deal with that portion of the administrative service for which the Manager is responsible solely through the Manager, and neither the Commission except in open session, nor any member thereof, shall give orders to any subordinate of the Manager. Any violation of the provisions of this section by a member of the Commission shall work a forfeiture of the office of such member.

Legal Effect: This proposed amendment eliminates the City Commission's authority to direct or require appointments, suspensions, or discharges of employees by the City Manager. It specifies that inquiry is permissible to "obtain information" and that "the Commission may direct staff at a public meeting." The forfeiture provision for violating this section now requires a willful violation "as determined by the Commission."

Proposal #7: External Auditor (new section)

Proposed New Section:

Sec. 25. External Auditor

The City Commission shall appoint an independent certified public accountant to conduct an annual audit of the City's books of account. The Auditor will report directly to the City Commission or to the Budget and Audit Advisory Board (or any other similar committee established by the City Commission for said purpose). The Auditor may be procured through an external audit contract awarded by the City Commission. Irrespective of how the Auditor is retained, the individual or company must be changed every six (6) years. All correspondence regarding the audit process and any audit findings are to be addressed and reported directly to the City Commission. Furthermore, all reports generated by the City Commission Auditor are to be discussed and presented annually to the City Commission at a regular City Commission meeting.

Legal Effect: The City presently has an external auditor appointed by the Commission to perform an annual budget and provide a report. The proposed amendment would make this a Charter requirement and would require the auditor to be changed every six years.