

CITY OF NEW SMYRNA BEACH
CHARTER REVIEW ADVISORY
COMMITTEE
FINAL REPORT AND
RECOMMENDATIONS

MAY 14, 2020

**CITY OF NEW SMYRNA BEACH
CHARTER REVIEW ADVISORY COMMITTEE
FINAL REPORT**

INTRODUCTION

The New Smyrna Beach City Commission appointed a Charter Review Advisory Committee (CRC) to review the city's charter and make recommendations for changes deemed advisable. The members of the Charter Review Advisory Committee are:

Mr. Kenneth Bohannon (resigned in March 2020), Ms. Marie Bushey, Ms. Terry Dallas, Mr. Marty Danaher, Ms. Christine Elnitsky, Ms. Sally Gillespie, Mr. Kirk, Jones, Ms. Lisa Martin, Mr. Eric Preston, Ms. Marvel Richards, and Ms. Patricia Tudeen.

The city contracted with The Florida Institute of Government at the University of Central Florida for Ms. Marilyn Crotty to facilitate the process. City Clerk Kelly McQuillen served as secretary to the committee and recorded the minutes. City Attorney Carrie Avallone provided legal assistance throughout the process. The CRC held nine meetings between November 7, 2019 and May 14, 2020. All meetings were publicly noticed with opportunities for comments from the public at each.

PROCESS

The Charter Review Advisory Committee adopted the following guidelines which were followed throughout the process:

- Start and end meetings on time.
- Meetings will begin at 5:30 and end at 7:30. Ending time may be extended up to 15 minutes upon agreement of the Committee.
- There will be no chair or vice chair and the meetings will be facilitated by Marilyn Crotty.
- Consensus decision making will be used throughout the process seeking broad consensus for any recommended changes. There can be minority reports presented from any member of the committee along with the final report.
- Up to 10 minutes of public comment will be taken at the beginning and at the end of each meeting with each speaker limited to 3 minutes.
- Issues that have been discussed may be brought back for reconsideration at any time.

The members of the CRC were provided copies of the “Model Charter, Eighth Edition” published by the National Civic League to use as a reference. Ms. Crotty provided additional background information on specific issues that were addressed.

The attached revised charter and report was approved by a unanimous vote of the ten CRC members present at its meeting on May 14, 2020.

RECOMMENDATIONS

The recommended revised charter is a refinement of the document that has been amended at various times. Many of the changes that are recommended are for the purpose of clarifying or further defining the intent of the language; removing obsolete language; changing current sections; and adding items not included in the existing charter. There have been no changes made to the form of government, the makeup of the City Commission, or the terms of office. The following is a brief description of the changes the committee agreed upon, setting forth the rationale for the changes.

General Provisions – The charter has been reorganized, renumbered, and reformatted for consistency and ease of understanding. Language throughout the Charter has been revised to be gender neutral.

Preamble

A preamble was added to the charter as an introduction, setting forth the rationale for the document and aspirational goals for the city.

Sec. 1.01. – Powers of the City.

New language provides the city with all the powers it can have under federal and state law without enumerating specific powers.

Sec. 1.02. – Construction of Charter

Adds new section with language that clarifies the powers of the city will be interpreted in favor of the city and that the general power of the city is not limited.

Sec. 1.03. Intergovernmental Relations.

Adds new section authorizing the city to engage with other governmental entities.

Sec. 2.03. Powers and Duties of Commission.

States that the City Commission has all powers except for those prohibited by the state constitution, the Volusia County Charter, or this charter. It further requires the City Commission to conduct annual performance reviews on the charter officers (Manager, Attorney, Clerk). Finally, this section requires an annual strategic planning process that includes implementation strategies to be conducted by the City Commission.

Sec. 2.04. Qualifications of Members.

Changes the residency requirement for Zone Commissioners to have lived in the zone for 1 year prior to qualifying instead of the current 6 months requirement.

Sec. 2.05. Prohibitions.

Includes, in one place, the following prohibitions on the City Commission and its members: may not hold other office; may not hold compensated appointment or employment with the city until one year after expiration of term of office; may not attempt to control the appointment or removal of staff under the authority of the City Manager; may not interfere in the day-to-day administration controlled by the City Manager, the City Attorney, or the City Clerk.

