

A workshop meeting of the City Commission was held on January 11, 2011 at 6:00 p.m. in the Commission Chambers at the Municipal Administration Building. The meeting was called to order by Mayor L. Jack Van Sickle.

COMMISSIONERS PRESENT: Michael S. Carter; Terrye Y. Howell; John Paul Rogers; Mayor L. Jack Van Sickle.

COMMISSIONERS ABSENT: Jonathan Thornhill

CITY REPRESENTATIVES PRESENT: Judith H. Delmar, City Manager; Albert C. Galloway, Jr., City Attorney; Clara VanBlargan, City Clerk; Jacquie Hawkins, Deputy City Clerk

Agenda Item 1. Roll Call

Mayor Van Sickle requested that Agenda Item 2 be addressed first so the presenter, Mr. Robert Meyers, could leave earlier to drive back to Miami.

Agenda Item 3. Revision of Ethics Policy

Mr. Meyers gave a brief presentation on the Miami-Dade Commission on Ethics.

Commissioner Carter asked how the Miami-Dade Ethics Committee could control voting conflicts when that normally would lie outside the jurisdiction or umbrella of city government. Mr. Meyers said that anything dealing with absentee ballot fraud would require a criminal investigation by the State Attorney's Office and would not come before their Miami-Dade Ethics Commission.

Commissioner Carter asked if the on-line training Mr. Meyers mentioned in his presentation was available to principalities outside Metro-Dade. Mr. Meyers said the on-line training was designed for Miami-Dade County employees using their own Municipal Code but it could be created for other governments using the state code or local ordinances. He added that on-line training was the most cost effective way to train elected officials, boards, committees and employees. After taking the on-line training they would have to pass a test and would get credit for completing it.

Commissioner Carter asked if Mr. Meyers had an opportunity to review the ethics standards that Lake Wales' City staff and commissioners go by and Mr. Meyers said he had not. Commissioner Carter said he would like to know how theirs differ. Mr. Meyers explained and gave examples of the differences between the Florida Statute and the stricter Miami-Dade County Code of Ethics. He said the City could adopt either stricter or more lenient standards than the state's, or areas that are not currently covered in the state ethics code.

Commissioner Rogers asked if the Miami-Dade Ethics Code applied to only elected officials and Mr. Meyers said it applied to board members as well. Commissioner Rogers asked for confirmation that their ethics commission did not do the enforcement but turned it over to the State Attorney's Office for prosecution. Mr. Meyers said their ethics commission could not enforce criminal cases. Commissioner Rogers asked if they just gave out fines and Mr. Meyers said they do fine people but they are working on being able to force people to give up the profits they made from something unethical, which would make it less desirable for them to engage in that kind of behavior.

Commissioner Howell asked if the state's ethics code superseded theirs. Mr. Meyers said their ethics commission did not think it was fair for a person to be brought before the county's ethics board and the state's ethics board for the same violation so they are trying, though unsuccessfully, to work it out that a person can be tried by one or the other but not both. Right now, a person could have a case dismissed by the county board only to be brought before the state board for the same offense.

Commissioner Carter said an ethics commission would have to be a watchdog in order to enforce the ethics code. He asked how small municipalities deal with that and if they each have to establish an ethics commission. Mr. Meyers said if they don't have a freestanding ethics commission they could create a citizens advisory board to hear complaints and issue recommendations to the City Commission. He admitted that enforcement was a problem because the state will only enforce state violations and not those created by cities or counties. In some places the City Manager and City Attorney handle the investigation leaving the enforcement to the City Commission, unless it is a City Commissioner who is involved in the violation. Commissioner Carter asked if the citizen's advisory board would have jurisdiction over city staff. Mr. Meyers said that would be up to the ordinance they adopt.

Mayor Van Sickle stated that it would therefore be a voting conflict for him to vote on a grant being sought by, for example a soccer league, if he was on the board because he would be enriched in some manner through the organization in which he was a part even if that enrichment was not monetary. Mr. Meyers confirmed that under the Miami-Dade Code that would be true because there are other gains beside financial gains that may be intangible though beneficial to the Commissioner, but added that it would not be against the state code. He added that it did not mean that the soccer league could not seek the grant, only that the mayor, as a board member, would have to stay out of the process. City Attorney Chuck Galloway asked for confirmation that it would be a complete refusal to participate, with no comment and no voting, and it was confirmed. Mr. Meyers added that according to the state code, the Commissioner would have to fill out a report documenting the conflict for the record, but according to their ethics code that would be for the board member to decide.

Mayor Van Sickle said he thought the Commission should look into forming an ethics board or at least an ethics document that Commissioners would be held to because they should be held to a higher standard. He asked for a consensus so they could come up with at least an initial attempt at an ethics regulation. He said some points of the Miami-Dade's code differs greatly from that of the state but are good points and asked staff to start putting together an ethics document.

