

MAYOR  
BRIAN T. FOLEY

VICE MAYOR  
JESSE L. "SAM" CARROLL, JR.

COUNCIL:  
BOB AUWAERTER  
CHRISTIAN HENDRICKS  
MARY ALICE SMITH



TOWN MANAGER  
JAMES HARPRING

TOWN CLERK  
LAURA ALDRICH

TOWN ATTORNEY  
PETER J. SWEENEY, JR.

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## MINUTES WORKSHOP

### CHARTER REVIEW

Thursday, February 24, 2022

10:30 a.m.\* (*Immediately following Town Council Meeting*)

1. **Call to Order**
  - a. Pledge of Allegiance
  - b. Invocation
  - c. Roll Call

The meeting was called to order by Mayor Foley at 10:48 AM. The Pledge of Allegiance and Invocation were recited at the preceding General Employee Defined Benefit Pension Plan Board Meeting. Those present for roll call were Mayor Brian Foley, Vice Mayor Sam Carroll, Councilmember Bob Auwaerter, Councilmember Chris Hendricks, and Councilmember Mary Alice Smith.

2. **Council Discussion Regarding Charter Review Committee's Recommendations**

Mayor Foley began by thanking the members of the Charter Review Committee for their hard work. He continued that it would be extremely time-consuming for Council to go through the Charter recommendations by line item and proposed that they focus on three categories of changes recommended by the Charter Review Committee.

Mayor Foley said the first category is regarding changing the language so that it is more understandable to a layperson, which he stated could be handled administratively. He stated the second category of changes is structural reorganization, and he doesn't believe that Council needs to spend a lot of time talking about either of these categories. He recommended that Council focus on the substantive changes, which he outlined as follows.

Mayor Foley said the first substantive change he would like to discuss would be the addition of language requiring a referendum vote on substantive issues, such as the Town's joining a special taxing district.

He said the second important issue to be discussed is Charter officers and reporting requirements. He noted that it is much more streamlined for Council members to work with the Town Manager, who is administratively responsible for the various functions of the Town. He said in a Town of our size, he believes it is more functional for the Town Attorney and the Town Clerk to report to the Town Manager instead of the Town Council.

Mayor Foley said those were the two issues of importance he wished to discuss during the workshop and invited his fellow Council members to speak.

Councilmember Smith agreed that many of the changes were just translating the Charter into simpler language, and that regarding the reporting structure, she does believe the Town needs a cohesive plan for

reporting so that it is not as fractured. She continued that having the Town Manager oversee is a good idea. Councilmember Smith said she does have a question regarding Section 2.9.1 and the two-year terms for Mayor and Vice Mayor, and whether that meant that a Mayor/Vice Mayor could only serve two years at a time. It was explained they can serve more than two years and that the two-year increments are in place because the Town Council elections are held every two years. She said she believes the Charter Review Committee did a great job.

Councilmember Hendricks said he believed the Deputy Town Manager should be considered a Charter Officer. Discussion ensued regarding the creation of the Deputy Town Manager position, with Mayor Foley stating that he believes when the Deputy Town Manager is acting as Town Manager, they should have the powers of the Town Manager. Mr. Harpring said he agrees this is an important structural issue but questions the appropriate location; whether in a Town policy/procedure or within the Charter itself. Town Attorney Sweeney is to look into this matter further. Mayor Foley said he believed that his fellow Town Council members agreed with the principle that the Deputy Town Manager should have the same powers as the Town Manager when acting in their stead, and the question is whether the language belongs in the Charter or elsewhere.

Councilmember Hendricks questioned the use of the word “liberally” under Section 1.4 - Construction. Mayor Foley explained that the term is fairly standard language describing that if there is any doubt that the Town has the power to do something, it will be construed in favor of the Town, and deferred to Mr. Sweeney for his interpretation. Mr. Sweeney said that was exactly correct and serves as a buttress to uphold the Town’s home-rule powers. Councilmember Auwaerter explained that the language was pulled directly from the Charter of another municipality. Further discussion ensued, and it was decided that this verbiage would not be changed.

Vice Mayor Carroll said he supports the suggested change in reporting requirements that would result in the Town Clerk and Town Attorney reporting to the Town Manager. He also said he agrees with Mayor Foley regarding the referendum issue. Vice Mayor Carroll also said he believes the term “liberally” in this context is appropriate and should remain.

Councilmember Auwaerter stated that, as Chair of the Charter Review Committee, he wanted to thank his fellow Committee members for their work not just during the meetings but in preparation for them. He explained that their goal was to ensure maximum flexibility for the Town. He continued that he believed language should be added to Section 2.14.2 to clarify that a Town Council member may be a part of a committee when required by Statute, such as in the case of the Auditor Selection Committee. Everyone agreed that would be helpful.