Sec. 2.06. Judge of Qualifications, Election, and Forfeiture.

Adds election and forfeiture to the current responsibility of the City Commission to judge the qualifications of its members. In addition, lays out a detailed procedure to be followed if forfeiture of one of its members is under consideration.

Sec. 2.07. Forfeiture of Office.

Expands the grounds for forfeiture to include violation of the charter and conviction of a crime involving moral turpitude. Decreases number of unexcused absences allowed from Commission meetings from 4 to of 3. Includes current requirement to maintain residency.

Sec. 2.08. Vacancies; Filling Vacancies in Commission.

Clarifies when a vacancy occurs. Changes requirement for filling vacancies to the following: if less than 120 days remaining in term, seat is left vacant; if more than 120 days remain in terms, City Commission appoints a successor within 30 days of vacancy; if Commission fails to do so, a special election is held to fill the vacancy.

Sec. 2.09. Investigations.

Authorizes the City Commission to request investigations into the affairs of the city and the conduct of any departments.

Sec. 2.11. Compensation.

Requires determination of annual compensation of elected officials by ordinance. This is the current practice, but not included in charter.

Sec. 2.12. Voting.

Requires affirmative vote of 3 members of the City Commission to adopt any ordinance, resolution, or motion. This is the current practice, but not included in charter.

Sec. 2.13. Functions and Powers of Mayor.

Adds requirement for the Mayor to present an annual state of the city address at a public meeting.

Sec. 3.01. Appointment and Removal.

Clarifies that there are three charter officers in the city: City Manager, City Attorney, and City Clerk and specifies their appointment and removal by a majority vote of the entire City Commission as is the current practice.

Sec. 3.02. City Manager.

- (a) Requires appointment made on the basis of education and experience; requires the City Manager to live within the city unless otherwise approved by the City Commission.
- (d) Acting City Manager - Requires the City Commission to designate a city officer who will serve as acting City Manager during the Manager's temporary absence or disability.
- (e) Power and Duties – Deletes requirement for City Manager to attend all committee meetings; adds requirements to submit the annual capital program to the City Commission and implement the approved budget; adds requirement to submit an annual report on finances and activities at the end of each fiscal year, and make other reports as requested; adds requirement to assist the City Commission in developing long term goals and strategies for implementation; adds the requirement to promote partnerships; deletes the requirement for the Manager to be the purchasing agent; and, deletes the requirement to negotiate settlement agreements of litigation.

Sec. 3.03. City Attorney.

- (a) Duties – Clarifies duties
- (b) Qualifications – Adds requirement that Attorney be a member in good standing of the Florida Bar and have experience in local government law.

Sec. 3.04. City Clerk.

Adds the City Clerk to the charter with a description of the Clerk's duties.

Article IV. FINANCIAL MANAGEMENT

Adds an article to the charter that deals with fiscal matters.

Sec. 4.01. Fiscal Year.

Identifies the fiscal year required by state law.

Sec. 4.02. Submission of Budget and Budget Message.

Sets a date no later than August 1st for the City Manager to submit the budget and budget message to the City Commission.

Sec. 4.03. Budget Message.

Describes what should be included in the budget message.

Sec. 4.04. Budget.

Describes what should be included in the budget.

Sec. 4.05. Administration and Fiduciary Oversight of the Budget.

Requires the City Commission to pass an ordinance providing for administration and oversight of the budget.

Sec. 4.06. Independent Audit.

Requires an annual audit, setting forth standards, and requiring competitive bidding for the selection of the auditor who shall serve no longer than five years; prohibits auditor from providing city any other services.

ARTICLE V. SUSTAINABILITY.

Adds an article that deals with environmental stewardship, zoning goals, historic preservation, and sale of city land and structures.

Sec. 5.01. Environmental Stewardship.

Requires ordinances related to tree protection; water run-off; use of impervious materials; prohibition of new septic tanks; incentives for removal of septic tanks; and design standards for building in flood prone areas.

