



# *The Village of Biscayne Park*

600 NE 114th St., Biscayne Park, FL 33161

Telephone: 305 899 8000 Facsimile: 305 891 7241

**AGENDA  
WORKSHOP  
MEETINGS POLICIES AND PROCEDURES  
Log Cabin - 640 NE 114th Street  
Biscayne Park, FL 33161  
Wednesday, September 18, 2019 6:30 pm**

In accordance with the provisions of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made; which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in the proceedings should call Village Hall at (305) 899 8000 no later than four (4) days prior to the proceeding for assistance.

**DECORUM** - All comments must be addressed to the Commission as a body and not to individuals. Any person making impertinent or slanderous remarks, or who becomes boisterous while addressing the Commission, shall be barred from further audience before the Commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the Commission members present. No clapping, applauding, heckling or verbal outbursts in support or in opposition to a speaker or his/her remarks shall be permitted. No signs or placards shall be allowed in the Commission Chambers. Please mute or turn off your cell phone or pager at the start of the meeting. Failure to do so may result in being barred from the meeting. Persons exiting the Chamber shall do so quietly.



*Indicates back up documents are provided.*

**1 Call to Order**

**2 Roll Call**

Mayor Truppman

Vice-Mayor Samaria

Commissioner Johnson-Sardella

Commissioner Tudor

Commissioner Wise

**3 Pledge of Allegiance**

**4 Public Comments Related to Agenda Items / Good & Welfare**

*Comments from the public relating to topics that are on the agenda, or other general topics.*

**5 Information / Updates**

**5.a** Discussion on Meetings Policies and Procedures

**6 Adjournment**



Rebecca A. Rodriguez  
Of Counsel  
305-913-0536

REBECCA.RODRIGUEZ@GRAY-ROBINSON.COM

## MEMORANDUM

**TO:** Village Commission

**CC:** Krishan Manners, Village Manager  
Roseann Prado, Village Clerk

**FROM:** Rebecca A. Rodriguez, Village Attorney

**DATE:** September 18, 2019

**SUBJECT:** Provisions for Consideration during Second Workshop to Discuss Amending Section 2-16 of the Village Code and Codifying Commission Meeting Rules and Procedures

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Below please find a compilation of potential rules of procedure for the Commission's review, consideration, discussion, amendment, inclusion, and/or removal during its second workshop.

All proposed new text is underlined and removed text is in strikethrough font. Highlighted areas are items of particular significance that warrant Commission discussion and drafting direction during the course of the second workshop.

### **Sec. 2-16. – Rules of procedure for Village Commission mMeetings.**

#### **(X) GOVERNING RULES; AMENDMENT.**

Except as may be provided in the Charter, the Code or by these rules, questions of order, the methods of organization and the conduct of business of the Commission shall be governed by Roberts' Rules of Order (current edition).

#### **(X) PRESIDING OFFICER.**

Commission meetings as herein defined shall be conducted in an orderly manner to ensure that the public has a full opportunity to be heard and that the deliberative process of the Commission is conducted as efficiently as possible. The Presiding Officer shall be responsible for maintaining the order and decorum of meetings. The Village Mayor shall serve as the Presiding Officer for Commission meetings. In the Mayor's absence, the Vice-Mayor shall serve as the Presiding Officer for Commission meetings. If the Mayor and Vice Mayor are both absent, the Presiding Officer shall be elected for that meeting by a vote of the Commission members in attendance.

(X) VILLAGE MANAGER.

The Village Manager shall be available to the Commission at all meetings.

(X) VILLAGE CLERK.

The Village Clerk shall be available to the Commission at all meetings and workshops. The Village Clerk shall prepare the minutes and shall certify all ordinances and resolutions adopted by the Commission.

(X) VILLAGE ATTORNEY.

The Village Attorney shall be available to the Commission at all meetings. When requested by the Presiding Officer, the Village Attorney shall act as parliamentarian, and shall advise and assist the Presiding Officer in matters of parliamentary law.

(X) SERGEANT-AT-ARMS.

The Chief of Police for the Village Police Department, or such other Village official, employee, or other officer as the Commission may designate, shall be the Sergeant-at-Arms at Commission meetings. The Sergeant-at-Arms shall carry out all orders and instructions given by the Presiding Officer for the purpose of maintaining order and decorum at the meetings.

(X) REGULAR MEETINGS.

~~The regular meetings of the commission shall be held at 7:00 p.m., on the first Tuesday of each month at the village hall in the Village of Biscayne Park. The meeting time may be changed by resolution if approved by a simple majority of the commission.~~

The regular meetings of the Village Commission shall be held monthly on the first Tuesday of each month at 7:00 p.m. Regular meetings shall adjourn no later than 11:00 p.m. The meeting time may be changed by resolution if approved by a simple majority vote of the Commission.

(X) SPECIAL MEETINGS AND EMERGENCY MEETINGS.

- (1) *Special meetings.* A special meeting of the Commission may be called by the Village Mayor, or by a majority of the members of the Commission. The Village Clerk shall forthwith serve verbal and written notice upon each member of the Commission stating the date, hour and place of the special meeting and the purpose for which such meeting is called, and no other business shall be transacted at that meeting. At least twenty-four (24) hours must elapse between the time the Clerk receives notice in writing and the time the meeting is to be held. A special meeting of the Board of Village Commissioners may be cancelled (1) by resolution or motion adopted at a

regular meeting by a majority of the Commission members present or (2) by seven (7) members of the Board of Village Commissioners serving notice containing the required seven (7) signatures on the members of the Board of Village Commissioners and upon the Clerk who shall provide public notice when a meeting is cancelled. The Commission chambers shall be made available for a special meeting whenever such a meeting is called.

- (2) Emergency meetings. An emergency meeting of the Commission may be called by the Village Mayor whenever in his or her opinion an emergency exists which requires immediate action by the Commission. Whenever such emergency meeting is called, the Village Mayor shall notify the Clerk who shall forthwith serve either verbal or written notice upon each member of the Commission, stating the date, hour and place of the meeting and the purpose for which it is called, and no other business shall be transacted at that meeting. At least twenty-four (24) hours shall elapse between the time the Clerk receives notice of the meeting and the time the meeting is to be held. An emergency meeting of the Village Commission may be cancelled (1) by resolution or motion adopted at a regular meeting by a simple majority of the Commission members present. The Commission chambers shall be made available for an emergency meeting whenever such a meeting is called.
- (3) Notice to Commissioners. If after reasonable diligence, it is impossible to give notice to each Commissioner, such failure shall not affect the legality of the meeting if a quorum is present. The minutes of each special or emergency meeting shall show the manner and method by which notice of such special or emergency meeting was given to each member of the Commission, or shall show a waiver of notice. All special or emergency meetings shall be open to the public and shall be held and conducted in the Village Hall, or other suitable location within the Village of Biscayne Park, Florida. Minutes thereof shall be kept by the Clerk.
- (4) No special or emergency meeting shall be held unless notice thereof shall be given in compliance with the provisions of this rule, or notice thereof is waived by a majority of the entire membership of the Commission.

(X) PUBLIC WORKSHOPS.

- (1) Purpose. The Commission may, by a simple majority vote, schedule a public workshop to receive and to discuss public input on an issue.
- (2) Commissioner Attendance. Any Commissioner who affirmatively votes to schedule a public workshop on an issue must attend that workshop.
- (3) No action items permitted. The Village Commission may not adopt any resolutions or ordinances during a public workshop. This prohibition cannot be waived by a vote of the Commission, even if said vote is unanimous.

Village of Biscayne Park Commission Workshop  
September 18, 2019  
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(X) MEETING CANCELLATION PROCEDURES.

- (1) For further discussion.
- (2) Authority to cancel.
- (3) Reasons for cancellation. How to memorialize basis for cancellation.
- (4) Notice to public for cancellation.

(X) AGENDA FOR MEETINGS.

- (1) 4-day rule. A copy of each agenda item shall be furnished to the members of the Commission not later than four (4) business days before a vote may be called on the item. The provisions of this rule shall be deemed waived unless asserted by a Commissioner before the board takes action on the resolution, ordinance, motion or other item in question. This rule is not applicable to special or emergency meetings called in compliance with the Village Code and Charter.
- (2) Publishing Agenda to the Public. For discussion. The agenda for a regular commission meeting shall be published by the Village Clerk no later than [X] days prior to the meeting. This requirement does not apply to emergency matters, time sensitive matters which may be added to an agenda due to exigent circumstances as provided herein.
- (3) Minimum Standards for Proposed Agenda Items. For discussion.
- (4) Emergency matters; time sensitive matters. A matter may be placed on the meeting agenda to meet a public emergency or other time sensitive circumstance. Items placed on the agenda as an emergency or time sensitive matter shall so state. The Commission must ratify the emergency or time sensitive circumstance by a majority vote of Commission members present for the item to proceed.
- (5) Sponsorship; Authority to Sponsor or Present Agenda Items. A Commissioner, Village Manager, Village Attorney, Village Clerk, or Village department head may sponsor any report or memorandum to be presented before the Commission. A Village Commissioner may assume sponsorship of any ordinance, resolution, report, or other matter.
- (6) Prime Sponsorship and Co-Sponsorship. When a resolution or ordinance is placed on the agenda at the request of a Commissioner, the Commissioner who requested the preparation of the item shall be designated as the prime sponsor. Any other

commissioner who wishes to sponsor the resolution or ordinance shall so state during agenda approval and be designated a co-sponsor of the item.

- (7) Limitation on Amount of Sponsored Agenda Items. No Commissioner shall be a prime sponsor of a total of more than [number] ( ) action items on a single regular Commission agenda unless the Presiding Officer of the Commission authorizes the placement of additional items on the agenda by a particular Commissioner when approving the agenda. For purposes of this section, an "action item" means an ordinance for first reading or a resolution. This provision shall not be applied to ordinances or resolutions which are intended to correct scrivener's errors.
- (8) Limitation on Deferral of Agenda Items. An agenda item shall be deemed withdrawn upon its third deferral. The provisions of this subsection shall not apply to the certification of any election, quasi-judicial matters, zoning applications, or applications to amend the Village's Land Development Code.
- (9) Approval by Village Attorney. All ordinances, resolutions, and contract documents, before presentation to the Village Commission, shall have been reduced to writing and shall have been approved as to form and legality by the Village Attorney. All reports or memoranda that supplement pending ordinances or resolutions shall be presented to the Village Attorney for review and approval for placement on the agenda, when such reports or memoranda contain proposed amendatory language that can be used to formulate amendments to ordinances or resolutions. Prior to presentation all such documents may be referred to the head of the department under whose jurisdiction the administration of the subject matter of the ordinance, resolution or contract document would devolve.
- (10) Approval by Commission. The proposed agenda must be voted on and approved by a simple majority vote of the Commission during the meeting. Amendments to the agenda, such as tabling, deferral, and removal must be made at that time.
- (11) Order of Business on Agendas. There shall be an official agenda for every meeting of the Commission, which shall determine the order of business conducted at the meeting. The order of business for regular Commission meetings shall be as follows:

Roll Call  
Pledge of allegiance  
Motion to set agenda  
Special presentations  
Citizens' presentations  
Consent agenda  
Ordinances for first reading  
Public hearings

Ordinances for second reading  
Village departments  
Village manager  
Finance Manager  
Village Attorney  
Village Clerk

(12) Public Comment on Action Items Before the Commission. For discussion

(13) Public Comment on General Welfare and Non-Agenda Items. For discussion.

(X) CONDUCT OF MEETINGS.

- (1) Call to Order. Promptly at the hour set for each meeting, the members of the Commission, the Village Attorney, the Village Manager and the Village Clerk shall take their regular stations on the dais. The Presiding Officer shall take the chair and shall call the Commission to order immediately. In the absence of the Presiding Officer, the Village Clerk shall then determine whether a quorum is present and in that event shall call for the election of a temporary Presiding Officer. Upon the arrival of the Mayor or Vice-Mayor, the temporary Presiding Officer shall relinquish the chair upon the conclusion of the business immediately before the Commission.
- (2) Roll Call. The Village Clerk shall call the roll of the members, and the names of those present shall be entered in the minutes. Any Commissioner who notifies the Village Clerk that he or she will be absent from a Commission meeting prior to the start of such scheduled meeting shall be noted as excused in the minutes of the meeting. The Village Clerk shall note in the minutes when a Commissioner arrives after the commencement of a Commission meeting, or if a Commissioner departs a Commission meeting before it has adjourned.
- (3) Quorum. A majority of the Commissioners then in office shall constitute a quorum. No ordinance, resolution, or motion shall be adopted by the Commission without the affirmative vote of the majority of all the members present.
- (4) Failure to Maintain a Quorum. Should no quorum attend within thirty (30) minutes after the hour appointed for the meeting of the Commission, the chairperson or the Clerk may adjourn the meeting until another hour or day unless, by unanimous agreement, those members present select another time and continue the meeting to a date certain. The names of the members present and their action at such meeting shall be recorded in the minutes by the Village Clerk.
- (5) Opening statement time limit. For discussion.

(X) RULES OF DECORUM.

- (1) Preservation of order. Meetings of a Commission as herein defined shall be conducted in an orderly manner to ensure that the public has a full opportunity to be heard and that the deliberative process of the Commission is conducted as efficiently as possible. The Presiding Officer shall be responsible for maintaining the order and decorum of meetings.
- (2) Commission Members. The members of a Commission as herein defined shall preserve order and decorum, and a member shall not by conversation or other means delay or interrupt the Commission's proceedings, including delaying or interrupting any person who is speaking who has been recognized by the Presiding Officer.
- (3) Village Staff Members. Employees of the Village shall observe the same rules of order and decorum as those that apply to members of the Commission.
- (4) Persons Addressing the Commission. Members of the public are afforded the opportunity to address the Commission on any item of interest to the public that is within the subject matter jurisdiction of the Commission. Each person who addresses the Commission shall do so in an orderly manner and shall not make personal, impertinent, slanderous, or profane remarks to any member of the Commission, staff, or general public that disrupt, disturb, or otherwise impede the orderly conduct of any meeting of the Commission.
- (5) Any person who makes such remarks; or who utters loud, threatening, personal, or abusive language; or engages in any other disorderly conduct that disrupts, disturbs, or otherwise impedes the orderly conduct of any meeting of the Commission, including, but not limited to, addressing the Commission without being recognized, repetitiously addressing the same subject, or failing to relinquish the podium when requested to do so, shall, at the discretion of the Presiding Officer, be barred from further audience before the Commission during that meeting.
- (6) Members of the Audience. No person in the audience at a Commission meeting shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening, or abusive language; whistling; stamping of feet; or other acts which disturb, disrupt, or otherwise impede the orderly conduct of any meeting of the Commission. Any person who conducts himself or herself in the aforementioned manner shall, at the discretion of the Presiding Officer, be barred from further audience before the Commission during that meeting.
- (7) Addressing the Village Commission. Any person wishing to address the Commission regarding an item which is on the meeting agenda or is otherwise within the subject

matter jurisdiction of the Commission may submit a request on the form provided, or he or she may seek recognition by the Presiding Officer during discussion of any such item. Persons wishing to discuss a nonagenda item may seek recognition by the Presiding Officer during the Public Comment portion of the meeting. No person shall address the Commission without first being recognized by the Presiding Officer.

The following procedures shall be observed by persons addressing the Commission:

- A. Each person shall speak from the podium provided for the use of the public.
  - B. Each person shall confine his or her remarks to: (1) an agenda item before or during the Commission's consideration of the item; or (2) any matter not on the agenda which is within the Commission's subject matter jurisdiction.
  - C. Each person shall limit his or her remarks to five minutes, unless the Presiding Officer determines that a different time limit is appropriate.
- (8) Enforcement of decorum. The rules of decorum set forth above shall be enforced in the following manner:
- (A) Warning. The Presiding Officer shall request that a person who is violating the rules of decorum conform his or her behavior to these rules.
  - (B) Instructed to Leave Meeting. If, after receiving a warning from the Presiding Officer, a person persists in disturbing the meeting, the Presiding Officer shall order the individual to leave the meeting.
  - (C) Removal. If such person does not remove himself or herself from the meeting, the Presiding Officer may order any law enforcement officer who is on duty at the meeting as sergeant-at-arms to remove that person from the meeting.  
  
Any law enforcement officer who is serving as Sergeant-at-arms may carry out orders and instructions given by the Presiding Officer for the purpose of maintaining order and decorum at the meeting. Upon instruction of the Presiding Officer, the sergeant-at-arms may remove any person(s) who is (are) disturbing the proceedings of the Commission in violation of these rules from the meeting.
  - (D) Resisting Removal. Any person who resists removal by the Sergeant-at-arms may be charged with a violation of this section.
  - (E) Commission Override; Reinstatement. For discussion.

- (F) Citations and Arrests. Nothing in this section precludes the Sergeant-at-arms from utilizing their authority as a sworn law enforcement officer to cite or arrest an individual for violating the law, including, but not limited to, breach of the peace, disorderly conduct, disorderly intoxication, or trespass after warning.
- (G) Clearing the Meeting Site. In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the Presiding Officer may order the room cleared and continue in session. The Presiding Officer may subsequently readmit individuals not believed to be responsible for creating the disturbance into the meeting. If a meeting of the Commission is disturbed or disrupted in such a manner as to make unfeasible or improbable the restoration of order, the meeting may be adjourned or continued at the discretion of the Presiding Officer, and any remaining business of the Commission may be considered at the next scheduled Commission meeting.
- (9) Rules for recording meetings. As permitted by Florida Statutes, members of the public are permitted to record any open and public Commission meeting. In order to provide for the recording of such meetings by members of the public, the Village has developed the following guidelines:
- (A) The recording procedure must not disrupt, disturb, or otherwise impede the conduct of the meeting. A disruption or disturbance of the orderly conduct of the meeting can include, but is not limited to, the following:
1. Obstructing the view of audience/staff members.
  2. Creating noise that keeps audience/staff members from hearing the proceedings.
  3. Treating potential interviewees, and/or conducting interviews, in a belligerent manner.
  4. Interfering with the Village's audio and/or recording equipment for the meeting. This includes, but is not limited to, the use of equipment which creates beeping, radio noise, or static interference "white noise" with Village equipment during the pendency of a Commission meeting.
- (B) Placement of video recording equipment/crew:

1. When recording is taking place in the meeting chambers, video cameras, tripods, and/or crew shall be located in the back corner of the room and shall be situated so the public is able to safely walk around the room's aisles and perimeter without being impeded by such video cameras, tripods, and/or crew.
  2. When recording is taking place at a meeting of a Commission herein defined at a location other than the Village Council Chambers, video cameras, tripods, and/or crew shall be situated so neither the view nor the circulation of the audience or staff is impeded.
  3. All audio/electrical cords must be securely taped or covered with a mat.
  4. No recording devices may be placed on the dais, podium, or other Village-owned apparatus.
- (C) Village staff is in charge of enforcing the recording guidelines at the meeting site. The Presiding Officer may instruct the Sergeant-at-arms to unplug or otherwise remove any equipment which fails to conform with the rules provided herein.

(X) PUBLIC PARTICIPATION.

- (1) Persons authorized on the dais; approaching dais prohibited. No person, except Village officers or their representatives, shall be permitted on the dais unless authorized by the Presiding Officer or a majority vote of the Commission. Unauthorized individuals approaching the dais is strictly prohibited and may result in removal from the Commission meeting.
- (2) Citizens' presentations; public hearings.
  - (a) Citizens' presentations. Any citizen shall be entitled to be placed on the official agenda of a regular meeting of the commission and be heard concerning any matter within the scope of the jurisdiction of the Commission. Only Commissioners and the Village Manager may place a citizen on the official agenda. The deadline for placing a citizen on the agenda is noon on Monday of the week preceding the week of the meeting at which said citizen wishes to be heard. No action may be taken by the Commission on an item heard as a citizen's presentation unless two-thirds ( 2/3 ) of the members present deem that the issue requires immediate Commission action.

- (b) Public hearings. Any citizen shall be entitled to speak on any matter appearing on the official agenda under the section entitled "Public Hearings."
- (c) Public discussion on agenda items. No member of the public shall be entitled as a matter of right to address the Commission on any matter listed on or added to the official agenda which is not scheduled for citizen's presentations or a public hearing, except as provided herein.
- (3) Registration of speakers for public hearing items.

  - (a) The Village Clerk shall prepare appropriate sign-in sheets for public hearing items which should indicate the speaker's name, the public hearing item on which he or she is speaking, and whether he or she is speaking in favor of or against the proposed item.
  - (b) On the day of the Commission or committee meeting, a person desiring to speak shall sign in with the Village Clerk, at least fifteen (15) minutes prior to the commencement of the discussion on the public hearing item, at a registration table in the meeting chambers.
  - (c) Failure to comply with the registration provisions of this rule shall prohibit a person from speaking on any public hearing item for which he or she is not properly signed-in.
- (4) Addressing Commission, manner, time for public hearing items. Each person, other than salaried members of the Village staff, who addresses the Commission or a committee shall step up to a podium and shall give the following information in an audible tone of voice for the minutes:

  - (a) Name;
  - (b) Address;
  - (c) Whether the person speaks on his or her own behalf, a group of persons, or a third party; or if the person represents an organization; and whether the view expressed by the speaker represents an established policy of the organization approved by the board or governing council;
  - (d) Compensation, if any;
  - (e) Whether the person or any immediate family member has a personal financial interest in the pending matter, other than as set forth in (d).

Unless further time is granted by the Commission or committee, the statement on a public hearing item shall be limited to three (3) minutes. All remarks shall be addressed to the Commission or committee as a body and not to any member thereof. No person, other than Commissioners and the person having the floor,

shall be permitted to enter into any discussion, either directly or through a member of the Commission, without the permission of the Presiding Officer. No question shall be asked directly to a Commissioner except through the Presiding Officer.

(X) RULES OF DEBATE.

- (1) Questions under consideration. When a motion is presented and seconded, it is under consideration and no other motion shall be received thereafter, except to adjourn, to lay on the table, to postpone, or to amend until the question is decided. These motions shall have preference in the order in which they are mentioned and the first two (2) shall be decided without debate. Final action upon a pending motion may be deferred until a date certain by a majority of the members present.
- (2) As to the Presiding Officer. The Presiding Officer, upon relinquishing the chair, may move, second debate and vote, subject only to such limitations as are by these rules imposed upon all members.
- (3) Getting the floor, improper references to be avoided. Every member desiring to speak for any purpose shall address the Presiding Officer, and upon recognition, shall be confined to the question under debate, avoiding all personalities and indecorous language.
- (4) Interruption; call to order; appeal a ruling of the chair. A Commission member, once recognized, shall not be interrupted when speaking unless it be a call to order or as herein otherwise provided. If a member be called to order, the member shall cease speaking until the question of order be determined by the Presiding Officer, and if in order the member shall be permitted to proceed. Any member may appeal to the Commission from the decision of the Presiding Officer upon a question of order, when, without debate, the Presiding Officer shall submit to the Commission the question, "Shall the decision of the Chair be sustained?" and the Commission shall decide by a majority vote.
- (5) Privilege of closing debate. The Commissioner sponsoring or moving the adoption of an ordinance, resolution or motion shall have the privilege of closing the debate.
- (6) Method of voting. Voting shall be by machine, roll call, voice vote or paper ballot. Upon every roll call vote the names of the Commissioners shall be called alphabetically by surname, except that the names shall be rotated after each roll call vote, so that the Commissioner who voted first on a preceding roll call shall vote last upon the next subsequent matter; provided, however, that the Presiding Officer shall always cast the last vote. The clerk shall call the roll, tabulate the votes, and announce the results. The vote upon every ordinance shall be taken by roll call or machine vote. The vote upon any resolution, motion or other matter may be by

voice vote provided that the Presiding Officer or any Commissioner may require a roll call or machine vote to be taken upon any resolution or motion. Board appointments may be made by paper ballot which clearly identify the Commissioner voting.

- (7) Explanation of vote; conflicts of interest. Upon any roll call, there shall be no discussion by any commissioner voting, and the commissioner shall vote yes or no. Any commissioner, upon voting, may give a brief statement to explain his or her vote. A commissioner shall have the privilege of filing with the clerk a written explanation of his or her vote. Any commissioner with a conflict of interest on a particular matter shall: (1) announce publicly at the meeting the nature of the conflict before the matter is heard; (2) absent himself or herself from the commission chambers during that portion of the meeting when the matter is considered; and (3) file a written disclosure of the nature of the conflict with the Village Clerk consistent with state and local ethics rules. The filing of the State of Florida form prescribed for written disclosure of a voting conflict shall constitute compliance with this subsection. Any such Commissioner who does not leave the chambers shall be deemed absent for purposes of constituting a quorum, counting the vote, or for any other purpose.
- (8) Tie votes. Whenever action cannot be taken because the vote of the commissioners has resulted in a tie, and no other available motion on an item is made and approved before the next item is called for consideration or before a recess or adjournment is called, whichever occurs first, the item shall be carried over to the next regularly scheduled meeting for the consideration and Commission vote.
- (9) Vote change. Any Commissioner may change his or her vote before the next item is called for consideration, or before a recess or adjournment is called whichever occurs first but not thereafter.
- (10) No motion or second. If an agenda item fails to receive a motion or second, it shall be removed from the agenda and may only be reintroduced thereafter in accordance with the renewal provisions of this section.
- (11) Item Reconsideration. An action of the commission may be reconsidered only at the same meeting at which the action was taken or at the next regular meeting thereafter. A motion to reconsider may be made only by a Commissioner who voted on the prevailing side of the question and must be concurred in by a majority of those present at the meeting. A motion to reconsider an item resulting in a tie vote is not in order, and no such motion shall be reconsidered. A motion to reconsider shall not be considered unless at least the same number of commissioners is present as participated in the original vote, or upon affirmative supermajority vote of those commissioners present. Adoption of a motion to reconsider shall rescind the action reconsidered.