Commissioner Carter asked for Ms. Delmar's comment on how it would be handled if a staff member's violation was reported to a citizen's advisory ethics board because he did not believe the Commission could address that. Ms. Delmar said that if the employee's offense required discipline, it would be covered in the Personnel Administrative Policy, and depending on the nature, it could result in termination. Mr. Meyers said there are two sets of standards for their employees; the personnel policies the City Manager enforces, and the ethic code which the ethics committee enforces. He said that if the Commission adopts a code of ethics, it would have to decide if the employees would be included in that or if the personnel policy would be sufficient. Ms. Delmar said the ethics code for employees had been adopted before the personnel policy, which was adopted by ordinance. At that time all the ethics codes that applied to employees were incorporated into the Personnel Policy.

Mr. Meyers said the section in their code of ethics on Misuse of Position was the one most used in Miami-Dade. He explained that the difference between the state's code and theirs on Misuse of Position is that the state's code requires proof of intentional misconduct whereby in their code it is considered misconduct if there is even an attempt of misuse, or exploitation of an official position.

Commissioner Howell had concerns about the Nepotism policy as she thought it was not being followed. Human Resource Director Sandra Davis said that years ago that was a problem but they no longer have employees that are under the supervision of a relative.

Mr. Meyers said that 17 cities in Miami-Dade County have their own code of ethics which makes it hard for their employees and officials because they are held to the state standards, the county standards and the municipal standards. He noted that if the Commission passed an ethics code for Lake Wales, they would only have two standards to follow as there is no county standard here.

COMMISSION COMMENTS

Commissioner Rogers pointed out that presently employees are held to rules and regulations that Commissioners or board members are not held to. He said he believed they should answer to a code other than the state's code which he thought was vague in some places. He said having their own code of ethics would clarify their duties and responsibilities. He said the Charter Review Committee has recommended some form of ethics policy and he was in agreement and thought it long overdue. He said the Commission has the power to do this without necessarily requiring a public vote.

Mayor Van Sickle concurred and said Commissioners should be held to at least as high a standard as city staff. He did not agree that Commissioners should make the rules for everyone else and not for themselves so asked Ms. Delmar to come up with some ideas, incorporating what already exists with a couple of minor changes. Ms. Delmar said it would not take a charter amendment for the Commission to adopt an ethics policy. The Charter Review Committee recommended that if an ethics code is adopted, a supermajority vote by the Commission should be required for any changes.

Agenda Item 2. Lake Wales Charter Revisions Recommended by Charter Review Committee

Charter Review Committee Chairman Robin Gibson thanked the Commission for appointing the committee members they did as he said it was a constructive exercise, they worked well together and though they did not always agree, they were never disagreeable. He thanked the Commissioners, staff, and citizens who participated in the process. He then reviewed the recommended changes by sections giving the Committee's reasons for those recommended changes. The following comments were made and questions were asked in response to his presentation.

Article III. Legislative, Sec. 3.05. Election of mayor

City Manager Judith Delmar wanted confirmation and received it that the proposed change states that Commissioners running for Mayor would have to resign on Election Day whether elected or not. Mayor Van Sickle said if they did not resign, they would be holding two positions, one as Commissioner and one as Mayor, which would be against state law. Mr. Gibson explained that the way it is now, there are five City Commissioners, one being the Mayor. In the proposed changes there would be four Commissioners and a separate Mayor, so if a Commissioner also ran for Mayor it would be for two positions.

Commissioner Howell asked if the Deputy Mayor as termed in Section 3.05 (a) would become the Vice Mayor, the term they have been using, or if it would matter. Mr. Gibson said it would make no difference which term was used.

Article III. Legislative, Sec. 3.06. Functions and powers of mayor

Section 3.06 (e)

Commissioner Rogers said that years ago when they had trouble filling board vacancies, the Mayor appointed one of the Commissioners to recruit candidates. Prospective board members were asked to fulfill their civic duty by serving on a board and because the Commissioner was persuasive, citizens had a hard time refusing. He said he thought the Charter Review Committee's proposal to have the mayor recruit board members, in Section 3.06(e), was a good idea because if citizens are selected for these positions based on their jobs and experience, there would be better board members, and citizens would feel like they were doing something for their community because it was a position of honor.

Commissioner Howell said that presently citizens can apply for board positions by filling out an application, or Commissioners can recruit them. She asked for confirmation that in the proposal the mayor would do the recruiting. Mr. Gibson said the mayor would not appoint them but make a recommendation to the Commission. Ms. Delmar said that if this was approved by the Commission, it would take a housekeeping ordinance in order to get the way the members are appointed into compliance with the Charter.

