

**CITY OF HALLANDALE BEACH
CHARTER REVIEW COMMITTEE**

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**MINORITY
&
CONCURRING REPORT**

DECEMBER 21, 2011

Prepared by:

ANDREW MARKOFF
Vice-Chair

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I. OVERVIEW

I was very pleased and grateful to be appointed by Mayor Cooper to the Charter Review Committee, established by City ordinance to review our Charter on an ad-hoc basis every eight years. According to the ordinance, we are to submit a Final Report within six months of commencing the Committee's first meeting. The six month mark for this Charter Review is December 21st, 2011.

Our committee's recommendations to the Commission in regards to changing/amending the City Charter consist of items that the majority of the committee members had been in favor of. The accuracy of votes on some items as recorded in our meeting minutes as well as in our Final Report, however, is questioned in this *Minority & Concurring Report*. Additionally, items for which I had clearly been a dissenting vote are addressed.

I am also including a couple of concurring statements. I believe that certain recommendations that are included in our Final Report and for which I had voted with the majority may benefit from my emphasis.

Prior to addressing the recommendations of the committee, PART ONE of this Overview shall address the process engaged by our committee, which culminated in the submission of the committee's *Final Report* and *Outline*. I shall also address city policies in regards to advisory boards and committees. This report recommends measures that may improve the functions as well as the results of our city's advisory boards and committees using my experience on the Charter Review Committee to provide some insight and perspective.

PART TWO of this report will address the recommendations sent from the Charter Review Committee to the City Commission.

PART ONE

Policies & Procedures for Advisory Boards & Committees In the City of Hallandale Beach

A. 2011 CRC PROCEDURES vs. CITY POLICY

1. Establishment of Procedures for the CRC

The City of Hallandale Beach Charter Review Committee held its first meeting on June 21, 2011, at which committee member Leo Grachow made a motion that Anthony Musto would serve as the committee's chair. The motion was seconded by committee member Marc Pomerantz, and Chair Musto was elected unanimously, although committee member Reverend Joe Johnson was absent.

Chair Musto then called for nominations for a Vice-Chair, and committee member Leo Grachow nominated me. That motion was seconded by committee member Bill Julian, and the motion also carried unanimously, excluding Reverend Johnson's vote.

It was also decided by a 7/0 vote that the committee Alternate, Alicia Moreno, would be permitted to "fully participate" in all of our meetings, "except for voting."¹ There had been no mention or discussion of any city ordinance or any charter provision that might have dictated the role of the Alternate and specified voting procedures for the position during regular proceedings.

Our Committee then immediately proceeded to discuss the venue for our meetings and the process for selecting an attorney to consult with and represent the committee. The city attorney at that time, David Jove, advised the committee on the attorney selection process. No discussion had ensued in regards to the role and the duties of the Chair, the Vice-Chair or the Alternate, nor did we discuss any procedures that had been undertaken by the city in regards to selecting a clerk for the committee. We had adjourned without discussion with Mr. Jove or any other city staff regarding the procedures we would be expected to follow in accordance with any ordinance(s), city policy or any other directive in regards to reviewing our charter for approximately the next six months.

Our Agenda for our second meeting, held on June 29th, had included a "Presentation by City Attorney Jove on Revisions Made to the City of Hallandale Beach Charter During the Last Charter Review Session in 2003."² Mr. Jove did not appear at that June 29th meeting, however, and we had assumed that there had been a mis-communication of some sort. We were not subsequently informed as to why Mr. Jove had not appeared, but I did ask him when I saw him at the next city Commission meeting. Mr. Jove asserted that once the committee's meetings had commenced, he had no intention of having anything further to do with the committee beyond the provision of three candidates applying to be selected as the committee's attorney. He advised that the placement on our committee agenda of any presentation provided by him to our committee had otherwise been mistaken.

2. The Alternate

As we progressed in attending to reviewing the City Charter, we never did re-visit any procedures that were to be agreed upon amongst committee members in regards to the role and functions of the Chair, the Alternate, and the Vice-Chair. Eventually, our Alternate, Alicia Moreno, did write a letter to the Mayor that had been shared with the rest of the Commission and the committee members. In her letter, Ms. Moreno advised of her intention to resign from the committee because she had not been

¹ CRC Minutes June 21, 2011- p.2 MOTION by Committee Member Julian.