- (12) Renewal. Once action is taken on a proposed ordinance or resolution, neither the same matter nor its repeal or rescission may be brought before the Commission again during the six (6) month period following the said action, unless application for renewal is presented and approved by a supermajority vote of the Commissioners present. An application for renewal must be approved during a regular commission meeting prior to that item being placed on a meeting agenda.
- (13) Expiration of postponed items. Once an item before the Board is postponed indefinitely, and no action is taken by the Board on such item for a period of six (6) months following the latest postponement, such item shall be deemed withdrawn. Consideration of the matter covered under the item shall require the introduction of a new item.
- (14) Recess. Any Commission member may move for a recess during a pending meeting. The Presiding Officer has the authority to unilaterally declare a recess in the interests of security, safety, and/or order during Commission meetings.
- (15) Adjournment A motion to adjourn shall always be in order and decided without debate.
- (16) Suspension of the rules. No rule of procedure provided herein shall be suspended except by an affirmative supermajority vote of the Commissioners present.

**(X) CENSURE BY COMMISSION.**

- (1) Censure defined. Censure is a formal act by the Commission as a body, which publicly condemns and reprimands an individual or entity whose action runs counter to the Village's acceptable standards for behavior, civility, order, and decorum.
- (2) Authority to Censure; Procedure. The Village Commission may, as a body, censure any individual or entity by a supermajority vote of the Commission members present. No individual Commission member has the authority to unilaterally censure or otherwise publicly reprimand any individual or entity during a Commission meeting, or at any time whatsoever, on behalf of the Village of Biscayne Park. Any Commission censure must be memorialized in a signed written resolution detailing the conduct and basis for the censure.

888 F.2d 1328  
United States Court of Appeals,  
Eleventh Circuit.

Douglas M. JONES, Plaintiff–Appellee,

v.

Richard A. HEYMAN, Defendant–Appellant.

No. 88–5858.

|  
Nov. 22, 1989.

### Synopsis

Plaintiff brought action against mayor and city, claiming that mayor violated his First and Fourteenth Amendment rights when he was silenced and removed from a public hearing of the city commission. The United States District Court for the Southern District of Florida, No. 85–499–CIV–SM, Stanley Marcus, J., 679 F.Supp. 1547, awarded plaintiff compensatory and punitive damages, and defendants appealed. The Court of Appeals held that mayor's actions in attempting to confine speaker to agenda item in city commission meeting, and having speaker removed when speaker appeared to become disruptive, constituted a reasonable time, place and manner regulation, and did not violate speaker's First Amendment rights.

Reversed.

### Attorneys and Law Firms

\*1328 Michael T. Burke, Ft. Lauderdale, Fla., for defendant-appellant.

David P. Karcher, Miami, Fla., for plaintiff-appellee.

\*1329 Appeal from the United States District Court for the Southern District of Florida.

Before ANDERSON and COX, Circuit Judges, and BUTLER \*, District Judge.

### Opinion

PER CURIAM:

This appeal arises from an action that Douglas M. Jones, a citizen of the city of Key West, Florida, filed against Key

West's former mayor, Richard Heyman, and the City of Key West.<sup>1</sup> Jones claimed that the mayor and the city violated his First and Fourteenth Amendment rights when Jones was silenced and removed from a public meeting of the Key West City Commission. The district court agreed and awarded Jones compensatory and punitive damages. For the reasons set forth below, we reverse.

### I. BACKGROUND

On February 5, 1985, Jones attended a meeting of the Key West City Commission. As the mayor of the city, Heyman presided at the meeting. Although Jones was a member of the city's civil service board, Jones attended the meeting in his capacity as a private citizen. Jones had attended and voiced his opinion at many commission meetings in the past. On the evening in question, Jones complied with the customary procedure to be recognized to speak on an item on the agenda. He submitted his name and the topic on which he wished to speak—senior citizen discounts for garbage removal.

The meeting began at approximately 8:00 p.m. Two and one half hours later, the city commissioners turned to this topic, and the mayor recognized Jones' request to speak. Jones approached the podium, and began by criticizing the commission's general spending habits. The mayor quickly rebuked Jones, advising him to confine his comments to the topic at hand. Jones retorted in a raised voice: “Let me tell you something Mister, I am on the subject. If you can't stay germane in your mind, that's your problem, not mine.” At this point, Jones' attitude was decidedly antagonistic. The mayor warned Jones that any further outbursts would result in his removal from the meeting. Jones responded by saying, “I don't think you're big enough,” and the mayor ordered his expulsion.<sup>2</sup>

Jones was escorted out of the meeting by two city police officers, taken to a detaining room, and handcuffed to the wall. He was later released when the mayor told an officer he wanted Jones removed rather than arrested. Although advised by the police officers not to reenter the commissioners' meeting, which was still continuing, Jones attempted to do so. He was then handcuffed again and taken back to the detaining room. There is no evidence that the mayor caused Jones to be handcuffed or arrested. At the time, Jones was charged with violating

City Ordinance 85-1<sup>3</sup>, which prohibits conduct intended to \*1330 disrupt city commission meetings.<sup>4</sup>

Key West City Commission meetings are broadcast live in the city and surrounding county. Area television viewers thus witnessed both the verbal exchange between Jones and the mayor and Jones' subsequent expulsion from the room. The incident was re-televised several times after the initial broadcast and publicized by the local newspaper and radio stations. Jones testified that both the incident and the surrounding publicity embarrassed his family and caused his business to decline.

Jones filed suit against the mayor and the City of Key West for a violation of 42 U.S.C.A. § 1983 (1981), alleging that his removal from the meeting constituted a deprivation of his rights under the First and Fourteenth amendments. Jones also sought a declaratory judgment invalidating Ordinance 85-1 as unconstitutionally vague and overbroad, and a permanent injunction barring its enforcement. The city and the mayor answered that Jones was removed from the meeting for creating a disturbance in violation of the ordinance and that the mayor had acted in good faith and under the reasonable belief that this ordinance was constitutional. The mayor also asserted that his decision to remove Jones was protected by the qualified immunity doctrine because the mayor did not violate Jones' clearly established First Amendment rights.

Following a bench trial, the district court held that the mayor had silenced Jones based on the content of his comments and thus deprived him of his First Amendment right of free speech. The court examined the manner and content of Jones' "challenge" to the mayor—"I don't think you're big enough"—and concluded it was neither sufficiently violent or provocative to constitute "fighting words" outside the scope of First Amendment protection. Although noting its lack of clarity, the court declined to pronounce Ordinance 85-1 void for vagueness or unconstitutionally overbroad. The court then rejected the mayor's qualified immunity defense. Based on Jones' testimony as to the emotional and economic injury he suffered from the incident, the court awarded Jones compensatory damages of \$31,500. The district court also found that the mayor's actions had "evinced callous indifference to the Plaintiff's first amendment rights," and ordered that the mayor pay \$31,500 in punitive damages.<sup>5</sup>

*Jones v. City of Key West, Fla.*, 679 F.Supp. 1547, 1563 (S.D.Fla.1988).

The mayor presents three issues on appeal.<sup>6</sup> First, he challenges the district court's ruling that his actions impermissibly deprived Jones of his freedom of speech. Second, he contends he is entitled to qualified immunity for his discretionary decision to remove Jones from the meeting. Third, the mayor argues that the award of punitive damages is unsupported by the law and the evidence of the case. Because we reverse on the first issue, we need not address the mayor's second and third contentions.

## II. DISCUSSION

We initially note that we must conduct a de novo review of the evidence in the record and independently determine whether Jones' First Amendment rights have been violated. "In reviewing findings of fact in first amendment cases, this Court must make an 'independent examination of the whole record,' rather than relying solely \*1331 on the 'clearly erroneous' standard." *McMullen v. Carson*, 754 F.2d 936, 938 (11th Cir.1985) (citing *Bose Corp. v. Consumers Union*, 466 U.S. 485, 104 S.Ct. 1949, 1958, 80 L.Ed.2d 502 (1984); *New York Times v. Sullivan*, 376 U.S. 254, 284-86, 84 S.Ct. 710, 728-29, 11 L.Ed.2d 686 (1964)). The facts in this case are essentially undisputed. We conclude that Jones has not demonstrated that the mayor's actions abridged his freedom of speech within the meaning of the First Amendment.

The freedom of expression protected by the First Amendment is not inviolate; the Supreme Court has established that the First Amendment does not guarantee persons the right to communicate their views "at all times or in any manner that may be desired." *Heffron v. International Soc'y. for Krishna Consciousness*, 452 U.S. 640, 647, 101 S.Ct. 2559, 2564, 69 L.Ed.2d 298 (1981); *Adderley v. Florida*, 385 U.S. 39, 48, 87 S.Ct. 242, 246, 17 L.Ed.2d 149 (1966). Accordingly, in evaluating a citizen's right to express his opinion on public property, the Court has established certain boundaries within which it balances a citizen's First Amendment rights and the government's interest in limiting the use of its property. In a traditional public forum, such as a park or a street, the government's power to limit expressive activity is severely curtailed:

“For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.... The State may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”

*Airport Comm'rs. of Los Angeles v. Jews for Jesus*, 482 U.S. 569, 573, 107 S.Ct. 2568, 2571, 96 L.Ed.2d 500 (1987) (quoting *Perry Educ. Ass'n. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45, 103 S.Ct. 948, 955, 74 L.Ed.2d 794 (1983)). The same analysis applies to speech on property which is not a traditional public forum, but which has been intentionally designated a public forum for a certain time period.<sup>7</sup> In a nonpublic forum, however, the government may limit expressive activity with less exacting scrutiny by the courts. Such regulations are upheld in a nonpublic forum if they are reasonable and not merely the result of disagreement with the speaker's point of view. *Jews for Jesus*, 482 U.S. at 573, 107 S.Ct. at 2571; *Cornelius v. NAACP Legal Defense and Educ. Fund*, 473 U.S. 788, 806, 105 S.Ct. 3439, 3451, 87 L.Ed.2d 567 (1985); *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 812, 104 S.Ct. 2118, 2133, 80 L.Ed.2d 772 (1984).

We agree with the district court that the city commission designated their meeting a public forum when the commission intentionally opened it to the public and permitted public discourse on agenda items.<sup>8</sup> As noted by the district court, although the commission need not have created this forum in the first place, once it did so, the commission became bound by the same standards that apply in the case of a traditional public forum. Content-neutral time, place and manner restrictions are permissible if they are narrowly drawn to achieve a significant governmental interest and if they allow communication through other channels. Content-based exclusions must be narrowly tailored to effectuate

a compelling governmental interest. We address each question separately.

#### A. Content

The government's purpose in limiting one's speech in a public forum constitutes the “controlling consideration” in determining \*1332 content neutrality. *Ward v. Rock Against Racism*, 491 U.S. 781, —, 109 S.Ct. 2746, 2754, 105 L.Ed.2d 661 (1989). Even if a limitation on speech incidentally affects only some speakers, “[a] regulation that serves purposes unrelated to the content of expression is deemed neutral.... Government regulation of expressive activity is content-neutral so long as it is ‘justified without reference to the content of the regulated speech.’ ” *Id.* at —, 109 S.Ct. at 2754 (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 3069, 82 L.Ed.2d 221 (1984)).

The district court found that Jones had complied with the time, place and manner restrictions imposed on the meeting and was silenced because of the content of his speech. We disagree. In our opinion, the mayor's actions resulted not from disapproval of Jones' message but from Jones' disruptive conduct and failure to adhere to the agenda item under discussion. Jones began by admonishing the commission to act more prudently in its spending habits, particularly with respect to its spending on waste disposal. The commissioners' general fiscal habits were *not* the topic of debate, however, and the mayor quickly directed Jones to speak only on the relevant issue. Jones' retort—that his comments were germane and that it was the mayor's “problem” if he failed to recognize this—was also irrelevant, and Jones was warned that any further outbursts would result in his removal. Jones responded, “I don't think you're big enough,” and was expelled. The substance of Jones' views on the agenda item was thus never expressed. We decline to rule that his expulsion was based on disapproval of the content of his opinion in view of this fact.

One could reasonably infer from both Jones' opening comment and his mannerisms that his opinion would be critical of the commission's actions. In this sense, the mayor could have disapproved of the content of Jones' message. However, we also realize and emphasize that we necessarily must view this brief incident from hindsight, and we are hesitant to speculate about the mayor's exact mindset at the moment he ordered Jones' removal. The mayor testified at trial that he perceived that Jones'

disruptive behavior would worsen if ignored, that Jones presented a possible threat of violence to the commission, and that Jones was questioning the mayor's authority to preside over the session. In view of this testimony and the plain fact that Jones did fail to address the subject of senior citizen discounts, we conclude that Jones has not demonstrated that the mayor's actions resulted from disapproval of Jones' message rather than from the need to continue the orderly progression of an already lengthy commission meeting.

#### B. Significant Governmental Interest

A valid time, place and manner regulation must be “narrowly tailored to serve a significant governmental interest.” The Supreme Court has recognized the significance of the government's interest in conducting orderly, efficient meetings of public bodies. In *City of Madison, Joint School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976), a case considered persuasive by the district court, a teachers' union charged that the school board had committed a prohibited labor practice in allowing a non-union teacher to speak on a matter subject to collective bargaining at an open school board meeting. The Supreme Court held that the First Amendment permitted teachers to speak at public meetings of the school board, even if they are not union representatives and even if “such speech is addressed to the subject of pending collective-bargaining negotiations.” *Id.* at 169, 97 S.Ct. at 423. The Court deemed the union's attempt to limit “participation in public discussion of public business ... to one category of interested individuals” the “antithesis of [the] constitutional guarantees.” *Id.* at 175–76, 97 S.Ct. at 426. The Court qualified its broad language, however, with this relevant statement: “Plainly, public bodies may confine their meetings to specified subject matter and may hold nonpublic sessions to transact business.” *Id.* at 176 n. \*1333 8, 97 S.Ct. at 426 n. 8 (emphasis added). Justice Stewart discussed this qualification in his concurrence:

A public body that may make decisions in private has broad authority to structure the discussion of matters that it chooses to open to the public. Such a body surely is not prohibited from limiting discussion

at public meetings to those subjects that it believes will be illuminated by the views of others and in trying to best serve its informational needs while rationing its time.

*Id.* at 180, 97 S.Ct. at 427 (Stewart, J., concurring).

We believe this reasoning controls the instant case and consider the mayor's interest in controlling the agenda and preventing the disruption of the commission meeting sufficiently significant to satisfy this governmental interest prong of the analysis. Unlike the situation in *City of Madison*, the mayor was not attempting to limit the discussion to one category of interested individuals. The topic of senior citizen discounts arose at 10:30 p.m., approximately two and one half hours after the meeting began. Although Jones was the only member of the public scheduled to speak on this subject,<sup>9</sup> and although the record does not reveal the number of topics covered in any one commission meeting, we feel that the mayor certainly had an important interest in confining Jones to the topic at hand and in preventing disruption of the meeting. To hold otherwise—to deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting—would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions.

The Eighth Circuit's opinion in *Wright v. Anthony*, 733 F.2d 575 (8th Cir.1984), comports with our reasoning. In *Wright* the plaintiff claimed a violation of his First Amendment rights when a congressman silenced him at a public hearing on social security reform. The plaintiff had been given informal notice to limit his presentation to five minutes; the plaintiff had finished only half of this presentation when he exceeded this time limit and was interrupted. The Eighth Circuit affirmed the district court's dismissal of the plaintiff's complaint, holding that the congressman's actions constituted a reasonable attempt to regulate the time, place and manner of the plaintiff's speech. The court recognized the significance of the congressman's interest in running the meeting, stating: “[T]he [time, place and manner] restriction may be said to have served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak.” *Id.* at 577.

### C. Narrowly Tailored Means

The mayor's actions must also be narrowly tailored to achieve this interest. As recently clarified by the Supreme Court, the means adopted by the government need not be the least-intrusive or least-restrictive means to satisfy this prong of the analysis. Instead, “the requirement of narrow tailoring is satisfied ‘so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.’ ” *Rock Against Racism*, 491 U.S. at —, 109 S.Ct. at 2758 (quoting *United States v. Albertini*, 472 U.S. 675, 689, 105 S.Ct. 2897, 2906, 86 L.Ed.2d 536 (1985)). The analysis does not hinge on the “ ‘judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests’ or the degree to which those interests should be promoted.” *Rock Against Racism*, 491 U.S. at —, 109 S.Ct. at 2758 (quoting *Albertini*, 472 U.S. at 689, 105 S.Ct. at 2906).

The district court found that Jones was “quite clearly *laying the groundwork* for a presentation focusing on the senior citizen discount issue.” 679 F.Supp. at 1547 (emphasis added). The court apparently opined that Jones had not wandered far from the subject of the agenda item and \*1334 that if left alone, Jones would immediately proceed to it. We could agree. It is also possible, however, that Jones would have continued to wander from the subject in question and unduly prolong the meeting. This is a judgment call that a presiding officer and parliamentarian must make without the benefit of leisure reflection. *Rock Against Racism* instructs us that

our agreement with the mayor concerning the most appropriate method of conducting the meeting is not the test. An erroneous judgment call on the part of a presiding officer does not automatically give rise to liability for a constitutional tort. The mayor's actions in this case constituted a reasonable attempt to confine the speaker to the agenda item in question, and that conclusion should end the inquiry. We should not inquire whether we as presiding officers would have handled the matter in the same way.

### D. Alternative Channels of Communication

The last requirement, that there remain ample alternative channels of communication, is easily satisfied in this case. The mayor testified at trial that the city commission provided for public discussion of non-agenda items at the end of every meeting. If Jones wanted to discuss the general fiscal responsibility of the commission or some other non-agenda item, he would have only had to wait until the end of the meeting, which was approximately one half hour from the time Jones took the podium.

We thus conclude that the mayor acted reasonably in regulating the time, place and manner of Jones' speech. Accordingly, the judgment of the district court is REVERSED.

### All Citations

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### Footnotes

- \* Honorable Charles R. Butler, U.S. District Judge for the Southern District of Alabama, sitting by designation.
- 1 The City of Key West, initially an appellant, has dismissed its appeal and is no longer a party in this action.
- 2 This entire incident was recorded on video tape; this tape forms part of the record on review. For a verbatim transcript of the entire exchange, see the district court's opinion at 679 F.Supp. 1547, 1550–51.
- 3 More specifically, Ordinance No. 85–1 provides in relevant part:
- Section 1:* It shall be unlawful for any person to disturb or interrupt any meeting of the City Commission. The use of obscene or profane language, physical violence or the threat thereof, or other loud and boisterous behavior which the presiding officer or a majority of the commission shall determine is intended as a disruption of the meeting and a failure to comply with any lawful decision or order of the presiding officer or of a majority of the City Commission shall constitute a disturbance.

*Section 3:* Any person violating the provisions of this Ordinance may be ejected from the Commission Chambers or other meeting room for the duration of the meeting or such lesser period as the presiding officer or a majority of the commission shall determine. Any decision of the presiding officer hereunder shall be subject to appeal pursuant to Robert's Rules of Order and the by-laws of the Commission.

This ordinance was drafted by the city attorney and enacted only one month prior to this incident.

- 4 Prior to Jones' suit in the district court, this criminal charge was tried in the County Court in and for Monroe County. After a one and one-half day jury trial, Jones was pronounced not guilty of violating the ordinance.
- 5 In an order dated January 22, 1986, the district court dismissed Jones' claim for punitive damages against the city. The court thus considered the question of punitive damages only against the mayor.
- 6 Jones does not challenge by cross-appeal the district court's refusal to pronounce Ordinance 85–1 void for vagueness or unconstitutionally overbroad.
- The mayor's fourth ground of appeal, which challenged the district court's award of compensatory damages, was rendered moot by the settlement between the city and Jones and eliminated from appellate review.
- 7 Examples of public forums created by governmental designation include a university's meeting facilities, *Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981); a municipal theater, *Southeastern Promotions Ltd. v. Conrad*, 420 U.S. 546, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975); and a school board meeting, *City of Madison Joint School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976). See *Perry Educ. Ass'n*, 460 U.S. at 45, 103 S.Ct. at 955.
- 8 The parties apparently don't dispute this conclusion, for neither party contends otherwise.
- 9 The mayor testified that when an agenda item was a controversial one—one that many persons wanted to address—speakers were generally allotted two or three minutes apiece. The subject of senior citizen discounts was not such a topic, and Jones was not silenced because he exceeded this pre-set time limitation.

888 F.2d 1328  
United States Court of Appeals,  
Eleventh Circuit.

Douglas M. JONES, Plaintiff–Appellee,

v.

Richard A. HEYMAN, Defendant–Appellant.

No. 88–5858.

|  
Nov. 22, 1989.

### Synopsis

Plaintiff brought action against mayor and city, claiming that mayor violated his First and Fourteenth Amendment rights when he was silenced and removed from a public hearing of the city commission. The United States District Court for the Southern District of Florida, No. 85–499–CIV–SM, Stanley Marcus, J., 679 F.Supp. 1547, awarded plaintiff compensatory and punitive damages, and defendants appealed. The Court of Appeals held that mayor's actions in attempting to confine speaker to agenda item in city commission meeting, and having speaker removed when speaker appeared to become disruptive, constituted a reasonable time, place and manner regulation, and did not violate speaker's First Amendment rights.

Reversed.

### Attorneys and Law Firms

\*1328 Michael T. Burke, Ft. Lauderdale, Fla., for defendant-appellant.

David P. Karcher, Miami, Fla., for plaintiff-appellee.

\*1329 Appeal from the United States District Court for the Southern District of Florida.

Before ANDERSON and COX, Circuit Judges, and BUTLER \*, District Judge.

### Opinion

PER CURIAM:

This appeal arises from an action that Douglas M. Jones, a citizen of the city of Key West, Florida, filed against Key

West's former mayor, Richard Heyman, and the City of Key West.<sup>1</sup> Jones claimed that the mayor and the city violated his First and Fourteenth Amendment rights when Jones was silenced and removed from a public meeting of the Key West City Commission. The district court agreed and awarded Jones compensatory and punitive damages. For the reasons set forth below, we reverse.

### I. BACKGROUND

On February 5, 1985, Jones attended a meeting of the Key West City Commission. As the mayor of the city, Heyman presided at the meeting. Although Jones was a member of the city's civil service board, Jones attended the meeting in his capacity as a private citizen. Jones had attended and voiced his opinion at many commission meetings in the past. On the evening in question, Jones complied with the customary procedure to be recognized to speak on an item on the agenda. He submitted his name and the topic on which he wished to speak—senior citizen discounts for garbage removal.

The meeting began at approximately 8:00 p.m. Two and one half hours later, the city commissioners turned to this topic, and the mayor recognized Jones' request to speak. Jones approached the podium, and began by criticizing the commission's general spending habits. The mayor quickly rebuked Jones, advising him to confine his comments to the topic at hand. Jones retorted in a raised voice: “Let me tell you something Mister, I am on the subject. If you can't stay germane in your mind, that's your problem, not mine.” At this point, Jones' attitude was decidedly antagonistic. The mayor warned Jones that any further outbursts would result in his removal from the meeting. Jones responded by saying, “I don't think you're big enough,” and the mayor ordered his expulsion.<sup>2</sup>

Jones was escorted out of the meeting by two city police officers, taken to a detaining room, and handcuffed to the wall. He was later released when the mayor told an officer he wanted Jones removed rather than arrested. Although advised by the police officers not to reenter the commissioners' meeting, which was still continuing, Jones attempted to do so. He was then handcuffed again and taken back to the detaining room. There is no evidence that the mayor caused Jones to be handcuffed or arrested. At the time, Jones was charged with violating

City Ordinance 85-1<sup>3</sup>, which prohibits conduct intended to \*1330 disrupt city commission meetings.<sup>4</sup>

Key West City Commission meetings are broadcast live in the city and surrounding county. Area television viewers thus witnessed both the verbal exchange between Jones and the mayor and Jones' subsequent expulsion from the room. The incident was re-televised several times after the initial broadcast and publicized by the local newspaper and radio stations. Jones testified that both the incident and the surrounding publicity embarrassed his family and caused his business to decline.

Jones filed suit against the mayor and the City of Key West for a violation of 42 U.S.C.A. § 1983 (1981), alleging that his removal from the meeting constituted a deprivation of his rights under the First and Fourteenth amendments. Jones also sought a declaratory judgment invalidating Ordinance 85-1 as unconstitutionally vague and overbroad, and a permanent injunction barring its enforcement. The city and the mayor answered that Jones was removed from the meeting for creating a disturbance in violation of the ordinance and that the mayor had acted in good faith and under the reasonable belief that this ordinance was constitutional. The mayor also asserted that his decision to remove Jones was protected by the qualified immunity doctrine because the mayor did not violate Jones' clearly established First Amendment rights.

