



ByLaw Committee Meeting Transcript

July 20th, 2023

THE CHILDREN'S TRUST
BYLAW COMMITTEE MEETING
(IN PERSON QUORUM WITH SOME VIRTUAL ATTENDANTS)

MEETING MINUTES

The MDC Children's Trust Meeting, Bylaw Committee Meeting was held on July 20, 2023, commencing at 10:11 a.m., at 3150 Southwest 3rd Avenue, 8th Floor, Miami, Florida 33129. The meeting was called to order by Nelson Hincapie, Chair.

AUDIO TRANSCRIPTION

**CERTIFIED
ORIGINAL**

COMMITTEE MEMBERS APPEARANCES:

NELSON HINCAPIE

NORMAN GERSTEIN

NICOLE GOMEZ

KENNETH HOFFMAN

1 STAFF MEMBER APPEARANCES:

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3 JAMES HAJ

4 IMRAN ALI

5 JACK BENTOLILA

6 YULIET ALFONSO

7 JUANA LEON

8 VICTORIA GANDUL

9 WILLIAM KIRTLAND

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11 LEGAL COUNSEL APPEARANCES:

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13 LEIGH KOBRINSKI

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P R O C E E D I N G S

(Thereupon, the following proceedings commenced at 10:11 a.m.)

MR. HINCAPIE: Good morning, everybody. We have a quorum, so we'll start the meeting. Thank you very much -- Thank you for coming, for helping us -- helping the staff going through the bylaws. It's what we're here for. Before we start the meeting, let -- I'd love to have a moment of silent meditation for all the children who are suffering in this community and whose job it is for us to --. Thank you.

Do we have any public comments?

MS. LEON: There are no public comments.

MR. HINCAPIE: Thank you. So, let's dive right into it. So, if -- you'd like to get --

MR. HAJ: I'll take it over. Nelson, thank you. So, the bylaws that are in front of you, and as we mentioned at prior board meetings, this has been a year we're looking at all our -- and we did the HR handbook a couple of months ago that the board approved the bylaws. Now we're going to need a couple of months to dive into the procurement policy. So, three years ago since we approved the bylaws, there has been a lot of discussion of

1 committees and boards and recommendations. We've
2 taken notes throughout the years, compiled them.

3 And this was sent to you earlier last week for
4 your consideration. So, I object there's -- there's
5 -- I don't think there's significant change in here.
6 If you'd like to just to highlight some of the more
7 -- changes.

8 MR. BENTOLILA: Thank you. So, everyone has
9 the bylaws sent to them with you, in front of you as
10 well. With the proposed language -- underlying
11 language being removed and struck out. I'm going to
12 go ahead and just jump through and highlight the
13 areas. And I'll call out the change numbers as well
14 so you can follow along. In Article 2 Organization
15 of the Board Terms of Office, which is Page 1. Here
16 they're -- we're clarifying when vacancies are
17 filled midterm as well as serving in multiple
18 officer positions.

19 So, the new language will state that a board
20 member shall serve in an officer position to which
21 he or she is elected for a term up to two years and
22 may be eligible for reelection to such officer
23 position for no more than two additional successive
24 terms. A board member shall not serve more than six
25 consecutive years in the same officer position

1 except in the event of a vacancy as provided in
2 Article 2C, which is the next section.

3 Nothing is in this section should be
4 constituted to prohibit a board member from serving
5 in multiple officer positions for a maximum term of
6 any such position. Notwithstanding the above, a
7 board member's position as an officer shall not
8 extend beyond his or her term of appointment to the
9 board as provided in Section 125.901 of Florida
10 statutes or the ordinance. And on Page 2, you'll
11 see, same Article Section C where it talks about
12 vacancy of officers.

13 If a vacancy should occur in any officer
14 position, the board shall fill such vacancy at a
15 regular special meeting as soon as reasonably
16 possible. The vacancy establish -- establishes the
17 president's or chief executive officer's authority
18 to solicit nominations for each vacancy and present
19 them to the nominating committee.

