

**FORT MYERS BEACH  
TOWN COUNCIL WORKSHOP  
JUNE 26, 1997**  
Nations Bank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA

**I CALL TO ORDER**

Mayor Anita T. Cereceda opened the meeting on Thursday, June 26, 1996, at 6:35 P.M.  
Present for the Town Council: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Attorney Richard Roosa.

**II PLEDGE OF ALLEGIANCE**

All assembled recited the Pledge of Allegiance to the flag.

**III DISCUSSION WITH THE CHARTER REVIEW COMMISSION ON RECOMMENDED CHARTER REVISIONS**

Present for the Charter Review Commission: Ilene Barnett, Joe Croker, Andy Priem, and Dave Smith. Dan Parker was excused.

Mr. Roosa said that the Charter Review Commission has completed their review and the next step is to decide what questions are to be put on the ballot next November. The Charter mandates that the voters must be offered the option of electing their council members by districts, but that is the only mandatory question. He has read the minutes of their meetings, and has taken the proposed changes and attempted to draft a question for the ballot and given them a title and number. He suggested that the Council look at the proposed amendment to see if it solves the problem it is trying to address. There will be two public hearing to discuss the changes before the election. The next charter review will be in five years unless the Council asks for it one sooner.

Mr. Priem recommended that they change the language to clarify the role of the council and the public hearings. Does the Council just review the recommendations, or can the council make changes before it is brought to the public? Mr. Roosa said that it is not necessary to change the language of the charter if it is doing what it should be doing. There should only be a question on the ballot if you are offering the public a choice, not if you are just changing the language for clarification. If you are not sure of the meaning of the charter, then get a legal opinion and it will stand unless challenged in court. It was asked if these clarification questions could be lumped under one ballot question like Cape Coral did with scribes errors. Mr. Roosa said that this type of question is not considered a scrivener's error.

Mr. Priem suggested going through Mr. Roosa's questions one by one, because some are not what the commission intended in the change. Also the council may want to ask why the commission didn't make certain changes.

It was clarified that the charter review commission meetings were open meetings, that they were advertised, and that minutes were kept.

Ms. Barnett said that overall it seemed like a good charter and that most of the changes were for clarification. Mr. Murphy said that the charter hasn't been challenged yet, and that should be a sign of a good charter. Mr. Roosa said that in retrospect the council should have hired an independent attorney to work with the charter commission. They could have written the questions as they came up for discussion. Mr. Reynolds said he felt they did an exceptional job and he is glad they did not have an attorney. He thought it was good to have laymen look at it. Dr. Croker said he thought it would have been helpful to have an attorney for guidance because they did not know the points of law. Mr. Roosa suggested perhaps the city attorney from another local city who knows municipal government would be appropriate. He clarified that the council is not deciding about changes to the charter, but are only deciding what will appear on the ballot.

Question 1: Shall the five members of the town council be elected to office from single member districts by electors residing in each of those districts only? Mr. Priem said their recommendation is that elections be at-large. They would like to have it so you must reside in your district, but the whole town votes on you, just like the county commissioners. They recommend that three seats will represent the three

precincts, and that two would be at large with no precinct designation. They think the island is too small to have each district elect their own council member. Ms. Barnett said Mr. Roosa's question does not do what they wanted. She envisioned more detail in the question. Mayor Cereceda said the problem with giving people the option of going to districts is the perception that someone will be representing their district, but in truth candidates are voted on by people in all the districts. We need to let people know that if they vote for districts, that is not really what they are getting. Mr. Priem said that is where the public hearings and the newspapers come in. Mr. Roosa said the boundaries of the districts would be decided by the council, trying to get the population as even as possible. He said you can have five districts – you do not have to stay with the three that are already in place. Mr. Priem said maybe it is best to have the simplest question that just asks "do you want to change to single member districts?" Perhaps we do not have to worry about implementation now. Mr. Smith said they could find no positive reason to change to districts, but they need to be careful that the language of the question is neutral. Mr. Reynolds suggested two questions with directions to vote for only one. Mr. Roosa said he did not think that would meet the obligations of the charter. They do not need to vote on at-large because that is what the charter already provides for. He said a ballot must be a choice. Mayor Cereceda suggested two public hearings and then have a workshop afterward to formulate the wording of the questions after having heard what the public has to say. For the record it was stated that the consensus of the commission was that elections be at large. Dr. Croker suggested that the question should ask "should it be changed from the current at-large elections to some form of district election."