Following a bench trial, the district court held that the mayor had silenced Jones based on the content of his comments and thus deprived him of his First Amendment right of free speech. The court examined the manner and content of Jones' "challenge" to the mayor—"I don't think you're big enough"—and concluded it was neither sufficiently violent or provocative to constitute "fighting words" outside the scope of First Amendment protection. Although noting its lack of clarity, the court declined to pronounce Ordinance 85-1 void for vagueness or unconstitutionally overbroad. The court then rejected the mayor's qualified immunity defense. Based on Jones' testimony as to the emotional and economic injury he suffered from the incident, the court awarded Jones compensatory damages of \$31,500. The district court also found that the mayor's actions had "evinced callous indifference to the Plaintiff's first amendment rights," and ordered that the mayor pay \$31,500 in punitive damages.<sup>5</sup>

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The mayor presents three issues on appeal.<sup>6</sup> First, he challenges the district court's ruling that his actions impermissibly deprived Jones of his freedom of speech. Second, he contends he is entitled to qualified immunity for his discretionary decision to remove Jones from the meeting. Third, the mayor argues that the award of punitive damages is unsupported by the law and the evidence of the case. Because we reverse on the first issue, we need not address the mayor's second and third contentions.

## II. DISCUSSION

We initially note that we must conduct a de novo review of the evidence in the record and independently determine whether Jones' First Amendment rights have been violated. "In reviewing findings of fact in first amendment cases, this Court must make an 'independent examination of the whole record,' rather than relying solely \*1331 on the 'clearly erroneous' standard." *McMullen v. Carson*, 754 F.2d 936, 938 (11th Cir.1985) (citing *Bose Corp. v. Consumers Union*, 466 U.S. 485, 104 S.Ct. 1949, 1958, 80 L.Ed.2d 502 (1984); *New York Times v. Sullivan*, 376 U.S. 254, 284-86, 84 S.Ct. 710, 728-29, 11 L.Ed.2d 686 (1964)). The facts in this case are essentially undisputed. We conclude that Jones has not demonstrated that the mayor's actions abridged his freedom of speech within the meaning of the First Amendment.

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disruptive behavior would worsen if ignored, that Jones presented a possible threat of violence to the commission, and that Jones was questioning the mayor's authority to preside over the session. In view of this testimony and the plain fact that Jones did fail to address the subject of senior citizen discounts, we conclude that Jones has not demonstrated that the mayor's actions resulted from disapproval of Jones' message rather than from the need to continue the orderly progression of an already lengthy commission meeting.

#### B. Significant Governmental Interest

A valid time, place and manner regulation must be “narrowly tailored to serve a significant governmental interest.” The Supreme Court has recognized the significance of the government's interest in conducting orderly, efficient meetings of public bodies. In *City of Madison, Joint School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976), a case considered persuasive by the district court, a teachers' union charged that the school board had committed a prohibited labor practice in allowing a non-union teacher to speak on a matter subject to collective bargaining at an open school board meeting. The Supreme Court held that the First Amendment permitted teachers to speak at public meetings of the school board, even if they are not union representatives and even if “such speech is addressed to the subject of pending collective-bargaining negotiations.” *Id.* at 169, 97 S.Ct. at 423. The Court deemed the union's attempt to limit “participation in public discussion of public business ... to one category of interested individuals” the “antithesis of [the] constitutional guarantees.” *Id.* at 175–76, 97 S.Ct. at 426. The Court qualified its broad language, however, with this relevant statement: “Plainly, public bodies may confine their meetings to specified subject matter and may hold nonpublic sessions to transact business.” *Id.* at 176 n. \*1333 8, 97 S.Ct. at 426 n. 8 (emphasis added). Justice Stewart discussed this qualification in his concurrence:

A public body that may make decisions in private has broad authority to structure the discussion of matters that it chooses to open to the public. Such a body surely is not prohibited from limiting discussion

at public meetings to those subjects that it believes will be illuminated by the views of others and in trying to best serve its informational needs while rationing its time.

*Id.* at 180, 97 S.Ct. at 427 (Stewart, J., concurring).

We believe this reasoning controls the instant case and consider the mayor's interest in controlling the agenda and preventing the disruption of the commission meeting sufficiently significant to satisfy this governmental interest prong of the analysis. Unlike the situation in *City of Madison*, the mayor was not attempting to limit the discussion to one category of interested individuals. The topic of senior citizen discounts arose at 10:30 p.m., approximately two and one half hours after the meeting began. Although Jones was the only member of the public scheduled to speak on this subject,<sup>9</sup> and although the record does not reveal the number of topics covered in any one commission meeting, we feel that the mayor certainly had an important interest in confining Jones to the topic at hand and in preventing disruption of the meeting. To hold otherwise—to deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting—would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions.

The Eighth Circuit's opinion in *Wright v. Anthony*, 733 F.2d 575 (8th Cir.1984), comports with our reasoning. In *Wright* the plaintiff claimed a violation of his First Amendment rights when a congressman silenced him at a public hearing on social security reform. The plaintiff had been given informal notice to limit his presentation to five minutes; the plaintiff had finished only half of this presentation when he exceeded this time limit and was interrupted. The Eighth Circuit affirmed the district court's dismissal of the plaintiff's complaint, holding that the congressman's actions constituted a reasonable attempt to regulate the time, place and manner of the plaintiff's speech. The court recognized the significance of the congressman's interest in running the meeting, stating: “[T]he [time, place and manner] restriction may be said to have served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak.” *Id.* at 577.

### C. Narrowly Tailored Means

The mayor's actions must also be narrowly tailored to achieve this interest. As recently clarified by the Supreme Court, the means adopted by the government need not be the least-intrusive or least-restrictive means to satisfy this prong of the analysis. Instead, “the requirement of narrow tailoring is satisfied ‘so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.’ ” *Rock Against Racism*, 491 U.S. at —, 109 S.Ct. at 2758 (quoting *United States v. Albertini*, 472 U.S. 675, 689, 105 S.Ct. 2897, 2906, 86 L.Ed.2d 536 (1985)). The analysis does not hinge on the “ ‘judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests’ or the degree to which those interests should be promoted.” *Rock Against Racism*, 491 U.S. at —, 109 S.Ct. at 2758 (quoting *Albertini*, 472 U.S. at 689, 105 S.Ct. at 2906).

The district court found that Jones was “quite clearly *laying the groundwork* for a presentation focusing on the senior citizen discount issue.” 679 F.Supp. at 1547 (emphasis added). The court apparently opined that Jones had not wandered far from the subject of the agenda item and \*1334 that if left alone, Jones would immediately proceed to it. We could agree. It is also possible, however, that Jones would have continued to wander from the subject in question and unduly prolong the meeting. This is a judgment call that a presiding officer and parliamentarian must make without the benefit of leisure reflection. *Rock Against Racism* instructs us that

our agreement with the mayor concerning the most appropriate method of conducting the meeting is not the test. An erroneous judgment call on the part of a presiding officer does not automatically give rise to liability for a constitutional tort. The mayor's actions in this case constituted a reasonable attempt to confine the speaker to the agenda item in question, and that conclusion should end the inquiry. We should not inquire whether we as presiding officers would have handled the matter in the same way.

### D. Alternative Channels of Communication

The last requirement, that there remain ample alternative channels of communication, is easily satisfied in this case. The mayor testified at trial that the city commission provided for public discussion of non-agenda items at the end of every meeting. If Jones wanted to discuss the general fiscal responsibility of the commission or some other non-agenda item, he would have only had to wait until the end of the meeting, which was approximately one half hour from the time Jones took the podium.

We thus conclude that the mayor acted reasonably in regulating the time, place and manner of Jones' speech. Accordingly, the judgment of the district court is REVERSED.

### All Citations

888 F.2d 1328

### Footnotes

- \* Honorable Charles R. Butler, U.S. District Judge for the Southern District of Alabama, sitting by designation.
- 1 The City of Key West, initially an appellant, has dismissed its appeal and is no longer a party in this action.
- 2 This entire incident was recorded on video tape; this tape forms part of the record on review. For a verbatim transcript of the entire exchange, see the district court's opinion at 679 F.Supp. 1547, 1550–51.
- 3 More specifically, Ordinance No. 85–1 provides in relevant part:
- Section 1:* It shall be unlawful for any person to disturb or interrupt any meeting of the City Commission. The use of obscene or profane language, physical violence or the threat thereof, or other loud and boisterous behavior which the presiding officer or a majority of the commission shall determine is intended as a disruption of the meeting and a failure to comply with any lawful decision or order of the presiding officer or of a majority of the City Commission shall constitute a disturbance.

*Section 3:* Any person violating the provisions of this Ordinance may be ejected from the Commission Chambers or other meeting room for the duration of the meeting or such lesser period as the presiding officer or a majority of the commission shall determine. Any decision of the presiding officer hereunder shall be subject to appeal pursuant to Robert's Rules of Order and the by-laws of the Commission.

This ordinance was drafted by the city attorney and enacted only one month prior to this incident.

- 4 Prior to Jones' suit in the district court, this criminal charge was tried in the County Court in and for Monroe County. After a one and one-half day jury trial, Jones was pronounced not guilty of violating the ordinance.
- 5 In an order dated January 22, 1986, the district court dismissed Jones' claim for punitive damages against the city. The court thus considered the question of punitive damages only against the mayor.
- 6 Jones does not challenge by cross-appeal the district court's refusal to pronounce Ordinance 85–1 void for vagueness or unconstitutionally overbroad. The mayor's fourth ground of appeal, which challenged the district court's award of compensatory damages, was rendered moot by the settlement between the city and Jones and eliminated from appellate review.
- 7 Examples of public forums created by governmental designation include a university's meeting facilities, *Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981); a municipal theater, *Southeastern Promotions Ltd. v. Conrad*, 420 U.S. 546, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975); and a school board meeting, *City of Madison Joint School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976). See *Perry Educ. Ass'n*, 460 U.S. at 45, 103 S.Ct. at 955.
- 8 The parties apparently don't dispute this conclusion, for neither party contends otherwise.
- 9 The mayor testified that when an agenda item was a controversial one—one that many persons wanted to address—speakers were generally allotted two or three minutes apiece. The subject of senior citizen discounts was not such a topic, and Jones was not silenced because he exceeded this pre-set time limitation.

348 Fed.Appx. 474

This case was not selected for publication in the Federal Reporter. Not for Publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Eleventh Circuit Rules 36-2, 36-3. (Find CTA11 Rule 36-2 and Find CTA11 Rule 36-3) United States Court of Appeals, Eleventh Circuit.

Sherman Lynell THOMAS, Plaintiff–Appellant,

v.

Boyd W. HOWZE, Jr., et al., Defendants, City of Apalachicola, Defendant–Appellee.

No. 08–16782

|

Non–Argument Calendar.

|

Oct. 6, 2009.

**Synopsis**

**Background:** Citizen, proceeding pro se, brought civil rights action against Florida city under § 1983. The United States District Court for the Northern District of Florida granted summary judgment in favor of city.

**Holdings:** The Court of Appeals held that:

city did not violate citizen's First Amendment rights by refusing to allow him to maintain structure on city property;

city did not violate citizen's First Amendment rights by refusing to place him on city commission meeting agenda;

city did not violate citizen's Fourteenth Amendment right to equal protection by towing his vehicle; and

district court did not abuse its discretion by imposing sanctions for discovery violation.

Affirmed.

**Attorneys and Law Firms**

\*476 Sherman Lynell Thomas, Apalachicola, FL, pro se.

Gwendolyn Palmer Adkins, Michelle Leigh Buckalew, Cooper, Monroe, Adkins, Dincman & Spellman, Tallahassee, FL, for Defendant–Appellee.

Appeal from the United States District Court for the Northern District of Florida. D.C. Docket No. 07–00357–CV–4–RH–WCS.

Before BIRCH, HULL and MARCUS, Circuit Judges.

**Opinion**

PER CURIAM:

\*\*1 Sherman Lynell Thomas, proceeding pro se, appeals the district court's order granting summary judgment in favor of the City of Apalachicola (the “City”) in his civil rights action under 42 U.S.C. § 1983. On appeal, Thomas argues that the district court: (1) erred in granting summary judgment on his claim that the City violated his First Amendment rights by refusing to allow him to maintain a structure on City property; (2) erred in granting summary judgment on his claim that the City violated his First Amendment rights by refusing to place him on a city commission meeting agenda; (3) erred in granting summary judgment on his claim that the City violated his Fourteenth Amendment right to equal protection by towing his vehicle; and (4) abused its discretion by imposing sanctions for a discovery violation. After careful review, we affirm.

We review a district court's grant of summary judgment de novo, considering all evidence and reasonable inferences drawn therefrom in the light most favorable to the non-movant. *Ellis v. England*, 432 F.3d 1321, 1325 (11th Cir.2005). Under Fed.R.Civ.P. 56(c), summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Because standing is a necessary component of this Court's jurisdiction to hear cases and controversies under Article III, we must address the matter first “without deference to the district court's legal conclusions.” *ACLU of Fla., Inc. v. Miami–Dade County Sch. Bd.*, 557 F.3d 1177, 1190 (11th

Cir.2009), *petition for cert.* filed, (U.S. June 18, 2009) (No. 08–1564). We review the imposition of a discovery sanction under Fed.R.Civ.P. 37 “for an abuse of discretion and a determination that the findings of the trial court are fully supported by the record.” *BankAtlantic v. Blythe Eastman Paine Webber, Inc.*, 12 F.3d 1045, 1048 (11th Cir.1994).

First, we find no merit in Thomas's argument that the district court erred by granting summary judgment on his claim that the City violated his First Amendment rights by refusing to allow him to \*477 maintain a structure on City property.<sup>1</sup> “The validity of restrictions on protected First Amendment expression depends upon the type of speech and the type of forum being regulated.” *Gold Coast Publ'ns, Inc. v. Corrigan*, 42 F.3d 1336, 1344 (11th Cir.1994). “Traditional public fora are places which by long tradition or by government fiat have been devoted to assembly and debate.” *Id.* (quotations omitted). “Streets and parks have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Id.* (quotations omitted). Where a limitation on the time, place, or manner of expression in traditional public fora is content-neutral—meaning that no distinction is made based on content—it must be “narrowly tailored to serve a significant government interest” and provide “ample alternative channels of communication.” *Id.* (quotations omitted).

\*\*2 Here, Ordinance No. 61–4 provides that “[n]o person shall erect, construct, place or maintain any obstruction or encroachments whatever on the streets, alleys or sidewalks of the City except where a permit has been issued by the City permitting the same.” Since Ordinance 61–4 expressly regulates *all* structures “on the streets, alleys or sidewalks of the City”—areas that are typically considered public fora within the meaning of the First Amendment, *see id.*—it is a content-neutral regulation that must be narrowly tailored to serve a significant government interest and provide ample alternative channels of communication. *See id.*

The record shows that Ordinance 61–4 serves the City's significant interest in the public's health, safety and general welfare by preventing the encroachment of \*478 structures on City property, and by protecting the public from any hazardous structures or materials placed on City property. *See Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta*, 219 F.3d 1301, 1318 (11th Cir.2000) (“To demonstrate the significance of its interest, the City is not

required to present detailed evidence ..., [but] is entitled to advance its interests by arguments based on appeals to common sense and logic.”) (quotations omitted); *see also id. at 1319* (“[M]unicipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for the movement of people and property, the primary purpose to which the streets are dedicated.”) (quotations omitted). Further, the Ordinance is narrowly tailored by providing a permitting process to vet whether structures built on City-owned property are in the interest of the public's health, safety and general welfare. *See Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir.1989) (“the means adopted by the government need not be the least-intrusive or least-restrictive ... so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation”). Finally, the Ordinance allows structures to be built with proper permitting, and does not target other forms of speech, which indicates that adequate alternative avenues of communication remain open. *See Ward v. Rock Against Racism*, 491 U.S. 781, 802, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989) (“That the city's limitations on volume may reduce to some degree the potential audience for respondent's speech is of no consequence, for there has been no showing that the remaining avenues of communication are inadequate.”). Because Thomas has failed to dispute that Ordinance 61–4 is narrowly tailored to serve a significant government interest and provides ample alternative channels of communication, the district court did not err in granting summary judgment on this First Amendment claim.<sup>2</sup>

We are likewise unpersuaded by Thomas's argument that the district court erred by granting summary judgment on his claim that the City violated his First Amendment rights by refusing to place him on the agenda for a city commission meeting. Speech at city commission meetings may be restricted to specified subject matter. *Rowe v. City of Cocoa, Fla.*, 358 F.3d 800, 802 (11th Cir.2004). In other words, city commission meetings are “limited public fora,” and “the government may restrict access ... by content-neutral conditions for the time, place, and manner of access, all of which must be narrowly tailored to serve a significant government interest.” *Id. at 802–03* (quotations omitted). “There is a significant governmental interest in conducting orderly, efficient meetings of public bodies,” and “[o]ne recognized way to conduct orderly, efficient meetings ... is for public bodies, such as a city council, to confine their meetings to specified subject matter.” *Id. at 803*.

**\*\*3** On the record here, it was undisputed that Thomas refused to submit a specific topic to the city administrator for inclusion on the agenda prior to the meeting. Further, he was permitted to speak **\*479** during the public comment portion of the meeting. Because city commission meetings are limited public fora, the City had authority to make content-neutral conditions for the time, place, and manner of access, so long as they were narrowly tailored to serve a significant government interest. *See Rowe*, 358 F.3d at 803. Prior to the meeting, the City instituted a new policy that required persons to submit a specific topic before being included on the agenda for city commission meetings. Before instituting this policy, it had difficulties conducting efficient meetings because persons would provide vague topics and speak for a long time, causing the meetings to last an unreasonable amount of time. Because this restriction was content-neutral, merely regulated the time, place, and manner of speech, and was narrowly tailored to serve a significant government interest, the district court did not err in granting summary judgment on this claim. *See id.*<sup>3</sup>

We also do not agree with Thomas's claim that the district court erred in granting summary judgment on his claim that the City violated his Fourteenth Amendment right to equal protection. The Equal Protection Clause of the Fourteenth Amendment requires state governments to treat similarly situated individuals alike. *Campbell v. Rainbow City, Ala.*, 434 F.3d 1306, 1313 (11th Cir.2006). Thus, "unequal application of a facially neutral statute may violate the Equal Protection Clause." *Strickland v. Alderman*, 74 F.3d 260, 264 (11th Cir.1996). In order to prevail based upon the application of a facially neutral statute, a plaintiff must show that: (1) "[he] was treated differently than similarly situated persons"; and (2) "the defendant unequally applied the facially neutral statute for the purpose of discriminating against [him]." *Id.*

Thomas argues that the City treated several similarly situated persons differently by failing to leave notices on vehicles near

residences owned by the chief of police, Anderson Williams, and Fred Reeder, a white neighbor. However, Thomas did not allege that the vehicle near Williams's residence was located in a right of way, and thus Williams was not similarly situated. *See id.* While Thomas asserted that the vehicle near Reeder's residence was located in the City's right of way, there is no evidence that the City failed to enforce the towing policy on Reeder's vehicle "for the purposes of discriminating against" Thomas. *See id.* Instead, the record shows that the City tagged numerous vehicles pursuant to the policy during the summer of 2007 and did not specifically target Thomas's vehicle. Accordingly, the district court did not err in granting summary judgment in favor of the City on this claim.<sup>4</sup>

Lastly, we find no merit in Thomas's claim that the district court abused its **\*480** discretion by finding that he failed to comply with his discovery obligations and ordering payment of costs and attorney's fees of \$900 to the City. If a party fails to appear at his own deposition or serve his answers, objections, or written response to interrogatories, a district court "must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." *Fed.R.Civ.P. 37(d)*.

**\*\*4** As the record shows, Thomas does not dispute that he refused to attend his deposition without good cause. Therefore, the district court did not abuse its discretion by ordering payment of costs and attorney's fees to the City. *See id.*

**AFFIRMED.**<sup>5</sup>

#### All Citations

348 Fed.Appx. 474, 2009 WL 3172152

#### Footnotes

**1** As an initial matter, however, we reject the City's argument that Thomas did not have standing to bring this claim. Standing requires the plaintiff to show: (1) that he suffered, or faced an imminent, but not merely hypothetical, prospect of suffering, "an invasion of a legally protected interest resulting in a concrete and particularized injury," (2) that the injury was "caused by the defendant's complained-of actions," and (3) that the "injury or threat of injury must likely be redressible by a favorable court decision." *ACLU*, 557 F.3d at 1190 (quotations omitted). "[E]ach element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). On the record here, Thomas had standing to challenge the City's refusal to allow him to maintain his

structure because: (1) Thomas suffered injury when the City requested that he remove the structure under Ordinance 61–4, see *Granite State Outdoor Adver., Inc. v. City of Clearwater, Fla.*, 351 F.3d 1112, 1117 (11th Cir.2003) (holding that a plaintiff suffered injury sufficient to confer standing to challenge the constitutionality of an ordinance after the City denied his application for a billboard permit under that ordinance); (2) this injury was causally related to the alleged constitutional violations challenged; and (3) it is likely that the injury would be redressed by a favorable decision because the City does not argue that Thomas's structure failed to meet the requirements of other unchallenged statute or ordinances. See *KH Outdoor, L.L.C. v. Clay County, Fla.*, 482 F.3d 1299, 1303–04 (11th Cir.2007) (holding that a plaintiff failed to satisfy the redressibility requirement where his application for a billboard permit did not meet the requirements of other unchallenged statutes and regulations). Indeed, while Thomas agreed to remove the structure from the right of way, he did so only after the City denied his permit application. Further, even if Thomas does not intend to rebuild the structure there, he is not consequentially prohibited from seeking redress in damages for a prior injury. See *City of Los Angeles v. Lyons*, 461 U.S. 95, 105, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983) (noting that a plaintiff's failure to allege a sufficient likelihood of future injury does not affect his standing to claim damages for a prior injury).

2 Notably, Thomas has never argued that Ordinance 61–4 or the municipal code granted the City “unbridled discretion” in the denial of his permit application, and the record is not developed on this issue. While we read briefs filed by *pro se* litigants liberally, *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir.), *cert. denied*, 555 U.S. 840, 129 S.Ct. 74, 172 L.Ed.2d 67 (2008), we will not act as *de facto* counsel for the appellant or otherwise rewrite a deficient pleading. *GJR Invs., Inc. v. County of Escambia*, 132 F.3d 1359, 1369 (11th Cir.1998).

3 To the extent that Thomas's appellate brief raises a First Amendment retaliation claim against the City based on its refusal to include him on the agenda for the meeting and its towing of his vehicle, he did not raise these claims brief before the district court. Accordingly, he has waived any argument in this regard on appeal. See *Access Now, Inc. v. S.W. Airlines, Co.*, 385 F.3d 1324, 1331 (11th Cir.2004) (“[A]n issue not raised in the district court and raised for the first time in an appeal will not be considered by this [C]ourt.” (quotations omitted)).

4 Finally, Thomas's initial appellate brief does not argue that the district court erred in granting summary judgment in favor of the City on his equal protection claim regarding the City's failure to post a “Slow Children at Play” sign near his residence. Thus, he has abandoned this claim on appeal. See *Horsley v. Feldt*, 304 F.3d 1125, 1131 n. 1 (11th Cir.2002).

5 In addition, Thomas's motion to dismiss and remand by default with prejudice is DENIED.





**VILLAGE OF BISCAYNE PARK**  
**Village Commission Agenda Report**

**Item # 5.a**

**REGULAR MEETING**

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**TO:** Honorable Mayor & Members of the  
Biscayne Park Village Commission

**FROM:** Commissioner William Tudor

**DATE:** July 24, 2019

**TITLE:** Discussion re: Establishment of Commission meeting procedures

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**Recommendation**

I am recommending that the Commission establish comprehensive policies and procedures for conducting Commission meetings to assist the Commission, staff and residents in fostering an environment of trust, consistency, efficiency, and transparency.

**Background**

The Village Charter provides that the Commission shall determine its own rules or procedure and order of business. Although the Commission has established Resolutions covering several key topics, it has failed to memorialize comprehensive policies and procedures for conducting Commission meetings.

**Resource Impact**

Resource impact should be nominal.

**Attachment**

1. Village of Biscayne Park Proposed Resolution 2018-05
  2. Miami Dade County Commission Rules of Procedures, specifically Part 5, Part 6, and Part 7.
  3. Montclair, CA, specifically 2.14.020, 2.14.030, 2.14.040, and 2.14.050
  4. Village of Biscayne Park Citizens Bill of Rights
- 

Prepared by: Commissioner William Tudor

**RESOLUTION NO. 2018-05**

**A RESOLUTION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA,  
RESOLUTION ON COMMISSION CONDUCT OF BUSINESS (A)  
PROVIDING MEETING PROCEDURES; (B) PROVIDING FOR POST-  
ELECTION ORGANIZATIONAL MEETING; AND (C) PROVIDING AN  
EFFECTIVE DATE.**

**WHEREAS**, The Village Charter provides that Commission (a) hold eleven regular monthly meetings each calendar year, and (b) determine its own rules or procedure and order of business (Village of Biscayne Park Charter, sec. 4.01); and,

**WHEREAS**, Commission recognizes the importance of conducting Village business in an orderly and efficient manner; and

**WHEREAS**, the Commission values the rights of its citizens and taxpayers to express their opinions and encourages public participation in the local government process; and

**WHEREAS**, procedures established in writing inform the public, foster trust in government, guide the Commission in consistent application of rules, and facilitate continuity in the conduct of Village business.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, THAT:**

**Section 1.** The above “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are incorporated herein by this reference.

