

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Steven Meiner and Members of the City Commission
FROM: Ricardo J. Dopico, City Attorney *RD*
Rafael E. Granado, City Clerk *REG*
DATE: May 15, 2024
SUBJECT: **FINAL REPORT AND RECOMMENDATIONS OF THE 2023-24 AD HOC ADVISORY CHARTER REVIEW AND REVISION BOARD.**

Substitute text for Amendment No. 3, pertaining to Charter Section 1.03 (sale/lease of City property), including revised draft ballot question, narrative, and City Charter text.

The purpose of this Memorandum is to provide substitute text for Amendment No. 3, pertaining to Charter Section 1.03 (sale/lease of City property), including a revised draft ballot question, narrative, and City Charter text. This Memorandum revises the Final Report of the Ad Hoc Advisory Charter Review and Revision Board ("Board"), attached to Agenda Item R9G on the May 15, 2024 City Commission meeting agenda, starting at Page 7 of the Report.

Charter Sec. 1.03 has been corrected to reflect that, at its meeting on March 25, 2024, the Board revised its prior recommendation. The Board's final recommendation is to **retain** the existing 6/7ths City Commission approval requirement for management and concession agreements of 10 years or more.

The revised draft ballot question, narrative, and City Charter text are as follows:

Amendment No. 3

Charter Section 1.03: Sale/Lease of City Property; Right of Way Vacations; Management/Concession Agreements.

Shall Charter be amended, requiring:

- majority voter approval for all (not some) "right of way vacations" and "sale/leases" (10 years or more) of City property (includes changing approval for "Convention Center Campus/Parking Lots" from 60% to majority);
- for vacations/sales/leases: expanded Planning Board review and incorporating Code provisions requiring planning analysis, appraisal, public hearing, bidding;
- for management/concession agreements (10 years or more): public hearing and 6/7 Commission approval?

Section 1.03 is one of the most often cited and referenced provisions in the Charter. It governs the disposition of City property and establishes procedures and requirements in the Charter for the sale of City property; the lease, of ten years or more, of City property; the vacation of streets, alleys, and right of ways which are either City owned or where the City has a dedicated interest such as a public easement; and for the approval of management and/or concession agreements, of ten years or more, for the management of City property/facilities by private operators.

The Charter Review Board's main objective in its proposed amendment to Section 1.03 was to streamline the provision and, in doing so, create a concise, uniform set of procedures for the disposition of City property. Since 1993, Section 1.03 has been amended numerous times, the end result being that different procedures and requirements are applied to different properties. For example, some properties required referendum to be sold, leased, or vacated, while others only required Commission approval.

In amending this Charter Section, first and foremost, the Board recognized and acknowledged the value of City property—i.e. by 2024, fewer unencumbered City properties remain available, and what property remains has appreciated tremendously in value. Therefore, the decision was made that, prior to selling, leasing (for more than 10 years), or vacating ANY—not just some—City property, majority approval of the voters in a Citywide referendum should be required. This would apply to all City property, including without limitation air rights, property owned by the Miami Beach Redevelopment Agency, and property owned by any other City entity or agency.

Additionally, the Board found the disposition of all City property—not just some—should be subject to Planning Board review, but in an advisory capacity. The Board also felt it was in the City's best interest to safeguard, in the City Charter, those procedures for sale, lease and vacation of City property that are contained in City Code Chapter 82, which require an appraisal, Planning Department analysis, competitive bidding, and public hearing. The Board recommends incorporating these provisions in the Charter so that, going forward, they cannot be deleted or diluted without voter referendum approval. This approach is consistent with prior City Charter amendments with respect to safeguarding the City's Historic Preservation laws, Ethics/Standards of Conduct (as written in Chapter 2 of the City Code), and nondiscrimination provisions (as set forth in Chapter 62 of the City Code).

Finally, as to the approval of management and concession agreements of ten years or more, the Board recommends retaining the existing requirement of 6/7ths approval by the City Commission. Additionally, in order to be completely transparent and afford the opportunity for public input, the Board recommends these agreements should be approved following a noticed public hearing before the City Commission, so that requirement was added.