20 The nominating committee shall recommend a
21 candidate to fill such vacancy in accordance with
22 the policies -- the process in -- in Article 2A2.
23 The board member so elected shall serve the
24 remainder of the unexpired term and thereafter may
25 serve in the same office for up to three successive

1 two-year terms.

2 MR. GERSTEIN: I have one question.

3 MR. BENTOLILA: Yeah.

4 MR. GERSTEIN: Sorry. In Article 1, which is
5 membership, it says the trust shall consist of, and
6 then 33 is crossed off and the other 33 is crossed
7 off.

8 MR. BENTOLILA: They're just crossing off --
9 spelling out 33. So, using a numerical 33. So,
10 substantively, nothing has changed, 33 members.
11 It's just -- that's a minor thing they're editing.
12 That happens just -- yeah, 33 stays the same. Okay.
13 So, on Page 3 and 4, so it's the pending Article
14 Section G, the standing committee shall be as
15 follows on number 2 where it talks Finance and
16 Operations Committee F and G.

17 So, information from G was just moved up into F
18 because it just flows properly and -- and is better
19 understood in that area. And that's the wording at
20 the end of F that talks about active vetting process
21 described in F, the chief financial officer will
22 present candidates to the Finance and Operating
23 Committee for consideration to be recommended and
24 retained as the auditor, and then that's the only
25 substantive change there. The rest are just

1 bringing terms into alignment. And Article 3 -- on
2 Page 5, Article 3 of meetings, Section A, regular
3 board meetings.

4 Here we're replacing the terms of one regular -
5 - one meeting a month to scheduled regular meetings
6 to allow the board more flexibility. So, number
7 one, we're talking scheduling, and the new wording
8 will state the board chair shall establish the
9 schedule of regular board meetings except for during
10 the months of August and December unless stated.
11 And August and December, that wording was actually
12 there, just being put into that one statement. I'm
13 going to move on to Page 7, Article 4, voting in
14 quorum.

15 So, it talks about the adoption of annual
16 budget shall require an affirmative vote of the
17 majority of all members then serving on the board so
18 long as such vote is in accordance with any
19 applicable requirements of Section 200.065 Florida
20 statutes as may be amended, and number 3 in that
21 same section is being added and that references a
22 consent agenda.

23 So, this entire section will read, the board
24 chair or presiding officer at a board meeting may
25 present resolutions for the same initiative or

1 similar items that may be grouped in a manner that
2 allows them to be voted on as a consent agenda in a
3 manner that enables the board of directors to act on
4 the group of resolutions with one vote and not have
5 each resolution read and voted on separately. Any
6 board member shall be entitled to request an item be
7 pulled from the consent agenda and be discussed as a
8 separate resolution.

9 MR. HINCAPIE: I have a question just on this
10 specific. Can items be pulled the day of the
11 meeting, or it has to be prior to the meeting?

12 MR. HAJ: Leigh, can you pull that portion?

13 MS. KOBRINSKI: Yeah.

14 MR. GERSTEIN: Are you saying --

15 MR. HINCAPIE: You have to do it ahead of time.

16 MR. GERSTEIN: Are you saying pulled?

17 MR. HINCAPIE: Pulled, yeah. You can -- you
18 can pull.

19 MR. GERSTEIN: You don't have to do it ahead of
20 -- you're sending it ahead of time, but it doesn't -
21 -

22 MS. KOBRINSKI: So, will the agenda say --
23 specifically say what's on the consent agenda so
24 that the board members know what to request to be
25 pulled?

1 MR. BENTOLILA: Once -- one -- when this is
2 approved by the board and the consent agenda would
3 be available to us, then we would be able to call
4 out on the agenda that these items would be pulled
5 together for the consent.

