

CRC RESOLUTION NO. 2014-09

A RESOLUTION OF THE CITY OF DORAL CHARTER REVIEW COMMISSION ADOPTING A PROPOSED AMENDMENT TO THE CHARTER OF THE CITY OF DORAL, FLORIDA, TO CREATE THE OFFICE OF CHARTER ENFORCEMENT; TO PROVIDE FOR THE APPOINTMENT OF A COMMITTEE TO SELECT AN INDIVIDUAL TO SERVE AS THE HEAD OF THE OFFICE OF CHARTER ENFORCEMENT; TO PROVIDE FOR THE AUTHORITY OF THE OFFICE OF CHARTER ENFORCEMENT TO INVESTIGATE VIOLATIONS OF FEDERAL, STATE, COUNTY, AND CITY LAWS, CHARTER PROVISIONS, ORDINANCES, AND OTHER REGULATORY PROVISIONS BY CITY ELECTED OFFICIALS, APPOINTED OFFICIALS, AND EMPLOYEES, RELATED TO CONDUCT, ETHICS, AND PUBLIC DECORUM; PROVIDING FOR MONETARY AND OTHER PENALTIES; PROVIDING FOR PRESENTATION TO THE ELECTORATE BY THE CITY COUNCIL AT A SPECIAL REFERENDUM ELECTION TO BE HELD WITHIN THE TIME FRAME AS PROVIDED IN THE CITY CHARTER; PROVIDING THE BALLOT TITLE AND SUMMARY OF THE CHIEF PURPOSE OF THE PROPOSED AMENDMENT; PROVIDING FOR THE CITY ATTORNEY TO RENUMBER AND RELETTER ARTICLES AND SECTIONS IN ORDER TO CONFORM THE AMENDMENTS TO THE CHARTER; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VI of the City of Doral Charter, the City of Doral Charter Review Commission may submit proposals to amend the City of Doral Charter directly to the City's electors; and

WHEREAS, the City of Doral Charter mandates that the Charter Review Commission, no later than April 1st following the year of their appointment, present to the City of Doral electorate its recommendations for amendments to the City Charter; and

WHEREAS, the Charter of the City of Doral, Florida provides that all amendments and revisions proposed by the Charter Review Commission must be presented by the City Council to

the electorate no earlier than sixty (60) nor more than one hundred twenty (120) days after the Charter Review Commission's submittal of the amendments to the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF DORAL CHARTER REVIEW COMMISSION:

SECTION 1: That pursuant to Section 6.02 of the Charter of the City of Doral, Florida, the City Council is hereby directed to place on the ballot for presentation to the electorate, at a special referendum election to be held no less than sixty (60) nor more than one hundred twenty (120) days from the date of this Resolution, the subject of which is proposed to establish the Office of Charter Enforcement to provide for the designation of an individual to investigate violations of Federal, State, and City laws, charter provisions, ordinances, and other regulatory provisions by City elected officials, appointed officials, and employees related to conduct, ethics, and public decorum, including monetary and other penalties, the full text of which is attached hereto and incorporated by reference as if fully set forth herein as **Exhibit "A"**.

SECTION 2: That the ballot title and summary for the proposed amendments/revisions as referred to above shall appear as follows:

**ESTABLISH CITY OFFICE OF CHARTER ENFORCEMENT
INCLUDING PROCESS FOR INVESTIGATING ETHICS AND
DECORUM VIOLATIONS**

Shall the Charter be amended to create the independent City Office of Charter Enforcement to investigate violations of Federal, State, County, and City laws, charter provisions, ordinances, and other regulatory provisions by City elected officials, appointed officials, and employees; provide for enforcement and penalties; provide for a process to designate an individual as the head of the

Office of Charter Enforcement; provide a process for filing complaints, conducting investigations, holding hearings, and issuing findings?

