

ORDINANCE #2009-12

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, PURSUANT TO ARTICLE 6.01 OF THE CITY'S CHARTER RELATING TO CHARTER AMENDMENTS; REMOVING SECTION 9.5 OF THE CHARTER, ENTITLED "MUNICIPAL SERVICE TRUST FUND", AND SECTION 9.8 OF THE CHARTER ENTITLED "FAVORED NATIONS STATUS" TO ELIMINATE FUTURE PAYMENTS TO THE MUNICIPAL SERVICE TRUST FUND, OTHERWISE KNOWN AS "MITIGATION"; REMOVING SECTION 9.3 OF THE CHARTER ENTITLED "SPECIALIZED LAW ENFORCEMENT SERVICES"; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO ELECTORS OF THE PROPOSED AMENDMENT TO THE CITY'S CHARTER; PROVIDING FOR COPIES OF THE CHARTER AMENDMENT TO BE MADE AVAILABLE FOR PUBLIC INSPECTION; PROVIDING FOR THE CITY CLERK TO UTILIZE THE SERVICES OF MIAMI-DADE COUNTY SUPERVISOR OF ELECTIONS TO PLACE THE CHARTER AMENDMENTS ON THE MAIL-IN BALLOT, WHICH ELECTION SHALL BE PAID FOR BY MIAMI-DADE COUNTY; PROVIDING FOR CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City is currently a party to pending litigation styled: *City of Doral v. Miami-Dade County*, Case No.: 3D08-1725, pertaining to the payment of mitigation fees (the "Pending Litigation"); and

WHEREAS, in the Incorporation/Annexation and Mitigation Workshop of the Governmental, Operations and Environment Committee of the Board of County Commissioners, the Town of Miami Lakes, the Village of Palmetto Bay and the City of Doral discussed the phasing out of mitigation payments to the County, which was voted upon by the electors as a pre-agreed condition contained in their respective municipal charters; and

WHEREAS, the Miami-Dade Board of County Commissioners expressed its intent to phase out mitigation through the adoption of Resolution R-508-07, and more specifically expressed its plan to do so under Resolution 1268-08, dated November 20, 2008; and

WHEREAS, County Resolution 1268-08 requires the City to:

1. Make payment for fiscal year 2006-2007 equal to one mill of the value of taxable real property within the boundaries of the City on the date the incorporation was approved, which amount equals \$5,546,632;
2. Make payment for fiscal year 2007-2008 equal to the mitigation payment due for fiscal year 2006-2007, as adjusted by the CPI, which amount equals \$5,779,590;
3. Make payment for fiscal year 2008-2009 equal to the mitigation payment due for fiscal year 2007-2008, as adjusted by the CPI, which amount is estimated to equal \$6,010,774;
4. Make payment for fiscal year 2009-2010 equal to the mitigation payment due for fiscal year 2008-2009, as adjusted by the CPI, which amount is estimated to equal \$6,251,205;
5. Eliminate the "Most Favored Nation Status" as it applies to the City's contribution to the Municipal Services Trust Fund (Section 9.8 of the City's Charter);
6. Prepare a ballot question (subject to approval of the ballot question by the County Attorney) authorizing an amendment to the City's Charter through a special election eliminating the obligation to pay to the County any mitigation fees for fiscal years subsequent to fiscal years 2009-2010, so long as the modification eliminates the Most Favored Nations status as part of its Charter as it applies to the City's contribution to the Municipal Services Trust Fund; and
7. Voluntarily dismiss with prejudice the pending litigation with such dismissal to be held in escrow by County Attorney pending the actual occurrence of the special election.