Section 3.06 (f)

Commissioner Howell asked if Commissioners would no longer volunteer for a board as they do now, but would be appointed to a board by the Mayor. Ms. Delmar said that this item refers to boards such as the TPO, County Airport Zoning, Housing Authority and other agency boards. Mr. Gibson said this did not apply to the city boards like the Planning and Zoning Board that citizens serve on but refers to boards that only Commission members serve on. It is the prerogative of any Chair or President to appoint members to these type boards.

Section 3.06 (g) and (h)

Commissioner Howell said that the Mayor would be like the cheerleader of Lake Wales and asked if the Commissioners therefore would not be cheerleading. Mr. Gibson compared it to a cheerleading squad where the Mayor would be the captain of the squad but all members would cheer together. Ms. Delmar said this section was proposed to get the City Manager out of the political arena and into the jurisdiction of the City Commission. Mr. Gibson said that because there presently is no political or community leadership, people don't know who to go to so they go to the City Manager, which gets things confused. Having a leader that the people are responsible for means no one is to blame but the citizenship. Commissioner Howell said she was in favor of that because that would leave the City Manager to do the city's business.

Section 3.09. Procedure (d)

Ms. Delmar said that in the present wording, if only three Commissioners were in attendance, a two-to-one vote could approve an item as long as it was not an ordinance. This change would require a minimum of three votes for any item before the Commission.

Article IV. City Manager

Section 4.01. Appointment of city manager

Commissioner Howell said she would like this section changed. She wanted a requirement that the City Manager has to live in Lake Wales or within the service area because the City Manager should be engaging with the people here and paying the same taxes citizens pay. Mr. Gibson said, though he agreed with that requirement, he did not think that should go into the Charter. The Commission hires the City Manager so one of the standards when recruiting candidates could be that the City Manager has to live for example within the City, within the service area, pay city taxes, or live outside the city limits but own property within the city. Leaving that kind of flexibility to the City Commission would also leave room to consider individual situations. Another drawback to having it in the Charter would be that any changes would require another election. Commissioner Howell asked what would happen if there was that requirement, yet after the candidate was hired, he or she decides to live in Orlando. Ms. Delmar said that would be a contract issue.

Commissioner Howell said she thought directors should be required to live in Lake Wales as well. Commissioner Rogers said that had been a requirement for years but, though he was in favor of it, he thought the US Supreme Court ruled in 1964 that employees could not be required to live within the city limits as a condition to employment.

Section 4.02. Removal

Commissioner Howell said the Charter Review Committee's proposal makes the procedure more professional.

Commissioner Rogers said that once confidence in a person was lost, it would be hard to get it back. For that reason he said he thought the City Commission should have the power to hire and fire a City Manager with or without grounds. He did not want it dragged out like what happened with the last city manager because dragging it out causes turmoil and hard feelings. Commissioner Carter asked Commissioner Rogers what he meant by not having grounds for removal and Commissioner Rogers said that the city manager serves at the pleasure of the City Commission so if the Commission gets to the point where confidence is lost and they can no longer work with the city manager, it would be best to let the person go so the city can move ahead. Mr. Gibson said that the Commission would have to have reasons for losing confidence in a City Manager and those reasons should be stated to give an opportunity for redress.

Mayor Van Sickle said that he took part of the blame for what happened at the last removal because he had allowed public input at the first reading, which got quite vocal and if executed differently, it may have resulted in less of an uproar. He said that when contractors terminate an employee they do it immediately, taking away keys so the employee has no access to the building so an upset employee cannot destroy something of value. Though he was not saying this would or could have happened with the last termination, there was the possibility that important data could have been deliberately destroyed. Therefore, he was not in favor of the 60 to 90 evaluation period.

Section 4.02 (2)

Commissioner Howell said she hoped if it was necessary to remove a city manager again, the Commission at that time will list attainable goals for the City Manager to reach. Mr. Gibson said there comes a time when you have to rely on the judgment of the elected officials.

Section 4.02 (4)

Commissioner Howell said, referring to not allowing public comments, that citizens could still voice their opinions to the Commissioners through letters and emails instead of at the Commission meeting.

Section 4.03. Acting city manager

Ms. Delmar said that the person filling the vacancy in the temporary absence of a city manager is now done by resolution and not by letter filed to the city clerk.

Section 8.10 (a). Commission districts; adjustment of districts

Commissioner Howell asked who would draw the lines for the districts. Ms. Delmar explained that the Districting Commission does it based on census blocks. During the last districting each City Commissioner appointed a member to the Districting Commission. Staff handed out the materials, matched up the city streets and block map, checked the block data so they knew how many people lived in each census block, and did the same thing with the voter's record to determine how many voters resided in each census block. Each Commission member developed their own plan, and then came together to develop the best plan to submit to the City Commission, who then adopted it. She said that once the 2010 census data becomes available, the City Commissioners will be asked to each appoint one member to the Districting Commission.