Mr. Priem said the commission was trying to fine tune the charter, so perhaps some of the questions can be dropped if they were only for clarification. It is important to get the ballot down to less than the current 8 pages. People will not vote on them if they are too long. Mr. Gucciardo said perhaps Mr. Roosa can give a legal opinion on the ones that are not clear enough but do not require a charter change. Mr. Smith said they were recommending only the first question be on the ballot, and the rest were only intended for the council to clarify. Ms. Barnett thinks there are about four areas that need looking at.

Question 2: Shall each member of the town council be required to show proof of residency within the town? Mr. Gucciardo said that neither the town nor the county verifies information on candidates unless they are challenged. They have to sign a form stating they are a resident. Mr. Priem said there have been some cases where residency requirements have been thrown out in other cities because the charter did not state why residency was necessary. Philinda Young has said that Cape Coral has put small typos and clerical changes all in one question. But the question is whether this is a clerical error or more substantial. Mr. Roosa said he does not see this as a change from the present charter, and that any additional words must go on the referendum. He will try to find out if clarifications can be put on one question like clerical things. He said the only way to change the charter without going on the ballot was to get it changed through the courts. It was decided to drop question 2 from the ballot but add it to a clarification list.

Question 3: Shall the mayor and vice mayor be elected at the first council meeting in November in non-election years? It was decided that this is a clarification problem only. Mr. Roosa said that the Council will pass a resolution after the election certifying the winner. He said you can accomplish this by policy decision. Mr. Priem said the purpose of changing it to read "next meeting" rather than "next regularly scheduled" was to keep a lame duck council from calling a special meeting after the election and passing something. Also the charter does not say anything about non-election years. It was decided that this could be handled in the administrative code and be accepted by ordinance rather than charter change.

Question 4: Shall the vice-mayor become mayor and the council elect a new vice-mayor during the absence or disability of the mayor? It was decided to drop this question, but it can be put in for clarification in the policy manual.

Question 5: Shall the reimbursement of actual expenses be reasonable and necessary? Mr. Roosa said he thinks the policy manual can handle this.

Question 6: Shall the forfeiture of office not apply after missing three consecutive regularly scheduled council meetings if excused by majority vote of the council? The way the charter reads now, the council is required to having a hearing. Does the council want to avoid that if a majority of the council excuses someone? What if someone is sick and in the hospital for 6 weeks and misses three meetings, but is now doing fine. Must you have a hearing or can the council excuse them? Mr. FitzSimons questioned if this means a public hearing.

Question 7: Shall the required hearing of forfeited office be held at a special meeting after one weeks notice rather than automatically at the next regular meeting? It was decided that this question can be

included with #6, that it can be put in the administrative code, and that a special meeting will be called within 30 days.

Question 8: Shall the council meetings be permitted to commence at any time in the case of a public emergency? Mr. Roosa said that after you proclaim an emergency, normal rules would not apply. You don't have to advertise meetings. You post notices and call as many people as you can. This question was dropped.

Question 9: Shall the vote of three members be required rather than a majority of the council? It was decided that this was a clarification only.

Question 10: Shall the term of members of the council be changed from January 1 to the first council meeting following the election? This is to eliminate lame ducks for two months. It will become Question #2 on the ballot.