WHEREAS, the County has additionally offered to pay the cost of the special election as it relates to specialized police services, mitigation, and the runoff election, in the form of a mail ballot election; and

WHEREAS, the City Council desires to move forward with the settlement of the Pending Litigation and to coordinate the Charter amendments and special election needed to approve same; and

WHEREAS, the Mayor and City Council of the City of Doral desire to amend the City's Charter in order to eliminate future payments to the Municipal

Service Trust Fund, Most Favored Nations Provision – as it relates to mitigation and specialized police services; and

WHEREAS, on March 11, 2009, the Mayor and City Council, via Resolution 09-30 directed the City Manager, City Attorney and City Clerk to take all necessary steps to:

1. Prepare ballot text amending the City's Charter to eliminate the payment of future mitigation fees effective for fiscal year 2010-2011 and to modify the City's Most Favored Nations status relating to the Municipal Services Trust Fund (the "Charter amendments");
2. Coordinate with the County and the Supervisor of Elections the scheduling of a special election mail ballot for the Charter amendments to be paid for by the County;
3. Negotiate an escrow agreement with the County Attorney for fiscal year 2006-2007, 2007-2008 and 2008-2009 mitigation fees in the estimated amount of \$17,336,996 to provide that the funds shall only be held in escrow by the County Attorney and released to the County upon the holding of the special election;
4. Make payment for mitigation fees for fiscal year 2009-2010 in an amount estimated to equal \$6,251,205 to made on or before September 30, 2010; and
5. Prepare a Stipulated Settlement for Voluntary Dismissal of the pending litigation which will be effective and filed with the court(s) after the special election is held.

WHEREAS, based upon the foregoing, the Mayor and City Council would like to amend the City Charter of the City of Doral as provided below; and

WHEREAS, the City Council may, by ordinance, propose an amendment to the Charter subject to approval by the electorate at the next general election or at a special election called for such purpose; and

WHEREAS, the City Council has determined to submit the attached proposed Charter amendment for approval or disapproval by the electors; and

WHEREAS, the Mayor and City Council desire to amend Sections 9.3, 9.5 and 9.8 of the City Charter of the City of Doral to provide requisite ballot language for submission to electors, providing for copies of this Charter

amendment to be made available for public inspection and providing for the City Clerk to utilize the services of Miami-Dade County Supervisor of Elections;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. The above Whereas clauses are incorporated by reference into this Ordinance.

Section 2. Proposed Revisions or Amendments to the City Charter. The City Council proposes certain amendments to the City Charter which shall be voted upon by the City electorate. The proposed amendment shall be commonly referred to by the following ballot titles:

1. Elimination of contract for specialized police services with Miami-Dade County.
2. Modification of Charter provisions relating to mitigation

Section 3. Form of Ballot. The form of ballot of the Charter amendments provided for in this Ordinance shall be as follows:

Question 1: Modification of Charter provisions relating to mitigation.

ELIMINATION OF MITIGATION PAYMENTS AFTER FISCAL YEAR 2009-2010

SHALL THE CITY OF DORAL'S CHARTER BE AMENDED TO MODIFY THE FORMULA FOR MITIGATION DUE TO THE COUNTY FOR FISCAL YEARS 2006-2007 THROUGH 2009-2010 RESULTING IN A REDUCTION IN THE REQUIRED PAYMENTS AND ELIMINATE MITIGATION PAYMENTS DUE TO THE COUNTY AFTER PAYMENT FOR FISCAL YEAR 2009-2010, RATHER THAN REQUIRING PAYMENT OF MITIGATION IN PERPETUITY, AND DELETE THE "FAVORED NATION STATUS" PROVISION RELATING TO MITIGATION AND CERTAIN OTHER PROVISIONS RELATING TO MITIGATION?

Shall the above described amendment be adopted?

YES []

NO []

Question 2: Modification of Charter provision relating to eliminating requirement that City pay for specialized police services.

ELIMINATION OF CITY'S CONTRACTUAL OBLIGATION TO PAY MIAMI-DADE COUNTY FOR SPECIALIZED POLICE SERVICES

SHALL THE CHARTER OF THE CITY OF DORAL BE AMENDED TO ELIMINATE THE OBLIGATION OF THE CITY TO CONTRACT FOR AND PAY FOR SPECIALIZED POLICE SERVICES WITH MIAMI-DADE COUNTY AND ELIMINATE THE FAVORED NATION STATUS FOR SPECIALIZED POLICE SERVICES?

Shall the above described amendment be adopted?

YES []
NO []

Section 4. The full text of the proposed amendment to the City Charter is attached hereto as Exhibit "1", and is incorporated by reference into this Ordinance. The proposed amendment to the City Charter is reflected by underlying in the text and strikethroughs reflect items to be deleted from the Charter.

