



1015 Cultural Park Blvd.
Cape Coral, FL

AGENDA

CHARTER REVIEW COMMISSION

April 19, 2018

3:00 PM

Conference Room 220A

1. Call to Order

A. Chair Peterson

2. Roll Call

A. Bennie, Jenkins, Kitchen, McNamara, Peterson, Robinson, Sund,
and Alternate Stewart

3. Public Input

4. Business

- A. Approval of meeting minutes - March 15, 2018 meeting
- B. Continue Discussion on Article IV, Section 4.10(a) - Prohibitions
- C. Article IV, Section 4.12 - Judge of Qualifications
- D. Article IV, Section 4.13 - City Clerk
- E. Article IV, Section 4.14 - Investigations
- F. Article IV, Section 4.15 - Independent Audit
- G. Article IV, Section 4.16 - Procedure
- H. Article IV, Section 4.17 - Action requiring an ordinance or resolution

5. Commissioner Comments

6. Date and Time of Next Meeting:

A. Thursday, May 17, 2018, at 3:00 p.m. in Conference Room 220A

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of the City Clerk at least forty-eight (48) hours prior to the meeting. If hearing

impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

If a person decides to appeal any decision made by the Board/Commission/Committee with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

SPECIAL NOTE: This is not a meeting of the Cape Coral City Council. However, two or more Council Members may be in attendance and may participate at this workshop/meeting.

Item Number:	4.A.
Meeting Date:	4/19/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Approval of meeting minutes - March 15, 2018 meeting

SUMMARY:

ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▢ March 15, 2018 meeting minutes	Backup Material

**MINUTES FOR THE MEETING OF THE CITY OF CAPE CORAL
CHARTER REVIEW COMMISSION**

THURSDAY, MARCH 15, 2018

Conference Room 220A

3:00 P.M.

Chair Peterson called the meeting to order at 3:00 p.m.

Roll Call: Jenkins, Kitchen, Peterson, Robinson, Sund, and Alternate Stewart were present. Bennie was excused. McNamara arrived at 3:13 p.m.

Also Present: Dolores Menendez, City Attorney arrived at 3:05 p.m.
Mark Moriarty, Assistant City Attorney arrived at 3:05 p.m.
Marilyn Stout, Council Liaison
Jay Murphy, CT Business Manager

Public Input

No speakers

BUSINESS

Approval of the Agenda

No action taken.

Approval of Minutes – February 15, 2018 meeting

Chair Peterson stated the minutes of the February 15, 2018 meeting were presented for approval.

Commissioner Sund moved, seconded by Commissioner Jenkins, to approve the minutes of the February 15, 2018 meeting as presented.

Commission polled as follows: Jenkins, Kitchen, Peterson, Robinson, Sund, and Stewart voted “aye.” Six “ayes.” Motion carried 6-0.

Continue Discussion on Article IV, Section 4.06, Mayor and Mayor Pro Tem

Chair Peterson stated the City Manager wanted to have input or at least be present for the discussion on any recommendations to the change of the type of government. He did not see any reason to table it completely, but if we are looking at making significant changes or if there is a motion, he thought we should table it at that point to allow the City Manager time to provide input.

Commissioner Sund stated he has been the one pursuing that. It was evident from previous discussions that there will not be any change, and he was fine to move on.

Chair Peterson continued discussion on section 4.06. He noted we left off specifically regarding the veto power on the budget. He suggested cutting the section out after City Council and taking the veto power out of the budget completely.

Commissioner Robinson asked for more detail since he was not at the last meeting.

Chair Peterson explained that the Mayor has the ability to veto line items in the budget and notify Council at least 14 days prior to the date of the final public hearing. Does it make sense to have the Mayor as a Chair for Council to have that power to veto line items in the budget? To override the veto, you must have 2/3 vote, and the Mayor that vetoes the section has a vote in the 2/3.

Discussion held regarding the following:

- If he keeps the veto, but can't be included in the 2/3 vote.
- He would always be able to cast a vote.
- The Mayor in our form of government is an elected chair of council. It seems odd that a voting member of Council has the ability to veto line items in the budget.
- The City Manager proposes the budget.

Chair Peterson recommended in 4.06(a) to where "all documents as required by the City Council" to cut out everything after that: "and shall have the power to veto line items in the City budget, provided that such veto is exercised in writing to the City Clerk, with immediate notification to the other members of the City Council at least fourteen (14) days prior to the date of the Final Public Hearing on the budget. The City Council may override such veto with a two-thirds vote of its members as provided in Section 4.16(d)." To keep it consistent, we would need to do that for the Mayor Pro Tem too and take out "shall not have power to veto" because there would be no more veto.

City Attorney Menendez stated veto procedure in section 4.16(d) would need to be changed.

Commissioner Sund asked if each one of these then have to be voted on individually or is there a way to combine them.

City Attorney Menendez explained various changes will have ripple effects. If this body recommends five different changes, each of those would be a separate Ordinance for Council to vote on as to whether or not to move forward. They would not be combined. Each of those would all be subject to statutory requirements. What they would actually be voting on is to put it on the ballot and how it would be worded on the ballot.

Commissioner Sund stated his question was more of how do you eliminate it.

City Attorney Menendez stated the Recording Secretary and the Assistant City Attorney are keeping track of your voting as we go along. When we near the end of your session

where things need to be solidified into a final form, that would be an opportunity for all to be sure that those are the things that you want to move forward with as a body. They would get formalized and moved forward.

Chair Peterson asked if there was a motion.

Vice Chair Kitchen moved that in beginning of section 4.06(a), third line after City Council we remove the remainder of point (a) and supported by other discussions we have had on 4.16(d), Mayor Pro Tem section, shall not have the power to veto.

Discussion held regarding whatever the City Manager proposes on the budget, all of City Council would vote on it and if it would be line by line.

Commissioner McNamara arrived at 3:13 p.m.

Chair Peterson stated Council would vote on the entire budget, but if they had issues, there could be discussion and go back to make changes. Once it is approved by City Council, there would not be any way to veto any portion.

Chair Peterson re-stated the motion on the table: in 4.06(a) to remove that section after City Council and in section (b) to take out shall not have the power to veto, and in section 4.16(d) to remove that section in general. He asked for a second.

Commissioner Robinson seconded the motion.

Commission polled as follows: Jenkins, Kitchen, Peterson, McNamara, Robinson, Sund, and Stewart voted "aye." Seven "ayes." Motion carried 7-0.

Continue Discussion on Article IV, Section 4.07, Council Vacancies in conjunction with Article IV, Section 4.11 – Vacancies; Forfeiture of Office; Filling of Vacancies

Chair Peterson stated there was backup in the form of a memorandum from the City Attorney's Office. We were tying in 4.07 with 4.11 which will take us into New Business which is related. He inquired what the specific challenges to the City were with a Councilperson running for Mayor.

City Attorney Menendez discussed the following:

- Details of the Resign to Run Law
- We were currently in an off-election year cycle with other entities.
- What happened recently in this last cycle when a Councilperson resigned to run for Mayor with an upcoming election that same year.
- Most vacancies are not created by Resign to Run but by death, moving, disability, etc.
- A special election would cost approximately \$150,000.
- The Charter says to fill a vacancy within 30 days.

- If you fail to fill it within 30 days, then a special election is called not less than 90 days or more than 120 days from the vacancy occurring.
- Challenges of a vacancy and how Council appointed someone to fill the seat until the election.
- This section has functioned beautifully for years.
- There might be an opportunity, if the Committee believes it would be necessary or beneficial, to potentially clarify the appointing. If you are going to have an intervening general election within 90 days from the date of the vacancy occurring that Council would not have to fill it within the 30 days.
- Why this is in the Charter is that when there is a vacancy, you fill it within 30 days or else you call a special election within 90 to 120 days. The law wants that seat filled.

Discussion held regarding the times Council people left by removal, suspension, etc.

Commissioner Stewart stated since Council only meets every other week, rather than giving them 30 days to appoint someone, could we extend that to 60 days?

Council Liaison Stout stated there are two regular council meetings where voting is done and a Committee of the Whole, with an occasional special meeting.

City Attorney Menendez stated that was the current practice but Council can change that.

Discussion held regarding the following:

- Resign to Run allows the person resigning to be appointed to fill the unexpired term
- No specific law that limits the amount of time that Council can be short one person.
- Charter does not allow a vacancy to exist forever.

Chair Peterson asked the Commission on how long is too long to have an open seat on Council.