Question 11: Shall the council seats not be numbered so that the candidate with the highest number of votes is elected? This would mean that if there were two places up for reelection, the top two vote-getters are elected. It would eliminate the political process of deciding which seat you want to run for against which candidate. This would also eliminate any runoffs. There would only be one ballot instead of multiple ballots, so it would save money. It would mean a candidate would not have to budget money for runoff. But it would mean that the incumbents will have to run against each other. It was noted that Sanibel holds their elections this way. It was pointed out that this could be an inconsistent question if the electorate decides they want to go to districts. This will become Question #3 on the ballot.

Question 12: Shall the town manager be employed by contract rather than appointed for an indefinite term? The commission said that they only intended to take out "indefinite term" but did not intend to specify that it would be a definite term. They mainly wanted to make sure it was a written contract with benefits and terms of termination spelled out. Mr. Roosa said you are correcting a problem that does not exist because the town manager does have a contract. The term "indefinite" works well and doesn't restrict the council. Their fear is that the council may not be able to attract the person they want if they can't make a definite contract term. But if a town manager has a definite contract, the town would probably have to buy out the contract in the case of termination. Mr. Isler said he thought this was going against the idea of lite government. It makes the public mad when you hire someone at a big salary and it doesn't work out and you have to pay them even though they are no longer working for you. He did not think it should be on the ballot. It was decided that this will be question #4 on the ballot, but it can be decided after the public hearings whether to leave it in or not.

Question 13: Shall the town manager be required to create and maintain a succession plan to perform the duties? It was decided that this can be done by administrative code.

Question 14: Shall an ordinance be recommended at a meeting by a member to the council for drafting rather than introduced? and Question 16: Shall a resolution be recommended at a meeting by a member to the council for drafting rather than introduced? Dr. Croker explained that they thought it was a waste of money that everything had to go to the attorney for legal writing before bringing before the council. They recommend bringing the idea before the council first to see if there is interest in going forward with the idea then sending it to the attorney to be brought back for a vote in the proper form. Mayor Cereceda said that the charter does not say that you can't discuss it beforehand. Mr. Roosa said that Cape Coral has a policy that they must be brought in a draft form, and that does not take nearly as much time to prepare as the final form. He thinks the system works fine as is. As for resolutions, concern was expressed that it would take at least a month to get a resolution passed, and sometimes you don't have that much time. Resolutions must be in writing and must be on the agenda, but that is all. Mr. Reynolds said he has a problem with the council approving a concept of a resolution and then it being written and sent out. He thinks it should have to come back to the council in its final form. It was decided to drop these two questions.

Question 15: Shall an emergency ordinance stand repealed no later than the 61<sup>st</sup> day following the date on which it was adopted? It was decided to drop this question.

Question 17: Shall the town manager be required to submit the budget at a regularly scheduled meeting on or before the 15<sup>th</sup> day of July? The commission wanted this change so that it will be on an agenda. Since it is currently being done this way, it was decided this can be done by policy decision.

Question 18: Shall the council be required to hold two public hearings on the budget with the first hearing no sooner than one week after posting the budget? This commission said this was intended to require that enough copies be available for everyone one week before the public hearings. It was decided that this can be decided by policy decision.

Question 19: Shall the requirement of a referendum prior to issuance of revenue bonds or prior to entering a lease purchase contract be replaced by two public hearings? This was intended to remove some of the restriction on bonds. It was decided that this will become question #5. The Town currently cannot borrow for more than three years. This will allow for the purchase of real property or large capital improvements through revenue bonds and lease purchase contracts. Revenue bonds can get paid off by proceeds from an activity, or they can be entered into in order to save another expense. For instance, this would allow leasing a car or truck for 5 years and therefore save the Town buying one. It would open the door for some borrowing but not all borrowing. This would apply only to revenues, not to debentures. If you have source of revenue that is predictable and bondable, like garbage franchise fees, you can pledge them. Ad valorem cannot be pledged. Our charter now is “pay as you go”. This would give the town more flexibility. Mrs. Segal-George gave the example of putting sidewalks on the beach side. Under the current charter, you would have to do only as much as you can afford and then stop, instead of doing the job and paying for it on time which would be cheaper. The commission expressed concern that the question as written does not address the question they wanted. Mr. Roosa will rewrite it.