**Section 2.** The following meeting procedures shall apply, unless otherwise agreed to by a majority of the Village Commission:

**A. Meetings.**

1. The Village Commission regular meetings shall be held monthly on the first Tuesday of the month, convened at 7:00 p.m., and adjourned no later than 11:00 p.m. [Charter and practice]
2. Workshop meetings may be called to allow for presentations or the development of matters that may later be taken up at a regular meeting on the call of the Mayor or upon the call of four members of the Commission as provided by the Village Charter, or on the call of the Village Manager.
3. Special meetings may be held on a similar call for a limited purpose, upon no less than 24 hours’ notice to each member and the public, or such shorter time as agreed by a majority of the Commission in case of an emergency affecting life, health, property or the public peace. [Charter – 24-hr notice]

## B. Agenda.

1. There shall be an official order of business in the form of an agenda prepared by the Village Clerk in consultation with the Village Manager and Village Attorney, if necessary.
  - a) To allow for the timely preparation of the Agenda, all items, agenda memo and all supporting backup must be provided to the Village Manager and Village Clerk at least eight (8) days prior to a regular Commission meeting. [VBP Reso. 2010-5] (“8-Day Rule”).
  - b) Other than a routine matter appropriate for inclusion in a consent agenda, no member of the Commission shall be a prime sponsor of a total of more than three (3) action items on a single regular commission Agenda. [County Rule 5.07 generally]
  - c) Any citizen shall be entitled to be placed on the official agenda of a regular meeting of the Commission and the citizen’s presentation of no more than ten (10) minutes be heard concerning any matter within the scope of the jurisdiction of the Commission. Such presentation may be sponsored and placed on the agenda by any member of the Commission, provided supporting materials are provided within the 8-Day Rule. [County Rule 6.02 generally]
  - d) A complete copy of each agenda item shall be furnished to the members of the Commission at least four (4) days prior to a vote being called on the item. This rule may be deemed waived unless asserted by a member of the Commission present at the meeting before action is taken on the item [County Rule 5.05(c)] (“4-Day Rule”).
  - e) The Agenda shall include a consent agenda for the adoption of resolutions and other items of routine and operational business upon the advice, direction and recommendation of the Village Manager. All items appearing on the consent agenda may be adopted by the affirmative vote of a quorum of the Commission members present, unless an item is first pulled from the agenda. Each Commission member, including the Mayor, is entitled to remove and item(s) from the consent agenda before the vote on the consent agenda. All items pulled from the consent agenda shall be considered separately following the approval of the consent agenda. [VBP Reso. 2011-13]
  - f) Any departure from the order of business set forth in the official agenda shall be made only upon majority vote of the members of the Commission present at the meeting. [practice]
2. The Agenda for a Village Commission regular meeting shall be published no less than five days prior to the meeting, barring exigent circumstances. [practice]

**C. Public Comment on Agenda Items and Good and Welfare.**

1. Members of the public shall be given a reasonable opportunity to be heard on Agenda items and general good and welfare.
2. The public shall be afforded the opportunity to comment on proposed ordinances at first reading in addition to public hearings, which shall be held at second reading. [Reso. 2010-6]
3. Each person presenting public comment shall step to the podium and provide the following information in an audible tone of voice for the minutes:
  - a) Name,
  - b) Address,
  - c) If speaking for any entity other than the speaker,
    - i. Identify the entity being represented,
    - ii. Compensation paid, if any,
    - iii. Whether the speaker or any immediate family member has a personal financial interest in the subject matter.
4. All public comments shall be addressed to the Commission and limited to three (3) minutes, unless otherwise agreed to by a majority of the member of the Commission present at the meeting. [practice]  
[3. – 4. County Rule 6.04 generally]

**D. Decorum.**

1. Any person making impertinent or slanderous remarks, or who becomes boisterous while addressing the Commission shall be barred from further audience before the Commission by the presiding officer, unless permission to continue or again address the Commission is granted by the majority vote of the Commission members present.
2. No clapping, applauding, heckling or verbal outbursts in support or in opposition to a speaker or his/her remarks shall be permitted. No signs or placards shall be allowed in the Commission Chamber. Persons existing the Commission Chamber shall do so quietly.  
[1. – 2. VBP Agenda note, County Rule 6.05]
3. The Chief of Police or his designee shall be the sergeant-at-arms at Commission meetings to assist with maintaining security and peaceful assembly. [new]
4. In extreme situations, the presiding officer, with the support of the majority of the members of the Commission present, may direct the Village Manager or designee to direct the sergeant-at-arms to remove persons from the Commission Chamber. [new]
5. These rules are not intended to infringe on any lawful expression of free

speech by any person appearing before the Commission. [new]

#### **E. Rules of Debate**

1. Questions Under Consideration: When a motion is presented and seconded, it is under consideration and no other motion shall be received thereafter except to adjourn, to lay on the table, to postpone or to amend until the question is decided. These motions shall have preferences in the order in which they are mentioned and the first two shall be decided without debate. Final action upon a pending motion may be deferred until a date certain by a majority of the members present.
2. As to the Presiding Officer: The presiding officer, upon relinquishing the chair, may move, second, debate and vote, subject only to such limitations as are by these rules imposed upon all members.
3. Getting the Floor, Avoiding Improper Reference: Every member desiring to speak for any purpose shall address the presiding officer, and upon recognition, shall be confined to the question under debate avoiding all personalities and indecorous language.
4. Interruption; Call to Order; Appealing Ruling of the Chair: A member once recognized shall not be interrupted when speaking unless it be a call to order or as herein otherwise provided. If a member is called to order, the member shall cease speaking until the question of order shall be determined by the presiding officer, and if in order, the member shall be permitted to proceed. Any member may appeal to the Commission from the decision of the presiding officer upon a question of order, when, without debate, the presiding officer shall submit to the Commission the question, "Shall the decision of the chair be sustained?" and the Commission shall decide by a majority vote.
5. Privilege of Closing Debate: The Commissioner sponsoring or moving the adoption of an ordinance, resolution or motion shall have the privilege of closing the debate.
6. Method of Voting: Voting shall be by roll call, voice vote or paper ballot. Upon every roll call vote the names of the commissioners shall be called alphabetically by surname, except that the names shall be rotated after each roll call vote, so that the commissioner who voted first on the preceding roll call shall vote last upon the next subsequent matter; provided, however, that the presiding officer shall always cast the last vote. The Clerk shall call the roll, tabulate the votes, and announce the results. The vote upon every ordinance shall be taken by roll call. The vote upon any resolution, motion or other matter may be by voice vote provided that the presiding officer or all commissioners may require a roll call vote to be taken upon any resolution or motion. Board appointments may be made by paper ballot which clearly identify the commissioner voting.

7. Explanation of Vote; Conflicts of Interest: Upon any roll call, there shall be no discussion by any commissioner voting, and the commissioner shall vote yes or not. Any commissioner, upon voting, may give a brief statement to explain his or her vote. A commissioner shall have the privilege of filing with the Clerk a written explanation of his or her vote. Any commissioner with a conflict of interest on a particular matter shall: (a) announce publicly at the meeting the nature of the conflict before the matter is heard; (b) absent himself or herself from the Commission Chamber during that portion of the meeting when the matter is considered and (c) file a written disclosure of the nature of the conflict with the Clerk within 15 days after the vote. The filing of the State of Florida form prescribed for written disclosure of a voting conflict shall constitute compliance with the subsection. Any such Commissioner who does not leave the chambers shall be deemed absent for purposes of constituting a quorum, continuing the vote, or for any other purpose.
8. The Votes:
  - a) Whenever action cannot be taken because the vote of the commissioners has resulted in a tie, or no other available motion on an item is made and approved before the next item is called for consideration or before a recess or adjournment is called, whichever occurs first, the item shall be removed from the agenda and shall be reintroduced only in accordance with the renewal provisions of this Resolution.
  - b) Notwithstanding any rule of procedure to the contrary, for quasi-judicial matters, when a motion to take action on the matter results in a tie vote, and no other available motion is made and approved before the next matter is called for consideration or before a recess or adjournment is called, which occurs first, such matter shall be carried over to the next regularly scheduled meeting for consideration of such quasi-judicial matters, unless the commission designates a different time for such consideration.
  - c) Any commissioner may change his or her vote before the next item is called for consideration, or before a recess or adjournment is called, whichever occurs first, but not thereafter.
9. No Motion or Second: If an agenda item fails to receive a motion or second, it shall be removed from the agenda and shall be reintroduced only in accordance with the renewal provisions of this Resolution.
10. Reconsideration: An action of the commission may be reconsidered only at the same meeting at which the action was taken or at the next regular meeting thereafter. A motion to reconsider may be made only by a commissioner who

voted on the prevailing side of the question and must be concurred in by a majority of those present at the meeting. A motion to reconsider an item resulting in a tie vote is not in order, and no such motion shall be reconsidered. A motion to reconsider shall not be considered unless at least the same number of commissioners is present as participated in the original vote, or upon affirmative vote of two-third (2/3) of those commissioners present. Adoption of a motion to reconsider shall rescind the action reconsidered.

11. Renewal: Once action is taken on a proposed ordinance or resolution, neither the same matter nor its repeal or rescission may be brought before the commission again during the six (6) month period following the said action (subject to the provisions of this Resolution), unless application for renewal is made by a majority of the members of the Commission.
12. Expiration of Postponed Items: Once an item before the Commission is postponed indefinitely, and no action is taken by the Commission on such item for a period of six (6) months following the latest postponement, such item shall be deemed withdrawn. Consideration of the matter covered under the item shall require the introduction of a new item.
13. Adjournment: A motion to adjourn shall always be in order and decided without debate.
14. Suspension of the Rules:<sup>1</sup> No rules of procedure adopted by this Resolution shall be suspended except by an affirmative vote of two-thirds (2/3) of the commissioners present.

[County Rules 7.01]

#### **F. Minutes and Register of Ordinances and Resolutions**

1. The Village Clerk is directed to prepare summary minutes which would include the general topic, relevant information as determined by the Clerk, and what action was taken concerning that topic. [VBP Reso. 2014-12]
2. The Village Clerk shall maintain and make available for public inspection a register separate from the minutes showing the votes of each Commission member on all ordinances and resolutions listed by descriptive title. The register shall be available for public inspection not later than 60 days after the conclusion of the meeting at which action was taken. [BVP Citizens Bill of Rights (A)(4)].

**Section 3. Post-Election Organizational Meeting.** Upon the installation of Village Commissioners after an election, at the first meeting of the reconstituted Commission, the

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<sup>1</sup> Rules in this Resolution that are based on provisions of the Village Charter may not be suspended, except by vote of the Village electors.

Agenda shall include for consideration:

1. An orientation package as compiled by the Village Manager and Clerk;
2. The review, amendment and/or ratification of these Meeting Rules; and
3. The scheduling of a training session to be provided by Miami Dade County Commission on Ethics and Public Trust.

**Section 4. Effective Date.** This Resolution shall become effective upon adoption.

**PASSED AND ADOPTED BY THE VILLAGE OF BISCAYNE PARK, FLORIDA  
THIS \_\_\_\_\_, 2018.**

**The foregoing resolution upon being put to a  
vote, the vote was as follows:**

\_\_\_\_\_  
Tracy Truppman, Mayor

Mayor Truppman: \_\_\_\_  
Vice Mayor Ross: \_\_\_\_  
Commissioner Bilt: \_\_\_\_  
Commissioner Johnson-Sardella: \_\_\_\_  
Commissioner Tudor: \_\_\_\_

Attest:

\_\_\_\_\_  
Marlen D. Martell, Village Clerk

Approved as to form:

\_\_\_\_\_  
John J. Hearn, Village Attorney



# **RULES OF PROCEDURE**

*(AS AMENDED THROUGH 11-1-16)*

**BOARD OF  
COUNTY COMMISSIONERS**

**MIAMI-DADE COUNTY  
FLORIDA**

**Rule 2.03. COUNTY ATTORNEY.**

The county attorney, or such member of the office of the county attorney as may be designated, shall be available to the commission at all meetings. The county attorney shall act as parliamentarian, and shall advise and assist the presiding officer in matters of parliamentary law.

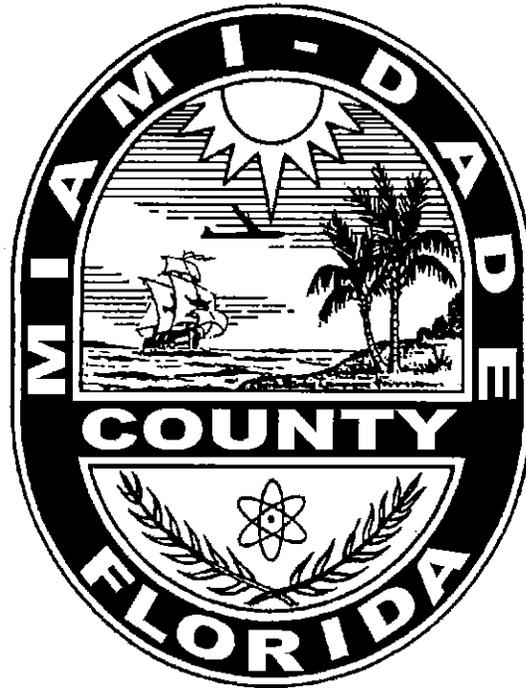
**Rule 2.04. SERGEANT-AT-ARMS.**

The Miami-Dade police director, or such other county official or employee as the commission may designate, shall be the sergeant-at-arms at commission meetings, commission committee and subcommittee meetings and community council meetings. The sergeant-at-arms shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the meetings.

**PART 3. MEETINGS**

**Rule 3.01. REGULAR MEETINGS AND REGULAR MEETING AFTER THE COUNTY COMMISSION INSTALLATION CEREMONY.**

- (a) The commission shall hold regular meetings on the first and third Tuesday and Thursday of each month, or on such other days as may be set on the annual calendar of meetings approved by the commission. Notwithstanding any provision herein to the contrary, there shall be no regular meeting held on the same day as the installation ceremony of County Commissioners. The first regular meeting occurring after the installation ceremony shall take place within three (3) to (7) days after the ceremony on a date selected at least 120 days prior to the meeting. The date of such meeting shall be selected by the Chairperson of the Board of County Commissioners, in consultation with the Mayor, the County Attorney, and the Clerk of the Board.
- (b) Unless otherwise determined by the commission, regular meetings shall commence at 9:30 in the morning and shall end no later than 6:30 p.m. each day. Regular meetings may be otherwise postponed or canceled (1) by resolution or motion adopted at a regular meeting by a majority of the commission members present, (2) by the chairperson and six (6) other members of the commission serving notice containing the required seven (7) signatures upon the clerk who shall provide public notice when a meeting is canceled or (3) by the chairperson of the commission when: (a) the agenda for a meeting has not been provided to the members of the commission at least twenty-four (24) hours before the scheduled meeting; (b) the chairperson is in receipt of written communications from at least a majority of those commissioners then in office stating that said commissioners will not be attending the meeting; or (c) no action item has been placed on the agenda of a zoning or comprehensive development master plan meeting in compliance with the applicable notice requirements. All regular meetings shall be held in the commission chambers, Stephen P. Clark Center, 111 N.W. 1 Street, Miami, Florida 33128, or such location as may be approved by a



# **RULES OF PROCEDURE**

*(AS AMENDED THROUGH 11-1-16)*

**BOARD OF  
COUNTY COMMISSIONERS**

**MIAMI-DADE COUNTY  
FLORIDA**

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**HOME RULE CHARTER**  
**CITIZENS' BILL OF RIGHTS**

\* \* \*

**5. Right to be Heard.** So far as the orderly conduct of public business permits, any interested person has the right to appear before the commission or any municipal council or any county or municipal agency, board or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the governmental entity involved; provided, nothing herein shall prohibit the commission or any municipal council from referring a matter to a committee of each of their respective bodies to conduct a public hearing, unless prohibited by law. Matters shall be scheduled for the convenience of the public, and the agenda shall be divided into approximate time periods so that the public may know approximately when a matter will be heard. Nothing herein shall prohibit any governmental entity or agency from imposing reasonable time limits for the presentation of a matter.

\* \* \*

**Section 1.02. Resolutions and Ordinances.**

A. The board shall adopt its own rules of procedure and shall decide which actions of the board shall be by ordinance or resolution, except as otherwise provided in this Charter and except that any action of the board which provides for raising revenue, appropriating funds, or incurring indebtedness (other than refunding indebtedness), or which provides a penalty or establishes a rule or regulation for the violation of which a penalty is imposed shall be by ordinance.

B. Every ordinance shall be introduced in writing and shall contain a brief title. The enacting clause shall be "Be it Ordained by the Board." After passage on first reading, a short summary of the ordinance shall be published in a daily newspaper of general circulation at least once together with a notice of the time when and place where it will be given a public hearing and be considered for final passage. The first such publication shall be at least one week prior to the time advertised for hearing. No ordinance shall be declared invalid by reason of any defect in publication or title if the published summary gives reasonable notice of its intent.

C. At the time and place so advertised, or at any time and place to which such public hearing may from time to time be adjourned, the ordinance shall be read by title and a public hearing shall be held. After the hearing, the board may pass the ordinance with or without amendment. No provision herein shall prohibit a committee of the commission from conducting such public hearing, as provided by Section 1.08.

D. The board may adopt in whole or in part any published code by reference as an ordinance in the manner provided by law.

E. The effective date of any ordinance shall be prescribed therein, but the effective date shall not be earlier than ten days after its enactment.

F. To meet a public emergency affecting life, health, property, or public safety the board by two-thirds vote of the members of the board may adopt an emergency ordinance at the meeting at which it is introduced, and may make it effective immediately, except that no such ordinance may be used to levy taxes, grant or extend a franchise, or authorize the borrowing of money. After the adoption of an emergency ordinance, the board shall have it published in full within ten days in a daily newspaper of general circulation.

G. Each ordinance and resolution after adoption shall be given a serial number and shall be entered by the clerk in a properly indexed record kept for that purpose.

\* \* \*

**Section 1.08. Organization of the Commission and Commission Committees.**

The mayor shall not be a member of the commission. The commission shall select the chairperson and vice-chairperson of the commission. The chairperson shall preside over commission meetings and perform such other duties set forth in the charter and ordinances of Miami-Dade County. The vice-chairperson shall perform the duties of the chairperson in the absence or incapacity of the chairperson. Any member may be selected by the commission to preside over commission meetings in the event of the absence of the chairperson and the vice-chairperson.

The commission may organize itself into standing committees, special committees, and ad hoc committees. Upon formation of any such committees, the commission may appoint its members or authorize the chairperson to appoint committee members. Commission committees may conduct public hearings, as authorized by ordinance of the commission. The Clerk of the Circuit Court or a deputy shall serve as clerk of the commission. No action of the commission shall be taken except by a majority vote of those present at a meeting at which a majority of the commissioners then in office is present. All meetings shall be public.

\* \* \*

**Section 2.02. Responsibilities of the Mayor.**

The Mayor shall serve as head of the county government with the following specific powers and responsibilities:

A. The Mayor shall be responsible for the management of all administrative departments of the County government and for carrying out policies adopted by the Commission. The Mayor, or such other persons who may be designated by the Mayor, shall execute contracts and other instruments, and sign bonds and other evidences of indebtedness. The Mayor shall serve as the head of the County for emergency management purposes.

B. The Mayor shall have the right to attend and be heard at any regular or special open session meeting of the Commission, but not the right to vote at such meetings.

C. Unless otherwise provided by this Charter, the Mayor shall have the power to appoint all department directors of the administrative departments of the County. Appointment of these department directors shall become effective unless disapproved by a two-thirds majority of those commissioners then in office at the commission's next regularly scheduled meeting. The Mayor shall also have the right to suspend, reprimand, remove, or discharge any administrative department director, with or without cause.

D. The Mayor shall within ten days of final adoption by the Commission, have veto authority over any legislative, quasi-judicial, zoning, master plan or land use decision of the Commission, including the budget or any particular component contained therein which was approved by the Commission; provided, however, that (1) if any revenue item is vetoed, an expenditure item in the same or greater dollar amount must also be vetoed and (2) the Mayor may not veto the selection of the chairperson or vice-chairperson of the commission, the enactment of commission committee rules, the formation of commission committees, or the appointment of members to commission committees. The Commission may at its next regularly scheduled meeting after the veto occurs, override that veto by a two-thirds vote of the Commissioners present.

E. The Mayor shall prepare and deliver a report on the state of the county to the people of the county between November 1 and January 31 annually. Such report shall be prepared after consultation with the commissioners.

F. The Mayor shall prepare and deliver a budgetary address annually to the people of the county in March. Such address shall set forth the Mayor's funding priorities for the County.

**CODE OF MIAMI-DADE COUNTY  
CHAPTER 2. ADMINISTRATION**

**ARTICLE I. IN GENERAL**

**Sec. 2-1. RULES OF PROCEDURE OF COUNTY COMMISSION**

**PART 1. GOVERNING RULES**

**Rule 1.01. GOVERNING RULES.**

Except as may be provided in the charter, the code or by these rules, questions of order, the methods of organization and the conduct of business of the commission shall be governed by Mason's Manual of Legislative Procedure (1953 Edition).

**PART 2. OFFICERS**

**Rule 2.01. CHAIRPERSON AND VICE-CHAIRPERSON.**

(a) CHAIRPERSON.

- (1) ELECTION, TERM, TERM LIMITATION, AND REMOVAL. A chairperson of the board of county commissioners shall be elected for a term of two (2) years by the vote of at least seven (7) commissioners at the regular commission meeting<sup>1</sup> following the installation<sup>2</sup> of the county commissioners during each even-numbered year. The chairperson's term shall commence on January 1 of the following year. The chairperson may be removed prior to the expiration of his or her term by the vote of nine (9) commissioners. No commissioner shall serve as chairperson of the county commission for more than two consecutive years.
- (2) DUTIES OF CHAIRPERSON.<sup>3,4</sup> The chairperson shall: (a) preside at all meetings of the commission and preserve strict order and decorum; (b) state every question coming before the commission and announce the decision of the commission on all matters coming before it; (c) appoint the chairpersons, vice-chairpersons and members of all commission committees, including standing committees, ad hoc committees and subcommittees;<sup>5</sup> (d) convene committees of the whole; (e) designate and supervise all persons who shall serve as employees of the entire county commission, as set forth in the pool budget;<sup>6</sup> (f) have responsibility for the

<sup>1</sup> Rule 3.01 (a) provides that such regular meeting shall not be on the day of the installation ceremony and provides the manner of scheduling such regular meeting.

<sup>2</sup> Rule 9.03.06 provides the procedures for ceremonial oath of office at the installation ceremony.

<sup>3</sup> The Chair may call emergency meetings in accordance with Rule 3.02(b).

<sup>4</sup> The Chair assigns items referred to committees to the appropriate committee agenda and following any required committee consideration, to the appropriate commission agenda in accordance with Rule 4.01(f).

<sup>5</sup> See also Rule 4.01 regarding establishment of committees and appointment of committee members and committee chairs and vice-chairs.

<sup>6</sup> The Office of Legislative Analysis no longer exists.

administration of the pool budget of the board of county commissioners, in conjunction with the mayor; (g) issue subpoenas, subpoenas duces tecum, and other necessary process to compel the attendance of witnesses and the production of any books, letters, or other documentary evidence required by a committee, upon the request of the chairperson of any commission committee;<sup>7</sup> (h) schedule the meetings of all commission committees, in consultation with the committee chairperson and vice-chairperson, to provide each with an opportunity to meet without conflicting with the meetings of other committees; (i) designate the arrangement and configuration of the county commission dais; and (j) have responsibility for administering the Miami-Dade County Goodwill Ambassadors Program under the Office of Community Advocacy within the Office of the Chair, with administrative support from the Mayor or the Mayor's designee. The chairperson shall serve as an ex-officio voting member of all commission committees but shall not count as a member of a committee for purposes of determining the existence of a quorum.

(b) VICE-CHAIRPERSON.

- (1) ELECTION, TERM, TERM LIMITATION AND REMOVAL. A vice-chairperson of the board of county commissioners shall be elected for a term of two (2) years by the vote of at least seven (7) commissioners at the regular commission meeting following the installation of the county commissioners during each even-numbered year. The term of office for the vice-chairperson of the board shall commence on January 1 of the following year. The vice-chairperson may be removed prior to the expiration of his or her term by the vote of at least seven (7) commissioners. No commissioner shall serve as vice-chairperson of the county commission for more than two consecutive years.
- (2) DUTIES OF VICE-CHAIRPERSON. Unless the chairperson appoints the vice-chairperson as a voting member of a committee, the vice-chairperson shall serve as an ex-officio non-voting member of each commission committee, but shall not count as a member of a committee on which he or she serves as a non-voting member for purposes of determining the existence of a quorum. The vice-chairperson of the board shall perform the duties of the chairperson in the event of the absence or incapacity of the chairperson. The vice-chairperson shall complete the unfinished term of any chairperson who resigns or is removed as chairperson of the commission.

**Rule 2.02. CLERK.**

The clerk of the circuit court or a designated deputy clerk shall act as clerk of the commission. The clerk of the commission shall prepare the minutes and shall certify all ordinances and resolutions adopted by the commission.

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<sup>7</sup> See also Rule 4.01(e) regarding the Chair's issuance of subpoena for committee.

**Rule 2.03. COUNTY ATTORNEY.**

The county attorney, or such member of the office of the county attorney as may be designated, shall be available to the commission at all meetings. The county attorney shall act as parliamentarian, and shall advise and assist the presiding officer in matters of parliamentary law.

**Rule 2.04. SERGEANT-AT-ARMS.**

The Miami-Dade police director, or such other county official or employee as the commission may designate, shall be the sergeant-at-arms at commission meetings, commission committee and subcommittee meetings and community council meetings. The sergeant-at-arms shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the meetings.

