

September 28, 2017

City of Palm Coast Council
City Clerk
Charter Review
160 Lake Avenue
Palm Coast, FL 32164

Via E-Mail: vsmith@palmcoastgov.com
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RE: City Charter Review

Members of City Council and City Clerk:

Last night, I was in attendance for the first of four planned meetings addressing the charter review for the City of Palm Coast. Council and staff members in attendance were encouraged by Ms. Crotty to post public comments regarding ideas as well as the process.

According to Council's section of the City's website, "citizen participation" is encouraged throughout the current process. The procedures, as outlined, include: sending ideas/thoughts to the city at a designated email address, attending the planned workshops, attending Council workshops, and then voting on proposed amendments, "if any are proposed during the 2018 election cycle". Continuing with this process, we learn it is the "City Council that will consider whether any changes to the charter should be proposed to the voters". A facilitator, Marilyn Crotty, has been hired by City Council to conduct the planned workshops and provide Council with a summary on Nov. 28, 2017. Thereafter, Council will hold meetings from December through February to finalize formal action, if any.

I prepared well-researched remarks for last night's meeting. Public comments were limited to (2) 3 minute opportunities; hardly ample time to discuss our charter, "comparable to the Constitution of the United States or a state's constitution". In fact, during last night's meeting, Ms. Crotty provided our state has currently empaneled "a body" to review our state constitution. Likewise, we learned the cities of Tallahassee and Cocoa Beach, through citizens appointed to charter review committees, changed their charter to address campaign finance and have limited contributions for municipal candidates. Our own city attorney, a charter officer, participated in a charter review committee for the City of Winter Springs; and, yet, he, along with our other charter officer, seek to deny the citizens of Palm Coast that same opportunity and are determined to have City Council control the entire process. Before addressing the obvious question, allow me to present the remarks prepared for last night's meeting:

According to the City's website, the current process is advertised and promoted as a Charter Review. Details are listed on the City Council section, with its own tab labeled, "Charter Review". Words matter.

What is a City Charter? As provided by the City, “A municipal charter... is comparable to the Constitution of the United States or a state’s constitution. The charter is, therefore, the most important legal document of any city”.

According to a 5/31/17 FlaglerLive article, “It’s a brief, 22-page document that sets out how the city is to govern itself, leaving the details to ordinances”.

The City Council’s page provides, “The Palm Coast City charter was approved by the Florida Legislature”. In fact, in order to become a City, a charter had to be drawn and subsequently approved by the Florida Legislature.

The Charter Review process on the website and adopted by City Council is extremely different than that explained by six simple sentences of Section 10, sub section 2 of our own Charter. This is the first issue that must be addressed.

According to Marilyn Crotty, the intermediary, hired by the Council, a city charter “should be compact, simple, clear, readable, and understandable to the lay citizen”. I agree. My background is that of an insurance underwriter and I know from experience insurance policies are to be written such that sixth graders are able to read and comprehend. So, this lay citizen read Section 10 – General Provisions of our Charter.

There are 5 separate sections: Charter Amendment, Charter Review, Initiative and Referendum, Adjustments of Districts, and Standards of Conduct.

Subsection 2 – Charter Review has 2 parenthetical sections, Schedule and Charter Review Committee. Six sentences outline the process for a Charter Review.

The Charter **shall be reviewed** no sooner than 10 years after the creation of the City..., and thereafter it may be reviewed every ten years. (As FlaglerLive reported in 5/17, the charter has been amended but **a full review has never been completed**. Many interpret the mandatory “shall be reviewed” as a review should have been done in 2009; but, the language is clear; it says no sooner than 10 years. Eighteen years is not any sooner than 10 years. I would argue the first compulsory review should follow our Charter.

The next 5 sentences outline how a 5 member Charter Review committee “**shall be appointed**” by city council members and the mayor, an appointee from each district and an appointee at large. The Council **shall fund the committee**. The committee **shall be appointed** one year before the next scheduled general election, finish its work, and make presentations no later than 60 days before the general election. City Council **shall hold** at least 2 public hearings on the proposed changes before placing the proposed changes on the general election ballot.

Seems clear to me; but, Ms. Crotty said, “One of the reasons that it’s a good time for you to look at your charter is because your charter is not clear on how you go about that process”. (FlaglerLive 8/9/17).