Section 5. Charter Amendment to be Available for Public Inspection and for the City Clerk to Utilize the Services of Miami-Dade County Supervisor of Elections. The place, information and the full text of the proposed City Charter amendment is available at the office of the City Clerk located at 8300 NW 53 Street, #100, Doral, Florida 33166. Copies of this ordinance providing the Charter amendment subject to this referendum approval is on file in the office of the City Clerk and available for public inspection during regular business hours. The City Clerk is authorized to utilize the services of Miami-Dade County Supervisor of Elections for any assistance required in the administration of the election.

Section 6. Inclusion in the Charter. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Charter of the City of Doral, Florida, as to the Charter amendment measure approved by a majority of voters on such measure in such election; that the sections of this ordinance may be renumber or relettered to accomplish such intentions; and the word "ordinance" shall be changed to "section" or other appropriate word.

Section 7. Providing for Adoption of Enabling Legislation. The City Council shall provide for enactment of an enabling ordinance submitting the proposed amendments to the electorate pursuant to Section 6.03 of the Miami-Dade County Charter.

Section 8. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 9. Effective Date. This ordinance shall become effective upon adoption on second reading, and each of the Charter amendment measures provided herein shall be effective only upon approval of a majority of electors voting on the measure, effective upon certification of the election results. If conflicting amendments are adopted at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

Section 10. Election Called. That a special election is hereby called, to be held on Thursday, June 25, 2009, via mail ballot, to present the qualified

electors of the City of Doral, the ballot questions provided in Section 3 of this Ordinance. That the City Council may by Resolution alter the date of the special election or elections in the event that the Council finds that unforeseen circumstances require it to do so. Miami-Dade County shall pay for the election as it relates to the following ballot questions: mitigation and specialized police services.

Section 11. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 12. This Ordinance initiating the amendment process and vote of the electorate shall take effect immediately upon execution.

[Section left blank intentionally]

The foregoing Ordinance was offered by Vice Mayor DiPietro who moved its adoption. The motion was seconded by Councilwoman Ruiz and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Michael DiPietro	Yes
Councilman Pete Cabrera	Yes
Councilwoman Sandra Ruiz	Yes
Councilman Robert Van Name	Yes

PASSED AND ADOPTED on first reading this 8th day of April, 2009.

PASSED AND ADOPTED on second reading this 22nd day of April, 2009.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



JOHN J. HEARN, CITY ATTORNEY

EXHIBIT “1”

* * *

Section 9.3 Reserved.

~~Section 9.3 Specialized Law Enforcement Services.~~

~~The City shall pay from its municipal funds, for specialized law enforcement services to be exclusively provided by the Miami-Dade Police Department in perpetuity. Payment amounts and other pertinent terms relating to the provision of specialized police services shall be set forth in a contract between the City and Miami-Dade County. These specialized police services include, but are not limited to, tactical services, such as special response team, canine, bomb squad investigations and central investigations, such as narcotics, criminal intelligence, economic crimes, homicide, robbery, sexual crimes, domestic violence, crime scene investigations and property and evidence. Specialized law enforcement services do not include police activities of a countywide nature such as warrants, crime lab, public corruption unit, communications, jail, court services, and all Sheriff's services as defined by State law. For as long as Miami-Dade County continues to fund specialized police services from the countywide budget, the City shall receive a credit equivalent to the payment made by Doral property owners through the countywide millage.~~

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Section 9.5 Municipal Service Trust Fund.

~~For the reasons outlined in the Doral Area Municipal Advisory Committee's Report ("the Report"), the City shall make an annual contribution from municipal revenues to the County's Municipal Service Trust Fund ("MSTF"). The initial annual contribution amount shall be 1.5 mills of the value of taxable real property within the boundaries of the City on the date the incorporation was approved. Each annual payment following the initial annual contribution will be in an amount which equals 1.5 mills of the value of taxable real property in the area designated as the CBI, as the value is shown on each year's preliminary assessment roll. The mitigation amount for the "residential area" will be set on the date of incorporation and subsequent annual payments will be adjusted, based on the local "CPI" on an annual basis, not to exceed 3% over the previous year.~~