**PART 3. MEETINGS**

**Rule 3.01. REGULAR MEETINGS AND REGULAR MEETING AFTER THE COUNTY COMMISSION INSTALLATION CEREMONY.**

- (a) The commission shall hold regular meetings on the first and third Tuesday and Thursday of each month, or on such other days as may be set on the annual calendar of meetings approved by the commission. Notwithstanding any provision herein to the contrary, there shall be no regular meeting held on the same day as the installation ceremony of County Commissioners. The first regular meeting occurring after the installation ceremony shall take place within three (3) to (7) days after the ceremony on a date selected at least 120 days prior to the meeting. The date of such meeting shall be selected by the Chairperson of the Board of County Commissioners, in consultation with the Mayor, the County Attorney, and the Clerk of the Board.
- (b) Unless otherwise determined by the commission, regular meetings shall commence at 9:30 in the morning and shall end no later than 6:30 p.m. each day. Regular meetings may be otherwise postponed or canceled (1) by resolution or motion adopted at a regular meeting by a majority of the commission members present, (2) by the chairperson and six (6) other members of the commission serving notice containing the required seven (7) signatures upon the clerk who shall provide public notice when a meeting is canceled or (3) by the chairperson of the commission when: (a) the agenda for a meeting has not been provided to the members of the commission at least twenty-four (24) hours before the scheduled meeting; (b) the chairperson is in receipt of written communications from at least a majority of those commissioners then in office stating that said commissioners will not be attending the meeting; or (c) no action item has been placed on the agenda of a zoning or comprehensive development master plan meeting in compliance with the applicable notice requirements. All regular meetings shall be held in the commission chambers, Stephen P. Clark Center, 111 N.W. 1 Street, Miami, Florida 33128, or such location as may be approved by a

majority of the commission members present and shall be open to the public and all news media.

- (c) The commission shall consider and determine zoning matters at its regular meetings.
- (d) The second reading (public hearing) of the annual budget ordinance shall be considered at a meeting at which the said budget ordinance and the levy of the millage are the only items on the agenda.

**Rule 3.02. SPECIAL MEETINGS; EMERGENCY MEETINGS.**

- (a) **SPECIAL MEETINGS.** A special meeting of the Commission may be called by a majority of the members of the commission. Whenever a special meeting is called, a notice in writing signed by such majority shall be served upon the chairperson and the clerk. Each signature by a commissioner shall constitute a representation that, at the time of affixing his or her signature to the notice, the commissioner has the present intention to attend the special meeting. The clerk shall forthwith serve verbal and written notice upon each member of the commission stating the date, hour and place of the meeting and the purpose for which such meeting is called, and no other business shall be transacted at that meeting. At least twenty-four (24) hours must elapse between the time the Clerk receives notice in writing and the time the meeting is to be held. A special meeting of the Board of County Commissioners may be cancelled (1) by resolution or motion adopted at a regular meeting by a majority of the Commission members present or (2) by seven (7) members of the Board of County Commissioners serving notice containing the required seven (7) signatures on the members of the Board of County Commissioners and upon the Clerk who shall provide public notice when a meeting is cancelled. The Commission chambers shall be made available for a special meeting whenever such a meeting is called.
- (b) **EMERGENCY MEETINGS.** An emergency meeting of the commission may be called by the chairperson whenever in his or her opinion an emergency exists which requires immediate action by the commission. Whenever such emergency meeting is called, the chairperson shall notify the clerk who shall forthwith serve either verbal or written notice upon each member of the commission, stating the date, hour and place of the meeting and the purpose for which it is called, and no other business shall be transacted at that meeting. At least twenty-four (24) hours shall elapse between the time the clerk receives notice of the meeting and the time the meeting is to be held. An emergency meeting of the Board of County Commissioners may be cancelled (1) by resolution or motion adopted at a regular meeting by a majority of the Commission members present or (2) by seven (7) members of the Board of County Commissioners serving notice containing the required seven (7) signatures on the members of the Board of County Commissioners and upon the Clerk who shall provide public notice when a meeting is cancelled. The Commission chambers shall be made available for an emergency meeting whenever such a meeting is called.

- (c) If, after reasonable diligence, it is impossible to give notice to each commissioner, such failure shall not affect the legality of the meeting if a quorum is present. The minutes of each special or emergency meeting shall show the manner and method by which notice of such special or emergency meeting was given to each member of the commission, or shall show a waiver of notice. All special or emergency meetings shall be open to the public and shall be held and conducted in the commission chambers, Stephen P. Clark Center, 111 N.W. 1 Street, Miami, Florida 33128, or other suitable location within Miami-Dade County, Florida. Minutes thereof shall be kept by the clerk.
- (d) No special or emergency meeting shall be held unless notice thereof shall be given in compliance with the provisions of this rule, or notice thereof is waived by a majority of the entire membership of the commission.

**Rule 3.03. SIGNATURE REQUIREMENT.**

Whenever in these rules an action requires the signature of a commissioner, a signature is acceptable when the commissioner: (1) provides an original handwritten signature; (2) provides a facsimile of an original handwritten signature; or (3) authorizes use of the commissioner's stamp and the stamp is accompanied by a legible signature of the staffer authorized to utilize such stamp. The authority to use a commissioner's stamp shall be evidenced by a written document on file with the office of the chairperson and the county attorney.

**PART 4. COMMITTEES**

**Rule 4.01. COMMITTEES.**

- (a) ESTABLISHMENT OF COMMISSION COMMITTEES. The county commission shall convene as a committee of the whole within 30 days of the date of the election of the commission chairperson and vice-chairperson to make recommendations to the chairperson regarding: the number of standing county commission committees; the subject matter of the commission's standing committees; the number of members on each standing committee; and the maximum number, if any, of standing committees on which a commissioner may serve. Within thirty (30) days of the chairperson's receipt of the recommendations of the committee of the whole, the commission chairperson shall establish standing county commission committees, determine the subject matter of these committees, the maximum number, if any, of standing committees on which a commissioner may serve, and the number of members on each committee and shall establish any additional procedural rules of order consistent with this section which are necessary for the efficient and effective operation of the committee system.
- (b) APPOINTMENT OF COMMITTEE MEMBERS. The chairperson of the county commission shall appoint the membership of each commission committee after he

or she has received any written expressions of interest from commissioners as to their preferences for committee service.

- (c) **COMMITTEE CHAIRPERSON AND VICE-CHAIRPERSON.** A chairperson and a vice-chairperson of each commission committee shall be appointed by the chairperson of the commission and shall continue in office at the pleasure of the chairperson of the commission. The chairperson of the commission shall also appoint a chairperson for each subcommittee authorized by these rules and may designate a vice-chairperson, both of whom shall continue in office at the pleasure of the chairperson of the commission. The committee chairperson shall set the order of items on the committee agenda for each committee meeting. The chairperson shall preserve order and decorum and shall have general control of committee proceedings. If there is a disturbance or disorderly conduct during the committee meeting, the chairperson or vice-chairperson may require participants in the disturbance to clear the room. The vice-chairperson shall perform the duties of the chairperson in the absence of the chairperson. If the chairperson and vice-chairperson are absent, the committee may select one of its members to perform the duties of the chair for the meeting during which the chairperson and the vice-chairperson are absent.
- (d) **POWERS OF COMMISSION COMMITTEES.** Commission committees and subcommittees are authorized:
- (1) To maintain a continuous review of the work and performance of county agencies and, notwithstanding any provision to the contrary in the Code, county boards within the jurisdiction of each committee;
  - (2) To invite public officials, employees, and private individuals to appear before the committees or subcommittees to submit information;
  - (3) To request reports from departments and, notwithstanding any provision to the contrary in the Code, county boards performing functions reasonably related to each committee's jurisdiction;
  - (4) To complete interim projects assigned by the chairperson of the commission;
  - (5) Lay the matter on the table resulting in the matter not being placed on an agenda of the county commission. A report submitted by a county board may not be laid on the table where the ordinance creating the county board requires that a report be submitted to the county commission;
  - (6) Notwithstanding any provision to the contrary in the Code, to conduct public hearings, unless state or federal law requires the county commission to conduct a given public hearing; or
  - (7) To provide a reasonable opportunity for the public to be heard on propositions not subject to public hearing pursuant to Rule 6.06.

- (e) **ANCILLARY POWERS.** In order to carry out its duties, each commission committee shall be empowered to inspect and investigate the books, records, papers, documents, data, operations, and physical plant of any department, agency or entity of Miami-Dade County. The chairperson of a commission committee may request the chairperson of the commission to issue subpoenas, subpoenas duces tecum, and other necessary process to compel the attendance of witnesses and the production of any books, letters, or other documentary evidence required by such committee. The chairperson of the commission may issue said process at the request of the committee chairperson. Any member of a standing committee or subcommittee may administer oaths and affirmations, in the manner prescribed by law to witnesses who appear before such committees to testify in any matter requiring evidence.
- (f) **COMMITTEE AND COMMISSION AGENDAS.** Administrative deadlines for printing the committee and commission agendas shall be established by the county Mayor and the county attorney that are sufficient to allow for timely printing of the committee and commission agendas. The commission chairperson, in consultation with the county attorney and county Mayor, shall assign all resolutions, ordinances for second reading, reports and other prospective agenda items received by the applicable administrative deadline to the appropriate committee agenda for consideration as required by these rules.<sup>8</sup> Following any required committee consideration, the commission chairperson, in consultation with the county attorney and the county Mayor, shall place items on the appropriate commission agenda, as permitted by these rules.<sup>9</sup> The Commission Auditor shall advise the Chairperson of any agenda item sponsored by the Mayor not in compliance with the provisions of Resolution No. R-530-10 prior to the Chairperson's assignment of such item to a committee or commission agenda. The Chairperson may determine, in his or her sole discretion, whether to place any item which is identified by the Commissioner Auditor as non-compliant, on any committee or commission agenda. A duly authorized designee of the county Mayor, the county attorney, the chairperson or the Commission Auditor may carry out the duties assigned to these persons pursuant to this paragraph.

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<sup>8</sup> Reports of procurement activities advertised or placed for public notice under authority of Sec. 2-8.2.12 of the Code (Miami-Dade Water and Sewer Department ("Water & Sewer") Consent Decree and Capital Improvement Programs Acceleration Ordinance), are required to be reported to the committee of jurisdiction over Water & Sewer matters at the next available meeting for committee review and approval.

<sup>9</sup> Procurement activities advertised or placed for public notice that are reviewed and approved by the committee of jurisdiction over Water & Sewer pursuant to Sec. 2-8.2.12 of the Code (Miami-Dade Water and Sewer Department Consent Decree and Capital Improvement Programs Acceleration Ordinance) shall be reported to the Board at the next Board meeting following the report to committee. The following matters shall be placed on the next available agenda of the Board; (a) all actions executed by the Mayor or designee pursuant to Sec. 2-8.2.7 of the Code; (b) all actions executed by the Mayor or Mayor's designee pursuant to Secs. 2-8.2.11(a) and (b) and 2-8.2.15 of the Code that are subject to ratification by the Board; (c) awards pursuant to Sec. 2-8.2.7 of the Code; (d) any contracts recommended for award pursuant to Sec. 2-8.2.11 of the Code; (e) resolutions, ordinances or reports submitted by the Property Appraiser related to his or her duties as set forth in Sec. 2-70 of the Code; (f) County Commission approval of the appointment of the Inspector General pursuant to Sec. 2-1076 of the Code; and (g) Mayoral vetoes and appointments of directors of administrative departments per Rule 8.01(e), 8.1.01(d) and 8.1.02(d).

- (g) **SUBCOMMITTEES.** The chairperson of the county commission may appoint a subcommittee to study or investigate a specific matter falling within the jurisdiction of a standing committee or to consider legislation or policy issues referred to it. The chairperson of the commission shall be notified on completion of the assignment. Subcommittees shall exist only for the time period necessary to complete their assignments and report to their commission committees; provided, however, that subcommittees shall not be in existence for a period in excess of ninety (90) days, unless otherwise specified by the commission chairperson. Reports prepared by subcommittees shall be reviewed by the commission committee with jurisdiction over the subject matter of the report and accepted, amended, or rejected by majority vote of those committee members present.
- (h) **COMMITTEE DELIBERATIONS.** A commission committee may take one of the following actions with respect to each matter referred to the committee for action:<sup>10</sup>
- (1) Recommend favorably;
  - (2) Recommend favorably with committee amendment(s);
  - (3) Forward without recommendation, upon the unanimous vote of the members of the committee who are present;
  - (4) Receive a report;<sup>11</sup>
  - (5) Lay the matter on the table resulting in the matter not being placed on an agenda of the county commission. A report submitted by a county board may not be laid on the table where the ordinance creating the county board requires that a report be submitted to the county commission; or
  - (6) Defer or take no action on an item as set forth in the last sentence of this subparagraph for a maximum of two consecutive committee meetings. Deferral of or failure to act on a matter beyond two consecutive committee meetings shall cause the matter to be laid on the table, as set forth in the preceding subparagraph. Notwithstanding any other provision of these Rules of Procedure, whenever: (A)(i) an item is considered but does not receive a motion; (ii) a motion on an item does not receive a second; (iii) at least a majority plus one of the committee members are present and a majority of those committee members present votes against a motion; or (iv) the vote of the committee members on an item has resulted in a tie; and (B) no other available motion on an item is made and approved before the next item is called for consideration or before a recess or adjournment is called, whichever occurs first, the item shall be deemed to be laid on the

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<sup>10</sup> Advertised procurement activities under authority of Sec. 2-8.2.12 of the Code (Miami-Dade Water and Sewer Department Consent Decree and Capital Improvement Programs Acceleration Ordinance) reported to the committee of jurisdiction over the Water and Sewer Department shall be reviewed by the committee and may be approved or the committee may require that specific projects be removed from the authority delegated by the Ordinance and that the award of such projects be subject to future committee and Board approval.

<sup>11</sup> Ordinance No. 14-65 requires all reports to go to the full Board.

table, as set forth in the preceding subparagraph; such item shall be reintroduced only in accordance with the renewal provisions of Rule 4.01(r). An item shall not be deemed laid on the table where the item is considered but no action is taken on the item due to: loss of quorum or adjournment; or, less than a majority plus one of the committee members is present and a majority of those committee members present votes against a motion.

- (i) **COMMITTEE CONSIDERATION REQUIRED.** Except as provided elsewhere in these rules, no item shall be placed on a commission agenda or considered by the county commission, unless each committee to which the item has been referred has forwarded the item to the commission pursuant to section 4.01(h)(1), (2), (3), or (4) above.
- (j) **EXCEPTIONS TO COMMITTEE REQUIREMENT.**<sup>12</sup>
  - (1) An item that has not been considered by a committee may be placed on the agenda of the county commission if the chairperson of the committee to which the item has been referred requests a waiver in writing and the commission chairperson concurs.
  - (2) Quasi-judicial items, special taxing districts, ordinances for first reading, consent agenda items, other than items related to certificates of transportation, district office fund allocations, special presentations, namings, renamings or codesignations of County roads, facilities or properties, approvals of namings, renamings or codesignations of federal, state or municipal roads, facilities or properties, citizens' presentations, bid protests, settlements, options to renew contracts, resolutions recommending the acceleration and deceleration of Building Better Communities General Obligation Bond Program funding of projects using unspent bond proceeds, including interest earnings and premium funds, notwithstanding Rule 4.01(d)(6), ordinances related to debt obligations, resolutions related to debt obligations, resolutions urging an entity or person to take stated action, resolutions taking a position or seeking direction from the Board on legislation or administrative action at the federal, state or local level, resolutions related to contract lobbyist conflict waiver requests and resolutions expressing intent shall be heard directly by the county commission, items awarding, granting, amending or relating to an award or grant of Targeted Jobs Incentive Fund, Qualified Targeted

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<sup>12</sup> Additional exceptions to committee requirement: a) emergency or time sensitive items per Rule 4.01 (k); b) ratification and/or approval of Mayor's actions for economic stimulus projects per Sec. 2-8.2.7 of the Code; c) agenda items submitted by the Property Appraiser per Sec. 2-70 of the Code; d) Truth-in-millage resolution and budget ordinances; e) Mayoral vetoes and appointments of directors of administrative departments per Rule 8.01(e), 8.1.01(d) and 8.1.02(d); f) county commission approval of the appointment of the Inspector General per Sec. 2-1076 of the Code; g) ratification of action taken by the Mayor or Mayor's designee under Sec. 2-8.2.12 of the Code (Miami-Dade Water and Sewer Department Consent Decree and Capital Improvement Programs Acceleration Ordinance) and Sec. 2-8.2.15 of the Code (Miami-Dade Seaport Department Capital Improvement Program Expedite and Acceleration Ordinance); (h) approval of Mayor's actions as to contracts for the Aviation Department per Sec. 2-285 of the Code; and (i) adoption of non-ad valorem assessment rolls.

Industry Business incentives, property or utility tax exemptions in enterprise zones, or Brownfield Economic Development Initiative Loan Funds or similar incentives and tax exemption programs; provided, however, any such item relating to an award of Community Redevelopment Agency funding or Community Development Block Grant funding or other funding administered by the Public Housing and Community Development department, or successor department, shall not be excepted from committee review by this subsection (j)(2). On such items, the public shall have the same rights to participate and be heard at the county commission as they would have received had the item been heard in committee.

- (3) Whenever the committee of jurisdiction considers a proposed road closing in a commission district where the district commissioner is not a member of the committee of jurisdiction, the Mayor shall notify the commissioner prior to the meeting. Under such circumstances, the committee may only lay the item on the table if the district commissioner attends the commission meeting and states that he or she supports laying the matter on the table.
- (k) EMERGENCY MATTERS; TIME SENSITIVE MATTERS. A matter that has not been considered by the committee(s) to which it is assigned may be placed on the agenda of the county commission by the chairperson to meet a public emergency as provided in section 1.02 of the Home Rule Charter. Time sensitive matters with little or no financial impact on the county may be placed on an agenda of the county commission by the chairperson of the commission without having been considered by a committee.
- (l) QUORUM. A quorum of any commission committee must be present in order for committee to take action. A majority of the members of each commission committee or subcommittee shall constitute a quorum.
- (m) CALLING COMMITTEE TO ORDER. The chairperson or, in the chairperson's absence, the vice-chairperson, shall call the committee to order at the time for which the meeting was noticed. On the appearance of a quorum the committee shall proceed with the order of business.
- (n) "3-DAY RULE". A copy of each agenda item shall be furnished to the members of each committee and subcommittee not later than three (3) working days before a vote may be called on the item. The provisions of this rule shall be deemed waived unless asserted by a commissioner before the committee takes action on the resolution, ordinance, motion or other item in question.

Proposed committee agenda items not delivered in accordance with the preceding paragraph (except for alternates, and substitutes), shall not be placed on the committee agenda unless placed on the agenda at the request of the committee chair.

- (o) MEMBERS' ATTENDANCE. Committee attendance requirements shall be established by the chairperson of the commission, after receiving recommendations by a commission committee of the whole regarding any attendance requirements. Any Commissioner who notifies the Committee Chairperson or the Clerk of the Board that he or she will be absent from a committee meeting prior to the start of such scheduled meeting shall be noted as excused in the minutes of the meeting. The Clerk of the Board shall note in the minutes when a Commissioner arrives at a committee meeting, if the Commissioner arrives after the meeting has commenced.
- (p) MAJORITY VOTE REQUIRED. Unless otherwise specified in these rules, an affirmative vote of voting members present, as long as a quorum is present, shall be required to act upon any ordinance, resolution, report or other matter considered by the committee.
- (q) RECONSIDERATION. Any committee action taken pursuant to Rule 4.01(h) may be reconsidered only at the same meeting at which the action was taken. A motion to reconsider an item which has been laid on the table as set forth in Rule 4.01(h)(5) and (6) is out of order and no such motion may be reconsidered.
- (r) RENEWAL. Once an ordinance or resolution is laid on the table in a committee, the proposed ordinance or resolution may not be brought before that committee again during the three (3) month period following the date the item is laid on the table (subject to the provisions of Rule 4.01(q)), unless an application for renewal made by two-thirds (2/3) of the committee members is first submitted to the chairperson of the committee.
- (s) STATEMENTS OF FISCAL IMPACT REQUIRED FOR ORDINANCES; EXCEPTIONS.
  - (1) Prior to the public hearing of any ordinance, the Mayor shall prepare a written statement setting forth the fiscal impact, if any, of the proposed ordinance. The fiscal impact statement shall at a minimum contain the following information: a description of the anticipated increase or decrease of expenditures (by component as listed in Section 2-1795(b) of the Code) and revenues for the current and subsequent fiscal year, if any; a description and projected dollar value of anticipated expenditures that will be absorbed within existing resources and/or departmental expenditure allocations for the current fiscal year, if any; a description of subsequent governmental actions that will be required in order to determine anticipated future revenues and expenditures, if any, including, but not limited to, receipt of any federal and state grant funds and approval of proposed new fees or increases to existing fees; a forecast, covering a period of no less than five years from the expected effective date of the proposed legislation, of the anticipated long-term fiscal implication of the proposed legislation, if any; in cases where risk factors or other variables that may impact future revenues or expenditures are uncertain, volatile, or difficult to project, a description of such risk factors or variables and an

estimate or projection of anticipated or projected impacts to revenues and expenditures; a description of all assumptions used to project the fiscal impact of the proposed legislation and to estimate anticipated revenues and expenditures; and, in cases where the Mayor has determined that an ordinance has no fiscal impact, a description of the Mayor's assumptions and analysis used to reach such conclusion. The fiscal impact statement shall only address the fiscal impact of the proposed legislation. No public hearing on any ordinance shall be held, if the statement of fiscal impact is not submitted with the ordinance as part of the agenda. The provision of this rule shall not apply to any emergency ordinance, any ordinance authorizing the issuance of bonds or indebtedness, or any budget ordinance.

- (2) If the Mayor initially determines that an ordinance has no fiscal impact, but later determines that the ordinance does have a fiscal impact (such as during the process of implementation), then the Mayor shall so advise the Board in a memorandum. Additionally, if, due to the fiscal impact, the Mayor has not fully implemented all or any part of the program or policy provided for in an ordinance within one year of the effective date, or such other date as set forth in the ordinance, then the Mayor shall so advise the Board in a memorandum. Notwithstanding the foregoing, nothing in this rule shall be construed to authorize the Mayor not to comply with the policy direction contained in an ordinance without Board approval.

(t) SOCIAL EQUITY STATEMENT REQUIRED FOR ORDINANCES;  
EXCEPTIONS.

- (1) Prior to the public hearing on any ordinance, the Mayor shall prepare a written social equity statement (a) identifying the possible non-monetary benefits and burdens of the policy to be implemented by the proposed ordinance and describing how those benefits and burdens would affect the community (e.g., geographically, demographically, by income levels, etc.), and (b) identifying the possible increase or decrease in monetary impacts anticipated to be borne by the residents of the County if the proposed ordinance is adopted and describing how those increased or decreased monetary impacts would affect the community (e.g., geographically, demographically, by income levels, etc.) ("social equity statement"). No public hearing on any ordinance shall be held, if the social equity statement is not submitted with the ordinance as part of the agenda.
- (2) If the Mayor initially determines that an ordinance has no social equity impact, but later determines that the ordinance does have a social equity impact (such as during the process of implementation), then the Mayor shall so advise the Board in a memorandum. Additionally, if, due to the social equity impact of an ordinance, the Mayor has not fully implemented all or any part of the program or policy provided for in an

ordinance within one year of the effective date, or such other date as set forth in the ordinance, then the Mayor shall so advise the Board in a memorandum. Notwithstanding the foregoing, nothing in this rule shall be construed to authorize the Mayor not to comply with the policy direction contained in an ordinance without Board approval.

- (3) The Mayor shall not be required to provide a social equity statement for budget or emergency ordinances.
- (4) The social equity statement shall be based on information that is currently available and known by the administration.
- (u) **PROCUREMENT ITEMS.** Provided public notice, public hearing and other legal requirements can be met, and notwithstanding and prevailing over any provision to the contrary, all items approved at committee meetings recommending or rejecting award of contracts for public improvements, and purchases of supplies, materials, and services, including professional services, shall be placed on the agenda of the next regularly scheduled Board of County Commissioners meeting, unless placed on the agenda of a special meeting held sooner than the next regularly scheduled Board of County Commissioners meeting or unless the chairperson of the commission deems it necessary to place the item on another agenda.
- (v) Upon completion of any report prepared pursuant to a motion or other action of a committee of the Board of County Commissioners, such report shall be placed on an agenda for review by the requesting committee and the Board of County Commissioners, notwithstanding any statement to the contrary in the motion or other action of the committee. For purposes of this ordinance, a report is deemed to include any oral or written document of any kind, including a feasibility study, that is intended to communicate information requested by resolution, motion or other action of a committee of the Board of County Commissioners. This ordinance shall not apply to reports provided pursuant to requests for information made by individual County Commissioners or memoranda from the Office of the County Attorney.

## PART 5. CONDUCT OF MEETINGS; AGENDA

### **Rule 5.01. CALL TO ORDER.**

Promptly at the hour set for each meeting, the members of the commission, the county attorney and the clerk shall take their regular stations in the commission chamber. The chairperson shall take the chair and shall call the commission to order immediately. In the absence of the chairperson and vice-chairperson, the clerk shall then determine whether a quorum is present and in that event shall call for the election of a temporary presiding officer. Upon the arrival of the chairperson or vice-chairperson, the temporary presiding officer shall relinquish the chair upon the conclusion of the business immediately before the commission.

