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OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

To: Commissioner Ricky Arriola, Chair
Members of the Finance & Citywide Projects Committee

Date: October 26, 2018

From: Raul J. Aguila
City Attorney



Subject: Municipal Annexation

On September 12, 2018, and pursuant to City Commission meeting agenda items R9E and R9F, the Mayor and City Commission referred a discussion to the Finance and Citywide Projects Committee (the "Committee"), regarding the City's possible annexation of North Bay Village, and the two westernmost islands along the Venetian Causeway (Biscayne Island and San Marco Island).

Municipal annexations in Miami-Dade County are governed by Miami-Dade County Charter Section 6.04, and Chapter 20 of the Miami-Dade County Code. The specific process to effectuate a boundary change, including a municipality's annexation of a specified area, is detailed in the City Attorney's Memorandum attached to agenda item R9E (attached hereto as Exhibit "A").

County Code Section 20-3, attached as Exhibit "B," details the initial steps for a municipality to initiate a proposed boundary change: "[a]ny proposed boundary change desired by the governing body of a municipality shall be initiated by resolution of such governing body adopted after a public hearing" Notice of the public hearing must be published, and must be provided by mail to "all owners of property within the area and within six hundred (600) feet thereof in such proposed boundary changes"

Prior to drafting the Resolution, several analyses and legislative findings would need to be made, including a land use plan for the area to be annexed, a list of services to be provided, a timetable for supplying the services, a property tax and budget analysis, and other relevant information.

Preparation of the Resolution and, in particular, the supporting documentation required will likely be labor-intensive and costly. Therefore, direction is requested as to whether, prior to proceeding with preparing the Resolution and supporting information, the City should seek to obtain the consent of the respective municipalities (i.e. North Bay Village and City of Miami).

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To: Commissioner Ricky Arriola

From: Raul J. Aguila
City Attorney



Date: April 24, 2018

Subject: Annexation Process

Pursuant to your request, this memo addresses the process applicable to the City of Miami Beach's proposed annexation of the City of North Bay Village.

I. Miami-Dade County Law Controlling.

Annexations in the State of Florida are governed by Chapter 171, Part 1, Florida Statutes, which requires in general that the annexation site(s) be contiguous to the city¹, must be reasonably compact, and not create enclaves or result in pocket or finger areas in serpentine patterns of unincorporated area. Municipalities in Miami-Dade County, however, are not bound by the annexation process in Chapter 171, but instead are subject to the procedures set forth in County Charter Section 6.04 and County Code Chapter 20.²

II. Miami-Dade County Charter, Section 6.04 "Changes in Municipal Boundaries"³.

A. *The planning director shall study municipal boundaries with a view to recommending their orderly adjustment, improvement, and establishment. Proposed boundary changes may be initiated by the Planning Advisory Board, the Board of County Commissioners, the governing body of a municipality, or by a petition of any person or group concerned.*

B. *The Board of County Commissioners, after obtaining the approval of the municipal governing bodies concerned, after hearing the recommendations of the Planning Advisory Board, and after a public hearing, may by ordinance effect boundary changes, with an*

¹ See, Fla. Stat. sec. 171.031.

² The Florida Constitution granted Miami-Dade County home rule power to establish, at its discretion, the applicable method of a municipality's annexation of land. See, Fla. Const. Art VIII, sec.6(e) at fn#3(c), providing that the County: "May change the boundaries of, merge, consolidate, and abolish and may provide a method for changing the boundaries of, merging, consolidating and abolishing from time to time all municipal corporations, county or district governments, special taxing districts, authorities, boards, or other governmental units whose jurisdiction lies wholly within Dade County, ..." (E.A.)

³ Note: Although the subject of "annexation" was on the initial list of areas for proposed study during the County's 2017 Charter Review process, the County's Charter Review Task Force did not select it for substantive discussion. As such, the County Code and Charter provisions referenced hereinabove are not (presently) subject to amendment, and the City may thus rely upon its existing language in its annexation analysis.

EXHIBIT

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A

affirmative vote of the members of the Board of County Commissioners. In making such decision, the Board shall consider whether commercial areas are included in the boundaries of the proposed area to be annexed for the mere benefit of increasing the tax base of the annexing municipality. Changes that involve the annexation or separation of an area of which more than 250 residents are electors shall also require an affirmative vote of a majority of those electors voting. Upon any such boundary change any conflicting boundaries set forth in the charter of such municipality shall be considered amended.