Councilman Auwaerter moved on to Section 4.1.2 regarding private property and eminent domain and said they added language that would preclude the Town from taking private property except for a public purpose. Discussion ensued, with the rest of the Council members agreeing to the proposed change. He also mentioned a change to Section 4.1.13 regarding clarification on emergency ordinances such as would be necessary in the event of a hurricane, etc. Mayor Foley agreed it is important to be precise regarding this matter.

Councilman Auwaerter mentioned the addition of a nepotism clause, which was briefly discussed, as well as the addition of language requiring a review of the Charter every 10 years. He also questioned the necessity of Section 7.5 – Transition Ordinances & Resolutions. Mayor Foley and Town Attorney Sweeney both advised that the language was pretty standard from a legal standpoint and should remain in the Charter.

Mayor Foley began a summary of the issues, starting with the restructure of the organization so that the Town Clerk and Town Attorney both report to the Town Manager instead of the Town Council, leaving the Town Manager as the only Charter officer. He said by his count all 5 Council members were in favor of this, to which he continued that the suggestion of the inclusion of the Deputy Town Manager as a Charter officer is to be researched by Town Attorney Sweeney, who will report back to Council.

Mayor Foley continued that all Council members agreed to add language regarding a referendum requirement for the creation of a special taxing district for the Town. He thanked Councilmember Auwaerter for his suggested language regarding eminent domain and said the whole Council agreed upon its addition. There was brief discussion regarding the nepotism clause, with all Council members agreeing to its inclusion.

All agreed to a full review of the Charter every 10 years. The inclusion of verbiage regarding borrowing and bond restrictions was briefly discussed, but it was decided said language is unnecessary as it is already included in State statute.

Mayor Foley said he wanted to ensure everyone agreed on the substantive issues discussed at this workshop today so that, after the public input portion of today's meeting, there will be a document that Council is basically ready to sign-off on at the next meeting.

Town Attorney Sweeney explained that the Supervisor of Elections will need the finalized version of the changes for the ballot by August 15<sup>th</sup>. In addition, an ordinance must be passed in order for the referendum to be placed on the ballot, which will, of course, require two readings, meaning that final language is really due by the June meeting.

Mayor Foley said he would prefer more flexibility and would prefer to have the recommended changes out to the Town's residents as far in advance of the vote in November as possible. Discussion ensued regarding requirements for disbursement, and Mayor Foley said that he thinks it should be placed on the website as soon as possible, with a note that physical copies will be provided upon request. He said he believes an explanation should also accompany the suggested changes, so the Town residents understand the reasoning behind the suggested changes. Discussion ensued regarding the voting process and the possible outcomes.

Mr. Sweeney wished to confirm that, going forward, the Town Manager is to be the only Charter Officer, and said that every reference regarding the Town Clerk & Town Attorney as Charter Officers would therefore need to be removed from the Charter. He clarified that the positions of Town Clerk and Town Attorney were still to be appointed by Town Council, which was confirmed. Mr. Sweeney asked whether verbiage in the Town's ordinances regarding the Town Treasurer, which states that they would be appointed by and serve at the pleasure of the Town Council, but report administratively to the Town Manager would also apply to the Town Attorney and Town Clerk positions, which was also confirmed.

Mayor Foley wished to clarify that there were no laws requiring that the Town Attorney or Town Clerk be Charter Officers, and Mr. Sweeney replied there were not. He stated approximately 40% of the Town Clerks in the State of Florida report directly to their Town Manager. He said there was not corollary information regarding Town Attorneys, but there is no legal requirement there either.

3. **Public Comment** (11:51 AM)

Resident Nancy Auwaerter stated she had concerns whether adding language to the Charter regarding the Deputy Town Manager position would then make it necessary that the position be filled at all times. Mayor Foley said Mrs. Auwaerter brings up a good point and suggested maybe the verbiage regarding the Deputy Town Manager position should be a non-Charter item.

Mrs. Patty Gundy, who was a member of the Charter Review Committee, said while she can appreciate the difficulty of discussions between Council members and Town employees given the constraints of the Sunshine Law, she does have a concern regarding there being only one Charter officer. She questioned what would happen if the Town Manager fell ill or had to leave suddenly. She agreed it is important that the Town Council continue to appoint the Town Attorney and Town Clerk. Mayor Foley thanked Mrs. Gundy for her comments and for her work as part of the Charter Review Committee.

4. **Recommendations**

These were discussed previously, as noted above.

4. **Adjournment**

The meeting was adjourned at 11:56 AM.