REVISED DRAFT CHARTER TEXT**Sec. 1.03. - Powers of City.**

- (a) *General.* The City shall have all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as expressly prohibited by law or this Charter.
- (b) *Disposition of City Property.*
- ~~1. The sale, exchange, conveyance, or lease of ten (10) years or longer (including option periods) of City-owned park, recreation, or waterfront property shall require approval by a majority vote of the voters in a City-wide referendum. This provision shall be liberally construed in favor of the preservation of all park, recreation and waterfront lands.~~
 - ~~2. The sale, exchange, conveyance or lease of ten years or longer of the following properties shall also require approval by a majority vote of the voters in a City-wide referendum: (1) *Lots West of the North Shore Open Space Park:* All City-owned property bounded by 87th Street on the North, Collins Avenue on the East, 79th Street on the South, and Collins Court on the West; (2) *Cultural Campus:* All City-owned property bounded by 22nd Street on the North, Park Avenue on the West, 21st Street on the South, and Miami Beach Drive on the East; (3) *72nd Street Parking Lot:* The City-owned surface parking lot bounded by 73rd Street on the North, Collins Avenue on the East, 72nd Street on the South, and Harding Avenue on the West; (4) *Lincoln Road Parking Lots:* All City-owned surface parking lots in the vicinity of Lincoln Road located within the area bounded by 17th Street on the North, Euclid Avenue on the East, 16th Street on the South, and West Avenue on the West; and (5) *41st Street Corridor:* All City-owned property in the vicinity of 41st Street, in the area bounded by West 43rd Street on the North, West 40th Street on the South, Pine Tree Drive on the East, and Alton Road on the West.~~
 - ~~3. The sale, exchange, conveyance or lease of ten years or longer of the following properties shall require approval by vote of at least sixty (60) percent of the City's voters voting thereon in a City-wide referendum: (1) *Convention Center Parking Lots:* All City-owned surface parking lots located in the Civic and Convention Center District, generally bounded by Lincoln Lane on the South, Washington Avenue on the East, Meridian Avenue on the West and Dade Boulevard on the North; (2) *Convention Center Campus:* All City-owned property, except for the Convention Center and Carl Fisher Club House, located within the Civic and Convention Center District (includes City Hall, 1701 Meridian Street, 555 17th Street, 21st Street Community Center, The Fillmore Miami Beach/Jackie Gleason Theater, and the 17th Street Parking Garage). All local laws, charter provisions and ordinances of the City in conflict with this provision are hereby repealed. This provision shall become effective immediately upon acceptance of the certification of election results by the City Commission.~~
 - ~~4. The sale, exchange, conveyance or lease of ten years or longer of all remaining City-owned property (other than public beach rights-of-way — see (d) herein below, and other than those properties addressed more specifically in this Charter section 1.03) shall, as provided by Ordinance, require approval by a majority 4/7 vote of all members of the Planning Board and 6/7 vote of the City Commission. The sale, exchange, conveyance or lease of ten years or longer of property owned by the Miami Beach Redevelopment Agency (Agency) shall require approval by a majority 4/7 vote of all members of the Planning Board and 7/8 vote of the Agency.~~
 - ~~5. The terms of this Charter section shall not apply to any valid written contractual commitments or bids or bonded indebtedness, which commitments, bids or indebtedness existed prior to January 14, 2004; nor shall this Charter section apply to any City property which is the subject of a settlements of a claim which the City had notice of as of January 14, 2004.~~
 1. The sale, exchange, conveyance (collectively the "sale"), or lease of ten (10) years or longer (including option periods/renewal terms), of any City-owned property (including, without

limitation, air rights, property owned by the Miami Beach Redevelopment Agency, or any other City entity/agency) shall be subject to the following requirements:

- i. The proposed sale or lease shall be transmitted by the City Manager to the Finance and Economic Resiliency Committee (or its successor committee) for its review;
 - ii. The City's Planning Department shall prepare a written analysis to be submitted to the City Commission concurrent with its consideration of the proposed sale or lease. The minimum criteria for the planning analysis shall be as set forth in the City Code, as same may be amended from time to time;
 - iii. The City shall obtain an independent appraisal of the fair market or rental value of the property. The City Commission may waive this requirement by 5/7th vote, upon a finding that the public interest would be served by waiving such requirement;
 - iv. There shall be no sale or lease of City property unless there has been an advertised public competitive bidding process. The City Commission may waive this requirement by 5/7th vote, upon a finding that the public interest would be served by waiving such requirement;
 - v. The proposed sale or lease shall be referred to the City's Planning Board for its review and advisory recommendation (which shall not be binding on the City Commission);
 - vi. The proposed sale or lease shall be approved by a majority vote of the City Commission (A) subject to the City Commission being presented and having considered the material terms of the proposed sale or lease, and (B) following a duly noticed public hearing in order to obtain citizen input into the proposed sale or lease; and
 - vii. The proposed sale or lease shall require approval by a majority of the voters in a City-wide referendum. At least thirty (30) days prior to the referendum date, the material terms of the proposed sale or lease shall be posted in the Office of the City Clerk and shall be made available for inspection by the public.
2. Vacation of City Right of Way. The vacation, sale, exchange, lease, or any other transfer (collectively, the "vacation") of any City-owned, or of any City interest (including, without limitation, air rights) in any street, street-end, sidewalk, alley, or any other right of way (collectively, the "right of way") shall be subject to the following requirements:
- i. The proposed vacation shall be transmitted by the City Manager to the Finance and Economic Resiliency Committee (or its successor committee) for its review;
 - ii. The City's Planning Department shall prepare a written analysis to be submitted to the City Commission concurrent with its consideration of the proposed vacation. The minimum criteria for the planning analysis shall be as set forth in the City Code, as same may be amended from time to time;
 - iii. The City shall obtain an independent appraisal of the fair market value of the property to be vacated. The City Commission may waive the appraisal requirement by 5/7th vote, upon a finding that the public interest would be served by waiving such requirement;
 - iv. The proposed vacation shall be referred to the City's Planning Board for its review and advisory recommendation (which shall not be binding on the City Commission);
 - v. The proposed vacation shall be approved by a majority vote of the City Commission following a duly noticed public hearing in order to obtain citizen input into the proposed vacation; and
 - vi. The proposed vacation shall be approved by a majority of the voters in a Citywide referendum.
3. Management and Concession Agreements with Private Operators. The City shall not enter into a management or concession agreement with a private party or operator, having a term of ten (10) years or longer (including option periods/renewal terms), for the management, operation,

and/or use of City property (including, without limitation, the City's public beachfront), or of a City facility, without complying with the following requirements:

- i. The proposed agreement shall be transmitted by the City Manager to the Finance and Economic Resiliency Committee (or its successor committee) for its review;
 - ii. The proposed agreement shall be referred to the City's Planning Board for its review and advisory recommendation (which shall not be binding on the City Commission);
 - iii. The proposed agreement shall be approved by 6/7^{ths} vote of the City Commission (A) subject to the City Commission being presented and having considered the final negotiated agreement, and (B) following a duly noticed public hearing in order to obtain citizen input into the proposed management or concession agreement.
- (c) The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists on the date of adoption of this Charter Amendment [November 7, 2001], including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach. The provision shall not preclude or otherwise affect the division of lots, or the aggregation of development rights on unified abutting parcels, as may be permitted by ordinance, except that all or a portion of any street, alley, right-of-way, or any public property, may not be vacated, deeded, or otherwise sold or conveyed, if it has the effect of aggregating the floor area of any unified abutting parcels, unless such aggregation of floor area is first approved by a vote of the electors of the City of Miami Beach. In addition, this provision shall not apply to settlements of any claims the City has notice of as of December 10, 2003. This Charter Amendment shall become effective on the day after its approval by the voters of the City of Miami Beach. No rights in derogation of the provisions of this Amendment under any ordinance or any other action of the Miami Beach City Commission between the time this measure is approved by the Miami Beach City Commission for placement on a ballot and the adoption of this Amendment shall be enforced against the City of Miami Beach.
- ~~(d) *Public Beach Rights-of-Way.* The sale, exchange, conveyance, lease, or any other transfer of any City interest in a public beach right-of-way (extending eastward from Collins Avenue/Ocean Drive to the erosion control line) shall require approval by a majority vote of the voters in a Citywide referendum, excluding permits of no greater than one year, and excluding the sale, exchange, conveyance, lease or any other transfer not exceeding 10% in width of such public beach right-of-way.~~
- ~~(e) *Public Street Ends Bordering GU, GC, or Waterfront Land.* The sale, exchange, conveyance, lease, or any other transfer of any City interest in any public street end bordering on land designated "Government Use", "Golf Course" or Waterfront land, shall require either the unanimous approval of those members of the City Commission with power to vote or approval by a majority vote of the voters in a Citywide referendum, excluding a sale, exchange, conveyance, lease, or any other transfer not exceeding 10% in width of such street end which advances a significant public purpose, and excluding underground utility easements.~~
- ~~(f) *Management and Concession Agreements with Private Operators.* The City shall not enter into a management agreement or concession agreement with a private party or operator, having a term of ten (10) years or longer (including option periods), for the management, operation, and/or use of City-owned property, or of a City-owned facility, without obtaining the approval of a majority 4/7 vote of all members of the Planning Board and 6/7 vote of the City Commission. For purposes of this subsection, the term "City property" shall include the City's public beach areas in the City of Miami Beach, from Government Cut to 87th Terrace. The term "private party or operator" shall exclude any political subdivision and/or governmental agencies, departments, and/or divisions of the United States, the State of Florida, or Miami-Dade County.~~