YES FOR APPROVAL _____

NO FOR REJECTION _____

SECTION 3: That should a majority of electors voting on the above-referenced referendum election vote "YES," thereby approving the above ballot issue, attached **Exhibit "A"** shall become a part of the Charter of the City of Doral, Florida.

SECTION 4: That the City Attorney is hereby directed to insure that the appropriate numbers and/or letters are affixed to the Articles and Sections of the Charter in order to conform the Charter to the amendments if approved.

SECTION 5: That if any section, sentence, clause or phrase of this resolution is held to be invalid or unconstitutional by a court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this resolution.

SECTION 6: That this resolution shall become effective immediately upon its adoption.

The foregoing resolution was offered by Vice Chairman Reisman who moved its adoption. The motion was seconded by member Bush and upon being put to a vote, the vote was as follows:

Chair Jesse A. Jones	Yes
Vice Chair Jerome Reisman	Yes
Christian L. Mazzola	Yes
Raymond G. Bush, Jr.	Yes
Eduardo Gomez	Yes

PASSED and ADOPTED this 31 day of March, 2014


JESSE A. JONES, CHAIR

ATTEST:


BARBARA HERRERA, CITY CLERK

DNT:dnt

EXHIBIT "A"

SEC. 2.07 OFFICE OF CHARTER ENFORCEMENT.

(a) An Office of Charter Enforcement ("OCE") is hereby created. The responsibility of the OCE shall be enforcement of provisions of Federal Law, State Law, County Law, this Charter, City Ordinances, and Regulations. The OCE shall investigate matters including, but not limited to, violations of Federal Law, State Law, County Law, this Charter, City Ordinances, and Regulations related to conduct, public decorum, and ethics. The OCE's responsibility and mission is to insure compliance with Federal law, State law, County law, the City Charter, and City Ordinances, Resolutions, Rules and Regulations, enacted pursuant Charter authority. The OCE shall oversee, and if necessary, investigate all City activities of all elected officials, all Charter Officials, all employees, appointed positions, and any activity which negatively reflects on Doral's government.

(b) The Office shall be headed by the Charter Enforcement Official. The organization and administration of the OCE shall be independent from the City Council, City departments, and City employees, to assure that no interference or influence external to the OCE affects the objectivity of the OCE.

(c) The OCE shall be one person selected as follows: No later than September 1, 2014, the Chief Judge of the Circuit Court for the 11th Judicial Circuit of Florida, or if he/she declines, or is unable to act, then the Chair of the Miami-Dade County Ethics Commission shall appoint three (3) individuals from the following group of individuals to comprise the City of Doral OCE Selection and Oversight Committee: Deans of the Law Schools located in Miami-Dade County, retired Circuit Court, Appellate, or Supreme Court Judges residing in Miami-Dade County, current or former directors of the Miami-Dade County Ethics Commission, and individuals who are retired from service as the head of the Miami-Dade County Attorneys' Office. In the event an individual appointed to the OCE Selection and Oversight Committee vacates their position, the Chief Judge for the 11th Judicial Circuit of Florida, or the Chair of the Miami-Dade County Ethics Commission, whoever is responsible for appointing the members of the OCE Selection and Oversight Committee, shall appoint a qualified individual to fill the vacancy.

(d) No later than November 1, 2014, the Selection and Oversight Committee shall select a person qualified to perform the tasks described in Charter Section 2.07(a).

(e) The head of the OCE shall be experienced in matters of government ethics, enforcement proceedings, Roberts Rules of Order, and conduct of public official, management, public employees in public matters.

(f) Individuals may file a written complaint with the OCE by filing a sworn statement with the City Clerk's Office, under seal. A complaint may only serve as a basis for a good cause finding if it is signed by an identified person who verifies the contents of the complaint by including the following statement: "Under penalties of perjury, I declare that I have read the foregoing complaint and that based on my personal knowledge the facts stated in it are true." The OCE shall develop a complaint form consistent with the requirements of this paragraph.

