

**CHARTER ADVISORY BOARD MEETING
HELD ON MARCH 15, 2011
AT 5:30 P.M. IN THE CITY COMMISSION CHAMBERS
121 S.W. FLAGLER AVE.
STUART, FLORIDA 34994**

**Chair Joe Capra
Vice Chair Carol Waxler
Board Member Nick Blount
Board Member David Collier (Absent)
Board Member Amber Ducote
Board Member Kevin Henderson
Board Member Craig Mancuso
Board Member Sandra Newman
Board Member Nicala Penna
Board Member Carol Waxler**

**Also in attendance were:
City Manager Dan Hudson
City Attorney Paul J. Nicoletti
City Clerk Cheryl White**

1. Approval of Minutes – February 22, 2011

MOTION: BOARD MEMBER HENDERSON MOTION TO APPROVE MINUTES OF FEBRUARY 22, 2011.
SECOND: BOARD MEMBER NEWMAN
MOTION APPROVED UNANIMOUSLY

2. Review of Agreed Revision Sections 1.01 through 7.11 City Charter

City Attorney gave a brief overview of the proposed changes. He noted section 7.04, and the blue language, is language the Board has not seen before. The old Charter provision has this form of ballot, that was Statutory Ballot language, but I have added the newer later language. It does a couple of things; 1 the B section, just updates the statutory language, and that includes things like the 75 word limit. C Paragraph states that in addition to every amendment proposed by initiative shall include a summary of financial impact statement. He stated that an initiative is a proposal that is brought forth by the electorate, not by the City Commission. If the electorate has a petition signed, and causes something to come on the ballot, that's what you want to know the financial impact of. The State does it by a committee, and is reviewed. There are also appeal rights. I didn't write that, I made it fairly simple.

Board Member Henderson asked if the City had to follow the statutes on initiatives.

City Attorney Nicoletti stated the City could choose something else, except that the body of law is now built up around the statutes. The Courts, if ever asked to interpret this, understand to know exactly what they're looking at.

Vice Chair Waxler stated it is like a case of first impression.

Board Member Henderson noted that the past referendum adopted. He asked if we required a financial statement as to what impact that meant, how would we do it?

City Attorney stated that in that particular instance you would have to look at each of the particulars, and figure out what the basics of what the rental value would be, and make some determinations to whether or not if it was leasable, saleable, purely a slice in time kind of financial statement.

Board Member Henderson "My thought is there are so many bits and pieces of the City plus big pieces of the City. For example, many times, over and over again, over the year's we had these design charettes on how to convert the whole waterfront downtown. If you're adding on to it for commercial activity, or whatever, and it's usually projected by the Citizenry as trying to put 10 pounds in a 5 pound bag, and it just doesn't fit. It's not that I don't agree that the financial impacts should be considered but, the simplest approach to that often would be, the City owns the property and isn't getting any revenue now; it's not going to make any difference for any future revenue. I am just raising that because I can see those kinds of things becoming huge obstacles, because that in general it's a good idea by the citizenry but..."

City Attorney Nicoletti stated that he interprets the statutes and its intent that it must be fair for the residents and citizens who are going to vote on it, and the cost of their decision. This also would be a case by case decision.

Vice Chair Waxler suggested adding the language; "Or as practical, or as reasonably calculated. I can see allot of staff time expended on some of these. Who knows what the future holds, we may get five or six of these coming up and then our Financial Services Department is spending all this time, so maybe we should put some qualifying language. If it is something that we can't reasonably or without great expense do so, there should be some limiting language to at least not be a financial drag."

Vice Chair Waxler noted that Chairman Capra was present.

Board Member Henderson expressed concern over the Financial Services Department preparing the financial analysis because they ultimately work for the Commission.

Vice Chair Waxler stated that that could be challenged.

City Manager Hudson said that people tend to like financial impact statements but true fully if you look at the real world examples. People like to see it, and have a frame of reference.

Vice Chair Waxler said and the proponents can come up with their own financial statements as well, in the campaign for the referendum or whatever, so it's not like you're locked in.

City Attorney Nicoletti stated that was true and you also see that sometimes in the campaign materials, where you see the official financial impact statements. He stated he would look at that some more to see if he can do something with the language.

Board Member Blount suggested having the total cost and let them draw their own conclusions on how it might impact them.

City Attorney Nicoletti stated that Kevin Henderson had raised points based upon existing language, that it could be very difficult to come up with a; "Clear and unambiguous statement of the financial impact" citing the last initiative we had, having to do with City Waterfront Property. That would be really tough to try and figure that one out!

Chairman Capra asked that if the City was challenged on the financial backup for a new Ordinance that is proposed for the ballot, you're thinking that in the court of law, someone is going to say that's not ambiguous and show how it isn't! Then we would lose the referendum.

City Attorney Nicoletti stated that whatever the Financial Services Director prepares has got to be as tight as she can make it. What Carol Waxler suggested was throwing some weasel language that say's; it has to be reasonable, and practicable, so that you don't have to spend millions of dollars to come up with a 75 word clear and unambiguous, thing. He said he would go back and try to write it right.

Chairman Capra: "I like that one, best effort."

City Attorney Nicoletti stated he would look to see what language he could add to it.

City Attorney Nicoletti noted that 7.05, concepts and dates were not changed but he did change the language so that it reads more clearly. He stated that it cleans it up and reads better.

Board Member Henderson asked if it automatically assumed that the City Clerk does all these calculations and announcements of the candidates, for the initiative proponents.

City Attorney Nicoletti stated that it all depends on if the elections are conducted in house, and if so it would be done by the City Clerk. If it is conducted by the

Supervisor of Elections then it would be done by her office. We do that every year anyway. I don't think we need to write that in the Charter because it is assumed, and we can add that to the code.