C. *No municipal boundary shall be altered except as provided by this Section.*

Under the County Charter, annexation may be initiated by either the County's Planning Advisory Board, the County Commission, a municipality's governing body (i.e., the Miami Beach City Commission), or by citizen Initiative Petition. Once initiated, the annexation must be approved by the City Commissions of both Miami Beach and North Bay Village⁴; obtain recommendation (positive or negative) of the County's Planning Board; obtain majority approval of the electors of North Bay Village⁵; and then be presented to the County Commission for its approval at a public hearing.

III. Miami-Dade County Code Chapter 20, Article I "Boundary Change Procedure".

County Code Chapter 20 is the implementing legislation for County Charter Section 6.04.⁶ Below is an overview of the steps the City of Miami Beach ("CMB") must take to annex North Bay Village ("NBV").⁷

➤ County Code Section 20-3:

- CMB must provide written notice⁸ of its intent to adopt a Resolution, re: annexation of North Bay Village, mailed to all owners of property "within the area and within six hundred (600) feet thereof in such proposed boundary changes, according to the current tax assessment roll, and pursuant to published notice" (no notice shall be required when all owners of property within the area and within six hundred (600) feet thereof shall consent in writing to the proposed boundary change), County Code Section 20-3;
- CMB adopts its Annexation Resolution proposing change in City's boundaries by annexation of North Bay Village, after public hearing and pursuant to the above written notice;
- Three certified copies of CMB's Resolution, together with proof of compliance with the notice requirements, must then be filed with the Clerk of the County Commission, and must be accompanied with additional specific materials set forth specifically in County Code Section 20-3 (A)-(H). Note in particular, one of these details that must be filed with the City's Annexation Resolution is a petition indicating the consent of 20% of NBV's electors.

⁴ CMB will need clarification from County's Office of Management and Budget (#306-375-5143) regarding County Charter Section 6.04 because although it appears to require both CMB and NBV City Commission approval prior to County Commission consideration the only provision in County Code Chapter 20 addressing NBV's consent is in Code Section 20-1, which relates solely to "Annexation Initiated by Planning Board" (inappropriate under our facts).

⁵ The County Election Department's last reported election of the City of North Bay Village occurred on November 8, 2016, evidencing the number of NBV registered electors as exceeding 250 in number.

⁶ County Code Chapter 20, Article I, in its entirety, is attached for your information.

⁷ The outline above is based upon the presumption that CMB is the party initiating annexation, and that CMB intends to annex the entirety of NBV.

⁸ Pursuant to Code Chapter 20, CMB must pay for the cost of all required notices.

➤ County Code Section 20-5:

- Upon the County's receipt of the CMB Resolution and accompanying material (as set forth above), the Clerk of County Commission shall place the matter on an "ensuing" regular meeting agenda of the County Commission and shall notify CMB of that meeting date;
- CMB may be heard "briefly" at the County Commission's meeting;
- After CMB's presentation, the County Commission refers the matter to the County Planning Advisory Board ("PAB") for review, study, consideration and recommendations.

➤ County Code Section 20-6:

- Prior to PAB consideration, the annexation report must be reviewed by the appropriate County personnel⁹;
- After Administrative review, PAB receives CMB's Resolution and studies/considers the requested boundary change;
- PAB then gives written notice of a public hearing to consider annexation to all owners of property within the area and within six hundred (600) feet thereof. Written mailed courtesy notice of the public hearing is also provided to adjacent municipalities;
- PAB shall then conduct a public hearing regarding the proposed boundary changes, hear from all interested persons and any municipality, and vote on its recommendation subject to those guidelines set forth in Code Section 20-6(b);
- The PAB's recommendation, along with Administration's report, is presented to the County Manager's office for review and recommendation;
- Above recommendations are presented to County Commission.

➤ County Code Section 20-7:

- Clerk of County Commission sets matter for public hearing at regular meeting of County Commission, with notice furnished to CMB, all property owners within the area and within six hundred (600) feet thereof, and any adjacent municipality.
- At public hearing, the County Commission reviews and considers the recommendations of PAB, and affords to all interested persons opportunity to be heard upon the merits and propriety of proposed boundary changes;
- After public hearing, the County Commissioners consider the matter pursuant to guidelines set forth in Code Section 20-7(A);
- County Commission then votes on the requested changes "...by motion, or may direct the County Attorney to prepare an appropriate ordinance accomplishing the proposed boundary change, which ordinance shall be placed on the official agenda of a subsequent regular meeting of the County Commission for consideration and adoption on first reading, or the County Commission may defer such requested boundary change for further consideration at a subsequent meeting, at which no public hearing or discussion by others than members of the County Commission shall be required."¹⁰