Commissioner Howell asked, if adopted and the city is divided into four districts, if the next City Commission could change it back to five districts. Ms. Delmar said it could but it would have to be at the next redistricting following the census, and it would also require a charter amendment by going before the voters for modification. Mr. Gibson said it probably could be done in the interim as long as you comply with the charter language; that districts are as equal as feasible based on the most current census data. .

The Mayor called a five minute break from 7:45 p.m. to 7:50 p.m.

Mayor Van Sickle said that staff needed a general consensus of what should be incorporated in the ordinance because it has to be reviewed at the next two Commission meetings in order to meet the deadline for the ballot. Ms. Delmar said she needed to identify the areas the Commissioners had exceptions to. She said she was almost finished with the ordinance, which included everything so anything the Commissioners did not want included she would simply have to remove at the next meeting, which would be the first reading of the ordinance. She asked the City Attorney if it would require re-advertisement for public notice and another first reading if much modification in the title was done. Mr. Galloway said it depended on how significant the change was and if they would be addressing the changes by separate ordinances. Ms. Delmar said there would be a single ordinance but separate sections within the ordinance. She asked if it would need no re-advertising if she did not itemize the sections that are being addressed but simply amended the Charter with no title change. Mr. Galloway said it would have to be considered by the voters by separate ballot for each section. Mr. Gibson asked about the ballot and Mr. Galloway said the ballot would address each change individually so the electorate could reject or accept each one.

The Mayor asked for consensus as to what items would need further discussion at the first reading next week, which were as follows:

- Mayor Compensation:
- Mayors Duties:
- Mayor's Four Year Term
- The Removal of the City Manager

Agenda Item 4. "Request for Resume" Ad

Agenda Item 4 prepared by Human Resources Director Sandra Davis

[Begin agenda memo]

We are forwarding proposed long-form and short-form ads for a new city manager.

The long-form ad will be placed where there is no cost to advertise or the cost is not dependent on the length of the ad: Florida League of Cities Datagram, International City/County Management Association (ICMA) publications, the govjobs.com website, the city's own website, etc.

The short-form ad will be placed where cost is dependent on the length of the ad: Lake Wales News, Ledger, Tampa Tribune, etc. Price to run this ad will range from less than \$100 for local newspapers to \$500 or more for Orlando, Tampa, Miami newspapers.

Please note that this proposed ad is meant to be a starting point for discussion.

[End agenda memo]

Ms. Delmar reviewed Agenda Item 4.

Mayor Van Sickle asked how long it would be advertised and when it would start. Ms. Delmar said the resumes would have to be submitted by March 25th and the advertisement would be put out once approved by the Commission. She read the framework of the advertisement which included the requirements being sought and the annual salary and benefits; then asked if any Commissioner wanted anything changed. Mayor Van Sickle said the 60 day period should be a minimum timeframe because the more resumes they get in the better. He said he also would like to find someone who was in like mind with the commission, not being stingy with spending, but conservative.

Commissioner Carter asked Ms. Delmar to add "personnel skills" to the list of requirements plus grant application and CRA experience. He asked that she add recreational assets to the list of things the city is proud of. He said he would like a contractual obligation added that the City Manager has to live in the city, if that is legal. Mr. Galloway said that is found in many city manager contracts.

Commissioner Howell said she also would like "strong personnel skills" added and would like to find someone with strong financial management.

Ms. Delmar explained the selection process as follows:

- It would be advertised for 60 days in various professional publications, which she listed.
- One selection committee member will be appointed by each commissioner to review the submissions, each member getting a copy of every resume organized by types of experience.
- Committee members will each rank the top ten, twenty, or whatever number is decided.
- The Selection Committee as a whole will rank the top resumes to be presented to the City Commission.
- The City Commission will get a copy of each resume on the short list to review and decide which ones they would like to interview.
- The selected candidates will be interviewed.
- The City Commission will make the final decision.

Ms. Delmar said the Commission needed to come up with a list of questions they would like the Selection Committee to ask.

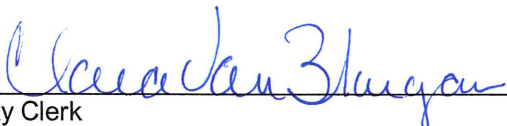
Mayor Van Sickle asked if the City Commission would be interviewing each candidate collectively or if each Commissioner would interview each one individually. Ms. Delmar said in the past, candidates were interviewed collectively but when it was narrowed down to two or three, each was interviewed individually.

There being no further business, the meeting was adjourned.



Mayor/Commissioner

ATTEST:



City Clerk