Board Member Blount asked what has changed to prevent us from running that election run-off well up into January like we did this year.

City Attorney Nicoletti stated that it is in Election Procedures. It talks about the regular election, and the new language explains that the Election would be held on the States Primary, and then the runoff would be held on the States General Election. It also explains that when there is no State Primary, it would still be held on the same date as when the States General Election would have occurred. This would shift out of a January Run-Off. He stated that by 2015 everyone would be in sync at that time.

City Attorney Nicoletti 7.06; Canvassing Board. He said that if the Supervisor of Elections conducts the City Elections then the Canvassing Board would be the Supervisor, County Judge and a City Commissioner not running for Election would serve as the Board.

Chairman Capra asked about the clarified language about the sitting Commissioners shall remain in office until qualified successor is determined. He asked if a Commissioner has to leave we can't force them to stay and serve because if they have to move away or something like that what would happen?

City Attorney Nicoletti stated that seat would be vacant.

Board Member Henderson asked if the vacant seat could still be filled by appointment.

City Attorney Nicoletti stated yes, that option will remain in the Charter in section 7.10.

City Attorney Nicoletti 7.07, 7.09; no changes. He noted a small change in 7.10, added language "Regular City Commission Meetings."

Board Member Blount asked to backup to 7.05 regarding the qualified successor determined. Stated that he assumed the successor was "determined" before they were sworn in to office at the Commission Meeting when they were sworn in.

City Attorney Nicoletti referred Board Member Blount to the section 7.05 (d) Election Procedures, and stated it includes added language; "And have taken the oath of office in accordance with law. He said he would strike the sentence he added beginning with "The sitting Commissioner shall remain in office until a qualified elector is determined".

Chair Capra asked about the cost associated with a Petition to the City.

City Attorney Nicoletti explained that the cost is minimal and the burden of the cost has to be paid by the person submitting the petition. He asked the Board their opinion on whether or not to allow 10 electors being able to do this or should it be more.

Vice Chair Waxler stated she was reluctant to change the 10 at this point in time, without having justification otherwise.

City Attorney Nicoletti stated he did not have any strong feelings one way or another.

Chairman Capra stated it all depends on how much our population has changed in the last 10 years.

Board Member Henderson expressed concern over the appeal process and whether or not it was needed in the Charter.

Board Member Blount stated that allows them to challenge the validity of the petition.

City Attorney Nicoletti stated it is in the Charter to allow for due process.

Vice Chair Waxler stated she would not want to take away due process rights, without having justification to do so.

3. Review of Proposed Revisions Section 8.01 through 11.05 City Charter

Chairman Capra asked for clarification of a "Qualified Elector."

City Attorney Nicoletti stated he would research the clear definition of a "Qualified Elector."

Vice Chair Waxler asked about Section 8.05 (b), and whether or not we could make it so the City does not have to pay the additional expense of a Special Election, if no election is scheduled by the City.

City Attorney Nicoletti said he would think that they should be aware of the City's election cycle and figure out.

Chairman Capra Article IX Vacation of Streets,

Board Member Henderson expressed concern over changing the closing of any street by Resolution.

Chairman Capra noted the discussion regarding the opening of 10th Street all the way through. He said he did not want the traffic coming through there. He said he personally would like to make that as hard as possible to open and close roadways.

However he understands that when there is a traffic problem there may be a need to open it up. He felt that having it as simple as a Resolution to open or close a street was not a good idea.

Vice Chair Waxler stated that it is ultimately up to the sitting Commission and they should not be micromanaged. "They may be wrong, or they may be right but at least they should be able to govern the Code.

City Attorney Nicoletti requested from the Board as to whether or not it should be done by Resolution or Ordinance. He explained the difference is a Resolution is read once and adopted, and an Ordinance has two public hearings.

Board Member Henderson felt that opening and closing a street should be done by Ordinance and not Resolution to allow for the public comment.

Vice Chair Waxler said she did not have a problem with that.

City Attorney Nicoletti advised the Board that it would require two hearings to also straightening, diverting, narrowing, widening, Ok. "So any road project is basically going to have two hearings."

Vice Chair Waxler suggested exempting out opening or closing and leave the other standard road work for adoption by Resolution.

City Attorney Nicoletti felt the entire section of language be stricken from the Charter, and asked if it was really something that could be dealt with in the Code itself. Either way, by Resolution or Ordinance.

Board Member Henderson said that the referendum passed in 2006 was a clear understanding on the voter's position, and is why it is in the Charter.

City Attorney Nicoletti suggested leaving it by Ordinance, and then strike straightening, diverting, narrowing and widening. "So it would be opening, closing and vacating has to be done by Ordinance."

The Board agreed with Attorney Nicoletti.

Chairman Capra: Sec 9.04 closing will be added back in from being stricken.

Chairman Capra: Sec 9.05.

Vice Chair Waxler suggested leaving that section alone.

City Attorney Nicoletti stated this would affect property like the Dockside Restaurant. He explained that unless it is a government project, no waterfront city owned property can be leased or conveyed for more than 10 years.

Vice Chair Waxler explained that if it is not a Government project like Indian Riverside Park than it's probably going to have to come to a referendum.

Chairman Capra asked if you could have a management agreement or something similar.

City Attorney Nicoletti stated the Lyric agreement is different than proposing a hotel or convention center on the City Hall Property because they are offering a public service for the City at the Flagler Center. He recommended eliminating sec 10.04, because it is the law in Florida. That would be my recommendation.

The Board agreed to remove 10.04 from the Charter.

1. Schedule next meeting Date/Time

The Board agreed to hold the next meeting on April 19, 2011.

2. Comments from the Public

None.

ADJOURNMENT 6:39 p.m.