### **Rule 5.02. ROLL CALL.**

The clerk shall call the roll of the members, and the names of those present shall be entered in the minutes. Any Commissioner who notifies the Chairperson or the Clerk of the Board of County Commissioners that he or she will be absent from a County Commission meeting prior to the start of such scheduled meeting shall be noted as excused in the minutes of the meeting. The Clerk of the Board shall note in the minutes when a Commissioner arrives at a County Commission meeting, if the Commissioner arrives after the meeting has commenced.

### **Rule 5.03. QUORUM.**

A majority of the commissioners then in office shall constitute a quorum. No ordinance, resolution or motion shall be adopted by the commission without the affirmative vote of the majority of all the members present.

### **Rule 5.04. FAILURE TO ATTAIN A QUORUM.**

Should no quorum attend within thirty (30) minutes after the hour appointed for the meeting of the commission, the chairperson or the clerk may adjourn the meeting until another hour or day unless, by unanimous agreement, those members present select another time. The names of the members present and their action at such meeting shall be recorded in the minutes by the clerk.

### **Rule 5.05. AGENDA.**

#### (a) ORDER OF BUSINESS.

(1) There shall be an official agenda for every meeting of the commission which shall determine the order of business conducted at the meeting. The order of business for Tuesday meetings shall be as follows:

1. invocation as provided in Rule 5.05(h)  
roll call  
pledge of allegiance  
special presentations  
citizen's presentations  
reports of official county boards

reasonable opportunity for public to be heard as provided in Rule 6.06

motion to set agenda

commission auditor

office of intergovernmental affairs

office of community advocacy

2. mayoral vetoes  
mayoral reports<sup>13</sup>
- 3(a). Consent Agenda – commissioner items
- 3(b). Consent Agenda – department items
4. ordinances for first reading
5. public hearings, which shall be scheduled for 9:30 a.m.
- 6(a). chairperson of the board of county commissioners
- 6(b). policy matters for discussion by the board
7. ordinances for second reading
8. departments
9. additional departmental items
10. authorities, boards, councils and trusts
11. county commissioners
12. county inayor
13. county attorney
14. items subject to “4-day rule”
15. clerk of the board.
16. items scheduled for Thursday
17. summer recess items

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<sup>13</sup> Sec. 2-8.2.12 of the Code (Miami-Dade Water and Sewer Department Consent Decree and Capital Improvement Programs Acceleration Ordinance) requires mayoral reports to the Board every 30 days on the status of consent decree work and other required capital improvement projects.

The following items shall be considered consent agenda items and placed in section 3(a) or 3(b) of the agenda, as appropriate:

1. Items approving or ratifying the submittal of grant applications and acceptance of grant awards, as long as required matching funds are appropriated in the County budget, as determined by the Office of Management and Budget
2. Resolutions ratifying contracts executed by the Mayor, as allowed by law or previous action of the Board (non-summer recess items)
3. Resolutions approving in-kind contributions
4. Resolutions making district office fund allocations
5. Resolutions approving namings, renamings or codesignations of federal, state or municipal roads, facilities or properties
6. Items awarding, granting, amending or relating to an award or grant of Targeted Jobs Incentive Fund, Qualified Targeted Industry Business incentives and tax exemption programs
7. Resolutions approving donations of surplus County property, except those donations made for emergency purposes and to foreign governmental entities
8. Resolutions approving the issuance or transfer of certificates of transportation for passenger motor carriers

Notwithstanding any provision herein to the contrary, first or second reading items, public hearing items, quasi-judicial items, and items requiring a supermajority vote of the board shall not be placed in the consent agenda section of the agenda.

Items shall be considered in the order in which they are placed on the agenda unless a majority of the commissioners determines to deviate from the printed agenda or in the discretion of the chairperson, certain matters should be taken out of order to help eliminate logistical concerns or exigent circumstances which would impede the proper functioning of the commission. During a commission meeting, commissioners may identify certain items for individual consideration (i.e., the "pull list"). Agenda items, including consent agenda items, not selected for individual consideration may be approved in a single vote.

The commission shall not take action upon any matter when it is first presented to the commission in a report or reports made by the County Commissioners.

(2) At Thursday meetings the following items of business shall be conducted in the following order:

1. special presentations and proclamations
2. items scheduled for Thursday
3. policy matters for discussion by the board
4. zoning
5. Historic preservation appeals
6. metropolitan planning organization (MPO)
7. workshops

(b) AUTHORITY TO SPONSOR OR PRESENT ITEMS ON AGENDA.

(1) Anything to the contrary notwithstanding and subject to the following paragraph related to quasi-judicial matters and certain Comprehensive Development Master Plan ("CDMP") applications, matters may only be presented or sponsored by a county commissioner, a commission committee, the county attorney and the clerk of the commission, except that the Mayor shall be able to present or sponsor: (1) reports which do not amend any policy established by the County Commission; (2) mayoral appointments; (3) solicitations for the purchase of goods and services, leases, construction contracts and debt obligations; (4) contracts for the purchase of goods and services and amendments thereto; (5) grant applications, grants and sub-grants; (6) leases of non-County owned property and amendments thereto; (7) debt obligations and amendments thereto; (8) construction contracts and amendments thereto; (9) labor agreements and amendments thereto; (10) special taxing districts initiated by petition; (11) certificates of public convenience and necessity; (12) certificates of transportation; (13) other matters where the presentation or sponsorship by the Mayor is required by the Home Rule Charter or state or federal law and (14) leases and licenses of County-owned property and amendments thereto if the Mayor first provides written notification to the Commissioner of the District wherein the County-owned property that is to be leased or licensed is located of the matter and the District Commissioner does not agree to present or sponsor such lease or license or amendment thereto within ten (10) days of the written notification. Any Commissioner or commission committee may present or sponsor any item which the Mayor is authorized to present or sponsor pursuant to the preceding sentence, except as provided otherwise in the Home Rule Charter, or state or federal law. Additionally, the committee chairperson of jurisdiction may, upon the written request of the Mayor or his or her

designee, submit an item for placement on a committee or Commission agenda. Such an item shall, if requested by the committee chairperson of jurisdiction, be placed on the appropriate agenda, in accordance with the applicable rules of procedure, as an item sponsored by the committee of jurisdiction.

Quasi-judicial matters may be presented by the applicable department and shall be placed on the appropriate agenda in accordance with these Rules. In addition, private applications for amendment, modification, addition, or change to the CDMP shall be placed on the appropriate CDMP agenda after the Department of Regulatory and Economic Resources Enhancement or successor department has completed its review of the application as provided in section 2-116.1 of the Code and all required fees have been paid (hereinafter "completed private CDMP application"). Each completed private CDMP application and the accompanying ordinance and any related resolution shall: (i) be forwarded to the Office of the Agenda Coordinator for placement on the appropriate CDMP agenda; and (ii) be accompanied by a recommendation from the Mayor or his or her designee.

- (2) Proposed agenda items not delivered in accordance with subsection (c) hereof, or which have not been considered by any committee, (except for alternates, substitutes and items not subject to committee review) shall not be placed on the agenda unless the chairperson of the committee which has jurisdiction over the item, if any, and the chairperson of the commission concur in writing.
- (c) "4-DAY RULE". A copy of each agenda item shall be furnished to the members of the commission not later than four (4) working days before a vote may be called on the item. The provisions of this rule shall be deemed waived unless asserted by a commissioner before the board takes action on the resolution, ordinance, motion or other item in question. The provisions of the rule may not be waived under Rule 7.01(o); however, this rule is not applicable to special or emergency meetings called pursuant to Rule 3.02, items related to the County's legislative package, resolutions recommending the acceleration and deceleration of Building Better Communities General Obligation Bond Program funding of projects using unspent bond proceeds, including interest earnings and premium funds, items approved at a committee meeting recommending or rejecting award of contracts for public improvements, and purchases of supplies, materials, and services, including professional services, resolutions related to debt obligations that do not require a public hearing, and resolutions or motions directing the Mayor or his or her designee to prepare an item for consideration by the Commission.<sup>14</sup>

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<sup>14</sup> Additional exceptions to the 4-day rule: a) Mayoral vetoes and appointments of directors of administrative departments per Rules 8.01(e), 8.1.01(d) and 8.1.02(d); b) Truth-in-millage resolution and budget ordinances; c) awards of Water & Sewer Department contracts as provided in Sec. 2-8.2.11(3) of the Code; d) actions for ratification under Sec. 2-8.2.12(6) of the Code (Miami-Dade and Sewer Department Consent Decree and Capital Improving Program Acceleration Ordinance) and Sec. 2-8.2.15 of the Code (Miami-Dade Seaport Department

- (d) APPROVAL OF MINUTES. Unless a reading of the minutes of a meeting is requested by a majority of the commission, such minutes, when approved by the commission and signed by the presiding officer and the clerk, shall be considered approved without reading; provided that the clerk shall place a copy of the minutes of each meeting, as soon as they have been completed, at a designated place in the clerk's office where they may be examined by the commissioners prior to formal approval. A copy of such minutes shall, upon completion by the clerk, be delivered to the mayor and county attorney. The minutes of prior meetings may only be approved by a majority of the commissioners present at a meeting of the commission, and upon such approval shall become the official minutes.
- (e) REMOVAL OF PUBLIC HEARING ITEMS FROM THE AGENDA. The sponsor of an item scheduled for public hearing shall be able to withdraw that item from the Commission agenda at any time prior to the commencement of the public hearing by written notification to the agenda coordinator.
- (f) PUBLIC HEARINGS HEARD BY COMMITTEE. When a public hearing relating to an ordinance or resolution is conducted before a commission committee as authorized herein, no additional testimony from the public shall be permitted except by a majority vote of those members present before final action is taken; however, debate by commissioners shall be allowed.
- (g) SUMMER RECESS ITEMS. During the Board's annual summer recess period, as determined by the County Calendar approved by the Board, the County Mayor or County Mayor's designee shall administer County business requiring approval of the Board, including the award of contracts and approval of change orders required to maintain essential health and safety activities pursuant to approved County procedures; application for grants; execution of grant agreements, related memoranda of understanding, and other intergovernmental cooperation agreements; application and execution of grants and agreements; receipt and expenditure of funds under the American Recovery and Reinvestment Act of 2009 and authorization to perform any and all requirements of said Act; and receipt and expenditure of other funds which will be put in jeopardy, if not received and expended during the summer recess period. All summer recess items not otherwise excepted from committee review will be scheduled for the appropriate committee of jurisdiction and will be placed on the Board's agenda for ratification at the first regular meeting in the month of October.
- (h) INVOCATIONS BEFORE THE COUNTY COMMISSION AND COMMITTEES.
  - (1) It is the policy of the Board to allow for an invocation, which may include a prayer or a short solemnizing message, to be offered before its meetings for the benefit of the Board.

- (2) Although the invocation shall be listed in the agenda, it shall not be considered an agenda item for the meeting or part of the public business.
- (3) No member or employee of the Board or any other person in attendance at the meeting shall be required to participate in any invocation that is offered.
- (4) The invocation shall be voluntarily delivered by an individual selected by members of the Board on a rotating basis.
- (5) No invitational speaker shall receive compensation for his or her service.
- (6) Any invitation extended shall specify that the opportunity to offer a legislative invocation shall not be exploited to convert others to any particular faith, to advance any particular faith, or to disparage any other faith or belief.
- (7) Neither the Board nor the Clerk of the Board shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by an invitational speaker.
- (8) This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Board with, nor express the Board's preference for, any faith or religious denomination.

**Rule 5.06. ORDINANCES, RESOLUTIONS<sup>15</sup> <sup>16</sup> MOTIONS, CONTRACTS.**

- (a) **PREPARATION AND ENACTMENT OF ORDINANCES.** The county attorney, when requested, shall prepare ordinances and resolutions.

Ordinances may be introduced and listed by title and shall be read by title only before consideration by the commission on first reading. On first reading of ordinances, there shall be no discussion by either county commissioners, county staff or members of the public, except as provided in Rule 6.06. On first reading only, the commission may either vote for all ordinances in one vote or may vote separately on any ordinance. At second reading, each ordinance shall be voted on individually. All ordinances presented for first reading related to debt obligations

<sup>15</sup> Resolution No. R-938-14 adopted a policy that, unless otherwise requested by the sponsoring Commissioner, resolutions presented for the Board's consideration shall have an "effective date" clause providing that the resolution shall be effective upon the earlier of: (i) 10 days after the date of adoption unless vetoed by the County Mayor, and if vetoed, only upon override by this Board; or (ii) approval by the County Mayor of the Board resolution and the filing of the approval with the Clerk of the Board. Further, Sec. 2-8.2.12 of the Code (Miami-Dade Water and Sewer Department Consent Decree and Capital Improvement Programs Acceleration Ordinance) provides that resolutions ratifying an act undertaken shall include an effective date provision that provides that the resolution shall become effective upon approval by the County Mayor of the resolution and the filing of the Mayor's approval with the Clerk of the Board, which approval may be provided before the expiration of the 10 day mayoral veto period.

<sup>16</sup> Resolution R-636-14, relating to agenda items for Board nominations and appointments requires action by the Clerk of the Board and the Commission Auditor for background research on such nominees and proposed appointees.

shall be placed on the next available regular or special Commission meeting agenda for public hearing and second reading in accordance with applicable public notice requirements and advertising, including but not limited to, those set forth in Section 1.02 B. of the Home Rule Amendment and Charter of Miami-Dade County.

- (b) **APPROVAL BY COUNTY ATTORNEY.** All ordinances, resolutions and contract documents, before presentation to a commission committee or the commission, shall have been reduced to writing and shall have been approved as to form and legality by the county attorney. All reports or memoranda that supplement pending ordinances or resolutions shall be presented to the County Attorney for review and approval for placement on a Board agenda, when such reports or memoranda contain proposed amendatory language that can be used to formulate amendments to ordinances or resolutions. Prior to presentation all such documents may be referred to the head of the department under whose jurisdiction the administration of the subject matter of the ordinance, resolution or contract document would devolve. The county attorney shall communicate with a designated staff person from each commissioner's office regarding the preparation and tracking of agenda items.
- (c) **SPONSORSHIP.** A Commissioner may assume sponsorship of any ordinance, resolution, report or other matter.
- (d) **EXCEPTION.** The provisions of this Rule 5.06 shall not be applicable to zoning applications, which shall be governed exclusively by Chapter 33 of the code, or to historic preservation appeals, which shall be governed by chapter 16A. In addition, all quasi-judicial matters shall be exempt from subsection (c) of this Rule.
- (e) **WHEN ACTION TO BE TAKEN BY RESOLUTION OR ORDINANCE.** All actions of the commission may be taken by motion, resolution or ordinance except that any action of the commission which provides for raising revenue, appropriating funds or incurring indebtedness (other than refunding indebtedness), or which provides a penalty or establishes a rule or regulation for the violation of which a penalty is imposed, shall be by ordinance.
- (f) **ORDINANCES DIRECTLY AFFECTING MUNICIPALITIES.** Any proposed county ordinances that would directly affect the jurisdiction or the duties of municipalities or their officers, or any proposed ordinances that may have a direct fiscal impact upon municipal governments in Miami-Dade County, shall be scheduled for public hearing no sooner than six (6) weeks after its passage on first reading. At least four (4) weeks prior to the scheduled public hearing, the Mayor is directed to mail or e-mail a copy of the proposed ordinance to each city clerk, city attorney, city manager and the Executive Director of the Miami-Dade League of Cities, Inc. The Mayor's communication shall include the date of the scheduled public hearing and shall state that the proposed ordinance may have an impact upon municipalities. This subsection shall be construed as directory only, and

failure to comply with the provisions hereof shall not affect the validity of any ordinance.

- (g) **PRIME SPONSORSHIP AND CO-SPONSORSHIP.** When a resolution or ordinance is placed on the agenda at the request of a commissioner, the commissioner who requested the preparation of the item shall be designated as the prime sponsor. Any other commissioner who wishes to sponsor the resolution or ordinance shall be designated as a co-sponsor.
- (h) **ITEMS AMENDED IN COMMITTEE.** Any item on the commission agenda that has been amended in committee shall so indicate on the cover memorandum and include a brief description of the amendment. In addition, committee amendments shall be uniquely identified in the item itself so as to distinguish committee amendments from the original item, such as by underlining and strike-through in the case of a resolution amended in committee and by double underlining and double strike-through in the case of an ordinance amended in committee, or where such an approach would not clearly show committee amendments or is not practical, by providing footnotes or comments on the item.
- (i) **SUBSTITUTE AND ALTERNATE ITEMS.** Any item on a committee agenda or the commission agenda that is a substitute or alternate shall so indicate on the cover memorandum and include a brief description of how the item differs from the original item. In addition, differences between the original item and the substitute or alternate item shall be uniquely identified in the substitute or alternate item itself so as to distinguish it from the original item, such as by underlining and strike-through in the case of a resolution, by double underlining and double strike-through in the case of an ordinance, or where such approaches would not clearly show the differences or are not practical, by providing footnotes or comments on the item.
- (j) Upon completion of any report prepared pursuant to a resolution, motion or other action of the Board of County Commissioners, such report shall be placed on an agenda of the Board of County Commissioners for review, notwithstanding any provision to the contrary or any statement to the contrary in any resolution, motion or other action of the Board of County Commissioners. For purposes of this ordinance, a report is deemed to include any oral or written document of any kind, including a feasibility study, that is intended to communicate information requested by resolution, motion or other action of the Board of County Commissioners. This ordinance shall not apply to reports provided pursuant to requests for information made by individual County Commissioners or memoranda from the Office of the County Attorney.

**Rule 5.07. LIMITATION ON AGENDA ITEMS.**

- (a) No Commissioner shall be a prime sponsor of a total of more than ten (10) action items on a single regular commission agenda unless the Chairperson of the Commission authorizes the placement of additional items on the agenda by a particular Commissioner when approving the agenda. As used in Rule 5.07(a), an "action item" means an ordinance for first reading or a resolution. This provision

shall not be applied to ordinances or resolutions which are intended to correct scrivener's errors.

- (b) An agenda item shall be deemed withdrawn upon its third deferral. The provisions of this subsection shall not apply to the certification of any election, quasi-judicial matters, zoning applications, or to applications amend the Comprehensive Development Master Plan.<sup>17</sup>

**Rule 5.08. STATEMENT OF PRIVATE BUSINESS SECTOR IMPACT REQUIRED FOR ORDINANCE**

At the request of any commissioner at the first reading of any ordinance that regulates private business, land development or building code standards, the mayor shall prepare a written statement setting forth the fiscal impact, if any, of the proposed ordinance on the private business sector. No ordinance regulating private business, land development or building code standards shall be considered on second reading if the requested statement of fiscal impact on private business is not submitted with the ordinance as part of the agenda.

**Rule 5.09. STATEMENT OF CONSIDERATION OF IMPACT OF SEA LEVEL RISE**

For all agenda items brought to the Board that relate to the planning, design and/or construction of County infrastructure projects, including but not limited to, County building elevation projects, County installation of mechanical and electrical systems, County infrastructure modifications and County infrastructure renovations, the Mayor or Mayor's designee shall include a statement in the item that the impact of sea level rise has been considered in the project.

**PART 6. PUBLIC PARTICIPATION**

**Rule 6.01. PERSONS AUTHORIZED ON THE DAIS.**

No person, except county officers or their representatives, shall be permitted on the dais unless authorized by the presiding officer or a majority of the commission.

**Rule 6.02. CITIZENS' PRESENTATIONS; PUBLIC HEARINGS.**

- (a) CITIZENS' PRESENTATIONS. Any citizen shall be entitled to be placed on the official agenda of a regular meeting of the commission and be heard concerning any matter within the scope of the jurisdiction of the commission. Only commissioners and the mayor may place a citizen on the official agenda. The deadline for placing a citizen on the agenda is noon on Monday of the week preceding the week of the meeting at which said citizen wishes to be heard. No action may be taken by the commission on an item heard as a citizen's

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<sup>17</sup> In addition, Rule 5.07(b) shall not apply to quasi-judicial items.

presentation unless two-thirds (2/3) of the members present deem that the issue requires immediate commission action.

- (b) PUBLIC HEARINGS. Any citizen shall be entitled to speak on any matter appearing on the official agenda under the section entitled "Public Hearings".
- (c) PUBLIC DISCUSSION ON AGENDA ITEMS. No member of the public shall be entitled as a matter of right to address the commission on any matter listed on or added to the official agenda which is not scheduled for citizen's presentations or a public hearing, except as provided in Rule 6.06.

**Rule 6.03. REGISTRATION OF SPEAKERS FOR PUBLIC HEARING ITEMS.**

- (a) The Office of Agenda Coordination shall prepare appropriate registration cards for public hearing items which should indicate the speaker's name, the public hearing item on which he or she is speaking, and whether he or she is speaking in favor of or against the proposed item.
- (b) On the day of the commission or committee meeting, a person desiring to speak shall register with the office of the agenda coordinator, at least fifteen (15) minutes prior to the commencement of the discussion on the public hearing item, at a registration table in the lobby of the commission chambers.
- (c) Failure to comply with the registration provisions of this rule shall prohibit a person from speaking on any public hearing item for which he or she is not properly registered.
- (d) In the event that the seats in the commission chambers are filled to capacity, the Office of Agenda Coordination shall provide appropriate overflow seating in an area where the commission or committee meeting is being monitored on television.

**Rule 6.04. ADDRESSING COMMISSION, MANNER, TIME FOR PUBLIC HEARING ITEMS.**

Each person, other than salaried members of the county staff, who addresses the commission or a committee shall step up to a podium and shall give the following information in an audible tone of voice for the minutes:

- (a) Name;
- (b) Address;
- (c) Whether the person speaks on his or her own behalf, a group of persons, or a third party; or if the person represents an organization; and whether the view expressed by the speaker represents an established policy of the organization approved by the board or governing council;

- (d) Compensation, if any;
- (e) Whether the person or any immediate family member has a personal financial interest in the pending matter, other than as set forth in (d).

Unless further time is granted by the commission or committee, the statement on a public hearing item shall be limited to five (5) minutes. All remarks shall be addressed to the commission or committee as a body and not to any member thereof. No person, other than commissioners and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the commission, without the permission of the presiding officer. No question shall be asked a commissioner except through the presiding officer.

Any person who either supports or opposes a particular public hearing item, but does not wish to use his or her allotted time when called upon to speak may express his or her support or opposition by stepping up to the podium, complying with the requirements of Rule 6.04, identifying the public hearing item the person wishes to address, and stating either "I waive in support" or "I waive in opposition." Notwithstanding any provision to the contrary, any person who is called upon to speak and wishes to state his or her support for or opposition to a public hearing item without stepping up to the podium may do so by: (1) standing up wherever he or she may be in the audience; (2) stating his or her name; (3) identifying the public hearing item the person wishes to address; and (4) stating either "I waive in support" or "I waive in opposition" in an audible tone of voice. Any person who states his or her support or opposition as provided for in the preceding sentence shall comply with the rules of decorum set forth in Rule 6.05, and be required to fill out a registration card, prior to stating his or her position, which includes, among other things, the person's name, address and the public hearing item the person wishes to address. Whenever a person has elected to waive his or her right to speak in support or opposition to a public hearing item without stepping up to the podium, the presiding officer shall thereafter state the person's name and address as they appear on his or her registration card, repeat what the person stated (*i.e.*, the public hearing item addressed and whether the person waived in support or opposition) and, at the appropriate time, give that person's registration card to the Clerk of the Board.

**Rule 6.05. DECORUM.**

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the commission shall be barred from further appearance before the commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the commission members present.

No clapping, applauding, heckling or verbal outbursts in support or opposition to a speaker or his or her remarks shall be permitted. No signs or placards shall be allowed in the commission chamber. Persons exiting the commission chamber shall do so quietly.

The use of cell phones in the commission chambers is not permitted. Ringers must be set to silent mode to avoid disruption of proceedings. Individuals, including those on the dais, must exit the chambers to answer incoming cell phone calls. County employees may not use cell phone cameras or take digital pictures from their positions on the dais.

**RULE 6.06. REASONABLE OPPORTUNITY FOR THE PUBLIC TO BE HEARD ON NON-PUBLIC HEARING PROPOSITIONS.**

- (a) In addition to and apart from the right to speak on any public hearing item as set forth above and notwithstanding and prevailing over any other provision of the Code to the contrary, members of the public shall be given a reasonable opportunity to be heard as set forth in this rule on any non-public hearing proposition that is before the Commission or a committee pursuant to section 286.0114, Florida Statutes, as such may be amended from time to time.
- (b) For purposes of this rule, "proposition" shall mean a general substantive policy issue or matter proposed or offered for consideration or adoption, and shall not include:
  - (i) Procedural motions on propositions, or
  - (ii) Individual components, aspects or line items of a proposition.

While a single proposition may be considered multiple times before the Commission and Commission committees as the same or different agenda items, there shall only be one reasonable opportunity to be heard on each proposition during the decision-making process as set forth in this rule.