⁹ "...The statements contained in the annexation report pertaining to the quality, quantity, cost and timing of the services the municipality will extend to the areas requested for annexation will be reviewed by the appropriate County department to determine if the services proposed are adequate. The statements pertaining to the financing of the services and analysis of the tax load on the area to be annexed will be reviewed by the Miami-Dade County Budget Officer." *Id.*

¹⁰ Note that the County Code reserves onto the County Commission the ability to condition its approval of annexation upon certain matters. See, i.e., County Code section 20-8.7 "Mitigation on Proposed Boundary Changes"; and County Code section 20-8.8 "Retention of modification or deletion of covenants or declaration of restrictions".

➤ County Code Section 20-9(b):

- Since more than 250 electors reside in NBV, an election "may" be called by the County Commission on the question of whether NBV should be annexed. Note: County Charter Section 6.04(B) states that such election "shall" be called.¹¹ **My discussion with the County's Office of Management and Budget confirms that this election requirement is mandatory.**

IV. City Charter amendment re: CMB Municipal Boundaries.

Once the above election has occurred, resulting in approval of annexation by a majority of the electors of the area to be annexed, the CMB Charter is considered automatically amended¹² (i.e., no CMB voter approval needed) to incorporate the newly amended CMB boundary. Once the new boundary description is finalized, copy of same should be forwarded to the City Clerk for his transmittal of the new description to Municode (for its codification of the new municipal boundary).

RJA:JO/mmm
Attachment

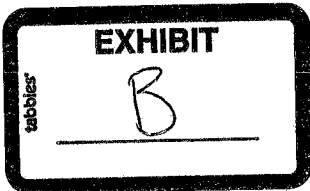
¹¹ Charter Section 6.04(B) provides: "Changes that involve the annexation or separation of an area of which more than 250 residents are electors *shall* also require an affirmative vote of a majority of those electors voting." See, also, County Code Section 20-2, providing that annexations "...shall be initiated by the Board of County Commissioners only by resolution adopted in accordance...with the controlling provisions of Section 5.04 [sic] of the Home Rule Charter, County Charter Section 6.04(B).

¹² "...Upon any such boundary change any conflicting boundaries set forth in the charter of such municipality shall be considered amended." County Charter Section 6.04(B).

Sec. 20-3. - Initiated by governing body of municipality.

Any proposed boundary change desired by the governing body of a municipality shall be initiated by resolution of such governing body adopted after a public hearing held pursuant to written notice mailed to all owners of property within the area and within six hundred (600) feet thereof in such proposed boundary changes, according to the current tax assessment roll, and pursuant to published notice; provided, however, that no notice shall be required when all owners of property within the area and within six hundred (600) feet thereof shall consent in writing to the proposed boundary change. The cost of such notice shall be paid by the governing body of the municipality. Three (3) duly certified copies of such resolution requesting the proposed boundary changes, together with proof of compliance with the notice requirements aforesaid, shall be filed with the Clerk of the County Commission, and shall be accompanied by the following:

- (A) An accurate legal description of the lands or land area involved in such proposed boundary change.
- (B) A map or survey sketch accurately showing the location of the area involved, the existing boundaries of the municipality or municipalities affected, and indicating the relation of the area involved to the existing municipal boundaries.
- (C) Certificate of the County Supervisor of Registration certifying that the area involved in the proposed boundary change contains either more than two hundred fifty (250) residents who are qualified electors, or less than two hundred fifty (250) residents who are qualified electors.
- (D) A brief statement setting forth the grounds or reasons for the proposed boundary changes.
- (E) A statement declaring whether an enclave, as defined in Section 20-7(A)(1)(c), borders the municipality and whether the proposed boundary change includes such enclave.
- (F) In addition to the foregoing, there shall be filed with the Clerk of the County Commission the following information:
 - (1) *Land use plan and zoning.* The municipality shall present a general land use plan and a map showing proposed zoning for the subject area which, if annexed, will be enacted by the municipality. In addition, the municipality shall provide a comparison between existing County land use regulations governing the subject area and the relevant municipal land use regulations, including, but not limited to, any zoning restrictions pertaining to location of businesses and hours and days of sale for businesses, to identify how businesses may be impacted upon annexation. This information shall be submitted regardless of size of area or state of existing development.
 - (2) *List of services to be provided.* In this section the municipality shall describe in detail the character and amount of services which the municipality would provide to the area if annexed. The discussion of service levels shall take into account not only existing development but changes in the character and extent of development which may be reasonably anticipated in the near future based on the land use plan and zoning for the area as submitted by the municipality in accordance with (1) above. The statements pertaining to the various services shall be set forth under the headings listed below. The character and amount of services now being received in the area sought for annexation shall be set forth for comparative purposes.
 - (a) Police protection.
 - (b) Fire protection.
 - (c) Water supply and distribution.
 - (d) Facilities for the collection and treatment of sewage.
 - (e) Garbage and refuse collection and disposal.
 - (f) Street lighting.