Question 20: Shall the reduction or transfer of debt service be prohibited during the year? Mrs. Segal-George said the Town may want to refinance if the interest rate changes enough, or the market may change and something advantageous may be allowed now that wasn't allowed at the time of the debt. Mr. Roosa asked what this was trying to correct. He also pointed out that this will not be valid if question 19 does not pass. It was decided to handle this through policy.

Question 21: Shall the council be required to place an ordinance subject to initiative on the ballot in a special election. Ms. Barnett said that section 12.01 was changed from 25% to 10% which was the reason for the question and they wanted that in the question itself. They thought that 10% was a strong enough sentiment and reasonably difficult to achieve. This would change the number of signatures required from 1100 to 450. It was pointed out that the Civic Association and the Chamber both have more than 450 members. This will become question #6 and Mr. Roosa will rewrite the question.

Question 22: Shall the legal requirement for the percentage of electors for an initiative petition amending the charter be defined as 10%? It was pointed out that this is now state law, so it does not need to be on the ballot.

Mr. Gucciardo wanted to discuss section 5.03 regarding term limits. He feels that rather than being limited to 6 years, council member should be able to serve for life. The commission said that changing this question was not brought up at their meetings.

Mayor Cereceda asked about compensation for council members. Mr. Priem said the commission felt that the compensation cannot be made significant enough to do any good. They also felt like it might attract people for the wrong reasons, and that in this town there are enough people who can afford to serve without compensation. Also many people still want bare bones government. But they also felt that it should be brought up at the next charter review in five years. If the town council wants compensation, they can bring it up themselves. Mayor Cereceda felt that people will perceive it differently if the charter commission brings it up. Mr. Priem said you depoliticize it by voting for compensation in the next term, not the current term. Mayor Cereceda said being in government should not be prohibitive and it is prohibitive for people in her age group and economic class. Even if compensation was \$5000 per year it might allow a parent to run so they could afford babysitting. Sanibel's council members are not compensated, but Cape Coral and Fort Myers are. Ms. Barnett said 23 people ran knowing there was no compensation, but they probably did not have any idea about the tremendous amount of time and effort it takes. The council should make it clear before the next election how much time is involved.

#### **IV COUNCIL MEMBERS' REPORTS**

##### **A RUSTY ISLER**

Mr. Isler asked Mrs. Segal-George about the information about Bay Oaks. He asked if part of the negotiation was whether the swimming pool could be incorporated in the decision. She said the 50/50 split was only for this year, and that some commissioners are already upset about Stilwell offering 50%. They want the town to take it over completely this year. Mr. Isler stated his opinion that the town should avoid user fees because use of the facility will drop. Ms. Segal-George said the county had been clear that the town could not charge more for off-island than on-island use of the pool. She has asked them why they are now saying that the town can charge more for off-island at Bay Oaks. She understands that

50% of the use is now off-island. We can enter an agreement that the county employees stay on, but the question is whether the town will be willing to pay their current salaries.

**B GARR REYNOLDS**

Mr. Reynolds asked about the personnel manual. Mrs. Segal-George said that she wrote the draft, but that it will have to go to council before it is adopted. He also asked about Bay Oaks. Mrs. Segal-George said that the Town does not participate in the unincorporated MSTU and that is where the money comes for parks and recreation, so the commissioners say they can no longer fund it. Regarding beach accesses, she said there are two types: roads and easement. The county is maintaining the easement.

**V PUBLIC COMMENT:**

**A BOB GAYDOS**

Mr. Gaydos said that if we are going to pay \$300,000 a year for Bay Oaks, we must have control. He has seen county electricians at Bay Oaks shooting hoops.

Mr. Isler thanked the charter commission for their hard work and thanked them for their time and thorough job. He hoped they did not feel that the council did not appreciate their work because they rejected so many questions. The commission was formally dissolved.

**VI ADJOURNMENT**

**Motion:** Mr. FitzSimons moved that the meeting be adjourned. The meeting adjourned at 9:55 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary