



The Village of Biscayne Park

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

Telephone: 305 899 8000 Facsimile: 305 891 7241

**AGENDA
WORKSHOP
DISCUSSION ON COMMISSION MEETINGS PROCEDURES
AND VILLAGE CODE
Log Cabin - 640 NE 114th Street
Biscayne Park, FL 33161
Wednesday, July 24, 2019 7:00pm**

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 Truppmann
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 Commission Meetings Policies & Procedures

5.b Discussion on Amendments to Section 2-30 of the Village Code

6 Announcements

Parks & Parkway Advisory Board, Thursday July 25, 2019 7:00pm

Planning & Zoning Board, Monday August 5, 2019 6:30pm

Second Workshop Budget FY 2019-2020 on July 30, 2019, 7:00pm

Budget FY 2019-2020 - First Hearing will be held on Tuesday, August 6, 2019 at 6:30pm

Our next Regular Commission Meeting will be held on Tuesday, August 06, 2019 at 7:00pm



VILLAGE OF BISCAYNE PARK
Village Commission Agenda Report

Item # 5.a

REGULAR MEETING

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

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:¹ 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

¹ 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

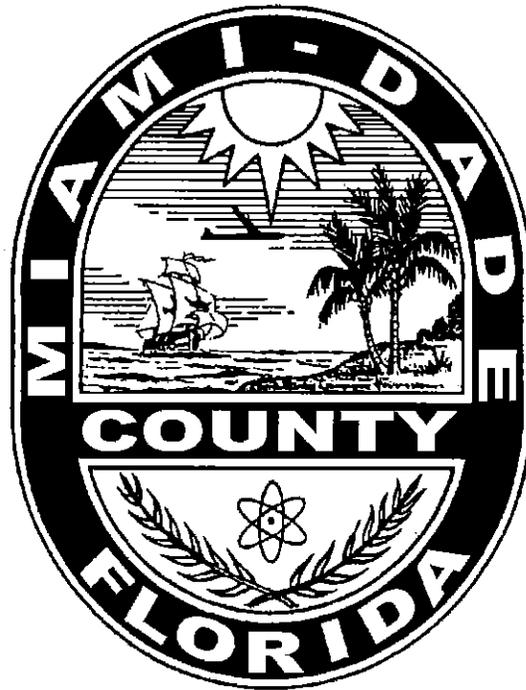
Mayor Truppman: ____
Vice Mayor Ross: ____
Commissioner Bilt: ____
Commissioner Johnson-Sardella: ____
Commissioner Tudor: ____

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.

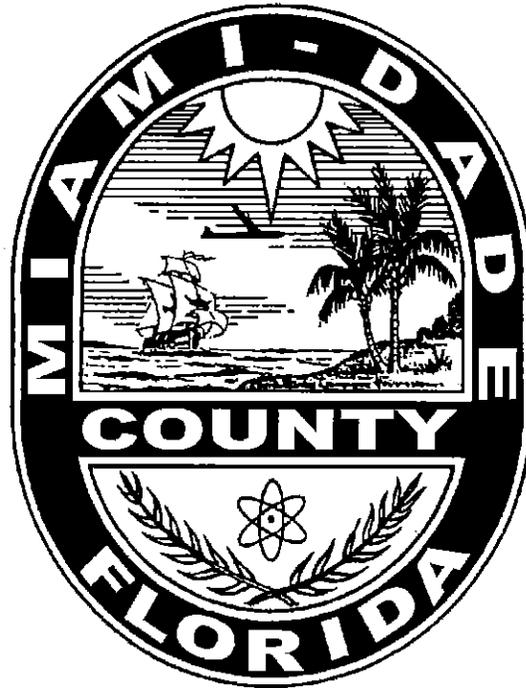
Rule 2.04. SERGEANT-AT-ARMS.

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 meeting¹ following the installation² 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.^{3,4} 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;⁵ (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;⁶ (f) have responsibility for the

¹ 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.

² Rule 9.03.06 provides the procedures for ceremonial oath of office at the installation ceremony.

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

⁴ 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).

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

⁶ 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;⁷ (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.

⁷ 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.⁸ 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.⁹ 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.

⁸ 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.

⁹ 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:¹⁰
- (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;¹¹
 - (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

¹⁰ 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.

¹¹ 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.**¹²
 - (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

¹² 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 reports¹³
- 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

¹³ 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.¹⁴

¹⁴ 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, RESOLUTIONS¹⁵ ¹⁶ 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

¹⁵ 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.

¹⁶ 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.¹⁷

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

¹⁷ 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.¹⁸ 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.

¹⁸ 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.¹⁹

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

MAYORAL APPOINTMENT

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].

¹⁹ 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.²⁰

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

MAYORAL APPOINTMENT

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].

²⁰ 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.²¹

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

²¹ 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 ordinance²² 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

²² 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.

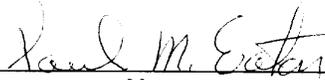
SECTION 3. Severability.

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.

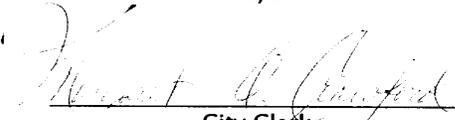
The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

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



Mayor

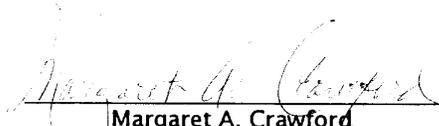
ATTEST:



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.



VILLAGE OF BISCAYNE PARK
Village Commission Agenda Report

Item # 5.b

REGULAR MEETING

TO: Members of the Biscayne Park Village Commission

FROM: Mayor Tracy Truppman

DATE: July 24, 2019

TITLE: Discussion of Amending Section 2-30 of the Village's Code

Recommendation

At the advice of the Village Attorney, I propose the Commission discuss certain amendments to Section 2-30 of the Village's Code of Ordinances. The objective of these proposed amendments is to improve upon the rules and policies governing the Village's boards and committees in an effort to set certain legal compliance standards. The proposed amendments would require one hour of annual ethics training to sit on a Village board or committee. It would also provide better procedures for boards and committees to ensure compliance with Sunshine Law and applicable public records laws.

Financial Impact

TBD

Attachment(s)

- Herald Tribune article regarding legal issues with advisory board Sunshine Law compliance City of Sarasota
 - Florida cases discussing legal issues in advisory board compliance
-

Tracy Truppman, Mayor

Sarasota advisory boards dogged by costly Sunshine Law missteps

By **JESSIE VAN BERKEL**

Posted Nov 1, 2012 at 2:05 PM

The city has had to pay about \$100,000 in legal fees this year over open meeting violations

Advice has come at a high cost for Sarasota this year.

An artist, historian, store owner and dozens of others volunteer on the city's 21 advisory boards and help commissioners make decisions that impact thousands. They are the "lifeblood" of Sarasota, City Manager Tom Barwin said.

But in a city with a fierce legal watchdog and a state with stringent open records laws, they are also a liability.

Government-in-the-Sunshine Law and public record missteps have cost Sarasota about \$100,000 in legal fees since this spring and local attorney Andrea Mogensen's firm has garnered the majority of the money. The firm doggedly monitors local government for missteps and last week filed a suit claiming Sarasota's advisory boards have a widespread problem: Members conducting public business through private email accounts, text messages and social media.

Michael Barfield, a paralegal with Mogensen's firm, watched from the back of City Hall chambers as about 60 advisory board members trickled in for an open records refresher course, intended to prevent further breaches of the law.

Before starting on the review, City Auditor and Clerk Pam Nadalini wryly suggested that if city officials could not answer a public records question, perhaps Barfield could.

"He's an expert," she said to laughter.

Mogensen's firm is unique, said Jon Kaney, general counsel for the First Amendment Foundation. No other attorney in Florida is so active in open government lawsuits.

The best way to prevent costly violations, Kaney said, is to give advisory board members copies of the law and drill requirements into them: Do not talk to other board members outside of meetings. Do not email about city business from a private account.

Sarasota volunteers have gone through the rules time and again, including 90 members who showed up for refresher sessions in the last couple of weeks.

People just have not got the message, Barfield said.

"We believe the violations are so pervasive that a court needs to take action, step in and hold the city's feet to the fire, if you will, on its obligations under the public records act," he said.

Advisory boards recommend how to spend taxpayer money, and Sunshine and public records laws are intended to keep that conversation accessible.

Florida's laws on open government are some of the most far-reaching in the country. Under the state Constitution, virtually everything is public.

In 1974, the Florida Supreme Court determined advisory committees are subject to the same Sunshine Law requirements as elected officials. If a commissioner or public board member knowingly violates the open records law, it is a misdemeanor offense, punishable by up to 60 days in jail and a \$500 fine.

Mogensen's firm solidified its reputation as an enforcer — her opponents sometimes argue "abuser" would be a better term — of the law in 2009 after representing the nonprofit Citizens for Sunshine Inc. in an open records case against Venice City Council. The parties settled and Mogensen received \$750,000 in legal fees.

During the past two years, the firm has sued Sarasota for Sunshine Law violations that include a public art steering committee holding meetings without notifying the public and members of a civil service board discussing the actions

of a police officer outside of a public meeting. Sarasota has paid the firm nearly \$100,000 for the cases.

Barfield has an ongoing public records lawsuit against the Downtown Improvement District advisory board, claiming two members deleted emails that they are required to keep and used personal email accounts for public matters.

Both men had to turn over their computers so a forensic computer expert could examine them — an awful experience that “breaks our heart,” Nadalini said during the recent refresher presentation to advisory board members.

City Manager Barwin said he wishes the watchdogs were solution-oriented rather than adversarial, and worries the lawsuits might discourage advisory board members from participating.

“We now have a situation where it’s become a business for some, they get legal fees,” he said.

If the elected officials and their appointees follow the law they will not have problems, Kaney said. The more costly cases are usually due to hard-headed ignorance and an unwillingness to comply with requests, he said.

“I’ve hear public officials complain about the expense, but if they do it right the first time they do not have the expense. That does not bring a tear to my eye,” Kaney said. “It’s the cost of government.”

Two months into his job, Barwin said the Sunshine Law has been his greatest challenge, and one he did not anticipate.

He is constantly confronted with a new interpretation of the law that includes more people, like members of subcommittees, Barwin said.

“Florida’s like a giant government nudist colony,” he said. “We don’t have anything to hide, but it’s boring and not that attractive.”

Barfield disagrees, saying most of the city’s sensitive issues are discussed on private email accounts, outside of the public sphere.

Text messages and social media have added another complicated layer of records.

In the past five years, debates over how the law applies to electronic media have been hashed out in court, said Kraig Conn, legislative counsel for the Florida League of Cities.

While local municipalities are generally good at educating advisers about the Sunshine Law when they start the job, legal nuances can complicate things, Conn said.

Advisory board members in Sarasota are not accidentally slipping up on public record obligations, they are deliberately disobeying the law, Barfield said.

“It’s quite easy for a board member to follow the law,” he said. “Don’t communicate about public business on your private email. Period.”

Barfield expanded his lawsuit against the Downtown Improvement District last week to say the city’s boards have made a practice of using private electronic accounts — email, Facebook and texts — to evade the law.

Barfield would not disclose the basis for his claim that board members were texting one another about public business. He said advisers have written posts about city business on private, invitation-only Facebook pages.

The Florida Attorney General has stated texts are subject to the same public records rules as emails, and material posted on a city Facebook page can be public records. “The medium is not important, it’s the message,” Kaney said.

Barfield’s complaint also alleges widespread email violations. Public email records show city staff sending messages to board members’ private accounts, he said.

Historic Preservation Board member Sherry Svekis used to get notifications from the city on her private email account, telling her the agenda for an coming meeting was released and she should check her city email for details. Now she does not even get those, she said.

Svekis, a historical archaeologist, said she applied to the board to offer her specialized expertise and a fresh perspective. After city commissioners selected her to serve as an adviser, city staff went over public records and Sunshine Law requirements and gave her packets of information.

Svekis said it has always been clear that she should not talk with other board members about city business outside of meetings and should use only her city email for public business. The preservation board meets once a month and rarely uses email, she said.

“I can’t imagine anyone on the boards trying to do business outside of the public eye,” Svekis said. “We’re serving because we care about the community.”

535 So.2d 694
District Court of Appeal of Florida,
Third District.

SPILLIS CANDELA & PARTNERS, INC., Appellant,
v.
CENTRUST SAVINGS BANK, f/k/a [Dade Savings & Loan Association](#), Dade County and City of Miami, and Miami Center Associates, Inc., a Florida corporation, Appellees.

No. 88-415.
|
Dec. 28, 1988.

Synopsis

Action was brought complaining of closed meeting held by committee appointed by County Board of Rules and Appeals. The Circuit Court, Dade County, Stuart M. Simons, J., held that Board violated Sunshine Law, and appeal was taken. The District Court of Appeal held that committee appointed by Board was subject to Sunshine Law.

Affirmed.

Attorneys and Law Firms

*694 Stanley V. Bukey and Esther E. Galicia of George, Hartz & Lundeen, Miami, for appellant.

John G. Fletcher, South Miami, for appellee-Centrust.

Opinion

PER CURIAM.

The appellant challenges the trial court's determination that the Dade County Board of Rules and Appeals violated *695 [section 286.011, Florida Statutes \(1987\)](#), commonly known as the Sunshine Law. We affirm.

The Board appointed a committee which, with one exception, was comprised of Board members. The committee's purpose was to report on the correctness of plans relating to fire resistivity provisions of the South

Florida Building Code for the Centrust Tower parking garage. After a public committee hearing on the matter, the committee recessed and deliberated on the matter for several minutes. These deliberations and the resulting vote were conducted in private without the inclusion of the public. Thus, the public was not given the opportunity to express views or to participate in the decision-making process.

Thereafter, the Board was presented with the committee's report. Contrary to the recommendation of its own attorney, the Board ratified the committee's report without a full and open public hearing on the matter.

The appellant asserts that the trial court erred in holding that the committee was an advisory board subject to the Sunshine Law. The law is quite clear. An ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law. [Town of Palm Beach v. Gradison](#), 296 So.2d 473 (Fla.1974); [IDS Properties, Inc. v. Town of Palm Beach](#), 279 So.2d 353 (Fla. 4th DCA 1973). The committee here, made a ruling affecting the decision-making process and it was of significance. As a result, it was improper for the committee to reach its recommendation in private since that constituted a violation of the Sunshine Law. Similarly, the committee's violation of the Sunshine Law was not cured by the Board's perfunctory ratification of the committee's report. Only a full, open public hearing by the Board could have cured any problem. [Tolar v. School Board of Liberty County](#), 398 So.2d 427 (Fla.1981).

Accordingly, the trial court properly held that there was a violation of the Sunshine Law.

AFFIRMED.

HERSEY, GEORGE W., LETTS, GAVIN K., and WALDEN, JAMES H., Associate Judges, concur.

All Citations

535 So.2d 694, 14 Fla. L. Weekly 79

535 So.2d 694
District Court of Appeal of Florida,
Third District.

SPILLIS CANDELA & PARTNERS, INC., Appellant,
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Dec. 28, 1988.

Synopsis

Action was brought complaining of closed meeting held by committee appointed by County Board of Rules and Appeals. The Circuit Court, Dade County, Stuart M. Simons, J., held that Board violated Sunshine Law, and appeal was taken. The District Court of Appeal held that committee appointed by Board was subject to Sunshine Law.

Affirmed.

Attorneys and Law Firms

*694 Stanley V. Bukey and Esther E. Galicia of George, Hartz & Lundeen, Miami, for appellant.

John G. Fletcher, South Miami, for appellee-Centrust.

Opinion

PER CURIAM.

The appellant challenges the trial court's determination that the Dade County Board of Rules and Appeals violated *695 [section 286.011, Florida Statutes \(1987\)](#), commonly known as the Sunshine Law. We affirm.

The Board appointed a committee which, with one exception, was comprised of Board members. The committee's purpose was to report on the correctness of plans relating to fire resistivity provisions of the South

Florida Building Code for the Centrust Tower parking garage. After a public committee hearing on the matter, the committee recessed and deliberated on the matter for several minutes. These deliberations and the resulting vote were conducted in private without the inclusion of the public. Thus, the public was not given the opportunity to express views or to participate in the decision-making process.

Thereafter, the Board was presented with the committee's report. Contrary to the recommendation of its own attorney, the Board ratified the committee's report without a full and open public hearing on the matter.

The appellant asserts that the trial court erred in holding that the committee was an advisory board subject to the Sunshine Law. The law is quite clear. An ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law. [Town of Palm Beach v. Gradison](#), 296 So.2d 473 (Fla.1974); [IDS Properties, Inc. v. Town of Palm Beach](#), 279 So.2d 353 (Fla. 4th DCA 1973). The committee here, made a ruling affecting the decision-making process and it was of significance. As a result, it was improper for the committee to reach its recommendation in private since that constituted a violation of the Sunshine Law. Similarly, the committee's violation of the Sunshine Law was not cured by the Board's perfunctory ratification of the committee's report. Only a full, open public hearing by the Board could have cured any problem. [Tolar v. School Board of Liberty County](#), 398 So.2d 427 (Fla.1981).

Accordingly, the trial court properly held that there was a violation of the Sunshine Law.

AFFIRMED.

HERSEY, GEORGE W., LETTS, GAVIN K., and WALDEN, JAMES H., Associate Judges, concur.

All Citations

535 So.2d 694, 14 Fla. L. Weekly 79

296 So.2d 473
Supreme Court of Florida.

TOWN OF PALM BEACH et al., Petitioners,
v.

Jules T. GRADISON, Respondent.

TOWN OF PALM BEACH et al., Petitioners,
v.

Fred GLADSTONE, Respondent.

TOWN OF PALM BEACH et al., Petitioners,
v.

FAIRMONT CONVERTING CO., INC., Respondent.

TOWN OF PALM BEACH et al., Petitioners,
v.

Morris LANSBURGH, Respondent.

TOWN OF PALM BEACH et al., Petitioners,
v.

Perry KAYE, Respondent.

TOWN OF PALM BEACH et al., Petitioners,
v.

Ralph H. SHERE et al., Respondents.

TOWN OF PALM BEACH et al., Petitioners,
v.

Walter PORANSKI et ux., Respondents.

TOWN OF PALM BEACH et al., Petitioners,
v.

FIRST BANK AND TRUST CO. OF
BOCA RATON, etc., Respondents.

Nos. 44099 to 44106.

|
May 1, 1974.

|
Rehearing Denied July 10, 1974.