So, I questioned this. I was told Florida Statutes, [Chapter 166, section 031](#) governs this process and gives the Council the authority to change the charter review process. I humbly disagree. I read F.S. 166.031. Its title is **Charter Amendments**, not Charter Review. Section 10, subsection 1, rightfully references Chapter 166 as the Municipal Home Rule Powers Act is important for cities; however, as F.S. 166.031(3) notes, “A municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. **This section shall be supplemental to the provisions of all other laws relating to the amendment of municipal charters and is not intended to diminish any substantive or procedural power vested in any municipality by present law**”. Yes, City Council can amend, by ordinance, or elector(s) may by petition, offer proposed amendments, such as was done with the change in our election process, moving to even-numbered years; but, this is not a Charter Review. Section 10 (2)(a)(b) **is contrary**. It spells out, in layman’s terms, how the Charter Review is to proceed.

I went further. Attorney General Opinion, AGO 2003-36, was written to address question by a Charter Review Committee for the City of Hallendale Beach. The committee asked if the city charter could be amended so that the city council could amend without referendums, except in certain circumstances defined by [F.S. 166.021\(4\)](#). The answer was “No”. Yet, another statute provides clarity as far as Charter Amendments are concerned; but, neither reference Charter Review.

Ms. Crotty, as reported by FlaglerLive (8/9/17), first met Attorney Reischmann, a charter officer according to Section 6 of our Charter, while he was a member of a citizen panel working on the charter for the City of Winter Springs. According to the article, Reischmann has parroted Landon’s position, another charter officer, that the council, not an independent body [not the people], maintain control of the review and the process. Winter Springs does not and did not conduct its charter review in the manner before us. Why are we?

Money. Maintain the status quo. Control.

Offering an amendment through the Charter Amendment process is essentially the council identifying a change and putting the proposed change on the ballot. By the time it gets to the ballot, little education has occurred and it becomes like those judges who appear on the ballot – retain yes or no?

The referendum initiative method requires citizens to mobilize, gather petition signatures, have it presented to council and contingent upon council’s action, place it on the ballot. At least 10% of registered voters, ranging from 7,000 to 8,000, required signatures. We already see difficulties in mobilizing voters to vote. The referendum process requires work that sadly many choose to not to do.

The Charter Review, spelled out in our charter, is a **citizen panel**, much like the one Mr. Reischmann joined in Winter Springs. I would argue it is a “substantive or procedural power vested” in the City of Palm Coast, specifically its citizens. By adopting the current process, the people are circumvented and neutralized. City Council offers reasons as to why the current process was chosen and the prescribed process was cast aside:

- There is not a ground swell or clamoring for the review
- The elected body is exposed to more information than the everyday resident.
- The county's experience proved to be a "huge learning experience" for that committee and after 6 months they couldn't move forward.
- Tremendous amounts of resources were required to educate the lay people
- Essentially, it's complicated.

Please note Section 10(2)(a)(b) does not require any of the above for the first mandatory Charter Review to occur.

The county process was NOT a charter view. That committee was tasked with determining if a Charter form of government would work in Flagler. They concluded it would not.

The City Council and the Charter Officers looked at the Charter, specifically Section 10(2)(a)(b) and decided to change it. And they have done this without placing this proposed change on the ballot for a vote by its electors. Why? Because the outcome sought has already been written, "There's not that much in it that needs to be changed, tweaked, adjusted, or added", stated Marilyn Crotty in an August 10, 2017 Daytona Beach News Journal article penned by Matt Bruce. A conclusion has been reached before the first meeting.

This current process satisfies being able to check the box and say, we did it. We had the Charter Review. We can look our constituents in the eye and say we tried, there wasn't any excitement, and the changes offered simple aren't feasible. But that's wrong.

John Brady's letter of June 5, 2017 captures the essence of the current process, "the idea of citizens having the accumulated knowledge of the workings of municipal government" is basically absurd. But he goes on to make a point with which I concur, a lack of understanding of the "way things have always been done", or the good ole' boys' system, is an asset, not a detriment as it invites citizens to apply critical thinking skills and ask why, why not, and what if. Mr. Brady offers several suggestions. I have recommendations, too; yet, I fear the current process opens the door to litigation. Still, sadly in the end, our ideas will not get past the automatic 3 No votes currently on council.

We are being told to sit down. Be quiet. Council knows best. This is an Eminence Front. It's the fox guarding the hen house. Sadly, taxpayers are paying for this and "We the People" have been subjugated to hens.

I urge City Council to request an opinion from the Attorney General to reconcile the current charter review process with that outlined in our Charter and approved by the Florida Legislature.

Sincerely,

Kimble Medley
Palm Coast Elector, District 2