

CITY OF CORAL GABLES

OFFICE OF THE CITY ATTORNEY

- MEMORANDUM-

TO: HONORABLE MAYOR
AND CITY COMMISSIONERS

DATE: July 27, 2004

FROM: _____
Elizabeth M Hernandez
City Attorney

SUBJECT: REPORT AND
RECOMMENDATIONS OF
CHARTER REVIEW
COMMITTEE
“Corrected”

The Charter Review Committee was created on April 13, 2004-by the City Commission pursuant to Resolution No. 2004-78 (attached). The City Commission initially charged the Committee with reviewing the work of the prior Charter Review Committee and the City Charter. The Committee was requested to submit recommendations in time to place any referendum questions on the ballot for the November 2004 Election. Discussions with the Supervisor of Elections of Miami-Dade County revealed that the Committee would need to report by the city commission meeting of July 13, 2004, in order to meet the deadline imposed by the City Commission. The following report is primarily limited to a review and recommendation on those issues identified by the prior Charter Review Committee.

The members of the Committee, Chair Mikki Canton, Robert D. Zahner, Tom Logue, Leslie Lott, Eibi Aizenstat, Estrella Fajardo Gonzalez and Carlos Diaz Padron, met regularly to study, review and research appropriate recommendations for consideration by the City Commission. City Commissioners, Appointed Officials, Department Heads, Employees and the General Public addressed the Committee concerning:

- 1- Mayor's Term;
- 2- Term Limits for Elected Officials;
- 3- Elimination of Provisions for the Trial Board;
- 4- Creation of the Office of Independent Auditor General;
- 5- Increase in amount required for public bid on Public Works projects from \$7,500 to \$25,000;
- 6- Campaign Finance Reform;
- 7- Mandatory review of Charter every 5/10 years.

In addition, the Committee determined that it had been approximately five years since the Charter was last reviewed and updated. As a result, the Committee determined that one of the recommendations

to be made to the City Commission was that the Committee be allowed to finalize a review of the entire Charter and bring back further recommendations in the future.

RECOMMENDATIONS

The Committee met on July 8, 2004 to obtain public input and discuss the recommendations of the Committee, in an effort to provide Mr. Eibi Aizenstat an opportunity to provide input and to vote on the issues addressed. Ms. Fajardo Gonzalez and Mr. Diaz Padron were on previously scheduled out of town vacations. The Committee met on July 12, 2004, to review the proposed final Report and Recommendations and to provide Ms. Fajardo Gonzalez and Mr. Diaz Padron an opportunity to provide input and vote on the issues addressed.

In considering each issue, the Committee felt that there had to be a solid basis to send an issue to the voters. Each issue was studied and debated at length in order to determine whether, at the present time, there was a sufficient basis upon which to submit the question to the electors. As such, it is the Committee's recommendation that not all of the matters considered by the Committee be submitted to a vote of the electors, at the present time.

The Committee presents the following report and recommendation:

I. SHALL THE CITY OF CORAL GABLES CITY CHARTER BE AMENDED TO PROVIDE FOR THE MAYOR TO BE ELECTED TO SERVE A FOUR (4) YEAR TERM.

The Committee addressed this issue and offered the following comments:

The Committee discussed the present system. The Committee reviewed the work of the Blue Ribbon Committee and the 1997 Charter Review Committee. The Committee found the arguments both for and against a four year mayor's term compelling. Former members of the City Commission and prominent members of the community testified and provided a historical review of the prior system.

In addition, the Committee reviewed the terms of Mayors in other cities and the process used by those cities. The Committee reviewed the old system under the Charter, as well as the system adopted in the 1980's. Until 1985, an election would be held every two years for three seats on the City Commission, one of which was the Mayor's seat. The Mayor had to run also as a Commissioner. If a candidate lost the Mayor's race, they could still potentially keep their commission seat. The person with the highest number of votes became the Mayor. In 1985, the process changed to groups or seats numbered One (1) through Five (5). One of the said Commissioners became the Mayor elected from Group One (1), and received a two year term. Candidates running for Commission seats ran in either Group Two (2) or Group Three (3), and received four year terms. Two years later, at the election in April, 1987, candidates for Mayor ran in Group One (1) and received a two- year

term, and candidates for the other two Commission seats in Group Four (IV) and Five (V) ran for four-year terms. The first election where candidates ran solely for the position of Mayor was in 1985. The person running for Mayor could no longer run concurrently for a seat as a City Commissioner. There was no longer a hybrid race.

The members felt that there were valid arguments on both sides of the issue: Maintaining the status quo versus a four year term for the Mayor. There was a concern that a Mayor's race brings out the voters. However, a review of the historical voting patterns of the City did not support this argument. Some members of the Committee felt that the present system had worked over the years and that it did not need to be changed. Furthermore, the present system allows the electorate to vote a majority of commissioners out of office every two years.