Synopsis

Action challenging town zoning ordinance. The Circuit Court, Palm Beach County, James C. Downey, J., upheld the ordinance, and the challengers variously appealed. The District Court of Appeal, [279 So.2d 353](#), reversed the order but certified the question. The Supreme Court, Adkins, C.J., held that a citizens' planning commission composed of private citizens, established by the town council, which appointed the members, was subject to the government in the sunshine law.

Certified question answered, and cause remanded.

Dekle, J., dissented and filed opinion in which Roberts, J., joined.

Attorneys and Law Firms

*[474](#) Chester Bedell and John A. DeVault, III, Bedell, Bedell, Dittmar, Smith & Zehmer, Jacksonville, and Burns, Middleton, Farrell & Faust, Palm Beach, for petitioners.

H. L. Cooper, Jr., O'Connell & Cooper, West Palm Beach, for Jules T. Gradison, Morris Lansburgh, Perry Kaye, Ralph H. Shere and Walter Poranski.

Larry B. Alexander, Jones, Paine & Foster, West Palm Beach, for Fred Gladstone and Fairmont Converting Co., Inc.

Ross, Hardies, O'Keefe, Babcock, McDugald & Parsons, Chicago, Ill., and Fisher, Prior, Pruitt & Schulle, West Palm Beach, for First Bank and Trust Co. of Boca Raton.

Opinion

ADKINS, Chief Justice.

By petition for writ of certiorari, we have for review the consolidated cases arising out of a decision of the District Court of Appeal, Fourth District ([IDS Properties, Inc. v. Town of Palm Beach](#), [279 So.2d 353](#)), which is accompanied by a certificate of the District Court of Appeal that its decision had passed upon a question of great public interest, to-wit:

'Whether a zoning ordinance adopted by zoning authorities and the Town Council after public hearings is rendered invalid under the [s 286.011, F.S.1971](#), (F.S.A.), Government in the Sunshine Law, because of the nonpublic activities of a citizen's planning committee which committee was established by the town council and acting on behalf of the council in an advisory capacity participated in the formulation of the zoning plan.'

We have jurisdiction. Fla.Stat., art. V, s 3(b)(3), F.S.A.

The Town Council of the Town of Palm Beach, hereinafter referred to as 'Town Council,' passed a resolution providing that the Council would undertake the updating and revision of the town zoning ordinances. Interviews were held with a planning firm, hereinafter called 'Planners,' and, at a public meeting, the Town Council authorized a contract with the Planners. A citizens' planning commission was decided upon and chosen by the Town Council at a nonpublic administrative meeting. The nominees were told that the Town Council had nominated each one to serve on the town planning committee for the purpose of guiding the Planners in their efforts to assure that the plan produced would be consistent with the character, image and land-use controls intended by the citizens. Changes in the plan during its formulation were made by the Planners to reflect the decisions of the planning committee.

The planning committee, a lay group of citizens, were not regularly employed personnel of the Town. The members of the committee were not landscape or civil engineers nor expert vocational zoning planners performing their work outside the scope of the sunshine law. Neither were they contractors engaged by the Town for making zoning studies, surveys or plans. To the contrary, they were a buffer lay group of citizens to serve part-time as the alter egos of the Town Councilmen to make tentative decisions guiding the zoning planners and advising the Council as to their ultimate zoning ordinances. In other words, the Council delegated to the committee much of their administrative and legislative decisional zoning formulation *475 authority which is ordinarily exercised by a city-governing body itself—and particularly the position of the process where the affected citizens expect to be officially heard. Thus, the nature of the committee and its function reached the status of a board or commission that to act legally must comply with the sunshine law.

The trial court specifically found that the Planning Advisory Committee meetings with the Planners were not open to the public, nor were minutes taken. These meetings were numerous and detailed.

At a joint meeting of the Town Council and the planning committee the role of the committee was explained. The Town Council was of the opinion the committee should work as an 'element' of the zoning commission, and further, that the Town Council had the authority to

override any changes induced by the zoning commission and 'would do so without timidity.' This joint meeting was held without notice, without members of the public or press present, and no official minutes were taken or recorded.

Thereafter, the President of the Town Council and various members of the zoning commission met with the town manager and were finally advised as to the operation of the committee. An agenda was prepared for presentation of the tentative comprehensive plan to a meeting of the Town Council. At that meeting the plan was discussed. Further executive sessions of the zoning commission were held.

Thereafter, full public meetings and hearings of the zoning commission and of the Town Council were conducted and proper procedure followed. The comprehensive zoning plan was approved in essentially the same form as that which had been produced by the consultants and the planning advisory committee.

The government in the sunshine law contains the following:

'(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting.' Fla.Stat. s 286.011, F.S.A.

The only question to be determined is whether the citizens planning commission composed of private citizens, which was established by the Town Council and the members thereof appointed by the Town Council, was subject to the government in the sunshine law.

Every meeting of any board, commission, agency or authority of a municipality should be a marketplace of ideas, so that the governmental agency may have sufficient input from the citizens who are going to be affected by the subsequent action of the municipality. The ordinary taxpayer can no longer be led blindly down the path of government, for the news media, by constantly reporting community affairs, has made the taxpayer aware of governmental problems. Government, more so now than ever before, should be responsive to the wishes of the public. These wishes could never be known in

nonpublic meetings, and the governmental agencies would be deprived of the benefit of suggestions and ideas which may be advanced by the knowledgeable public.

Also, such open meetings instill confidence in government. The taxpayer deserves an opportunity to express his views and have them considered in the decisionmaking process.

Those who do not attend public meetings are given ample opportunity to participate in government by securing information of governmental activities from the news media. Responsible reporting of governmental activities results in letters or telephone calls from interested citizens so that governmental officials are given the benefit of *476 both sides of the question. No governmental board is infallible and it is foolish to assume that those who are elected or appointed to office have any superior knowledge concerning any governmental problem. Every person charged with the administration of any governmental activity must rely upon suggestions and ideas advanced by other knowledgeable and interested persons. As more people participate in governmental activities, the decisionmaking process will be improved.

Few, if any, governmental boards or agencies deliberately attempt to circumvent the government in the sunshine law. We feel that the Town Council of Palm Beach acted in good faith, but any committee established by the Town Council to act in any type of advisory capacity would be subject to the provisions of the government in the sunshine law.

The citizens' planning committee was not an organization formed by any civic group such as a taxpayer's league, better government league, civic association, etc. It was conceived and formed by the Town Council for the purpose of working with the planning consultant so that the plan produced would be consistent with the land-use controls intended by the citizens. The citizens' planning committee was an arm of the Town Council.

The Legislature would have no right to require meetings of civil organizations, unconnected with municipal government, to conform to the government in the sunshine law. However, a subordinate group or committee selected by the governmental authorities should not feel free to meet in private. The preponderant interest of allowing the public to participate in the conception of a proposed zoning ordinance is sufficient to justify the inclusion of this selected subordinate group, within the provisions of the government in the sunshine law.

Cases from other jurisdictions dealing with the scope of similar statutes compel the conclusion that bodies such as the Palm Beach Planning Committee selected by the Town Council are governed by Fla.Stat. s 286.011, F.S.A.

In [Raton Public Service Co. v. Hobbes](#), 76 N.M. 535, 417 P.2d 32 (1966), the Board of Directors of a city-owned electric utility were held to be within the scope of a statute governing 'all other governmental boards and commissions.'

In [Glick v. Trustees of Free Public Library](#), 2 N.J. 579, 67 A.2d 463 (1949), trustees of the Library were held to be within the purview of a statute requiring the 'governing body' to advertise for bids.

In the case of [Bogert v. Allentown Housing Authority](#), 426 Pa. 151, 231 A.2d 147 (1967), the Pennsylvania Supreme Court, interpreting that State's 'right to know' statute, stated:

'Within the past several decades we have witnessed the creation of these public bodies called 'authorities' which have been granted the power to, and do, perform important governmental functions which vitally affect the public. Unlike other public bodies, the members of the 'authorities' are appointed and not elected and are not Directly responsible for their actions to the electorate. If the elected members of public bodies are to be subjected to public disclosure of their actions, how much more important that the appointed members of public bodies be required to make such disclosure.' (p. 151)

In [Beacon Journal Publishing Co. v. City of Akron](#), 3 Ohio St.2d 191, 209 N.E. 399, 404 (1965), it was held that a city planning commission created by the city charter with 'such other powers and duties as the council may confer upon the planning commission,' was subject to the open meeting provision of the Akron City Code which applied to 'any board or commission . . . created by the charter or by action of council.'

*477 In [Lhormer v. Bowen](#), 410 Pa. 508, 188 A.2d 747, 749 (1963), proposed rezoning ordinance was held ineffectual to restrict the issuance of a building permit, one of the reasons being the failure of the planning commission to hold a public hearing on its preliminary report before submitting a final report to the borough

council for action, as required by the zoning enabling legislation.

In [Sacramento Newspaper Guild v. Sacramento County Board of Supervisors](#), 263 Cal.App.2d 41, 47, 69 Cal.Rptr. 480, 485 (1968), California's Third District Court of Appeal upheld an injunction restraining the Sacramento County Board of Supervisors, and its committees, from holding informal meetings in violation of the Brown (California) Act. It held that there was nothing in the new Brown Act 'to demarcate a narrower application than the range of governmental functions performed by the agency.' It further held the Act applied not only to 'action' but also to 'deliberative gatherings . . . however confined to investigation and discussion.' Noting the widespread evasion of pre-Brown Act open-meeting statutes 'through unannounced 'sneak' meetings and through indulgence in euphemisms such as executive session, conference, caucus, study or work session, and meeting of the committee of the whole,' the court concluded that the statute could be pushed 'beyond debatable limits' to block such evasive techniques. The court continued:

'An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in the light of the Brown Act's objectives, the term 'meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business.' (p. 487)

One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency, and relates to any matter on which foreseeable action will be taken.

The principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State. See Florida Law Review, Government in the Sunshine by Ruth Mayes Barnes, Vol. XXIII, 361, 365 (Winter 1971).

Mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury so that the ordinance is void *Ab initio*. [Times Publishing Co. v. Williams](#), 222 So.2d 470 (Fla.App.2d 1969). Florida Law Review, Government in the Sunshine by Ruth Mayes Barnes, Vol. XXIII, p. 369 (Winter 1971).

Although a criminal prosecution requires proof of scienter ([Board of Public Instruction of Broward County v. Doran](#), 224 So.2d 693, 699 (Fla.1969)), an unintended violation of the government in the *478 sunshine law will negate any action taken by the Town Council. Fla.Stat. s 286.011, F.S.A.

The Superior Court of New Jersey in [Wolf v. Zoning Board of Adjustment of the Borough of Park Ridge](#), 79 N.J.Super. 546, 192 A.2d 305 (1963), held that the proper implementation of their 'Right to Know Law' requires the court upon proper application to set aside any official action taken without compliance, even in the absence of bad faith, saying:

'The trial judge noted, and the defendant officials stress, that the act states that 'official action taken in violation of the requirements of this act shall be Voidable (Emphasis theirs.) in a proceeding in the Superior Court,' thereby supposedly indicating a legislative intent that the voiding of such action should rest in the discretion of the judge. The court concluded that since no impropriety or bad faith on the part of the board was indicated, it should exercise its discretion to permit the action to stand. We think the court took too narrow a view of the intent and underlying policy of the statute. The purpose of the act, as reflected in [N.J.S.A. 10:4—1](#), is to implement the declaration therein that it is 'the public policy of this State to insure the right of the citizens of this State to attend meetings of public bodies * * * for the protection of the public interest.' In other words, the object of the act is primarily prophylactic, and not necessarily restricted to creation of a remedy for illegalities at particular public meetings from which the public is excluded. Appropriate implementation of that object and policy calls, as a general rule, for the Superior

Court upon proper application to set aside any official action, as defined by the act, which is taken without compliance with the prescriptions of the statute, as here. We need not now decide that no discretion is ever to be reserved to the court to save the validity of official action taken in contravention of the statute. That question may be left to await a case where a sufficiently impelling counter-interest may be argued to bespeak sustaining the action impugned. It suffices here to say that mere absence of bad faith or other impropriety on the part of the public body should not ordinarily move the court to stay its hand in voiding official action taken contrary to the statute upon proper application therefor.' (Emphasis supplied.) (pp. 308—309)

[Fla.Stat. s 286.011](#)(1), F.S.A., specifically provides that 'no resolution, rule, regulation or formal action shall be considered binding' where the government in the sunshine law is violated. We follow the reasoning of the New Jersey court in *Wolf v. Zoning Board of Adjustment of the Borough of Park Ridge*, *Supra*.

Answering the question presented by the District Court of Appeal in the case *Sub judice*, we hold that the zoning ordinance adopted by the zoning authorities and the Town Council after public hearing was rendered invalid because of the non-public activities of the citizens planning committee, which committee was established by the Town Council, active on behalf of the Council in an advisory capacity and participated in the formulation of the zoning plan. We approve the decision of the District Court of Appeal.

Having answered the certified question, this cause is remanded to the District Court of Appeal for further proceedings in accordance with the views expressed herein.

It is so ordered.

ERVIN, BOYD and McCAIN, JJ., concur.

DEKLE, J., dissenting with opinion.

ROBERTS, J., dissents and concurs with DEKLE, J.

DEKLE, Justice (dissenting):

The Town Council, upon determining that an updated zoning plan was advisable for the Town of Palm Beach, employed a *479 professional planning firm for the purpose of preparing such a plan. In addition, the Town Manager named five citizens from a group recommended by council members to serve as guides to the professional consultants in the preparation of the comprehensive zoning plan. The crux of the problem before this Court is that this group, the Advisory Planning Committee, held its meetings without public attendance or involvement.

The plan finally proposed by the consultants was adopted, with some modifications, by the Zoning Commission and Town Council, Following public meetings and discussion. The adoption of the plan was accordingly carried out 'in the sunshine.'

The controlling statutory law in this case is, of course, [Fla.Stat. s 286.011](#) F.S.A., which provides:

'(1) All Meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, At which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting.

'(2) The minutes of a meeting of any Such board or commission of any such state agency or authority shall be promptly recorded and such records shall be open to public inspection. . . .

'(3) Any Person who is a Member of a board or commission or of any State agency or authority of any County, municipal corporation or any political subdivision who violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s 775.082 or 775.083.' (emphasis added)

The role of the Advisory Planning Committee was well defined by the learned trial judge in a memorandum order:

'This was an ad hoc committee of local residents familiar with the

character, historical background and desired future development of the Town. It was the committee's function to transmit to the Planner that information and to advise with it so that the eventual plan would be compatible with the known desires of the community. This committee of citizens, while influential in what the Planner ultimately produced, was merely advisory as far as the Planner, the Zoning Commission and the Town Council were concerned. They made no decision which bound either the Zoning Commission or the Town Council. Much of what the Planning Committee did with the planner could have been done by the Town Manager, or some of the Town's staff, or the Planner could have sought out residents on its own initiative for advice and assistance in preparing the plan.'

The trial judge concluded that the acts complained of did not fall within the purview of the Sunshine Law.

The district court of appeal reversed the trial court's finding, reasoning that the Town Council should not be able to do by proxy that which it is forbidden to do itself by [Fla.Stat. s 286.011](#), F.S.A., suggesting that the Planning Committee had De facto authority to act on behalf of the Town Council, so that it must stand in the shoes of the Council in regard to the Government in the Sunshine Law. In the words of the district majority opinion: 'Although, admittedly, the zoning plan was 'born' when the Town Council (acting in the sunshine) voted upon the ordinance at a public meeting, the 'conception', which is an inseparable part of the life-giving process, took place (in the dark) with the appointment of the Citizens' Planning Committee. The zoning ordinance was, therefore, not conceived *480 eo instanti at the public meetings held by the Town Council and Zoning Commission. It was the product of the deliberations and actions of the Citizens' Planning Committee acting as the alter ego of the Town Council; the action of the Citizens' Planning Committee was an indispensable requisite to and

integral part of the 'official acts' or 'formal action' of the [Town Council.](#)' [279 So.2d 353, 356.](#)

The question presented in the case Sub judice is one of first impression in this State. The effect of the 'Government in the Sunshine' Law has been considered in the past as it applies to various boards and commissions of elected officials, the terms used in the statute. But it has never before been suggested, by either the Courts or the Legislature, that meetings of all unofficial and purely advisory groups be likewise public and give notice of meetings held and otherwise act to insure that their meetings are 'public.' The statute simply does not include such persons.

Should the Legislature choose so to extend the Act, then would be the time to so hold, but not by this precipitous judicial extension thereof without the benefit of the majority's own requirement of a 'marketplace of ideas' first allowed to be debated by the citizens' elected representatives in the Legislature. Let the same worthy principle be applied in both instances. 'Consistency, what a jewel thou art.'

The Legislature having chosen not to include such advisory and purely private groups under the mandate of the statute, the Courts are powerless to extend the statute beyond the clear intent of the Legislature. As this Court has stated:

'In construing or interpreting the words of a statute it should be born in mind that the courts have no function of legislation, and seek only to ascertain the will of the Legislature. The courts may not imagine an intent and bend the letter of the act to that intent, much less, says the Maryland court, 'can we indulge in the license of striking out and inserting and remodeling with the view of making the letter express an intent which the statute in its native form does not evidence.'" [Fine v. Moran, 74 Fla. 417, 77 So.2d 533, 536 \(1917\).](#)

Despite the majority's assertion to the contrary, the extension of the statute here asserted would as logically apply also to gatherings of civic groups which meet with elected officials to discuss or recommend suggested legislation, resulting in the invalidation of otherwise quite proper 'sunny' subsequent decisions by such officials because in all innocence no notice to the press and the public might have issued for the occasion. Likewise, all

organizations dedicated to the swaying of public opinion and the initiation of public action later taken by a public body—be it a private group of legislative lobbyists, the League of Women Voters or the editorial board of a civic-minded publication—would have to welcome public involvement in their decision-making processes to avoid ‘tainting’ such officials’ subsequent decisions in public.

In the most recent pronouncement by this Court on the ‘Sunshine’ issue, it was decreed that a county school board sitting in a quasi-judicial matter is still required to meet in the ‘Sunshine.’ [Canney v. Board of Public Instruction of Alachua County](#), 278 So.2d 260 (Fla.1973). This Court has previously held that executive sessions of school boards ([Board of Public Instruction of Broward County v. Doran](#), 224 So.2d 693 (Fla.1969)), or city councils ([City of Miami Beach v. Berns](#), 245 So.2d 38 (Fla.1971)), must be in the ‘Sunshine,’ reasoning:

‘A secret meeting occurs when Public officials meet at a time and place to avoid being seen or heard by the public. When at such meetings Officials mentioned in [Fla.Stat. s 286.011](#), F.S.A., *481 transact or agree to transact public business at a future time in a certain manner they violate the government in the sunshine law, regardless of whether the meeting is formal or informal.’ [City of Miami Beach v. Berns](#), *Supra*, at 41. (Emphasis added).

However, both cases involved meetings of officials mentioned in the statute, to-wit:

‘(A)ny board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution.’ [Fla.Stat. s 286.011\(1\)](#), F.S.A.

Nothing in the statute or in the prior decisions of the courts of this State dictates or even hints that the ‘Government in the Sunshine’ Law is intended to go beyond elected or officially appointed boards. In fact, it is constitutionally questionable in light of the freedoms of speech and peaceable assembly guaranteed by the [U.S. Const., Amendment I](#), and by [fla.Const., art. I, ss 4, 5](#), F.S.A., to forbid private citizens to meet and discuss matters of public concern merely because their ideas are to be transmitted to a firm of professional planners and consultants, and because their ideas might be incorporated into a suggested plan which might then pass muster before the public in full hearings, and before

two public bodies meeting in the ‘Sunshine,’ as occurred Sub *judice*. The Citizens’ Planning Committee working with the professional planner here cannot, under any reasonable theory, be equated with such a public ‘board or commission.’ These were solely private citizens, unsalaried volunteers.

In my view, the language of the statute mandates that the fact that a purely advisory group of private citizens did not hold public meetings, is not a violation of [Fla.Stat. s 286.011](#), F.S.A., such as to void official action later taken in the ‘Sunshine’ by the Zoning Commission over a period of five days of public hearings and debate and thereafter, by the City Council, after six days of public hearings at which the only decisions were made. The fact that a private advisory group provided a part of the input which resulted in the plan presented to the official bodies for consideration is at best a preliminary planning aid which is entirely subject to the will (‘decisions’) of the Commission and the Council (official body). It only provided a starting point from which the Commission could start to work and into which the public could inject its contentions and plans to be incorporated or substituted as the Public body should decide. The ‘marketplace of ideas’ occurs at that point and total input from the public is therefore not denied.

Where it can be shown that a public body has intentionally, and for the purpose of avoiding the light of public scrutiny, appointed a board of non-elected citizens to determine For the elected board what course should be pursued, and where the actions of the private citizens are in any way Binding upon the elected officials, a different situation would be presented. No such evidence or any indication of collusion between the Town Council and the Citizens’ Planning Committee has been found in the case Sub *judice*. No intentional or incidental wrongdoing or collusion has been shown. If such collusion and impropriety of purpose had been made to appear, then the hearings of the private committee could be viewed as an alter ego extension of the official board, and thus amenable to the ‘Sunshine.’ This is not the case.

So long as the Committee has been advisory only, and the Zoning Commission and Town Council have remained free to view the suggested comprehensive plan as objectively as though it had been prepared solely by the hired consultants, and have made the decisions in the ‘Sunshine,’ the requirements of the statute have been met. See *482 [Basset v. Braddock](#), 262 So.2d 425 (Fla.1972).

Accordingly, the question posed by the District Court of Appeal, Fourth District, as stated, should have been answered in the negative.

I therefore most respectfully must dissent.

ROBERTS, J., concurs.

All Citations

296 So.2d 473

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647 So.2d 857

District Court of Appeal of Florida,
Third District.

MONROE COUNTY, Florida, a political subdivision of The State of Florida, and Pigeon Key Preservation Foundation, Inc., a Florida corporation, Appellants,

v.

PIGEON KEY HISTORICAL PARK, INC., a Florida corporation, Appellee.

Nos. 93-2308, 93-2298.

|
July 12, 1994.

|
Opinion Denying Rehearing
and Certification Jan. 11, 1995.

Synopsis

Historical park filed petition for temporary injunction seeking to invalidate lease. The Circuit Court, Monroe County, [Richard G. Payne, J.](#), invalidated lease, based on sunshine law violations. County appealed. The District Court of Appeal, Gersten, J., held that sunshine law violations had been cured.

Reversed.

Cope, J., filed dissenting opinion, and dissented on denial of motion for rehearing and certification.

Attorneys and Law Firms

***858** Morgan & Hendrick, and [James T. Hendrick](#), Key West, for appellant, Monroe County.

***859** [Michael Halpern](#), Key West, for appellant, Pigeon Key Preservation Foundation, Inc.

[Sharon I. Hamilton](#), Marathon, for appellee.

Before [NESBITT](#), COPE and GERSTEN, JJ.

GERSTEN, Judge.

Appellants appeal the trial court's invalidation of the Monroe County Board of County Commissioner's 30-year lease with the Pigeon Key Preservation Foundation. This appeal is based upon alleged violations of [section](#)

[286.011, Florida Statutes \(1993\)](#), commonly known as the Sunshine Law. We reverse.

The issue is, under the Florida Constitution and Florida Supreme Court precedent, did governmental meetings held without public notice invalidate a final governmental action taken in the sunshine or did the subsequent corrective actions cure the Sunshine Law violations?

The Monroe County Board of County Commissioners (the Commission) issued a "Request for Proposals" to restore and preserve Pigeon Key, an offshore island located near Marathon, Florida. The Commission selected the proposal of the Pigeon Key Preservation Foundation (the Foundation), who seek to establish a marine environmental education and research center on Pigeon Key. The Commission then directed its Pigeon Key Advisory Committee (the Advisory Committee) to negotiate a lease agreement for the use of Pigeon Key with the Foundation.

Upon a request by the Advisory Committee for community input, three Marathon business organizations issued a joint resolution urging a number of recommendations. These recommendations included that the lessee "work with local tourist-related businesses to make [Pigeon Key] an on-going tourism attraction that will encourage visitors to stay at local hotels and make use of local restaurants, shops and businesses."

The Advisory Committee held its first two meetings without proper public notice. Minutes of these meetings detail the Advisory Committee's recommendations for the lease and for the Master Plan, the Foundation's overall development plan for Pigeon Key. Following these meetings, the Advisory Committee held a third and final meeting which had proper public notice.

Thereafter, the Commission held a public hearing regarding the lease on June 15, 1993, at which over 30 members of the community spoke. At the hearing, the County Attorney stated that tourism could not become a primary use of Pigeon Key because the Key was purchased by a bond issue through ad valorem taxes and its uses must remain public. The Commission tabled the vote on the lease and urged the Foundation and community members promoting a tourist use to meet and negotiate a joint plan.

Following these meetings, the County Attorney and the attorney for the Foundation agreed to numerous changes in the lease. The tourist use provision had been incorporated verbatim from the joint resolution and was the Advisory Committee's primary addition to the lease. Because tourist use of Pigeon Key violated the law, that provision was eliminated.

On July 29, 1993, the Commission reconvened for its second public hearing on the Pigeon Key lease. Minutes of the unnoticed Advisory Committee meetings were read into the record. After approximately 20 members of the public spoke, the Commission recommended and approved additional changes to the lease. The Commission then defeated a motion to reject all proposals for Pigeon Key and readvertise the "Request for Proposals." At the end of the hearing, the Commission approved the amended lease with the Foundation by a 3–2 vote.

Appellee, Pigeon Key Historical Park, filed an emergency petition for a temporary injunction seeking: 1) to enjoin the Commission from acting on the Advisory Committee's recommendations at its July 29, 1993 meeting, or 2) to set aside any action taken at that meeting which was based upon a Sunshine Law violation. The trial court declined to consider the emergency request and a hearing was set after the Commission's meeting. Following the hearing, the trial court invalidated the lease, finding that the *860 reading of the minutes into the record and the subsequent public hearings did not cure the Sunshine Law violations.

Appellants rely on *Tolar v. School Bd.*, 398 So.2d 427 (Fla.1981), asserting that the Advisory Committee's failure to notice its first two meetings was cured by its own subsequent public meeting, publication of the minutes of the unnoticed meetings, two subsequent public hearings held by the Commission, and the Commission's deletion of the Advisory Committee's principal addition to the lease of a tourist-oriented use. Appellee relies on *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla.1974), contending that the Sunshine Law violations have not been cured because the unnoticed Advisory Committee meetings were initial steps in the decision-making process of an issue that deserves full and complete public input.

Originally codified by statute, the Sunshine Law recently became part of the Florida Constitution. [Article 1, section](#)

[24\(b\) of the Florida Constitution](#), adopted in 1992, provides:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public....

[Section 286.011\(1\), Florida Statutes \(1993\)](#), states that:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

The Sunshine Law penalizes members of governmental bodies who meet in secret. [§ 286.011\(3\), Fla.Stat. \(1993\)](#). Minutes of meetings of such boards or commissions are to be promptly recorded and open to public inspection. [§ 286.011\(2\), Fla.Stat. \(1993\)](#).

Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla.1974), articulates the purpose of the Sunshine Law: "to prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance.... The statute should be construed so as to frustrate all evasive devices." *Id.* at 477. Under *Gradison*, a "[m]ere showing" of a Sunshine Law violation renders final governmental action void *ab initio*. *Id.*

Tolar v. School Bd., 398 So.2d 427 (Fla.1981), however, provides that Sunshine Law violations can be cured by independent, final action in the sunshine that is “not merely a ceremonial acceptance ... and ... a perfunctory ratification of secret decisions.” *Id.* at 429. *Tolar* recedes from *Gradison* and distinguishes it as a case in which a town council summarily approved planning committee recommendations in a purely ceremonial meeting. *Id.* Under *Tolar*, a full, open public hearing can cure a prior violation. *Spillis Candela & Partners, Inc. v. Centrust Sav. Bank*, 535 So.2d 694, 695 (Fla. 3d DCA 1988).

Here, the Commission did not ceremonially accept or perfunctorily ratify the Advisory Committee recommendations. First, open public hearings followed the unnoticed meetings. The Advisory Committee held one public meeting after the Sunshine Law violations, and the Commission held two public hearings at which over 50 people testified. Rather than voting at the end of the first public hearing, the Commission tabled its vote until a subsequent public meeting and urged the Foundation and the supporters of a primary tourist use of Pigeon Key to meet and seek a joint plan. Even before voting on the lease at the conclusion of the second public hearing, the Commission voted on whether to readvertise for new proposals for the use of Pigeon Key.

Second, an effort was made to make available to the public the minutes of the unnoticed meetings. The minutes from these meetings, which specified the Advisory Committee's recommendations to the lease, were *861 read into the record at the second public hearing.

Third, the lease the Commission approved was markedly different from that recommended by the Advisory Committee. The Advisory Committee's most substantial recommendation was its addition of tourist promotion as a use of Pigeon Key, which the Commission excised from the final lease it approved.

Finally, most of the lease negotiations were conducted after the Advisory Committee concluded its work. They were conducted between the County Attorney and the Foundation attorney, neither of whom were members of the Advisory Committee.

This court is concerned that unnoticed governmental meetings were held here. We are reminded of the

importance of open meetings to democratic government from *Gradison*:

Every meeting of any board, commission, agency or authority of a municipality should be a marketplace of ideas, so that the governmental agency may have sufficient input from the citizens who are going to be affected by the subsequent action of the municipality.... [O]pen meetings instill confidence in government.

296 So.2d at 475.

Our new constitutional amendment, now [article 1, section 24\(b\) of the Florida Constitution](#), expresses a recent public mandate reaffirming the Sunshine Law and extending its reach into every meeting at which public business is to be transacted or discussed. Yet, the amendment neither provides for its own enforcement nor counters *Tolar*'s standard of remediation.

Tolar effectively sounded the death knell of an unadulterated Sunshine Law.¹ See *Tolar*, 398 So.2d at 432 (Adkins, J., dissenting). Governmental actions will not be voided whenever governmental bodies have met in secret where sufficiently corrective final action has been taken. *Id.* at 428–29.

Because we are bound by *Tolar*, and because subsequent governmental actions cured the Sunshine Law violations here, we reverse the determination of the trial court and validate the lease between the Monroe County Board of County Commissioners and the Pigeon Key Preservation Foundation.

Reversed.

[NESBITT, J.](#), concurs.

COPE, Judge (dissenting).

I respectfully dissent. The trial court after an evidentiary hearing made the explicit factual finding that the action

taken by the Monroe County Commission did not cure the Sunshine Law violations. The trial court's factual findings are backed up by the evidence, and the court correctly applied the Sunshine Law. The majority position essentially nullifies the new constitutional sunshine provision, and is contrary to *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla.1974).

I

At the 1992 general election Florida voters ratified [article I, section 24 of the Florida Constitution](#),¹ which elevated to constitutional status the public's right to government in the sunshine. [Article I, section 24](#) provides, in part:

[Section 24](#). Access to public records and meetings.—

....

(b) All meetings of ... any collegial public body of a county ... at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public ... except with respect to meetings *862 exempted pursuant to this section or specifically closed by this Constitution.

The new constitutional right of public access is self-executing. The obvious intent of the electorate was to strengthen Florida's Government in the Sunshine Laws, including the Open Meetings Law. *See* [§ 286.011, Fla.Stat. \(1993\)](#). Injunctive relief is available to enforce the Open Meetings Law; actions taken in violation of the law are not binding. *Id.* [§ 286.011\(1\), \(2\)](#).

II

The Monroe County Commission decided to grant a thirty-year exclusive lease for the use of Pigeon Key, an island located at the midpoint of the historic Seven Mile Bridge. The County Commission appointed the Pigeon Key Advisory Board and directed it “to negotiate a lease with the Pigeon Key Foundation, Inc., and report to the County Commission.” (Final Order, para. 1). It is well settled that an advisory body like the Pigeon Key Advisory Board is governed by the Open Meetings Law. All parties agree on this point.

It is also well settled that a body covered by the Open Meetings Law must give proper notice of its meetings, so that the public will have an opportunity to attend. The new [article I, section 24](#) to the Florida Constitution explicitly so provides. [Art. I, § 24\(b\)](#), Fla.Const. (“shall be open and noticed to the public”). The requirement of public notice also existed under earlier case law. *See Hough v. Stembridge*, 278 So.2d 288, 291 (Fla. 3d DCA 1973).

In the present case “all parties agree that there were violations of [the] Florida Sunshine Law, Statute 286.011 on January 27 and March 12, 1993, by the Pigeon Key Advisory Board ... for although the meetings were open to the public, they were not advertised or properly noticed.” (Final Order, para. 3). There was a third meeting on June 2, 1993 which was properly noticed.

On June 15, 1993 the proposed lease was submitted to the County Commission for approval. At the June 15 meeting there was input from various members of the public, advisory committee members, the Foundation, and county staff. The County Commission deferred action and referred the matter to the county staff for further modifications to the lease.

The trial court explicitly found that as of June 15, the County Commission was *not* made aware that the Pigeon Key Advisory Board meetings had been conducted in violation of the Sunshine Law.

Open meeting violations were not disclosed or the subject of discussion during this [County Commission] meeting. This [County Commission] hearing was not held with the heightened awareness that the [advisory] committee's recommendations concerning the negotiated lease [were] the product of Sunshine Law violations since disclosure of [same] had not yet been made.... For this reason the court discounts the overall remedial value of the June 15 [County Commission] hearing.

(Final Order, para. 4).

The county staff undertook to modify the lease. These modifications were accomplished in private session. The matter was not referred back to the Pigeon Key Advisory Board, nor was any of the modification work on this lease accomplished in public session.

The Pigeon Key lease was scheduled to be considered again at the County Commission's July 29, 1993 meeting. On July 26, 1993 Pigeon Key Historical Park, Inc., filed an emergency petition for a temporary injunction. Pigeon Key Historical Park "is a non-profit corporation formed by some Marathon, Florida residents to promote the use of the island." (Final Order, at 1). The plaintiff's petition asserted that the work of the Pigeon Key Advisory Board had been conducted in violation of the Open Meetings Law. The petition requested that the court enjoin the County Commission from taking final action on the Pigeon Key lease. Alternatively, the petition requested that if the County Commission took action on the lease, the court should set the lease aside under [section 286.011, Florida Statutes](#). The trial court denied the temporary injunction "reasoning that any alleged invalid lease could subsequently be set aside by the court providing *863 full remedy to Petitioners." (Final Order, para. 5).

Belatedly realizing that there was indeed a Sunshine Law problem here, the County attempted to cure the Sunshine Law violation. The trial court summarized the County's actions, and drew its conclusions of law, as follows:

7. On July 29 the County attempted to rectify the open meeting violations of its advisory panel at the meeting scheduled to approve the panel's negotiated lease. Prior to discussion of the negotiated lease the County Attorney caused to be read into the record two documents prepared by the County Administrator purporting to reflect the minutes of the Advisory Board's meetings on January 27 and March 12.... The first document was in the form of a 4 page letter written by the County Administrator to Joe Hammond, President of the Pigeon Key Foundation dated January 28 in which he summarized the committee's negotiations of the previous day. The second document read was a 4 page "Memorandum" prepared by the County Administrator directed to Hammond summarizing the 3 hour meeting of the Advisory Committee held with the "Foundation" on March 12, 1993.

8. After a reading of these letters the meeting of July 29 was opened for discussion concerning approval of the proposed 30 year lease. Approximately 20 individuals addressed the County Commission. *Thereafter the lease was approved essentially as negotiated with only minor changes* made to certain language of the Whereas clauses, and by adding an additional clause to prohibit the Foundation from allowing the collecting of marine resources within one half mile of the island and adding a hold harmless clause if for any reason the subject lease was declared invalid.

9. That both parties stipulate that the meetings of January 27, 1993 and March 12, 1993 were held in violation of [F.S. 286.011](#). The issue before the court is therefore limited to whether or not the violations have none-the-less been rendered cured in accord with *Tolar [v. School Board of Liberty County, 398 So.2d 427 (Fla.1981)]*.

10. This court does not read *Tolar* as offering local governments a panacea for all [open] meeting law violations in all instances irrespective of the number of Sunshine violations uncovered, the number of citizens concerned, affected or interested in the outcome, the length, nature and kind of the particular violations, the overall importance and long range effect of the action taken by the governmental body in comparison to the curative action taken.

11. In the instant case the action of the County Board ... involved the granting of a thirty (30) year exclusive lease for the use of Pigeon Key, an island owned by the County located south of Marathon situated approximately midway the famous Seven Mile Bridge. The island is accessible by vehicle via the old Seven Mile Bridge and contains numerous historical residential structures used in the past in operation of the East Coast Railroad system.

12. The subject lease called for the renovations of all the numerous historical structures on the island and require[d] the lessee to implement its Island Master Plan and as such said lease and the negotiations surrounding same constitute discussion of vital issues of great public importance.

13. *In no reported cases cited by the Respondent Monroe County have open meeting violations of the magnitude shown here been deemed cured by the procedures*

employed here. *Tolar* involved the decision of the school board to abolish the position of school administrator after members of the school board had met informally with the school superintendent-elect and discussed same. In *Tolar* a regular advertised open [meeting] with *Tolar* present and given a full opportunity to express his views concerning the abolition of his position was deemed sufficient when afterwards the Board duly voted by voice vote to abolish the position.

14. Similarly, in *Bassett v. Braddock*, 262 So.2d 425 (Fla.1972), an open meeting violation of using a secret ballot to elect a chairman or presiding officer was deemed *864 cured by a subsequent voice vote confirming the selection.

15. Abolishing an administrative position or selecting a presiding officer are government actions that have little [effect], if any, on the public and normally receive little, if any, public input.

16. More appropriate to the decision in the case are the facts of the 1974 Supreme Court of Florida opinion *Town of Palm Beach v. Gradison*, 296 So.2d 473 [(Fla.1974)], wherein it was held that a planning committee appointed by the town council was subject to the open meeting law. Here no curative steps had been taken. The planning committee met numerous times discussing a comprehensive zoning plan for the city in contravention of the statute. Later the plan prepared by the committee after a full and complete hearing was approved in essentially the same form by the town council as was recommended by the committee. The zoning plan was invalidated. *Gradison* turned on whether or not the provisions of the open meeting law applied to the advisory panel. However it's doubtful that a reading of a summary of the advisory panel's meeting's minutes prepared by an attending member would have cured the violations due to the seriousness of the violation and the long term [effect] upon the public.

17. *The letters of the County Administrator were an inadequate substitute for notice to the public of the time and place of the subject meetings and opportunity to be present and attend discussions and negotiations concerning a proposed 30 year lease.* The meeting of the Advisory Board on March 12 was 3 hours in duration yet the Memorandum condensed the meeting into a

little more than 3 pages. The duration of the January 27 meeting is unknown but resulted in a 4 page summary.

18. The fact that a public meeting was held by the commission on June 15 and again on July 29 before adoption of the lease does not cleanse the [open] meeting law violations under the circumstances as described in the evidence presented to the court in this case.

IT IS THEREFORE ORDERED and ADJUDGED:

1. That there was a violation of the Florida Open Meeting law, [Florida Statute 286.011](#) on January 27, 1993 and on March 12, 1993.

2. That the violations have not been shown cured in accord with applicable law.

3. The lease approved between the Board of County Commissioners of Monroe County, Florida and the Pigeon Key Foundation is hereby declared non-binding in accord with [F.S. 286.011\(1\)](#) and null and void.

4. The Respondents are at liberty to renegotiate the lease in accordance with the law.

5. The court reserves jurisdiction regarding attorneys fees and costs pursuant to [F.S. 286.011](#).

(Emphasis added).

In the first place, Judge Payne entered his thorough order *after an evidentiary hearing*. The factual findings are supported by substantial competent evidence. Unless the court has misapprehended the law—and the court did not—we are obliged to affirm.

III

By ruling as it has, the majority has misapprehended the thrust of *Tolar v. School Board of Liberty County*, *Town of Palm Beach v. Gradison*, and *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So.2d 694 (Fla. 3d DCA 1988), among others.

For present purposes the open meetings cases must be divided into two groups. One group is represented by *Tolar*, in which a collegial body commits an open meetings

violation, and then the *same* collegial body holds another open meeting in order to correct *its own* violation.

In *Tolar* the superintendent-elect of schools met privately with “some or all of the School Board members to discuss ideas on reorganization. Included in these discussions was the topic of removal of [Tolar and the abolition of his position.](#)” 398 So.2d at 427. This was concededly a sunshine violation. *Id.* at 428. Thereafter, the School Board held a public meeting at which the *865 Board discussed the abolition of Tolar's position and then by public vote, abolished it. *Id.* at 428.

The Florida Supreme Court held that the procedure followed in the *Tolar* case was sufficient to cure the open meetings violation. This may be looked at as a matter of fashioning an effective remedy. If the supreme court in *Tolar* had ruled the other way, the remedy would have been to set aside the action abolishing Tolar's position, and to order the Liberty County School Board to schedule another public meeting on the subject of the abolition of Tolar's position. It is reasonably clear that the supreme court majority rejected this approach because the Liberty County School Board had already had such a meeting. In that context, the public meeting was deemed to cure the open meetings violation.

To the same effect is [Bassett v. Braddock](#), 262 So.2d 425 (Fla.1972). In that case the election of the chairperson and vice-chairperson of the Dade County School Board was initially conducted by secret ballot, but this was later followed by a motion and vote in open meeting. Based on the “particular circumstances” presented, “any initial violation by secret written ballot was cured and rendered ‘sunshine bright’ by the corrective open, public vote which followed.” *Id.* at 428–29. Again, the practical consideration underpinning this decision is that if the supreme court had invalidated the election of school board officers, the remedy would simply be to return to the school board with directions to conduct a public vote—but the school board had already conducted a public vote.

In a different category are the “advisory board” cases: cases in which an advisory board commits an open meetings violation, and the question is whether subsequent action by a *different* body—typically the city council or county commission—will cure the open meetings violation. The most frequently cited example is [Town of Palm Beach v. Gradison](#), 296 So.2d 473 (Fla.1974).

There, the Town Council appointed a planning advisory committee to propose new zoning ordinances. The planning advisory committee conducted secret meetings. *Id.* at 475. The advisory body submitted its proposed plan, which was then subject to public hearings by the zoning commission and the Town Council. The committee's proposal was then adopted. The Florida Supreme Court invalidated the zoning ordinance “because of the non-public activities of the citizens planning committee which ... participated in the formulation of the zoning plan.” *Id.* at 478. The court made clear that the Sunshine Law includes “the collective inquiry and discussion stages within the terms of the statute [.]” *Id.* at 477. “Mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury[.]” *Id.*

In [Bigelow v. Howze](#), 291 So.2d 645 (Fla. 2d DCA 1974), the county commission appointed a committee to study a proposed county contract. This required an out-of-state fact-finding trip. While on the trip, the committee members met and discussed their recommendation at a meeting which was not in conformity with the Open Meetings Law. The Second District concluded:

Upon its return to Florida, the committee should have held a public meeting with proper advance notice at which time the reasons to recommend Hunnicutt would have been aired and the committee's decision would have been made.

....

We cannot say that the trial court erred in finding that the ratification of the award by the full Commission failed to breathe life into the contract which was tainted by the Sunshine Law violation.

Id. at 647–48.

In [Blackford v. School Board of Orange County](#), 375 So.2d 578 (Fla. 5th DCA 1979), the school superintendent held a series of private meetings with what amounted to subcommittees of the school board to discuss possible redistricting alternatives. This “resulted in six de facto meetings by two or more members of the board at which official action was taken. As a consequence, the discussions were in contravention of the Sunshine Law.” *Id.* at 580. Following the private meetings, there was a

public meeting of the school board, which took final action.

*866 The court set aside the school board's vote and directed that the entire process be reopened. In so doing, the court said, “we recognize the possibility that the board, upon reconsideration, may decide on the same course of action as before. However, what we *do* require is that the entire redistricting problem, and all the supporting data and input leading up to the resolutions which are the subject matter of this cause, be re-examined and re-discussed in open public meetings.” *Id.* at 581.

In *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So.2d 694 (Fla. 3d DCA 1988), the Dade County Board of Rules and Appeals created a committee to report on the correctness of certain plans for the Centrust parking garage. The committee was covered by the Sunshine Law, but deliberated in secret. The committee presented its report to the full Board, which then “ratified the committee's report without a full and open public hearing on the matter.” *Id.* at 695. This court ruled that the ratification of the committee report in public session was insufficient to correct the Sunshine Law problem. “Only a full, open public hearing by the Board could have cured any problem.” *Id.* (citation omitted).

From the foregoing decisions, the following principles can be gleaned. By statute, action taken in violation of the Open Meetings Law is to be set aside. See § 286.011(1), Fla.Stat. (1993); *Town of Palm Beach v. Gradison*, 296 So.2d at 476. Where that occurs, the public agency may restart the deliberative process, but only in full compliance with the Sunshine Law.

Under the Sunshine Law and the new constitutional amendment, the right being protected is the right of the public to notice and an opportunity to be heard where public agencies—including the advisory committee at issue here—meet in furtherance of public business. Where there are secret meetings, or meetings without the required notice, the problem can be cured only by scheduling a new meeting of an appropriate deliberative body which will cover the *same* subject matter previously covered in violation of the Sunshine Law. In order to obtain relief under the Sunshine Law, the citizen does not need to show that the outcome would have been different had there been compliance with the Sunshine Law; it will almost always be impossible to demonstrate how things might have been

different if the Open Meetings Law had been followed. This reasoning is akin to that which in civil litigation invariably allows a litigant a new hearing if the litigant was not given required notice and an opportunity to be heard. See, e.g., *Fernandez v. Colson*, 472 So.2d 868 (Fla. 3d DCA 1985) (where moving party was obliged to give notice of application for default and failed to do so, the default will be vacated for want of notice, without the necessity of showing, inter alia, a meritorious defense); accord *Herrera v. Garcia*, 559 So.2d 83 n. 1 (Fla. 3d DCA 1990); *Reichenbach v. Southeast Bank, N.A.*, 462 So.2d 611, 612 (Fla. 3d DCA 1985); *Chester, Blackburn & Roder, Inc. v. Marchese*, 383 So.2d 734, 735 n. 3 (Fla. 3d DCA 1980).

If the public agency has taken the necessary corrective action on its own volition, then in appropriate cases the agency is found to have cured the Sunshine Law problem. In *Tolar* the school board had had a secret meeting to discuss Tolar's contract. It later had a full meeting on proper notice to discuss the same issue. In those narrow circumstances, the public meeting was found to have cured the Sunshine Law violation.

By contrast, where the violation occurred before an advisory committee, *Town of Palm Beach v. Gradison* held that later public deliberations by the Town Council did *not* cure the problem. That is so because the advisory group's deliberative process was not “restarted” or done over in front of the Town Council. Instead, the Town Council picked up the work product of the advisory committee and used it as a basis for the Town Council's deliberations. This action was ineffective to cure the Sunshine Law problem.

Less than two years ago, the voters of Florida elevated the right to open meetings to the status of one of our fundamental rights set forth in the Declaration of Rights of the Florida Constitution. *Tolar* and *Town of Palm Beach v. Gradison* were decided purely as matters of statutory construction of the Open Meetings Law. Given the new constitutional *867 amendment, it is abundantly clear that hereafter, all doubts must be resolved in favor of the right of the public to have fully protected access to open meetings. The new constitutional amendment is expressly declared to be self-executing, and the judiciary is obliged to give proper enforcement to the new constitutional right.

IV

In light of the foregoing principles, it is clear that the trial court was completely correct in setting aside the action of the Monroe County Commission. The County argues that the Sunshine Law violation was cured because on July 29 the County Attorney read into the record summaries of the events transpiring at the Advisory Board's meetings on January 27 and March 12.

In no way could the reading of summaries of the violative Advisory Board meetings correct the Sunshine Law infraction. The entire point of the Sunshine Law is to give proper notice of public meetings so that citizens have an opportunity to attend and participate. All the County Attorney did in this instance was to give a summary of events occurring at meetings which had not been properly noticed. This misses the point. Under the County's theory, it is acceptable to have private meetings, or unnoticed meetings, so long as the public is later given a summary of events. That approach misapprehends the purpose of the Sunshine Law. Meaningful notice and an opportunity to participate is required so that citizens have a statutorily and constitutionally protected right to be able to attend and participate if they choose. An after-the-fact reading of a summary of an unnoticed meeting is in no way a cure of a Sunshine Law violation.

The County argues that because there were public County Commission hearings on June 15 and July 29, this means that there was a full and appropriate opportunity for public participation, and that this opportunity functioned as a cure for the prior Sunshine Law violation. Again, this argument misses the point of *Town of Palm Beach v. Gradison*, and misses the distinction between *Gradison* and *Tolar*. The trial court in this case found that the County Commission had instructed the Pigeon Key Advisory Board to negotiate a thirty year lease on Pigeon Key. The Advisory Board's work product—a proposed lease—was submitted to the County Commission. On June 15, the County Commission referred the lease to the county staff for certain modifications having nothing to do with the Sunshine Law violations. On July 29, the lease was approved as modified. This process is exactly parallel to that which occurred in *Gradison*. There, the work product of the advisory body was the subject of public hearings before the Town Council. The supreme court concluded that the later public deliberations by the Town Council did

not cure the earlier advisory body violations, because the hearings before the Town Council did not “restart” or “do over” the work done before the advisory body. In *Tolar*, by contrast, it was the school board itself which committed the violation; the school board itself then had a later, duly announced public meeting to discuss the identical subject matter which had been discussed in private.

The majority relies on *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, but that reliance is misplaced. In *Spillis Candela*, the report of the committee was submitted to the Dade County Board of Rules and Appeals, which approved it. 535 So.2d at 695. The ratification in public session was held not to cure the Sunshine Law problem. *Id.* at 695. The court said, “Only a full, open public hearing by the Board could have cured any problem.” *Id.* (citing *Tolar*). What this means is that the entire subject matter of the committee's secret deliberations would have had to be fully aired in a properly noticed public session in order to cure the problem. Interpreting *Spillis Candela* in any other way would create a conflict with *Town of Palm Beach v. Gradison*.

The County also strongly suggests that it will be a waste of time to sustain the trial court's ruling because the County Commission has voted and further deliberations will not change anything. As already suggested, that argument likewise misses the point. The integrity of public decision-making can be assured only when the Sunshine Law is respected. All citizens are entitled to enforce the Sunshine Law. The citizen's right *868 to open government, like a litigant's right to due process, notice, and an opportunity to be heard, does not depend on a showing of likelihood that the ultimate outcome will be different.

V

It is the judiciary's mandate under the new constitutional amendment to enforce the public right to open meetings. The trial court correctly analyzed the decisional law. The trial court conducted an evidentiary hearing and concluded as a factual matter that the July 29 meeting did not cure the earlier admitted Sunshine Law violations. The trial court's order should be affirmed.²

ON MOTION FOR REHEARING
AND CERTIFICATION

GERSTEN, Judge.

Appellee moves for rehearing and certification of our opinion filed July 12, 1994. We deny the motions.

On appeal, this court reversed the trial court's invalidation of a final governmental action taken by the Monroe County Board of County Commissioners (the Commission). The Commission approved a lease with the Pigeon Key Preservation Foundation (the Foundation) following two meetings of the Pigeon Key Advisory Committee (the Committee) which were held without public notice. Following these meetings which violated the Sunshine Law, 1) the Committee held a public meeting, 2) the Commission thereafter conducted two public hearings, and 3) the County attorney, the Foundation's attorney and Commission members made substantial revisions to the lease. In fact, the Commission excised from the lease the Committee's principal recommendation that Pigeon Key be made an ongoing tourism attraction. We held, therefore, that the Committee's Sunshine Law violations were cleansed by the final actions of the Commission.

As we previously determined, *Tolar v. School Bd. of Liberty County*, 398 So.2d 427 (Fla.1981), governs this case. *Tolar* established the legal standard for resolving whether a Sunshine Law violation has been cured. *Tolar* requires final, independent action in the sunshine that is not a ceremonial acceptance or perfunctory ratification of secret decisions. *Id.* at 429.

We still do not find the appellee's arguments sufficiently persuasive to discard the binding precedent of *Tolar*. First, the new Constitutional amendment does not create a new legal standard by which to judge Sunshine Law cases. In fact, although the amendment has elevated Sunshine Law protection to constitutional proportions, the language of [Article I, Section 24\(b\), of the Florida Constitution](#), is virtually identical to that of the Sunshine Law statute, [section 286.011\(1\), Florida Statutes \(1993\)](#). Therefore, we find no reason to construe the amendment differently than the Supreme Court has construed the statute. Indeed, had the drafters of the amendment sought to overrule *Tolar*, they would have done so.

Second, the Sunshine Law does not require unique treatment for governmental advisory committees. Where an advisory committee has committed a Sunshine Law violation, the committee itself need not reconvene in public to discuss the subject matter considered in private. Only a full, open public hearing by the public agency can correct the committee's Sunshine Law violations. *Spillis Candela & Partners, Inc. v. Centrust Sav. Bank*, 535 So.2d 694 (Fla. 3d DCA 1988). Here, the Commission held two public hearings to address the subject matter previously considered by the Committee.

Third, the Sunshine Law does not provide that cases be treated differently based upon their level of public importance. *Tolar's* standard of remediation by independent final action in the sunshine applies regardless of whether a case concerns a City Council's approval of an \$8.8 million dollar utility system improvement. *Yarbrough v. Young*, 462 So.2d 515 (Fla. 1st DCA 1985), or a School Board's abolition of an administrator's position, *Tolar*, 398 So.2d at 427.

***869** In conclusion, the Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials. [Art. I, § 24\(b\), Fla. Const.; § 286.011\(1\), Fla.Stat. \(1993\)](#). Governmental officers who meet in secret may be penalized. [§ 286.011\(1\), Fla.Stat. \(1993\)](#). Governmental bodies who hold unnoticed meetings do so at their peril. Their final public action may be invalidated, if the action does not meet the standard of *Tolar v. School Bd. of Liberty County*, 398 So.2d 427 (Fla.1981). Here, we deny the motions for rehearing and certification because the Monroe County Board of County Commissioners met the *Tolar* standard.

Motions for rehearing and certification denied.

NESBITT, J., concurs.

COPE, Judge (dissenting).

For the reasons stated in my previously filed dissent to the panel opinion, I would grant rehearing and alternatively, the motion for certification.

All Citations

647 So.2d 857, 19 Fla. L. Weekly D1505

Footnotes

- 1 Although I support an unadulterated Sunshine Law, my viewpoint is irrelevant when it conflicts with the Florida Supreme Court. A judge's role in an intermediate appellate court is to follow the law, not impose one's personal opinions to change it. Following the law brings stability to our legal system and security to the public who rely on the law for certainty. In that light, imperfect law is better than inconstant law.
- 1 The amendment was favored by 83 percent of those voting. Patricia A. Gleason & Joslyn Wilson, *The Florida Constitution's Open Government Amendments: Article I, Section 24 and Article III, Section 4(e)—Let the Sunshine In!*, 18 Nova Law R. 973, 979 n. 32 (1994).
- 2 As a procedural matter, the County complains that the pleading in this case was entitled "Petition" instead of "Complaint." The pleading satisfied the requisites for a complaint and the trial court was within its discretion to treat it as such.

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