Upon the receipt of a complaint, or on his/her own initiative, the OCE shall conduct an investigation, and if the OCE determines there is good cause to conduct an investigation, the OCE shall, issue written charges which shall include a statement of the facts upon which said charges are based. All charges and statements of the OCE shall be filed with the City Clerk's Office, and be part of the Public Record.

(g) After completing his or her investigation and determining that there is probable cause to believe a violation has occurred, the OCE shall notify the appropriate civil, criminal, or administrative agencies charged with enforcement related to the alleged violation. If no civil, criminal, or administrative agency has jurisdiction over the alleged violation, the matter shall be referred to a Hearing Officer, as provided for in this section, for a quasi-judicial enforcement proceeding.

- (1) The OCE shall refer findings of alleged criminal offenses to the Office of the State Attorney and/or the office of the United States Attorney.
- (2) The OCE shall refer findings of alleged civil offenses involving a violation of Chapter 112, Part III, Florida Statutes, to the Florida Commission on Ethics.
- (3) The OCE shall refer findings of alleged civil offenses involving a violation of the Miami-Dade County Code of Ethics to the Miami-Dade County Ethics Commission.
- (4) The OCE shall refer findings of alleged violations of The Florida Elections Code, Chapters 97 through 106, Florida Statutes, to the Florida Elections Commission (except as to alleged violations that may be criminal in nature, which shall be referred to the Office of the State Attorney).
- (5) The OCE shall refer other alleged violations to the appropriate civil, criminal, or administrative agency that would have jurisdiction over the same.

(h) Any civil infraction not covered by paragraphs (1) through (5) above, shall be stated in a complaint brought in the name of the OCE. The OCE may retain legal counsel not employed by the City to represent the OCE in prosecuting a complaint. The OCE shall serve the complaint of the alleged violator in any manner deemed proper service under the Florida Rules of Civil Procedure. A copy of the complaint shall also be filed with the City Clerk. Concurrently with such service, the OCE shall refer the complaint to a Hearing Officer chosen from a panel of Hearing Officers selected by the Selection and Oversight Committee. The alleged violator shall file a response to the complaint within thirty (30) days after service.

(i) In the event the facts lead to the conclusion that no violation has occurred, the OCE shall publish the findings of NO VIOLATION, conspicuously in the Miami Herald, the Doral Media, shall seek television coverage, and further publish those findings of NO VIOLATION on the City website. The OCE shall deliver copies of all final reports and findings to the alleged violator, the complainant, if any, the members of the City Council, the City Clerk, the City Manager, and the City Attorney.

(j) Except to any extent inconsistent with any provision of this Section, the Florida Rules of Civil Procedure and Florida Evidence Code, as amended, shall apply to all matters referred to a Hearing Officer under this Section.

(k) In addition to all other authority granted in this Section, the Hearing Officer **has the authority to:**

- (1) Issue scheduling orders, case-management orders, and briefing schedules;
- (2) Issue notices of hearings;
- (3) Hold hearings on any procedural or substantive matters related to the complaint;
- (4) Administer oaths and affirmations;
- (5) Issue subpoenas authorized by law, including those requiring attendance of witnesses and the production of documents and other items which may be used as evidence;
- (6) Rule upon motions presented and offers of proof and receive relevant evidence;
- (7) Issue appropriate orders to effectuate discovery;
- (8) Regulate the course of the hearing;
- (9) Dispose of procedural requests or similar matters; and
- (10) Enter any order, consistent with his or her authority, to carry out the purposes of this Charter provision.