Other Committee members felt that the present modern reality is that a candidate needs to devote considerable time and energy to raising substantial amounts of money, and to mount a campaign which detracts from the individual's service as an elected official. In the end, the Committee felt that this issue had been raised repeatedly over the years and should be submitted to the electors.

RECOMMENDATION: The Committee supports submitting this issue to the electors, with the following provisos:

a-That the City Commission maintain staggered terms;

b-That the City Commission decides whether, the four year term would take effect in 2005 or 2007.

VOTE: -ON THE FOUR YEAR MAYOR'S TERM-THE VOTE WAS 4-1 WITH TOM LOGUE, LESLIE LOTT, EIBI AIZENSTAT, AND MIKKI CANTON VOTING IN FAVOR, AND ROBERT D. ZAHNER VOTING AGAINST THE QUESTION. Note-Carlos Diaz Padron requested that his dissent on this issue be included in the final report and recommendation; Estrella Fajardo Gonzalez supported the four year Mayor's term.

II. SHALL THE CITY OF CORAL GABLES CITY CHARTER BE AMENDED TO PROVIDE FOR TERM LIMITS FOR ELECTED OFFICIALS?

The Committee addressed this issue and offered the following comments:

The Committee heard testimony on term limits of 8, 12 and 16 years. In addition, they reviewed research on term limits in other cities, the legislature and other government agencies.

The Committee was unanimously opposed to the idea of term limits for elected

officials . Term limits have created problems in the Legislature. It was the consensus of the Committee that the City is comprised of an intelligent, informed and educated citizenry, which has a demonstrated history of turning out incumbents with whom they have become dissatisfied. Most members expressed whole hearted opposition to term limits as it pertains to Coral Gables Government. The election of 2001 was used as a recent example of the success of the present process. In that election, three incumbents were voted out of office by the electors who had grown dissatisfied with the style of governance by the City.

RECOMMENDATION: The Committee does not support submitting this issue to the electors.

VOTE: ON TERM LIMITS, THE VOTE WAS 5-0 WITH TOM LOGUE, LESLIE LOTT, EIBI AIZENSTAT, ROBERT ZAHNER AND MIKKI CANTON VOTING AGAINST TERM LIMITS. Note-Neither Carlos Diaz Padron or Estrella Fajardo Gonzalez asked for Reconsideration of this Issue.

III. SHALL THE CITY OF CORAL GABLES CITY CHARTER BE AMENDED TO PROVIDE THAT THE TRIAL BOARD BE ELIMINATED?

The Committee addressed this issue and offered the following comments:

The Committee heard from the former City Attorney, the City Manager and affected employees. The Trial Board has historically been rarely used. However, elimination of the Trial Board would leave unclassified employees with no remedy or right of appeal. The Committee felt that before the City Commission considers eliminating the Trial Board, there should be alternative procedures in place.

RECOMMENDATION: At the present time, the Committee cannot support submitting this issue to the electors.

VOTE: THE VOTE WAS 5-0 WITH TOM LOGUE, LESLIE LOTT, EIBI AIZENSTAT, ROBERT ZAHNER AND MIKKI CANTON VOTING AGAINST THIS ITEM. Note-Neither Carlos Diaz Padron or Estrella Fajardo Gonzalez asked for Reconsideration of this Issue.

IV. SHALL THE CITY OF CORAL GABLES CITY CHARTER BE AMENDED TO PROVIDE FOR THE CREATION OF THE OFFICE OF INDEPENDENT AUDITOR GENERAL.

The Committee addressed this issue and offers the following comments:

The Committee members each voiced concern about this issue. This was an issue that members thought about, and studied, long and hard. It was the general consensus

that this issue would impose a new layer of bureaucracy. In studying the issue, the Committee heard arguments both for and against the creation of another appointive office. Specifically, as to the Independent Auditor General the Committee found certain advantages to an Independent Auditor General reporting to the City Commission. An Independent Auditor General would ensure that all audit reports were delivered to the City Commission, thereby limiting the possibility that corrections suggested by an audit would be ignored by management seeking to avoid criticism. In addition, an Independent Auditor General reporting directly to the City Commission would insulate the department from political pressure from the City Manager.

The Committee recognized that while creating an Independent Auditor General position would insulate the appointee from political pressure from the Manager, the Auditor would face heightened pressure from Commissioners. Maintaining the present system helps to avoid the problem that the City Commission is subject to constraints that may prevent it from managing an operating unit such as internal auditing. The City Commission is a part-time body, which must act corporately by majority vote. The decisions of the City Commission are potentially more subject to political and constituent concerns than the City Manager's. In addition, the Internal Auditor allows the City Manager the flexibility to allocate resources quickly to respond to management needs. Furthermore, in reviewing the departments in cities or counties that have independent auditors, each has a staff and a fairly large budget.

In a city such as Coral Gables, the Office of Independent Auditor General would create a duplication of effort, as there is no requirement that the manager eliminate the internal auditor. The Internal Auditor is a management tool for the City Manager. The City Commission has the authority, at any time, to require an investigation or audit of any department or contract.

The Committee further found that the City Commission needs no reason to dismiss the appointed officials. This City is a sufficiently manageable size, such that, waste should be readily apparent. Furthermore, the City Commission is a part-time body which is not set up to be an executive board managing officers. Weighing the costs and benefits of both systems, the Committee was satisfied that the present system meets the needs of the city.

RECOMMENDATION: At the present, time the Committee cannot support submitting this issue to the electors.

THE VOTE WAS 5-0 WITH TOM LOGUE, LESLIE LOTT, EIBI AIZENSTAT, ROBERT ZAHNER AND MIKKI CANTON VOTING AGAINST THIS ITEM. Note-Neither Carlos Diaz Padron or Estrella Fajardo Gonzalez asked for Reconsideration of this Issue. However, Mr. Diaz Padron asked that his dissent on this issue be included in the Final Report and Recommendation.

V. SHALL THE CITY OF CORAL GABLES CITY CHARTER BE AMENDED TO PROVIDE FOR AN INCREASE IN THE AMOUNT ON PUBLIC WORKS PROJECTS WHICH REQUIRE FORMAL PUBLIC BID FROM \$7,500 TO \$25,000?

The Committee addressed this issue and offers the following comments:

The Committee discussed the request to increase the amount required to submit a matter to the formal public bid from \$7,500 to \$25,000. The electors approved a referendum question in 1983 which increased the amount to \$7,500. Over twenty years have passed since the initial increase to \$7,500 before the formal public bid process is triggered. The Committee was unanimous in its view that \$7,500 is not a realistic figure in today's marketplace. Qualified companies do not submit bids on what are considered small capital improvement projects because of the red tape and time consuming process.

Bid procedures can be time consuming and expensive. There is a required mandatory pre-bid conference, drafting of the bid documents, advertising costs and expenses, and public opening of the Bids. Many Cities of this size, and larger, have increased the amounts for formal public works bids to \$25,000. The budget in 1983 was \$33 million dollars. Today it is over \$100 million dollars. Thus, the increase is in keeping with the present growth of the city.

The Committee was mindful of the fact that while, the increased amount would trigger the mandatory public bid process, the City still requires an informal bid process on projects below the threshold amount, which mandates three informal bids prior to award of contracts on any proposed project .

RECOMMENDATION: The Committee supports submitting this issue to the electors.

VOTE: THE VOTE WAS 5-0 WITH TOM LOGUE, LESLIE LOTT, EIBI AIZENSTAT, ROBERT ZAHNER AND MIKKI CANTON VOTING FOR THE ITEM. Note-Neither Carlos Diaz Padron or Estrella Fajardo Gonzalez asked for Reconsideration of this Issue.

VI. MISCELLANEOUS.

During the course of the process, the Committee was asked to address several other issues. These included campaign finance reform, mandatory review of the charter every 5 or 10 years, strong mayor versus city manager form of government, term limits for appointed officials, as well as changing the date of the election to coincide

with the general elections to name a few. Many of the issues presented would require further research, public hearings and deliberations. The Committee did not wish to rush their analysis. Instead they focused on key issues as reported herein. Due to the limited time provided to the Committee to review the Charter, only two additional recommendations were unanimously agreed upon by the Committee members.

The Committee, therefore, requests that the City Commission consider an amendment to Resolution No. 2004-78 that would require the Committee to continue its work until the Charter is completely reviewed for compliance with statutory provisions.

The Committee further requests that the City Commission adopt an ordinance requiring that a Charter Review Committee be convened as determined appropriate by the City Commission, but at a minimum, at least once every five years.

CONCLUSION

It is the hope and desire of the Committee that the Recommendations provided herein assist the City Commission, in its deliberations on the proposed referendum questions. The Committee also recommends that the City Commission adopt appropriate legislation allowing the expenditure of an educational program for the electors on the issues to be submitted for vote.

Respectfully Submitted,

Mikki Canton, Esq.
Chair

Tom Logue, Esq.
Vice Chair

Eibi Aizenstat
Carlos Diaz Padron, Esq.
Estrella Fajardo Gonzalez, Esq.
Leslie Lott, Esq.
Robert D. Zahner, Esq.