Sec. 5.02. Zoning Goals.

Requires ordinances related to preservation of the scale and character of neighborhoods; maintenance of tree canopy, green areas, and historic footprint; and standards for ensuring sustainability of buildings.

Sec. 5.03. Historic Preservation.

Requires ordinances that update the definition of historic; expand and make contiguous Coronado and Mainland Districts; expand historic overlay districts; provide methodology for accessing property tax exemptions; and empower code enforcement to assist with grant programs.

Sec. 5.04. Sale, Lease, Trade, or Gifting of Public Lands and Structures.

Prohibits the sale, lease, trade, or gifting of public lands or structures without approval by a majority vote of the electors of the city.

Sec. 6.01. Nonpartisan Elections.

Adds a section declaring city elections are nonpartisan as is the current practice.

Sec. 6.02. Conduct of Elections.

Requires the city to follow State of Florida election laws which include process for qualifying, ballots, voter registration, certification of elections, etc. Thus, it is not necessary for the city to create its own rules or include them in the charter.

Sec. 6.04. Canvassing Board.

Changes the existing Board of Elections to the Canvassing Board which only includes members of the City Commission whose names do not appear on the ballot. The role of the canvassing board is to canvass ballots and election results. The Volusia County Canvassing Board may be used when elections coincide with county elections.

Sec. 6.05. Nomination and Election; Tie Vote; When Primary Election Unnecessary.

Changes the current election process to now require the two candidates for Mayor or City Commissioner who receive the highest number of votes in a primary to appear on the general election ballot, deleting the provision that if one candidate secures more votes than the combined votes of the other candidates in the race, they are elected and do not appear on the general election ballot. This section also changes the procedure for handling tie votes that will now be determined by the drawing of lots rather than holding a special election.

Sec. 6.06. When Term of Office Commences.

Changes from seventh day after election to the first Tuesday after certification of the election to avoid any problem with contested elections.

Sec. 6.07. Commission Zones; Adjustment of Zones.

Adds criteria for drawing of zones and procedures for adoption.

ARTICLE VII CITIZEN PARTICIPATION

Creates new article that includes advisory boards, charter amendments, charter review, recall, initiative and citizen referendum.

Sec. 6.02. Charter Amendments.

Allows for amending the charter according to state law.

Sec. 6.03. Charter Review.

Requires a review of the charter by an advisory committee every five years commencing in 2026.

Sec. 6.04. Recall.

Identifies how elected officials may be recalled according to state law.

Sec. 6.05. Initiative and Citizen Referendum.

Provides for a process for adoption of ordinances by a vote of the electorate and for the reconsideration of adopted ordinances by a vote of the electorate.

ARTICLE IX MISCELLANEOUS

Several sections of this article (chapter) have been deleted because they are addressed in other sections of the charter or they are covered by provisions giving all powers to the city and Commission (Service of Utilities, Authority to Contract, Golf Course, Eminent Domain).

Sec. 9.01. Severability

Title changed from Saving Clause and reworded for clarity.

IMPLEMENTATION STRATEGIES

This report and the revised Charter are submitted to the City Commission for its review. The Commission may accept all, some, or none of the recommendations in the report.

If the City Commission wishes to place any of the recommendations on the ballot at the General Election on November 3, 2020, it will need to adopt an ordinance that will include the ballot language. The usual process of two public hearings on the ordinance with an opportunity for public comment will be held and final approval from a majority of the Commission will be required to place any items on the ballot.

Since there are thirty plus changes to the existing charter included in this report, the Charter Review Advisory Committee recommends that a single question be submitted to the electorate, in November, approval or rejection of the revised charter. No changes to the charter can be adopted without a majority of the voters approving them.

If the Commission places the adoption of any charter amendments on the ballot, the CRC suggests the city act to enable the voters to fully understand the proposed changes. The Charter Review Advisory Committee recommends that the city fund a community education program consisting, at a minimum, of the following: printed informational brochures (possibly mailed with utility bills); public forums; access to copies of the proposed charter changes; information on the city website and social media; and a speakers' bureau to inform voters of the proposed changes.