Discussion held regarding:

- It depends what issues are coming along.
- Is it budget time?
- 90 days is short.
- Would you want to be without representation during that time?
- What are they asking to be fixed?
- Appending some language dealing with putting an exception in place if a regularly scheduled election is a certain amount of days out

City Attorney Menendez confirmed that the CRC wants to bring forward some kind of language at the next meeting to accommodate the notion of an upcoming general

election that would occur prior to the time when a special election could be called within 90 to 120 days.

Discussion held regarding the minimum notification for a special election.

City Attorney Menendez stated the Clerk's Office notifies the Attorney's Office what the deadline is for getting recommendations to Council in order to get it on the ballot.

Council Liaison Stout stated you are trying to fix something that is not broken.

Discussion held regarding this is not an easy process if this were to happen again.

Commissioner Sund requested discussion on 4.07 dealing with the level of vote required to fill that vacancy, whether it be a simple majority or increasing that to 2/3.

Chair Peterson stated the first thing that was brought up in the last discussion is what if you are limited on a number of people willing to serve.

Commissioner Sund stated at the end of the day it would go to a special election.

Chair Peterson stated a special election is a big cost to the City that could have been handled with a majority vote.

Continue Discussion on Article IV, Section 4.09 – General Powers and Duties

Chair Peterson stated this section was pretty straightforward. If it is not covered by law, it is covered by the duties of City Government. He asked the City Attorney if there was anything that we should be aware of.

City Attorney Menendez stated this is one of the things that Council delegates to others.

Article IV, Section 4.10 – Prohibitions

Chair Peterson stated you cannot work for the City while you are a member on Council.

Discussion held regarding how a salary increase for a Councilperson has to be on a referendum to be voted on; Council can initiate discussion to recommend a salary increase.

Discussion held regarding the following:

- You could not double dip being a Mayor and a Director at the same time
- Positions appointed by Council: City Attorney, City Auditor, and City Manager
- Extend language from one year after expiration of the last term to four years

Commissioner Sund stated if there are any State prohibitions, we would need to come back to make a motion.

City Attorney Menendez confirmed that the Commission wants to receive information more specifically related to 4.10(a) concerning being a contractor with and being employed by the City post service and see if anything the State Statutes say about it or what kind of regulations they have. She stated she will look into it and bring it back to the Commission at the next meeting.

Chair Peterson stated 4.10(a) will be on the next meeting agenda.

Discussion held regarding if anything needed to be strengthened in section 4.10(b) and 4.10(c).

Discussion held regarding:

- 4.07 language where under six months we would leave it for the Council to appoint by a majority vote; any time greater than that it would go directly to a special election.
- Super Majority Vote, Special Elections, Term Limits, Re-appointments, Qualifying Time, Cost of Special Election

Chair Peterson discussed putting the following agenda items for the next meeting:

- Continue 4.10(a) with requested information from the City Attorney
- 4.12, 4.13, 4.14, 4.15, 4.16 and 4.17 if not completed will be continued to the next meeting.

Commissioner Comments

None

Date and Time of Next Meeting

The next meeting would be held on Thursday, April 19, 2018, at 3:00 p.m. in Conference Room 220 A.

Adjournment

There being no further business, the meeting was adjourned at 4:23 p.m.

Submitted by,

Barbara Kerr
Recording Secretary

Item Number:	4.B.
Meeting Date:	4/19/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Continue Discussion on Article IV, Section 4.10(a) - Prohibitions

SUMMARY:

ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▣ Article IV, Section 4.10	Backup Material

- **4.10. - Prohibitions.**

(a)

Holding other office. Except where authorized by law, neither the Mayor nor any Council member shall hold any other City office or employment during the term for which he or she was elected to the Council, and neither a former Mayor nor former Council member shall hold any compensated appointive City office or employment until one (1) year after the expiration of the last term for which he or she was elected as Mayor or Council member. Neither the Mayor nor any Council member, either directly or indirectly, may be a contractor to the City.

(b)

Appointments and removals. Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any City administrative officers or employees whom the city manager or any of the city manager subordinates is empowered to appoint, but the Council may express its views and fully and freely discuss with the city manager anything pertaining to appointment and removal of such officers and employees.

(c)

Interference with administration. Except for the purpose of inquiries and investigations, the Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately.

(Ord. 125-02, 12-9-2002, Approved by referendum vote on April 8, 2003)

Item Number:	4.C.
Meeting Date:	4/19/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Article IV, Section 4.12 - Judge of Qualifications

SUMMARY:

ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▣ Article IV, Section 4.12	Backup Material

§ 4.12. -Judge of qualifications.