(l) Within thirty (30) days after completion of the hearing process, the Hearing Officer shall issue a final order determining whether the OCE has proved the allegations of the complaint by a preponderance of the evidence. The final order shall contain detailed findings of fact and conclusions of law. If the Hearing Officer determines that misconduct has occurred, the final order shall specify the sanction(s) imposed, if any. The Hearing Officer may impose any of the following sanctions:

- (1) An individual determined to have committed **a violation** shall be assessed a monetary fine not to exceed Five Hundred Dollars (\$500.00) per violation.
- (2) In determining the amount of the fine, the Hearing Officer shall consider:
 - a. The gravity of the violation;
 - b. Whether it was intentional; and
 - c. Whether it is a repeat offense.
- (3) The Hearing Officer may determine that no fine shall be imposed upon making an affirmative, express finding that the violation was unintentional and *de minimus*.
- (4) In addition to a fine, the Hearing Officer may order the individual to relinquish for a period of time an administrative right or privilege provided under the City's **Charter**, Code of Ordinances, Resolutions, or Policies.
- (5) The Hearing Officer may also order a public reprimand or censure at a public meeting called for that purpose.

(m) All orders issued by the Hearing Officer, when final, are subject to judicial review as provided by applicable law.

(n) The OCE Selection and Oversight Committee shall be responsible for selecting a panel of qualified hearing officers. No later than November 1, 2014, the OCE Selection and Oversight Committee shall issue a request for letters of interest for retired judges who reside in Miami-Dade County to serve as City of Doral Hearing Officers. No later than December 1, 2014, the OCE shall select a panel of five (5) Hearing Officers to serve in the City of Doral. The Hearing Officers shall be placed on a rotating list for selection. Upon the issuance of a complaint, the City Clerk shall select the next Hearing Officer on the list to handle the hearing process.

(o) The OCE shall also issue a written statement every three (3) months from the date of his/her designation, stating the status of all pending complaints, together with the facts which have been discovered at that time. The OCE Selection and Oversight Committee shall review the OCE statements and reports at an annual meeting to be held in the month of May each year, and issue a report to the City Council with any recommendations.

(p) All investigations shall be completed within six (6) months from the date of the complaint, or the date on which the OCE commenced its investigation when there was not a complaint filed by an individual, and issue the findings, facts upon which said findings are based, together with any referral to law enforcement or Ethics Enforcement body.

(q) By becoming a City elected official, appointed official, or employee, each individual submits to OCE oversight, and is entitled to confront any person who makes accusations against that individual, which result in negative published findings by the OCE.

(r) From time to time, as the OCE determines necessary, the Miami-Dade County Ethics Commission's investigative staff may be employed for matters, the investigation of which, exceed the capacity of the OCE. The costs of such an investigation shall be determined prior to entering into such a relationship with Miami-Dade County Ethics Commission, and the specified contract amount shall be strictly followed. In the event additional investigation becomes necessary, the OCE shall present the state of the findings to the Broward County Inspector General, and together a decision shall be made whether to conclude the investigation or go forward.

(s) Each member of the OCE Selection and Oversight Committee shall be entitled to reimbursement of all reasonable expenses related to their service on the OCE Selection and Oversight Committee, and shall be provided a defense and indemnified and held harmless by The City of Doral from an action of any and every kind resulting from his/her position or activity on the OCE Selection and Oversight Committee.

(t) The Designee to head the OCE shall serve for a period of four (4) years, unless he/she retires or is otherwise removed for Florida statutory cause.

(u) Upon resignation or removal of the head of the OCE, the OCE Selection and Oversight Committee shall commence the process for retaining an individual to serve as the head of the OCE.

(v) The Doral City Council, shall, upon the certification of the election of this Charter Revision, immediately fund the Search and Oversight Committee and the designee to head the OCE with sufficient funds to perform the requirements of this Section, and insure that City facilities, equipment, and resources are available for use by the OCE, the Search and Oversight Committee, and the Hearing Officers.

(w) The provisions of this Charter Section may only be amended following a referendum election held in the City of Doral pursuant to an ordinance adopted by four (4) affirmative votes of the Doral City Council calling for such a referendum election related to the amendment of any provision of this Charter Section. The provisions of this paragraph shall not apply to any proposed amendments to this Charter Section proposed by any Charter Review Commission appointed subsequent to the adoption of this Section.