6 MS. KOBRINSKI: Right. So, at the board
7 meeting --

8 MR. HINCAPIE: As you can see.

9 MS. KOBRINSKI: -- you can request that certain
10 parts be pulled out.

11 MR. HINCAPIE: Got it. Thank you.

12 MR. BENTOLILA: Okay. Same article, Section
13 four. We're updating the policy around board member
14 participation in meetings. So, number 4, I'll now
15 read. Once a quorum is established, a board meet
16 establish -- a board meeting may commence upon good
17 cause shown such as being out of town or
18 hospitalized as to why he or she cannot be present
19 at a meeting, and at the discretion of the board or
20 committee chair, any board member may attend a
21 Children's Trust meeting by telephonic or video
22 conferencing at the discretion of the board or
23 committee chair.

24 Such member may be allowed to speak on a
25 particular item but shall not be counted to

1 establish quorum and may not vote or take other
2 actions on an item. Board members who participate
3 in meetings in such manner will be recorded as
4 absent in the official meeting minutes.

5 MR. HOFFMAN: Can we just go back to the last
6 one for a second because I just -- I've never really
7 understood it in practice. But if we do a consent
8 agenda that says that a board member is entitled to
9 requests, does that mean it automatically -- the
10 item automatically comes out or shall be considered
11 separately, because if so, I think we should say
12 that -- that a board member may request any item to
13 be removed, and if a board member requests --

14 MR. HAJ: -- Which shall be requested.

15 MR. HOFFMAN: -- a gap between that and whether
16 or not it's, you know, the chair or somebody else.

17 MR. HAJ: But the last sentence doesn't make
18 clear.

19 MS. KOBRINSKI: We could say --

20 MR. HOFFMAN: We should be entitled to request.
21 What happens when -- so I say, I request it be
22 removed, so it gets removed?

23 MR. HINCAPIE: So, should we replace request
24 with have?

25 MR. KOBRINSKI: So, we can make --

1 MR. HOFFMAN: I would leave the sentence, but
2 you say it ends in such that the item will be
3 considered separately.

4 MR. GERSTEIN: Right. Something like that.

5 MR. HINCAPIE: So just the fact that a board
6 member --

7 MR. HOFFMAN: Is that the intention, that any
8 board member can move an item off the agenda. Is
9 that the way it works?

10 MR. HAJ: That is, it -- so the board members -
11 - there's ten resolutions and one wanting to pull
12 out an item, they basically would like to bifurcate
13 and pull this one out, and the rest all consent to
14 that item.

15 MR. HINCAPIE: So -- and it does say and
16 discuss a separate resolution.

17 MR. HOFFMAN: Yes, it's still following up.
18 Just the full sentence says that it can be
19 requested. It doesn't say it has to happen.

20 MS. KOBRINSKI: So, we can edit it to say any
21 board member shall be entitled to request an item to
22 be bifurcated. In such event, the item shall be
23 pulled from the consent agenda and discussed as a
24 separate resolution.

25 MR. HOFFMAN: That makes sense.

1 MR. HINCAPIE: Its -- again, just to make sure
2 to understand how it works on records.

3 MR. GERSTEIN: Are we -- could we go back to
4 the one about attending if you're not -- if you're
5 out of town, you're in the hospital. I mean, in
6 today's world, I mean, even the court is running.
7 because They have court hearings, they -- they make
8 decisions. Why should a board member not be able to
9 appear on Zoom and be able to vote? What's -- what's
10 the purpose of not allowing this? They allow it
11 virtually everywhere.

12 MR. HAJ: I guess it's illegal --

13 MR. HINCAPIE: Yeah, it's illegal --.

14 MS. KOBRINSKI: So, it stems from the county
15 code that required that members be present, and
16 present is physically present. And so, it all kind
17 of stems from like Sunshine regulation. So -- and
18 there are certain county board -- there are certain
19 state boards that are explicitly permitted to appear
20 virtually, but the fact that the Children's Trust is
21 not one of those boards, the statute has
22 specifically enabled that.

23 We've always -- our office has provided a
24 conservative view on the Sunshine Law and made sure
25 that, you know, in compliance with the Sunshine Law

1 and the code requirement to be physically present
2 that you have to be present for a quorum and that
3 you can't participate virtually. Just like a board
4 --

5 MR. GERSTEIN: Statute or board meetings?

6 MS. KOBRINSKI: Well, so the Board of County
7 Commissioners has adopted the code that applies to
8 all county boards generally, and this is considered
9 a county board, and it requires that you be present
10 for purposes of attendance. And I think that is in
11 light of Sunshine requirements. So, there's no
12 other county board -- this is consistent with all
13 other county boards, including the Board of County
14 Commissioners.

15 MR. GERSTEIN: But could the ordinance be
16 amended?

17 MS. KOBRINSKI: No. I mean the code; you could
18 request that the code be changed.

19 MR. HOFFMAN: Are there any -- and just as a
20 background, this predates Leigh, I've been asking
21 the same question for -- long as I cannot -- but I
22 actually came to believe during COVID and now since
23 that it's actually not a bad idea to try to
24 encourage people to come in and not just give an
25 excuse on Zoom, because it's difficult if we need it

1 in person or whether or not somebody can speak. And
2 that's part of this, I think part of the statute.

3 So -- but being able to speak and vote is
4 something that I thought was a good idea. I do
5 understand that there are other -- some boards in
6 Dade County that are able to have members speak and
7 vote.

8 MS. KOBRINSKI: Well, I think the -- the only
9 one that I'm aware of, it's the Career Source of
10 South Florida, and that's because they have -- they
11 specifically they have -- their state statute
12 specifically says that they can meet by means of
13 electronic communications, media communications.
14 Other than that -- and I don't know that they
15 actually do it in practice. I just know that they
16 have a state statute that specifically permits it.
17 But, right, I mean, I think the legal opinion we
18 gave in 2018 relied on the county code and the
19 presence requirement.

20 MR. GERSTEIN: How about the part where it says
21 a board member -- let's say a board member does in
22 fact appear on Zoom. They can't vote, but they're
23 there. Why should they be voted as absent?

24 MS. KOBRINSKI: They don't count towards forum.
25 They can't vote, they can't participate in any

1 official capacity. They're basically participating
2 like any member of the public and like a Sunshine
3 meeting. So, a Sunshine meeting can be held
4 electronically, like when you're doing a workshop or
5 it's just purely information gathering but you're
6 not taking any forward action.

7 So, that's why this kind of extension was -- is
8 permitted is that they're basically treating that
9 member as if they're in a Sunshine meeting. But no,
10 you can't take any official action at a Sunshine
11 meeting, so you don't count towards quorum, and you
12 can't vote.

13 MR. BENTOLILA: Okay. This the last section --
14 the last number -- number 5 in that section about
15 each board member. Again, wording was just added
16 for clarity. Each board member shall have one vote
17 that can be exercised by the member, or for those
18 members who are entitled to be represented by
19 meetings, by designee, the member is duly appointed
20 designee. So, that's just clarifying not -- you
21 can't assign a designee unless the statute says you
22 can. Article 5, board attendance and page 8, here a
23 clarification of attendance requirements as it
24 pertains to elected officials, was added.

25 In the first paragraph the attendance hasn't

1 changed, again, the numbering crosses out just
2 because of formatting, but you still have board
3 member has three consecutive absences or a total of
4 five absences from a regular board meeting within a
5 fiscal year, the board chair through the clerk of
6 the board shall divide the appointing authority of
7 the board member's absences and request another
8 board member be appointed to serve on the Children's
9 Trust, or the clerk of the board shall consider an
10 at-large member to have resigned from the board, and
11 the board shall fill the seat through the nominating
12 process provided herein.

13 This attendance requirement does not apply to
14 the position of the mayor pursuant to the ordinance
15 or board members who are also serving in another
16 elected position where they are absent to attend
17 another official meeting or legislative session that
18 requires their presence for quorum and/or voting on
19 behalf of their constituents. Such absences will
20 not be counted against the above absences. I'm going
21 to move to page 8 and 9, Article 7, general powers
22 of the board. Again, a lot of the updates are
23 updating language for clarity.

24 In number 3, tentative was replaced with
25 proposed written annual budget. Nothing else

1 changed. And C, the board shall adopt flex -- at a
2 time and a manner in accordance with Section 200.065
3 Florida statutes and Article 4.2. That just changed
4 because of editing of this document, the articles.
5 And page 9 on article 8, lobbying policy, this is --
6 this policy has always been in existence. It's just
7 being put here and highlighted for board members'
8 awareness.

9 So, the Children's Trust shall abide by the
10 Miami-Dade County conflict of interest and code of
11 ethics ordinance section 2-11.1. This includes a
12 code of silence and language prohibiting board
13 members from lobbying the trust for two years after
14 separation of service. Notwithstanding the above,
15 because the Children's Trust has a heightened
16 conflict of interest policy that is intended to
17 avoid the appearance of impropriety, none of the
18 exceptions for the -- of the two-year lobbying
19 prohibition in Section 211.1 shall be applicable to
20 the Children's Trust staff or board members.

21 And then the final --, on Page 10, Article --
22 Page 10, Article 10, the auditor, this is updating
23 language to allow for more flexibility to engage
24 higher-performing auditors. So, the board shall
25 appoint an external auditing firm following Section

1 218.391 Florida statutes as may be amended who shall
2 report directly to the board and shall conduct an
3 annual audit. Auditing firms will be chosen for a
4 five-year term through a competitive process using
5 requests for proposals.

6 If the finance committee selects the same
7 auditing firm from the previous cycle, the firm's
8 auditing team may not include the same reviewing or
9 engagement partner and lead audit staff as in the
10 last audit cycle. The auditing firm may not audit
11 the trust for more than two consecutive audit cycles
12 or ten years. And that concludes the highlights of
13 the changes -- proposed changes for the bylaws. Any
14 questions?

15 MR. HOFFMAN: Yeah, I just have one other
16 question on the lobbying policy. On the last ten
17 minutes, talks about -- staff or board members. I
18 think there's only one staff member who's really
19 even touched upon in the bylaws, it's just the
20 present CEO. Is that really applicable to every
21 statute or --.

22 MS. KOBRINSKI: Yeah, I mean, I think that it's
23 fine to take it out here because the bylaws guide
24 the board, and this is already in the HR of the --.

25 MR. HAJ: Correct. The recently approved

1 handbook added this language.

2 MS. KOBRINSKI: Right. So, that -- so I think
3 we should remove it here and just keep this
4 applicable to the board members. Yeah.

5 MR. HINCAPIE: What are the two-year exceptions
6 to the two-year --? There's a list of exceptions.

7 MR. BENTOLILA: The main one is that you're --
8 you're allowing for a nonprofit -- you're allowing
9 the board for a non-profit --.

10 MR. HINCAPIE: So, if there is a board member
11 that works currently for a nonprofit and they are --
12 they've met their -- and they are still functioning
13 and working for the nonprofit, they can't come
14 before the Trust on issues specific to the agency
15 for which they work.

16 MR. BENTOLILA: All right. So - so, the entity
17 can continue to come in front of the Trust and
18 request support. The board member can be the face
19 making the initial -- that asked for two years. But
20 that doesn't preclude the board member from working
21 in that organization, from assisting that
22 organization and preparing any documents or
23 proposals to the Children's Trust. They just can't
24 be the -- the face of that organization making the
25 ask.

1 MR. GERSTEIN: That means we don't see concepts
2 for three years, right, except in that same --

3 MR. GERSTEIN: Any other, you know --

4 MR. HINCAPIE: I'm just saying -- Yeah, as an
5 example -- as an example, or other, you know,
6 leaders of the organizations, and I think the --
7 well, their input is key, or different things as we
8 think about what areas that we need to work on, and
9 I just --

10 MR. HAJ: But we can still receive their input
11 -- their organization.

12 MS. KOBRINSKI: So long as they're not a face
13 or the representative of that entity.

14 MR. BENTOLILA: Requesting funds. They can
15 participate in workshops; they can assist in giving
16 the landscape or the marketing of a particular item
17 but just not the ask -- the final funding ask.

18 MR. HOFFMAN: Just goes to my many-- getting or
19 -- after.

20 MS. KOBRINSKI: Was this based on the
21 Commission on Ethics?

22 MR. BENTOLILA: Yes. We reached out to the
23 Commission on Ethics when we were doing the handbook
24 revision as well, and they clarified because of the
25 heightened -- that level of heighten that we have,

1 that -- that would preclude that -- those
2 exceptions.

3 MR. HINCAPIE: And I think we're just basically
4 approving this stage to go in front of the board so
5 that there can be more discussion at the board,
6 right?

7 MR. HAJ: The full board.

8 MR. HINCAPIE: Yeah, in the full board. And
9 there will be members hopefully that will, you know,
10 we'll be able to add comment or their opinions.

11 MR. HOFFMAN: So, the two years would apply if
12 we didn't have our own special exception. In other
13 words, there would be a two-year ban on lobbying.

14 MS. KOBRINSKI: That's what I was clarifying,
15 like, are we just stopping it as part of the bylaw,
16 or was that part of the code? And according to the
17 Commission of Ethics, it's part of the codes. The
18 bylaws are just making it consistent with --

19 MR. BENTOLILA: Correct. When the Commission
20 of Ethics makes the presentation, actually, one of
21 the things they recommend is the two-year -- that
22 rule about not lobbying. And outside of our --
23 minus the Children's Trust heightened level is that
24 exception would be would still be at play, but the
25 lobbying rule would still be that.

1 MS. KOBRINSKI: Would that not increase to six
2 years? Like, that could be at the state level, I
3 could be wrong.

4 MR. BENTOLILA: In the last discussion with the
5 Commission, I think it was still two for us.

6 MR. HOFFMAN: I'm just trying to -- just trying
7 to think what would some of the exceptions for it be
8 in the code that we're not taking advantage -- just
9 understanding that it applies. It says none of the
10 exceptions. So, the other things that we would
11 benefit from -- if, you know --

12 MS. KOBRINSKI: So, the code says the
13 provisions of this subsection Q shall not apply to
14 officials, department personnel, or employees who
15 become employed by government entities 501C3
16 nonprofit entities or educational institutions or
17 entities and who lobby on behalf of such entities in
18 their official capacities.

19 MR. HOFFMAN: So, the exception's too broad
20 there.

21 MS. KOBRINSKI: Sorry?

22 MR. HOFFMAN: Exception at the county level is
23 just for anybody who went to a 501C3 --.

24 MS. KOBRINSKI: Or educational institutions or
25 other government entities.

1 MR. HOFFMAN: But that one doesn't -- we're not
2 -- we're not --.

3 MR. HINCAPIE: Anything else? Any other --

4 MR. HAJ: No, I just -- the Judge.

5 MR. GERSTEIN: No, I don't have a question. I
6 think we're done.

7 MR. HOFFMAN: We have a motion.

8 MR. HAJ: I'd like to thank -- everyone --.
9 Thanks to Leigh and -- been doing this for the last
10 month or so. I really appreciate their work.

11 MR. HINCAPIE: Do we need a motion to --

12 MR. GERSTEIN: Okay. So, moved.

13 MS. GOMEZ: Second.

14 MR. GERSTEIN: Five amended; right?

15 MR. HINCAPIE: All those in favor say aye.

16 (A chorus of ayes.)

17 MR. HINCAPIE: So, I guess with that, we can
18 adjourn.

19 MR. HAJ: Thank you, sir.

20 MR. GERSTEIN: Thank you.

21 (Thereupon, the proceedings concluded at
22 10:39 a.m.)

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1 CERTIFICATE OF TRANSCRIPTION

2
3 The above and foregoing transcript is a true and
4 correct typed copy of the contents of the file, which was
5 digitally recorded in the proceeding identified at the
6 beginning of the transcript, to the best of my ability,
7 knowledge, and belief.

8
9 *Coresha Adams*

10 Coresha Adams, Transcriber

11 August 1, 2023
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