The Council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have the power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the city and published in Lee County at least one week in advance of the hearing. Decisions made by the Council under this section shall be subject to review by the courts.

Item Number:	4.D.
Meeting Date:	4/19/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Article IV, Section 4.13 - City Clerk

SUMMARY:

ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▣ Article IV, Section 4.13	Backup Material

§ 4.13. - City clerk.

The city manager shall appoint an officer of the city who shall have the title of City Clerk. The City Clerk shall give notice of Council meetings to its members and the public, keep a journal of its proceedings, and perform such other duties as are assigned by this Charter or by the city manager.

Item Number:	4.E.
Meeting Date:	4/19/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Article IV, Section 4.14 - Investigations

SUMMARY:

ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▣ Article IV, Section 4.14	Backup Material

§ 4.14.- Investigations.

The Council may make investigations into the affairs of the City and the conduct of any City department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the Council shall be guilty of a misdemeanor and punishable by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for not more than six (6) months, or both such fine and imprisonment.

Item Number:	4.F.
Meeting Date:	4/19/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Article IV, Section 4.15 - Independent Audit

SUMMARY:

ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Article IV, Section 4.15	Backup Material

§ 4.15. - Independent audit.

The Council shall provide for an independent annual financial audit of all City accounts and may provide for more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants with no personal interest, direct or indirect, in the fiscal affairs of the City government or any of its officers. Said accountant or firm of accountants shall be selected in accordance with state law. (Ord. 71-07, 6-11-07, Approved by referendum vote on November 6, 2007}

Item Number:	4.G.
Meeting Date:	4/19/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Article IV, Section 4.16 - Procedure

SUMMARY:

ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▣ Article IV, Section 4.16	Backup Material

§ 4.16. - Procedure.

- (a) *Meetings.* The Council shall meet regularly at least once in every month at such times and places as the Council shall prescribe by rule. Special meetings may be held on the call of the Mayor or of four (4) or more members and, whenever practicable, upon no less than twelve (12) hours' notice to each members. All meetings shall be public.
- (b) *Rules and journal.* The Council shall adopt its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record.
- (c) *Voting.* Voting, except on procedural motions, shall be by a public roll call, and ayes and nays shall be recorded in the journal. Five (5) members of the Council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Council. No action of the Council, except as otherwise provided in this section, shall be valid or binding unless adopted by the affirmative vote of four (4) or more members of the Council.
- (d) *Veto procedure.* The Mayor's line item veto may be overridden by the Council by an affirmative vote of two-thirds of the entire Council at any time prior to the adoption of the final budget. (Ord. 73-07, 6-11-07, Approved by referendum vote on November 6, 2007)

Item Number:	4.H.
Meeting Date:	4/19/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Article IV, Section 4.17 - Action requiring an ordinance or resolution

SUMMARY:

ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Article IV, Section 4.17	Backup Material

§ 4.17.- Action requiring an ordinance or resolution.

- (a) As used in this section, the following terms have the following meanings unless some other meaning is plainly indicated:
- (1) Ordinance means an official legislative action of the City Council of the City of Cape Coral, which action is a regulation of a general and permanent nature and enforceable as a local law.
 - (2) Resolution means an expression of City Council of the City of Cape Coral concerning matters of administration, an expression of a temporary character or a provision for the disposition of a particular item of the administrative business of the City Council.
- (b) In addition to other acts required by law or by specific provisions of this Charter to be done by ordinance, those acts of the City Council shall be by ordinance which:
- (1) Adopt or amend an administrative code or establish, alter or abolish any city department, office or agency;
 - (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
 - (3) Levy taxes;
 - (4) Grant, renew, or extend a franchise;
 - (5) Authorize the borrowing of money;
 - (6) Convey or lease or authorize the conveyance or lease of any lands of the City, provided,
however, that leases of residential property of 15,000 square feet or less for terms of twenty-four (24) months or less shall not require an ordinance;
 - (7) Adopt with or without amendment ordinances proposed under the initiative power; and
 - (8) Amend or repeal any ordinance previously adopted, except as otherwise provided in Article IX
with respect to repeal of ordinances reconsidered under the referendum power. (Ord. 65-07, 6-

4-07, Approved by referendum vote on November 6, 2007)

- (c) Acts other than those referred to in subsection (b) may be done either by ordinance or by resolution.