- (c) For any non-public hearing proposition that is referred to committee, the reasonable opportunity to be heard shall be before the committee subject to the limitations in (d) below. For any non-public hearing proposition that is not referred to committee and heard only by the Commission, the reasonable opportunity to be heard shall be before the Commission subject to the limitations in (d) below.
- (d) The reasonable opportunity to be heard shall not apply to:
  - 1. An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the Commission or a committee to act;
  - 2. An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamation;
  - 3. A meeting that is exempt from the Sunshine Law;
  - 4. A meeting during which the Commission or a committee is acting in a quasi-judicial capacity; provided, however, that this provision does not affect the right of a person to be heard as otherwise provided by law;
  - 5. Procedural motions, including, but not limited to, motions to defer an item, recess or adjourn;

6. Ordinances on second reading when there was a previous opportunity to be heard at a public hearing at committee or otherwise;
  7. Propositions before the Commission when there was a previous opportunity to be heard at committee;
  8. A request or direction to the Mayor or other County official that will be brought back before the Commission or a committee when there will be a subsequent opportunity to be heard on the proposition; or
  9. Any situation where there has been a previous public hearing or reasonable opportunity to be heard on a proposition, or where there will be a subsequent public hearing or reasonable opportunity to be heard on a proposition.
- (e) On the day of the Commission or committee meeting and no less than one-half hour after the publicly noticed time for the meeting to begin, a person desiring to speak on a non-public hearing proposition shall register with the Office of Agenda Coordination in the lobby of the Commission chambers and complete a registration card as set forth in (f) below.
- (f) The Office of Agenda Coordination shall make available appropriate registration cards for non-public hearing propositions. Such cards shall be formatted to indicate the speaker's name, address, the non-public hearing proposition on which he or she is speaking, and whether he or she is speaking in favor of or against the proposition or for informational purposes. Such registration cards shall be in a distinct color or otherwise immediately distinguishable from registration cards for public hearing items.
- (g) Failure to comply with the registration provisions of this rule shall prohibit a person from having an opportunity to be heard on any item or proposition for which he or she is not properly registered, provided however that if a proposition is discussed that is not listed on the agenda of the Commission or a committee, then a person shall have an opportunity to be heard on the proposition by registering with the Office of Agenda Coordination and completing a registration card as soon as it is announced that the Commission or committee, as applicable, will hear the proposition. Only in the event that (i) a proposition is being discussed and (ii) there was no advance notice of the proposition being heard shall a person have a right to approach the podium and request to be heard on the proposition.
- (h) A person who addresses the Commission or a committee under this rule shall step up to a podium and give the following information in an audible tone of voice:
1. Name;
  2. Address;

3. Whether the person speaks on his or her own behalf, a group of persons, or a third party; or if the person represents an organization .
  - (i) Unless further time is granted by the presiding officer of the Commission or a committee, the statement shall be limited to no more than two (2) minutes subject to the following additional limitations:
    1. No more than 10 minutes shall be available in total for all persons speaking in favor of a proposed item or proposition and no more than 10 minutes shall be available in total for all persons speaking against a proposed item or proposition;
    2. When more than five (5) persons have registered to speak in favor of an item or proposition, then such persons shall select a representative who shall speak on behalf of the proponents for no more than four (4) minutes and the presiding officer may read into the record the names of the other persons who have registered to speak in favor of the proposition. If the proponents cannot decide on a representative, then the representative shall be the first person that registered with the Office of Agenda Coordination pursuant to subsection (f) above;
    3. When more than five (5) persons have registered to speak against an item or proposition, then such persons shall select a representative who shall speak on behalf of the opponents for no more than four (4) minutes and the presiding officer shall read into the record the names of the other persons who have registered to speak against the proposition. If the opponents cannot decide on a representative, then the representative shall be the first person that registered with the Office of Agenda Coordination pursuant to subsection (f) above.
  - (j) All remarks shall be addressed to the Commission or committee as a body and not to any particular member thereof. No person, other than commissioners and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Commission, without the permission of the presiding officer. No question shall be asked a commissioner except through the presiding officer.
  - (k) No person shall be entitled to speak for more than five (5) minutes in total on any one Commission or committee agenda.
  - (l) The reasonable opportunity for the public to be heard on all propositions except public hearing items shall be provided before the motion to set the agenda for the Commission or committee meeting is entertained, or at the discretion of the presiding officer.
  - (in) The rules of decorum set forth in Rule 6.05 shall apply to the reasonable opportunity to be heard.

- (n) Any person who either supports or opposes a particular non-public hearing proposition ("proposition") but does not wish to use his or her allotted time when called upon to speak may express his or her support or opposition by: (1) stepping up to the podium; (2) complying with the requirements of subsection (h); (3) identifying the proposition the person wishes to address; and (4) stating either "I waive in support" or "I waive in opposition." Notwithstanding any provision to the contrary, any person who is called upon to speak and wishes to state his or her support for or opposition to a particular proposition without stepping up to the podium may do so by: (1) standing up wherever he or she may be in the audience; (2) stating his or her name; (3) identifying the proposition the person wishes to address; and (4) stating either "I waive in support" or "I waive in opposition" in an audible tone of voice. Any person who states his or her support or opposition without stepping up to the podium as provided for in the preceding sentence shall comply with the rules of decorum as provided in subsection (m), and be required to fill out a registration card, prior to stating his or her position, which includes, among other things, the person's name, address and the proposition the person wishes to address. Whenever a person has elected to waive his or her right to speak in support or opposition to a proposition without stepping up to the podium, the presiding officer shall thereafter state the person's name and address as they appear on his or her registration card, repeat what the person stated (*i.e.*, the particular proposition addressed and whether the person waived in support or opposition) and, at the appropriate time, give that person's registration card to the Clerk of the Board.

## **PART 7. RULES OF DEBATE**

### **Rule 7.01. RULES OF DEBATE.**

- (a) **QUESTIONS UNDER CONSIDERATION.** When a motion is presented and seconded, it is under consideration and no other motion shall be received thereafter, except to adjourn, to lay on the table, to postpone, or to amend until the question is decided. These motions shall have preference in the order in which they are mentioned and the first two shall be decided without debate. Final action upon a pending motion may be deferred until a date certain by a majority of the members present.

- (b) AS TO THE PRESIDING OFFICER. The presiding officer, upon relinquishing the chair, may move, second, debate and vote, subject only to such limitations as are by these rules imposed upon all members.
- (c) GETTING THE FLOOR, IMPROPER REFERENCES TO BE AVOIDED. Every member desiring to speak for any purpose shall address the presiding officer, and upon recognition, shall be confined to the question under debate avoiding all personalities and indecorous language.
- (d) INTERRUPTION; CALL TO ORDER; APPEAL A RULING OF THE CHAIR. A member once recognized shall not be interrupted when speaking unless it be a call to order or as herein otherwise provided. If a member is called to order, the member shall cease speaking until the question of order shall be determined by the presiding officer, and if in order, the member shall be permitted to proceed. Any member may appeal to the commission from the decision of the presiding officer upon a question of order, when, without debate, the presiding officer shall submit to the commission the question, "Shall the decision of the chair be sustained?" and the commission shall decide by a majority vote.
- (e) PRIVILEGE OF CLOSING DEBATE. The commissioner sponsoring or moving the adoption of an ordinance, resolution or motion shall have the privilege of closing the debate.
- (f) METHOD OF VOTING. Voting shall be by machine, roll call, voice vote, or paper ballot. Upon every roll call vote the names of the commissioners shall be called alphabetically by surname, except that the names shall be rotated after each roll call vote, so that the commissioner who voted first on a preceding roll call shall vote last upon the next subsequent matter; provided, however, that the presiding officer shall always cast the last vote. The clerk shall call the roll, tabulate the votes, and announce the results. The vote upon every ordinance shall be taken by roll call or machine vote. The vote upon any resolution, motion or other matter may be by voice vote provided that the presiding officer or any commissioner may require a roll call or machine vote to be taken upon any resolution or motion. Board appointments may be made by paper ballot which clearly identify the commissioner voting.
- (g) EXPLANATION OF VOTE; CONFLICTS OF INTEREST. Upon any roll call, there shall be no discussion by any commissioner voting, and the commissioner shall vote yes or no. Any commissioner, upon voting, may give a brief statement to explain his or her vote. A commissioner shall have the privilege of filing with the clerk a written explanation of his or her vote. Any commissioner with a conflict of interest on a particular matter shall; (1) announce publicly at the meeting the nature of the conflict before the matter is heard; (2) absent himself or herself from the commission chambers during that portion of the meeting when the matter is considered; and (3) file a written disclosure of the nature of the conflict with the Clerk of the Board within 15 days after the vote. The filing of the State of Florida form prescribed for written disclosure of a voting conflict

shall constitute compliance with this subsection. Any such commissioner who does not leave the chambers shall be deemed absent for purposes of constituting a quorum, counting the vote, or for any other purpose.

- (h) TIE VOTES. Whenever action cannot be taken because the vote of the commissioners has resulted in a tie, and no other available motion on an item is made and approved before the next item is called for consideration or before a recess or adjournment is called, whichever occurs first, the item shall be removed from the agenda and shall be reintroduced only in accordance with the renewal provisions of Rule 7.01(l). Notwithstanding any rule of procedure to the contrary, for zoning applications and other quasi-judicial matters, when a motion to take action on the matter results in a tie vote, and no other available motion is made and approved before the next matter is called for consideration or before a recess or adjournment is called, whichever occurs first, such matter shall be carried over to the next regularly scheduled meeting for the consideration of such zoning applications or other quasi-judicial matters, unless the commission designates a different time for such consideration .
- (i) VOTE CHANGE. Any commissioner may change his or her vote before the next item is called for consideration, or before a recess or adjournment is called, whichever occurs first, but not thereafter.
- (j) NO MOTION OR SECOND. If an agenda item fails to receive a motion or second, it shall be removed from the agenda and shall be reintroduced only in accordance with the renewal provisions of Rule 7.01(l).
- (k) RECONSIDERATION. An action of the commission may be reconsidered only at the same meeting at which the action was taken or at the next regular meeting thereafter. A motion to reconsider may be made only by a commissioner who voted on the prevailing side of the question and must be concurred in by a majority of those present at the meeting. A motion to reconsider an item resulting in a tie vote is not in order, and no such motion shall be reconsidered. A motion to reconsider shall not be considered unless at least the same number of commissioners is present as participated in the original vote, or upon affirmative vote of two-thirds (2/3) of those commissioners present. Adoption of a motion to reconsider shall rescind the action reconsidered.
- (l) RENEWAL. Once action is taken on a proposed ordinance or resolution, neither the same matter nor its repeal or rescission may be brought before the commission again during the six (6) month period following the said action (subject to the provisions of Rule 7.01(k)), unless application for renewal by seven (7) commissioners is first submitted to the presiding officer.
- (m) EXPIRATION OF POSTPONED ITEMS. Once an item before the Board is postponed indefinitely, and no action is taken by the Board on such item for a period of six (6) months following the latest postponement, such item shall be deemed withdrawn. Consideration of the matter covered under the item shall require the introduction of a new item.

- (n) ADJOURNMENT. A motion to adjourn shall always be in order and decided without debate.
- (o) SUSPENSION OF THE RULES.<sup>18</sup> No rule of procedure adopted by this board shall be suspended except by an affirmative vote of two-thirds (2/3) of the commissioners present.

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<sup>18</sup> The following rules cannot be suspended: a) the "4-Day Rule" per Rule 5.05(c); b) the provisions of Rule 8.01 regarding Mayoral veto per Rule 8.01(h); c) the provisions of Rules 8.1.01 and 8.1.02 regarding Mayoral appointment of directors of administrative departments per Rules 8.1.01(h) and 8.1.02(h); and d) the reasonable opportunity for the public to be heard under Rule 6.06 per §286.011(4), Fla. Statutes.



Veto message:

- (c) The completed form shall be submitted to the clerk of the board on or before 4:30 p.m. on the tenth (10th) calendar day following final commission enactment or adoption thereof. The clerk's official date and time recorder stamp on the completed form shall conclusively determine compliance or non-compliance with the ten (10) day time frame.
- (d) The clerk shall place items vetoed by the mayor, together with the completed veto forms, on the next regularly scheduled commission agenda as the first substantive items for commission consideration.
- (e) Notwithstanding any other rule of the commission, items vetoed by the mayor shall (1) not be subject to the "4-day rule" as provided in Rule 5.05(c); (2) not be deferred to a future meeting; (3) not require committee review; (4) not be subject to a motion to reconsider, except at the same meeting; (5) not require first reading; (6) not require publication or additional public hearings; or (7) not be amended if the item required special publication or a public hearing to be originally adopted or enacted.
- (f) A motion to override a mayoral veto shall be stated as follows:
  - (1) "I move that [the ordinance, resolution or motion] be adopted and become effective notwithstanding the veto of the mayor", or
  - (2) "I move that [the specific line item in the budget] be restored to the ordinance and become effective notwithstanding the veto of the mayor".
- (g) If two-thirds (2/3) of all commissioners present vote in favor of the motion as stated in subsection (f) above, the ordinance, resolution, motion or budget appropriation shall be deemed enacted or adopted and effective in accordance with its terms; otherwise, the mayor's veto shall be deemed sustained.
- (h) The provisions of this rule shall not be waived under Rule 7.01(o).

**PART 8.1. MAYORAL APPOINTMENT OF DEPARTMENT DIRECTORS OF THE ADMINISTRATIVE DEPARTMENTS OF THE COUNTY, AND COMMISSION DISAPPROVAL**

**Rule 8.1.01. MAYORAL APPOINTMENT OF DEPARTMENT DIRECTORS OF THE ADMINISTRATIVE DEPARTMENTS OF THE COUNTY, AND COMMISSION DISAPPROVAL.**<sup>19</sup>

The authority and powers provided to the Mayor and the Commission under Sections 2.02 C of the Miami-Dade County Home Rule Charter regarding the appointment of department directors of administrative departments shall be exercised exclusively in accordance with the terms and conditions of this rule.

- (a) The Mayor shall utilize the form provided herein to appoint a department director of an administrative department of the County. The Mayor shall personally sign a copy of the form in the place so provided and shall indicate with specificity the position, name, and qualifications of the person appointed. The form shall be as follows:

OFFICE OF THE MAYOR  
MIAMI-DADE COUNTY, FLORIDA

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MAYORAL APPOINTMENT

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To: Honorable Chairperson and Members  
Board of County Commissioners  
Miami-Dade County, Florida

From: [Signature of Mayor]

\_\_\_\_\_, Mayor

Miami-Dade County, Florida

Pursuant to the authority vested in me under the provisions of Sections 2.02 C of the Miami-Dade County Home Rule Charter, I hereby appoint:

[insert name of person appointed]

to the position of:

[insert position to which the person is appointed].

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<sup>19</sup> In accordance with the Code of Miami-Dade County references in Rule 8.1.01 to Section 2.02D of the Miami-Dade County Home Rule Charter have been removed as Section 2.02 of the Charter was amended by special election held on August 24, 2010 and effective November 16, 2012. See Miami-Dade County Code Section 1-4.1.

The person's qualifications for this position are as follows:

[insert person's qualifications]

A copy of the person's resumé shall be attached.

- (b) The completed form, together with the resumé, shall be submitted to the Clerk of the Board on or before 4:30 p.m. on the date of appointment. The Clerk's official date and time recorder stamp on the completed form shall conclusively determine date and time of submission of the form to the Clerk.
- (c) The Clerk shall place appointments by the Mayor pursuant to Rule 8.1.01, together with the completed form and resumé on the next regularly scheduled Commission agenda under the mayoral reports section of the agenda for Commission consideration.
- (d) Notwithstanding any other rule of the Commission, appointments made by the Mayor pursuant to Rule 8.1.01 shall (1) not be subject to the "4-day rule" as provided in Rule 5.05(c); (2) not be deferred to a future meeting; (3) not require committee review; (4) not be subject to a motion to reconsider, except at the same meeting; or (5) not require publication or public hearing.
- (e) The Mayor shall make every effort to have the nominee attend the Commission meeting at which the appointment is presented. Commissioners may ask such questions as they deem appropriate at that time.
- (f) Any Commissioner may move to disapprove a mayoral appointment made subject to this rule. A motion to disapprove a mayoral appointment shall be stated as follows:

"I move that the Mayor's appointment of [insert name of person appointed by the Mayor] as [insert the position to which such person was appointed by the Mayor] be disapproved."
- (g) If a two-thirds (2/3) majority of those Commissioners then in office vote in favor of the motion as stated in subsection (f) above, the appointment shall be deemed disapproved; otherwise, the appointment shall be deemed effective.
- (h) The provisions of this rule shall not be waived under Rule 7.01(0).

**Rule 8.1.02    MAYORAL APPOINTMENT OF INTERIM OR ACTING DEPARTMENT DIRECTORS OF THE ADMINISTRATIVE DEPARTMENTS OF THE COUNTY, AND COMMISSION DISAPPROVAL.**<sup>20</sup>

Notwithstanding any other rule of the Commission, the authority and powers provided to the Mayor and the Commission under Section 2.02 C of the Miami-Dade County Home Rule Charter regarding the appointment of interim or acting department directors shall be exercised exclusively in accordance with the terms and conditions of this rule. An "interim or acting department director" shall mean a person who has been appointed by the Mayor as a department director of an administrative department of the County for a term of six months or less.

- (a) The Mayor shall utilize the form provided herein to appoint an interim or acting department director of an administrative department of the County. The Mayor shall personally sign a copy of the form in the place so provided and shall indicate with specificity the position, name, and qualifications of the person appointed. The form shall be as follows:

OFFICE OF THE MAYOR  
MIAMI-DADE COUNTY, FLORIDA

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MAYORAL APPOINTMENT

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To: Honorable Chairperson and Members Board of County  
Commissioners Miami-Dade County, Florida

From: [Signature of Mayor]

\_\_\_\_\_, Mayor

Miami-Dade County, Florida

Pursuant to the authority vested in me under the provisions of Sections 2.02 C of the Miami-Dade County Home Rule Charter, I hereby appoint:

[insert name of person appointed]

to the position of:

[insert position to which the person is appointed].

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<sup>20</sup> In accordance with the Code of Miami-Dade County references in Rule 8.1.02 to Section 2.02D of the Miami-Dade County Home Rule Charter have been changed to Section 2.02C as the prior Section 2.02C of the Charter was removed and the remaining provisions renumbered by special election held on August 24, 2010 and effective November 16, 2012. *See* Miami-Dade County Code Section 1-4.1.

The person's qualifications for this position are as follows:

[insert person's qualifications]

This appointment shall serve until: [insert date].

A copy of the person's resumé shall be attached.

- (b) The completed form, together with the resumé, shall be submitted to the Clerk of the Board on or before 4:30 p.m. on the date of appointment. The Clerk's official date and time recorder stamp on the completed form shall conclusively determine date and time of submission of the form to the Clerk.
- (c) The Chairperson of the County Commission may, at his or her discretion, place the appointment by the Mayor of an interim or acting department director, together with the completed form and resumé on the next regularly scheduled Commission agenda under the mayoral reports section of the agenda for Commission consideration.
- (d) Notwithstanding any other rule of the Commission, interim or acting appointments made by the Mayor shall (1) not be placed on a Commission agenda except as provided in Rule 8.1.02; (2) not be subject to the "4-day rule" as provided in Rule 5.05(c); (3) not be deferred to a future meeting; (4) not require committee review; (5) not be subject to a motion to reconsider, except at the same meeting; and (6) not require publication or public hearing.
- (e) In the event the Chairperson of the County Commission places an interim or acting appointment on the Commission agenda, the Mayor shall make every effort to have the nominee attend the Commission meeting at which the appointment is presented. Commissioners may ask such questions as they deem appropriate at that time.
- (f) Any Commissioner may move to disapprove a mayoral appointment made subject to this rule if said appointment is placed on the agenda by the Chairperson. In the event an interim or acting mayoral appointment of a department director is not placed on the Commission agenda by the Chairperson of the County Commission, any Commissioner may appeal the decision of the Chairperson upon a question of order, when, without debate, the presiding officer shall submit to the Commission the question: "Shall the decision of the Chairperson be sustained?" If the question to appeal the decision of the Chairperson is approved by a majority vote, a motion to disapprove the interim or acting mayoral appointment shall be in order. A motion to disapprove an interim or acting mayoral appointment shall be stated as follows:

"I move that the Mayor's appointment of [insert name of person appointed by the Mayor] as [insert the position to which such person was appointed by the Mayor] be disapproved."

- (g) If a two-thirds (2/3) majority of those Commissioners then in office vote in favor of the motion as stated in subsection (f) above, the appointment shall be deemed disapproved; otherwise, the appointment shall be deemed effective.
- (h) The provisions of this rule shall not be waived under Rule 7.01(o).
- (i) At the conclusion of the term of an interim or acting department director, any reappointment of the interim or acting director or of a new department director shall be subject to the requirements of Rule 8.1.01.

**PART 9.      ADDITIONAL ORDINANCES  
PRESCRIBING COUNTY COMMISSION PROCEDURE**

**Rule 9.01.      ANNUAL BUDGET.**

- (a) The mayor shall prepare and deliver a budgetary address annually to the people of the county in March. Such address shall be prepared after consulting with the budget director and shall set forth the mayor's funding priorities for the county. By July 15, the mayor shall prepare and submit a proposed budget in a line item format pursuant to Section 2-1800 containing a complete financial plan, including capital and operating budgets, for the ensuing fiscal year. Other formats, such as narrative, pie charts and graphs may also be used to supplement the line item format. The budget prepared and recommended by the mayor shall be presented by the mayor or his or her designee to the commission in a line item format pursuant to Section 2-1800 on or before the board adopts tentative millage rates for the ensuing fiscal year. A summary of the budget shall be published and the board shall hold hearings on and adopt a budget on or before the dates required by law.
- (b) The Board shall adopt its proposed millage rates for use in the preparation of the truth in millage (TRIM) notice of proposed property taxes by separate resolution for each of the following rates:
  - (1) Countywide General Fund;
  - (2) Unincorporated Municipal Service Area;
  - (3) Miami-Dade Fire and Rescue Service District for operating purposes;
  - (4) Miami-Dade Library System for operating purposes;
  - (5) Countywide bonded debt service; and
  - (6) Miami-Dade Fire and Rescue Service District bonded debt service.

The date, time, and place at which the annual public hearings are scheduled shall be approved by motion or set forth in a separate resolution adopted by the Board.

- (c) The Board shall adopt millage rates at the first and second budget hearing by a separate vote for each millage rate. The Board's adoption of each proposed millage rate at the first budget hearing and each final millage rate at the second budget hearing shall be by separate ordinance for each of the following millage rates:
- (1) Countywide General Fund;
  - (2) Unincorporated Municipal Service Area;
  - (3) Miami-Dade Fire and Rescue Service District millage for operating purposes;
  - (4) Miami-Dade Library System millage for operating purposes;
  - (5) Countywide bonded debt service; and
  - (6) Miami-Dade Fire and Rescue Service District bonded debt service.
- (d) At the first budget hearing, a separate motion and vote on any part of the proposed budget shall be held upon the request of any Commissioner. In addition, a separate motion and vote shall be held on any amendment to the Mayor's proposed budget that:
- (1) Addresses an issue raised by a Commissioner at a Committee of the Whole meeting held in conjunction with the budget approval process, including a request by a Commissioner to propose or recommend funding alternatives for the Board's consideration;
  - (2) Proposes or provides for the appropriation of funds from the County's reserves to fund any activity, program or matter; or
  - (3) Proposes or provides for increased or decreased funding for a countywide service or countywide program funded in the Unincorporated Municipal Service Area General Fund budget.

If any of the foregoing amendments are recommended or provided by the County Mayor, such amendments shall be set forth in detail in a separate section of the Mayor's memorandum relating to information for the first budget hearing (the "First Changes Memorandum").

The Commission Auditor shall prepare and maintain a list of all issues raised in conjunction with the budget approval process as set forth in subsection (d)(1) above. The Commission Auditor shall distribute such list to each member of the Board no later than forty-eight (48) hours prior to the scheduled commencement of the first budget hearing.

After a separate vote on each proposed amendment but before the Board's adoption of each ordinance adopting a tentative millage rate, the Mayor or the Mayor's designee shall, for each such ordinance, recompute the tentative millage rate, and publicly announce the name of the taxing authority, the rolled back rate, the percent, if any, by which the recomputed tentative millage rate exceeds the rolled-back rate, and the tentative millage rate to be levied. The tentative budget

ordinances shall be adopted by separate vote after the tentative millage rate ordinances are adopted.

- (e) At the second budget hearing, a separate motion and vote on any part of the proposed budget shall be held upon the request of any Commissioner. In addition, a separate motion and vote shall be held on any amendment to the Mayor's proposed budget that:
- (1) Addresses an issue raised by a Commissioner at a Committee of the Whole meeting held in conjunction with the budget approval process, including a request by a Commissioner to propose or recommend funding alternatives for the Board's consideration;
  - (2) Proposes or provides for the appropriation of funds from the County's reserves to fund any activity, program or matter; or
  - (3) Proposes or provides for increased or decreased funding for a countywide service or countywide program funded in the Unincorporated Municipal Service Area General Fund budget.

If any of the foregoing amendments are recommended or provided by the County Mayor, such amendments shall be set forth in detail in a separate section of the Mayor's memorandum relating to information for the second budget hearing (the "Second Changes Memorandum").

The Commission Auditor shall prepare and maintain a list of all issues raised in conjunction with the budget approval process as set forth in subsection in subsection (e)(1) above. The Commission Auditor shall distribute such list to each member of the Board no later than forty-eight (48) hours prior to the scheduled commencement of the second budget hearing.

After a separate vote on each proposed amendment but before the Board's adoption of each ordinance adopting a final millage rate, the Mayor or the Mayor's designee shall, for each such ordinance, recompute the final millage rate, and publicly announce the name of the taxing authority, the rolled back rate, the percent, if any, by which the recomputed final millage rate exceeds the rolled-back rate, and the final millage rate to be levied. The final budget ordinances shall be adopted by separate vote after the final millage rate ordinances are adopted.