- (g) Street construction and maintenance.
 - (h) Park and recreation facilities and services.
 - (i) Building inspection.
 - (j) Zoning administration.
 - (k) Local planning services.
 - (l) Special services not listed above.
 - (m) General government.
- (3) *Timetable for supplying the services listed above.* For each of the services listed the time schedule for the provision of that service shall be set forth. The timetable shall be in terms of how soon after the annexation ordinance is finally adopted will the service be provided. If changes in the character and extent of the development in the area can reasonably be anticipated, these changes shall be taken into account in the proposed timetable.
- (4) *Financing of the services listed above.* For each of the services listed above, estimates of the costs of providing, maintaining and operating the service shall be set forth along with the methods used in making the estimates. The sources of funds which the municipality would utilize in providing, maintaining and operating the services listed shall be stated for each service and the effect this will have on the remainder of the municipality shall be analyzed.
- (5) *The tax load on the area to be annexed.* This section of the report shall discuss in narrative form, including estimated figures, the direct and indirect tax revenue from the area sought for annexation after annexation compared with the current period before annexation. Particularly this section shall clearly and concisely appraise the tax impact on the property owners and others residing and/or doing business in the area, and on those residing and/or doing business within the municipality. Methods utilized in making estimates contained in this section shall be fully and clearly set forth.
- (6) *Identification of any areas designated as terminals in the County's Adopted Land Use Plan Map ("terminals").* The municipality shall set forth the following information in its annexation petition or shall supplement its annexation petition, if such petition is pending as of the effective date of this ordinance:
- a. The reason that any area designated terminals and areas located within one-half (½) mile surrounding any area designated terminals ("surrounding areas") should be annexed to the municipality;
 - b. The impact that annexation may have on the operation and future development of facilities within any area designated terminals and surrounding areas;
 - c. The municipality's assessment of the present and future importance to the economy, job generation, and future development of the County and the region of any area designated terminals and surrounding areas proposed to be included in the area annexed;
 - d. Whether the land uses within areas designated terminals and surrounding areas are compatible with adjacent land uses within the annexing municipality; and
 - e. A proposed Interlocal Agreement with the County which would include provisions agreeing to the County's retention of master plan and regulatory control over any area designated terminals and surrounding areas, which shall set forth with specificity the limitations and conditions to be imposed on the municipality's jurisdiction of the area proposed for annexation.
- (7) *Existing Community Redevelopment Agency.* The municipality shall acknowledge in writing, in a format acceptable to the Office of Management and Budget or its successor department, the existence of any community redevelopment agency operating within the

area proposed to be annexed and shall agree to be bound by the provisions of Section 20-8.9 of the Code.

- (G) Certificate of the Director of the Department of Planning and Zoning certifying that in the Director's sole determination an area proposed for annexation or separation having two hundred and fifty (250) or fewer registered electors is more than fifty (50) percent developed residential. This certification will determine whether an election of registered electors will be required as provided in Section 20-9.
- (H) A petition filed with the Clerk of the County Commission indicating the consent of twenty (20) percent of the electors in the area proposed for annexation provided however, no petition shall be required where the property proposed for annexation is vacant or where there are two hundred fifty (250) or less resident electors.

(Ord. No. 60-42, § 3, 11-29-60; Ord. No. 64-21, § 1, 5-19-64; Ord. No. 66-60, § 1, 11-15-66; Ord. No. 70-2, § 2, 1-7-70; Ord. No. 96-39, § 1, 2-20-96; Ord. No. 96-73, § 1, 5-21-96; Ord. No. 96-136, § 1, 9-17-96; Ord. No. 01-168, § 1, 10-23-01; Ord. No. 05-112, § 2, 6-7-05; Ord. No. 07-176, § 1, 12-4-07; Ord. No. 14-18, § 1, 2-27-14; Ord. No. 17-16, § 1, 3-7-17; Ord. No. 17-33, § 1, 6-6-17)