~~Contributions to the MSTF shall be in perpetuity subject to this Article.~~

~~The City agrees that the MSTF will be utilized to (1) maintain police services in the unincorporated areas proximate to the City recognizing that crime does not respect political boundaries and that provision of police services to the neighboring UMSA communities directly benefits the City; and (2) provide a municipal assistance retainer enabling the City to obtain certain advise, expertise, training, financial budgeting/planning, and technological services, planning and other assistance from the County, as requested by the City and agreed to by the County. Zoning services shall be subject to the County's fee schedule and subject to the policies as set by the City Council.~~

The City agrees that Miami-Dade County may retain payments it would otherwise make to the City from fees collected by the County on behalf of the City to offset all or a portion of the amount due from the City to the MSTF.

~~The contribution by the City to the MSTF shall be revisited should significant changes in the composition of the remaining unincorporated area occur. These changes include but are not limited to:~~

- ~~(A) — The remaining unincorporated municipal service area is reduced to fewer than 500,000 residents, or~~

- ~~(B) — The unincorporated municipal service area per capita tax base exceeds Miami-Dade County's per capita tax base.~~

~~In the event of 100% incorporation of Miami-Dade County within the Urban Development Boundary, the City's obligation to contribute to MSTF will cease.~~

Provide for payment of mitigation for fiscal year 2008-2009 due on or before September 30, 2009 and fiscal year 2009-2010 due on or before September 30, 2010 consistent with County Resolution 1268-08. No further payment of mitigation will be required after mitigation payment for fiscal year 2009-2010.

* * *

Section 9.8 Favored Nation Status.

~~(A) — Contribution to the Municipal Services Trust Fund~~

- ~~(1) — In the event of the incorporation of a recipient community, defined as one where the revenues generated from the area are less than the cost of providing services to the area, the City's contribution will not be modified.~~
- ~~(2) — In the event of the incorporation of a donor community, defined as one where the revenues generated from the area are more than the cost of providing services to the area, but where revenues exceed the expenses by less than \$2 million*, the City's contribution will not be modified.~~
- ~~(3) — In the event of the incorporation of a donor community, defined as one where the revenues generated from the area are more than the cost of providing services to the area, and where revenues exceed expenses by more than \$2 million * but less than \$4 million*, and the newly incorporated area contributes everything in excess of \$2 million* to the MSTF, the contribution will not be modified. If the new municipality contributions an amount lower than as specified in this paragraph, the City's contribution, shall be reduced to be equal to the new municipality's contribution*.~~
- ~~(4) — In the event of the incorporation of a donor community, defined as one where the revenues generated from the area are more than the cost of providing services to the area, and where revenues exceed expenses by more than \$4 million*, and the newly incorporated area contributes less than 1.5 mills of the property taxes, as of the date of incorporation, to the MSTF, the City's contribution will be reduced to be the same millage as the new municipality's contribution calculated in terms of millage.~~
- ~~(5) — Notwithstanding the forgoing in no event shall this Section cause the City's contribution to the MSTF to increase and should any newly incorporated area be granted a more favorable status, subject to the terms and conditions of this Section, then the City shall receive the same benefits.~~

~~(B) County Services~~

If a subsequent incorporation is approved without the newly incorporated area being required to remain in the Miami-Dade Fire Rescue District, Miami-Dade Library System, Miami-Dade Solid Waste collection service area, or without contracting with the Miami-Dade Police Department for local patrol ~~and~~ specialized police services, the City will be entitled to modify its relationship with the County, so that the city will not be required to receive that particular service from the County. Both parties also agree that if a subsequent incorporation of any area is approved without conditions outlined in this agreement, and those terms would be beneficial to the City of Doral, the terms under this Charter will immediately be replaced with the terms granted to the subsequent, new, municipality (the "Most Favored Nation Status"). It is provided, however, that the Most Favored Nation Status shall not apply to mitigation payments into the Municipal Services Trust Fund, nor apply to any requirement to separately contract or pay for the provision of specialized police services.

The provisions of this section, apply only to the service or services modified, and in no way alter the agreement regarding the remaining services.