- (f) The Mayor shall distribute the First Changes Memorandum and the Second Changes Memorandum to each member of the Board and shall post a copy thereof on the County's website no later than forty-eight (48) hours prior to the scheduled commencement of the first and second budget hearings, respectively.
- (g) For all mid-year and end-of-year budget amendments, a separate motion and vote on any part of the proposed budget amendment shall be held upon the request of any Commissioner. In addition, a separate motion and vote shall be held on any part of the proposed budget amendment that:

- (1) Proposes or provides for the appropriation of funds from the County's reserves to fund any activity, program or matter; or
  - (2) Proposes or provides for increased or decreased funding for a countywide service or countywide program funded in the Unincorporated Municipal Service Area General Fund budget.
- (h) This ordinance shall be construed as directory only, and failure to comply with the provisions of this ordinance shall not affect the validity of any ordinance, resolution or action of the Board in whole or in part.<sup>21</sup>

**Rule 9.02. NAMING, RENAMING OR CODESIGNATION OF MIAMI-DADE COUNTY ROADS, FACILITIES OR PROPERTY; APPROVAL OF STATE OR MUNICIPAL ROAD CODESIGNATIONS.**

- (a) Resolutions regarding proposed naming, renaming or codesignation of Miami-Dade County roads, facilities or property shall be sponsored by the district commissioner where the property is located and shall be considered at public hearing.
- (b) Resolutions honoring outstanding individuals shall not be authorized for living individuals except as provided in subsection (d) hereof.
- (c) For every resolution honoring an individual without a personal and direct meaningful relationship to the Greater Miami area, the board of county commissioners shall, at the same time, honor an individual who has made a direct, significant contribution to this community.
- (d) This rule shall not prohibit the naming, renaming, or designation of a facility or property after a living individual who donates a significant portion of the cost of such facility or property. Further, this rule shall not prohibit the naming, renaming, or designation of a road, facility or property after a living individual who has made a direct, significant lifetime contribution to this community provided: (i) the naming, renaming or designation is approved by three-fifths vote of the board members present; (ii) that the naming, renaming or designation is not for any elected municipal, county, state or federal official currently serving or having served in any elected office within the last five years; and (iii) that the naming, renaming or designation of a road, facility or property in a particular commission district is limited to two times during any calendar year.
- (e) Special provisions for employees who give their lives in the line of duty. The mayor shall present the board of county commissioners with a resolution proposing the naming of an appropriate public right of way or portion thereof in honor of any Miami-Dade County employee who gives his or her life in the line

<sup>21</sup> Subsections (d), (e), (f) and (g) were added by Ordinance No. 15-44. This subsection (g) applies to subsections (d), (e) and (f) of Rule 9.01.

of duty. Such resolution shall be considered at public hearing and may be adopted by the board upon a favorable vote of a majority of the commissioners present.

- (f) The Commission Auditor shall complete background research, reviewing public records and other sources of information, in print, on the internet, or through other means of communication, that are publicly available, on any person, organization, place or thing that is the subject of a naming, renaming or codesignation item or an item approving the codesignation of state or municipal roads, and shall prepare a report detailing the findings of said research prior to the Commission meeting during which the item is scheduled to be considered. The Clerk of the Board shall place the Commission Auditor's report on the commission agenda as a supplement to the related agenda item.
- (g) Notwithstanding any other provision of this section, the Board of Trustees of the Public Health Trust may name or rename any interior portion of a Public Health Trust designated facility without approval by the Board of County Commissioners pursuant to the provisions of this subsection. Any Public Health Trust resolution to name or rename an interior portion of a designated facility shall only be considered by the Board of Trustees of the Public Health Trust after a public hearing and upon completion of a report by the Commission Auditor as required by subsection (f) herein. Prior to issuance of a notice for such public hearing, the Chief Executive Officer of the Public Health Trust shall notify the Board of County Commissioners by memorandum of the proposed naming or renaming. Such notification shall include the proposed name, the location and description of the designated facility and the scheduled time, date and location of the public hearing. Upon passage of a resolution by the Board of Trustees of the Public Health Trust to name or rename an interior portion of a designated facility, the clerk of the Board of Trustees of the Public Health Trust shall provide notice of same along with a copy of the Public Health Trust resolution to the Board of County Commissioners.

**Rule 9.03. FEE REDUCTION AND WAIVER REQUESTS FOR THE USE OF VIZCAYA MUSEUM AND GARDENS.**

- (a) All requests for fee reductions and waivers for the use of Vizcaya Museum and Gardens must be submitted to the board for review at a public hearing before the full Commission. Following the public hearing any such fee reductions and waivers will require a two-thirds (2/3) majority vote of the board members present. This Rule does not apply when Vizcaya Museum and Gardens' budget is

fully reimbursed from another County fund for such fee reduction or waiver. The following criteria shall govern the grant of a fee waiver or reduction:

- i. Fee waivers and reductions shall be granted only to major cultural, diplomatic, international, military, or other events or conferences involving heads-of-state or other similar individuals that will enhance the visibility of the County as a place to live, work, visit, or invest.
  - ii. No fee waivers or reductions shall be granted for events whose purpose is, in whole or in part, to raise funds.
  - iii. Fee waivers and reductions shall be granted only to not-for-profit or governmental organizations, and not to private individuals or for-profit organizations.
  - iv. Fee waivers and reductions may be granted at the discretion of the Board to an organization more than once every two years, but the Board recognizes that repeat events should generally not be based on recurrent complimentary use of this fragile facility.
  - v. Organizations that are offered fee waivers and reductions shall comply with all Vizcaya Museum and Gardens facility rental rules and regulations and shall sign and be bound by the facility rental agreement, except for the provisions regarding rental fee payment and deposit.
  - vi. All direct costs that result from the organization's event shall be payable by the organization directly to Vizcaya Museum and Gardens, including but not limited to tent or equipment rental, hire of police and cleanup crew, and costs of any damages or cleanup by County staff or outside vendors, unless the resolution granting the fee waiver and reduction states that the County will pay such costs to Vizcaya Museum and Gardens.
  - vii. Organizations requesting a fee waiver or reduction should first attempt to find other public or private ways to fund the Vizcaya fee.
- (b) Notwithstanding the previous paragraph (a), the mayor shall be permitted to:
- (1) Administratively reduce fees four (4) times during any calendar year and waive fees two (2) times during any calendar year for the use of Vizcaya Museum and Gardens for any non-fund raising events provided that those events are either diplomatic activities or events that benefit the entire citizenry of Miami-Dade County, and annually report the reductions and waiver to the commission; and
  - (2) Waive fees for events sponsored by organizations which provide volunteer services to Vizcaya Museum and Gardens or raise funds and provide support for the maintenance of, and improvements to, Vizcaya Museum and Gardens.

**Rule 9.03.01. EXPENDITURE OF SEAPORT DEPARTMENT PROMOTIONAL FUNDS.**

All proposed expenditures from seaport promotional funds over \$5,000, other than those adopted as part of the county's annual budget ordinance, shall require a written recommendation from the mayor together with a two thirds (2/3) vote of the entire membership of the board.

**Rule 9.03.02. ACTIONS WHICH DECREASE REVENUES OR INCREASE EXPENDITURES.**

- (a) Whenever a commissioner proposes a resolution, ordinance or other action of the board that would result in a decrease in revenues, the proposal from the commissioner must specifically designate an equal or greater reduction in expenditures or identify a project or services of equal or greater costs to be eliminated.

Whenever a commissioner proposes an increase in expenditures above the adopted budget level, such commissioner must concurrently propose additional revenue appropriate to fund the increased expense or an expenditure reduction equal to or greater than the amount of proposed new expense.

No final action affecting the adopted budget shall be taken if any member of the county commission requests a recommendation from the mayor pertaining to a budget adjustment proposed by a county commissioner. The mayor's recommendation shall be presented at the next regularly scheduled meeting of the county commission.

- (b) The provisions of this ordinance do not apply to actions taken at the annual budget hearings held pursuant to state law.

**Rule 9.03.03. PEOPLE'S TRANSPORTATION PLAN AMENDMENTS.**

\* \* \*

[T]he County Commission may not delete or materially change any County project listed on Exhibit 1 attached to the ordinance levying the surtax [Ordinance No. 02-116 codified in §§29-121 – 124 of the Code] nor add any project thereto except as provided in this subsection .... A proposed deletion, material change or addition of such a County project shall be initially reviewed by the Citizens' Independent Transportation Trust ("Trust"), which shall forward a recommendation thereon to the County Commission. The County Commission may either accept or reject the Trust's recommendation. If the County Commission rejects the recommendation, the matter shall be referred back to the Trust for its reconsideration and issuance of a reconsidered recommendation to the County Commission. The County Commission may approve, change or reject the Trust's reconsidered recommendation. A two-thirds vote of the Commission membership shall be required to take action other than as contained in the reconsidered recommendation of the Trust. The foregoing notwithstanding, the list of County projects contained in said Exhibit 1 may be changed as a result of the MPO process as mandated by federal and state law.

**Rule 9.03.04. HOME RULE CHARTER AMENDMENTS.**

- (1) The County shall hold six public meetings regarding any resolution calling an election on a proposed Home Rule Charter amendment. The Mayor or the Mayor's designee shall schedule public meetings on any such resolution proposed by the Board following the Chairperson's assignment of the items to committee or following any waiver of the committee requirement. Such public meetings shall be held prior to committee review or adoption of such resolution, if committee review is waived or not required.
- (2) If the Clerk of the Circuit Court approves an initiative petition to amend the Home Rule Charter as to form, the County Mayor or the County Mayor's designee shall make County-owned public facilities such as public libraries or park facilities available to the initiative petition proposers, at no cost, so that six public meetings can be conducted regarding the proposed initiative. Such meetings shall be scheduled within 60 days after the date the Clerk approves the initiative as to form.
- (3) The public meetings required in this section shall be conducted by county staff and shall be for the purpose of soliciting community input about the proposed charter amendments. Members of the public, County officials, County staff, and initiative petition proposers, if any, may be heard at such meetings.
- (4) All public meetings required hereby shall be held at locations and times which are accessible and convenient to the majority of residents in Miami-Dade County and allow for maximum participation by geographic and ethnic communities within Miami-Dade County.

- (5) All public meetings shall be appropriately advertised, including use of print advertisements in newspapers of general circulation and community based periodicals.
- (6) The provisions of this section shall be construed as directory only and failure to comply with the provisions hereof shall not affect the validity of any resolution, action of the Board, the election scheduled on any proposed charter amendment, or the timing of any initiative petition.

**Rule 9.03.05. COUNTY BALLOT QUESTIONS, INCLUDING HOME RULE CHARTER AMENDMENTS AND STRAW BALLOT QUESTIONS.**

The Board shall place no more than three (3) County questions on any general election ballot that includes a presidential election. For purposes of this rule, "County questions" shall mean straw ballot questions, commissioner-sponsored proposed amendments to the Home Rule Charter and any other questions related to the County that are proposed by the Board. This subsection shall not apply to amendments to the Home Rule Charter proposed by initiatory petition pursuant to section 9.07 of the Home Rule Charter. Once the Board has voted to place three (3) County questions on any general election ballot that includes a presidential election, each additional County question may be placed on such a ballot only with an affirmative vote of two-thirds (2/3rds) of those commissioners present.

**Rule 9.03.06. PROCEDURES FOR OATH OF OFFICE FOR COUNTY COMMISSIONERS.**

- (a) Prior to entering upon the duties of the office, each newly-elected or re-elected County Commissioner shall take the oath of office as set forth in Article II, Section 5(b) of the Florida Constitution or as otherwise required by law. Each Commissioner shall, at his or her option, either:
  - 1. Verbally take the oath of office; or
  - 2. Execute a written oath of office as set forth in substantially the form attached to this ordinance<sup>22</sup> or as otherwise required by law.
- (b) The oath of office under either paragraphs (a)(1) or (a)(2) above shall be administered by a person authorized to administer the oath of office pursuant to Florida law. Such person shall sign an acknowledgement of administration of the oath of office as set forth in substantially the form attached to this ordinance.
- (c) The Clerk of the Board shall retain in the public records each executed written oath of office and each executed acknowledgement of administration of the oath of office.
- (d) Nothing contained in this section shall prevent the Board of County Commissioners from holding an installation ceremony for County

<sup>22</sup> Refer to Ordinance No. 13-28.

Commissioners. At the installation ceremony, Commissioners may take a ceremonial oath of office which shall be administered at each Commissioner's option, in one of the two following ways:

- a. The Clerk or other official administering the oath shall state the oath of office in its entirety as set forth in Article II, Section 5(b) of the Florida Constitution or as otherwise required by law, as follows:

Do you (Commissioner's name) solemnly swear (or affirm) that you will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that you are duly qualified to hold office under the Constitution of the state; and that you will well and faithfully perform the duties of County Commissioner on which you are now about to enter. So help you God

After the Clerk or other official has stated the oath in its entirety, the Commissioner shall then say "I do;" or

- b. The Commissioner shall repeat after the Clerk or other official administering the oath of office the oath as set forth in Article II, Section 5(b) of the Florida Constitution or as otherwise required by law.

**Rule 9.04. REPRESENTATION OF MIAMI-DADE COUNTY.**

Whenever the commission deems it necessary or desirable that the commission shall be represented at meetings, conferences or other occasions involving other governmental entities, agencies, officials or groups, or nongovernmental organizations, or departments, agencies or officials of the county government, the presiding officer may designate members of the commission to represent the commission at such meetings, conferences or other occasions, with the consent of the designee. A majority of the board then present may disapprove any such appointment. Such representatives shall have no power to act for or on behalf of the commission, or to make any commitment or binding obligation on behalf of the commission or the county. Such representatives shall report in writing to the commission with regard to such meeting, conference or other occasion.

**Rule 9.05. NONCOMPLIANCE WITH PROCEDURAL RULES.**

If a procedural rule of this board is not complied with by either the presiding officer or the parliamentarian, then the validity of the underlying substantive ordinance, resolution, motion or other action shall in no way be affected thereby, and the failure of compliance with said procedural rule shall not be the basis for any person or party to challenge any ordinance, resolution or other action of this board.

ORDINANCE NO. 03-830

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADDING CHAPTER 2.02, ENTITLED "DEFINITIONS," AND CHAPTER 2.14, ENTITLED "DECORUM AT PUBLIC MEETINGS," TO THE MONTCLAIR MUNICIPAL CODE

WHEREAS, in order to ensure that public meetings of the Montclair City Council, Montclair Redevelopment Agency Board, Montclair Housing Corporation Board, Montclair Financing Authority Board, Montclair Planning Commission, Montclair Community Action Committee, and any other legislative body that is created by the Montclair City Council and is subject to the Open Meeting Laws of California, *The Ralph M. Brown Act*, are conducted in the most efficient manner, the City Council desires to establish rules of conduct suitable for such meetings.

THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES ORDAIN AS FOLLOWS:

SECTION 1.

Chapter 2.02 is hereby added to the Montclair Municipal Code as follows:

2.02.10 Definitions

As used in this title:

**Legislative body** shall mean the City Council, Redevelopment Agency Board, Montclair Housing Corporation Board, Montclair Financing Authority Board, Planning Commission, Community Action Committee, or any other legislative body that is created by the Montclair City Council and is subject to *The Brown Act*.

**Meeting site** shall mean any location in which a legislative body as defined herein is meeting including, but not limited to, the City Council Chambers.

**Presiding Officer** shall mean, in the case of the City Council, the Mayor or, in the absence of the Mayor, the Mayor Pro Tem or, in the absence of both the Mayor and Mayor Pro Tem, a member designated by the City Council. In the case of other legislative bodies defined herein, the presiding officer shall mean the Chairperson or, in the absence of the Chairperson, the Vice Chairperson or, in the absence of both the Chairperson and Vice Chairperson, a member designated by the legislative body.

SECTION 2.

Chapter 2.14 is hereby added to the Montclair Municipal Code as follows:

2.14.010 Preservation of order.

Meetings of a legislative body as herein defined shall be conducted in an orderly manner to ensure that the public has a full opportunity to be heard and that the deliberative process of the legislative body is conducted as efficiently as possible. The presiding officer shall be responsible for maintaining the order and decorum of meetings.

2.14.020 Rules of Decorum.

A. Members of a Legislative Body. The members of a legislative body as herein defined shall preserve order and decorum, and a member shall not by conversation or other means delay or interrupt the legislative body's proceedings including delaying or interrupting and person who is speaking who has been recognized by the presiding officer.

B. City staff members. Employees of the City shall observe the same rules of order and decorum as those that apply to members of the legislative body.

C. Persons addressing the legislative body. Members of the public are afforded the opportunity to address the legislative body on any item of interest to the public that is within the subject matter jurisdiction of the legislative body. Each person who addresses the legislative body shall do so in an orderly manner and shall not make personal, impertinent, slanderous, or profane remarks to any member of the legislative body, staff, or general public that disrupt, disturb, or otherwise impede the orderly conduct of any meeting of the legislative body.

Any person who makes such remarks; or who utters loud, threatening, personal, or abusive language; or engages in any other disorderly conduct that disrupts, disturbs, or otherwise impedes the orderly conduct of any meeting of the legislative body, including, but not limited to, addressing the legislative body without being recognized, repetitiously addressing the same subject, or failing to relinquish the podium when requested to do so, shall, at the discretion of the presiding officer, be barred from further audience before the legislative body during that meeting.

D. Members of the audience. No person in the audience at a meeting of the legislative body shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening, or abusive language; whistling; stamping of feet; or other acts which disturb, disrupt, or otherwise impede the orderly conduct of any meeting of the legislative body. Any person who conducts himself or herself in the aforementioned manner shall, at the discretion of the presiding officer, be barred from further audience before the legislative body during that meeting.

#### **2.14.030 Addressing the legislative body.**

Any person wishing to address the legislative body regarding an item which is on the meeting agenda or is otherwise within the subject matter jurisdiction of the legislative body may submit a request on the form provided, or he or she may seek recognition by the presiding officer during discussion of any such item. Persons wishing to discuss a nonagenda item may seek recognition by the presiding officer during the Public Comment portion of the meeting. No person shall address the legislative body without first being recognized by the presiding officer.

The following procedures shall be observed by persons addressing the legislative body:

A. Each person shall speak from the podium provided for the use of the public.

B. Each person shall confine his or her remarks to: (1) an agenda item before or during the legislative body's consideration of the item; or (2) any matter not on the agenda which is within the legislative body's subject matter jurisdiction.

C. Each person shall limit his or her remarks to five minutes, unless the presiding officer determines that a different time limit is appropriate.

#### **2.14.040 Enforcement of decorum.**

The rules of decorum set forth above shall be enforced in the following manner:

A. Warning. The presiding officer shall request that a person who is violating the rules of decorum conform his or her behavior to

these rules. If, after receiving a warning from the presiding officer, a person persists in disturbing the meeting, the presiding officer shall order him or her to leave the meeting.

B. Removal. If such person does not remove himself or herself from the meeting, the presiding officer may order any law enforcement officer who is on duty at the meeting as sergeant-at-arms to remove that person from the meeting.

Any law enforcement officer who is serving as sergeant-at-arms may carry out orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the meeting. Upon instruction of the presiding officer, the sergeant-at-arms may remove from the meeting any person(s) who is (are) disturbing the proceedings of the legislative body in violation of these rules.

C. Resisting removal. Any person who resists removal by the sergeant-at-arms may be charged with a violation of this section.

D. Clearing the meeting site. In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the presiding officer may order the room cleared and continue in session. In conformance with provisions of *The Brown Act*, the presiding officer may subsequently readmit individuals not believed to be responsible for creating the disturbance into the meeting. If a meeting of the legislative body is disturbed or disrupted in such a manner as to make unfeasible or improbable the restoration of order, the meeting may be adjourned or continued; and any remaining business of the legislative body may be considered at the next meeting.

#### **2.14.050 Guidelines for recording meetings.**

As provided by *The Brown Act*, members of the public are permitted to record any open and public meeting of a legislative body. In order to provide for the recording of such meetings by members of the public, the City has developed the following guidelines:

A. The recording procedure must not disrupt, disturb, or otherwise impede the conduct of the meeting. A disruption or disturbance of the orderly conduct of the meeting can include, but is not limited to, the following:

1. Obstructing the view of audience/staff members.
2. Creating noise that keeps audience/staff members from hearing the proceedings.
3. Treating potential interviewees, and/or conducting interviews, in a belligerent manner.

B. Placement of video recording equipment/crew:

1. When recording is taking place in the City Council Chambers, video cameras, tripods, and/or crew shall be located in the walkway surrounding the perimeter of the Chambers and shall be situated so the public is able to safely walk around said perimeter without being impeded by such video cameras, tripods, and/or crew.

2. When recording is taking place at a meeting of a legislative body herein defined at a location other than the City Council Chambers, video cameras, tripods, and/or crew shall be situated so neither the view nor the circulation of the audience or staff is impeded.

3. All audio/electrical cords must be securely taped or covered with a mat.

C. City staff is in charge of enforcing the above guidelines at the meeting site.

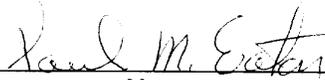
**SECTION 3. Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

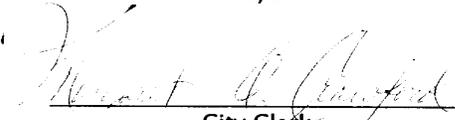
**SECTION 4. Posting.**

The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this 5th day of May, 2003.

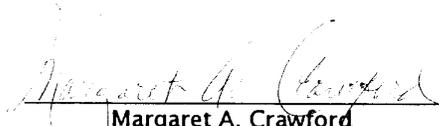
  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

I, Margaret A. Crawford, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 03-830 of said City which was introduced at a regular meeting of the City Council held on the 7th day of April, 2003, and finally passed not less than five days thereafter on the 5th day of May, 2003, by the following vote, to-wit:

AYES: Paulitz, Dutrey, Eaton  
NOES: Ruh, Raft  
ABSTAIN: None  
ABSENT: None

  
\_\_\_\_\_  
Margaret A. Crawford  
City Clerk

## CITIZENS' BILL OF RIGHTS

- (A) This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administration management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed:
- (1) *Convenient Access.* Every person has the right to transact Village business with a minimum of personal inconvenience. It shall be the duty of the Mayor, the Commission and the Manager to provide, within budgetary limitations, reasonably convenient times and places for registration and voting, for required inspections, and for transacting business with the Village.
  - (2) *Truth in Government.* No Village official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.
  - (3) *Public Records.* Records of the Village, its agencies, boards, committees, authorities and departments shall be open for inspection at reasonable times and places convenient to the public, to the extent required by law.
  - (4) *Minutes and Ordinance Register.* The Clerk shall maintain and make available for public inspection a register separate from the minutes showing the votes of each Commission member on all ordinances and resolutions listed by descriptive title. The register shall be available for public inspection not later than 60 days after the conclusion of the meeting at which action was taken.
  - (5) *Right to be Heard.* So far as the orderly conduct of public business permits, any interested person has the right to appear before the Commission or agency, board, committee, authority or department for the presentation, adjustment or determination of an issue, request, or controversy within the jurisdiction of the Village. Matters shall be scheduled for the convenience of the public. The Commission shall adopt agenda procedures and schedule hearings in a manner that will enhance the opportunity for public participation. Nothing herein shall prohibit any governmental entity or agency from imposing reasonable time limits and procedures for the presentation of a matter.
  - (6) *Right to Notice.* Persons entitled to notice of a Village hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing. Copies of proposed ordinances or resolutions shall be made available at a reasonable time prior to the hearing, unless the matter involves an emergency ordinance or resolution.
  - (7) *No Unreasonable Postponements.* No matter, once having been placed on a formal agenda by the Village, shall be postponed to another date except for good cause shown.
  - (8) *Right to Public Hearing.* Upon a timely written request from any interested party and after presentation of the facts to and approval by the Commission, a public hearing shall be held upon any significant policy decision which is not subject to subsequent administrative or legislative review and hearing.

At any zoning or other hearing in which review is exclusively by certiorari, a party or his/her counsel shall be entitled to present his/her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. The decision of such agency, board, department or authority must be based upon the facts in the record. Procedural rules establishing reasonable time and other limitations may be promulgated and amended from time to time.
  - (9) *Notice of Action and Reasons.* Prompt notice shall be given of the denial in whole or in part of a request of an interested person made in connection with any Village administrative decision or proceeding when the decision is reserved at the conclusion of the hearing. The notice shall be accompanied by a statement of the grounds for denial.
  - (10) *Managers' Report.* The Manager shall periodically make a public status report on all major matters pending or concluded within his/her areas of concern.
  - (11) *Budgeting.* In addition to any budget required by state law, the Manager shall prepare a budget showing the cost of each department for each budget year. Prior to the Commission's

first public hearing on the proposed budget required by state law, the Manager shall issue a budget summary setting forth the proposed cost of each individual department and reflecting the personnel for each department, the purposes therefore, and the amount of any contingency and carryover funds.

- (B) The foregoing enumeration of citizens' rights vests large and pervasive powers in the citizenry of the Village. Such power necessarily carries with it responsibility of equal magnitude for the successful operation of government in the Village. The orderly, efficient and fair operation of government requires the participation of individual citizens exercising their rights with dignity and restraint so as to avoid any sweeping acceleration in the cost of government because of the exercise of individual prerogatives, and for individual citizens to grant respect for the dignity of public office.
- (C) All provisions of this Bill of Rights shall be construed to be supplementary to and not in conflict with the general laws of Florida and the Home Rule Charter of Miami-Dade County, Florida.