² CRC Agenda July 7, 2011- COMMITTEE BUSINESS- B.

allowed by the Chair to participate or to vote during our meetings, including when other committee members were absent.

I had advised our committee's attorney, Susan Churuti, via email that our municipal *Code 2-72* provides for the specific duties of Alternates on boards and committees. According to the Code, the Alternate should have a vote whenever any member is absent.³ That Code had not been submitted to our committee as part of the packet of information provided to appointed members prior to commencing our meetings. Our Chair was unwilling to discuss the matter during our committee meetings, and Ms. Moreno had been absent for several meetings after submitting her letter of intent to resign. Ms. Moreno ultimately returned, but she never was allowed to vote, nor did we ever discuss her role or her written complaints during our meetings.

3. Involvement of City Staff

While there had been several discussions about the involvement of city staff in regards to answering questions from the committee and providing specific data requested by the Chair, specific procedures that we should expect in regards to any city staff involvement with committee deliberations had never been provided by the Commission, the City Attorney, the City Clerk, the City Manager, or any other city staff. No particular expectations had been posited by the committee in regards to the procedures we should expect relevant to city staff involvement with the Charter Review Committee-- other than the provision of requested documents and the updating of the city website in regards to the Charter Review Committee's agendas, minutes and membership.

The Commission had determined at some prior time that the Charter Review Committee's attorney and clerk would be contracted from outside the regular city staff, presumably to provide some kind of objectivity. Such a policy in regards to a municipal Charter Review Committee's legal advice, clerk duties and any involvement of city staff is not customary nor required by any state statute or by any advisory body, such as the *Florida League of Cities* that I became aware of, but I do know that some surrounding municipalities utilize their own staff clerks and attorneys as well as other city staff to advise their charter review committees and provide administrative support as needed. This is especially true in regards to background knowledge and statistical information on a variety of issues attended to by any charter review committee. Our committee had no such support other than presentations provided by invited guests, testimony provided by staff, including the City Manager, the Human Resources Director and four Commissioners, and information and references provided by our attorney. Otherwise, an undue burden had been placed on our extraordinarily capable Chair, Tony Musto, to research information, provide documentation and determine the necessary resources for further information as he had found appropriate. It is customary, I believe, for city staff in other municipalities to enhance the research and statistical information needed for charter review committees, but this had not been the case for our committee.

Any city ordinance that specifies that city employees will be separated from the process of undertaking a review of the charter by a committee of appointed residents had not been provided to our

³ Hallandale Beach, Florida, Code of Ordinances: PART II - CODE OF ORDINANCES, Chapter 2 - ADMINISTRATION, ARTICLE III. - BOARDS, COMMITTEES, DISTRICTS AND AUTHORITIES, DIVISION 1. - GENERALLY, SEC.2-72, Nomination and ratification of members of boards, authorities and agencies, *subset number 4*

committee. In fact, the only ordinance that our committee had been provided by Mr. Jove prior to commencing our proceedings was in regards to the establishment of the committee, but the ordinance specifying the role and the duties of the Alternate as well as other board and committee functions, policies and procedures had not, I believe, been provided to us.

4. City of Hallandale Beach Administrative Policy and Municipal Code

City of Hallandale Beach *Administrative Policy Number 2026.006/R5* specifies that, except as authorized by the enabling ordinance, board and committee members in our city may not also be members of the Commission or city officials or city employees. The Policy also specifies, however, that members of the Commission, city officials and employees may attend committee meetings or be designated to attend in an "advisory or administrative capacity" without voting privileges. The policy specifies that Commissioners may not "give direction to nor interfere with" committee actions, but that does not pertain, as far as I can tell, to advice and administrative functions.

Policy Number 2026.006/R5 is in apparent conflict with our city Code in regards to the use of Roberts Rules of Order. The Policy states that all boards and committees in the city shall operate under Roberts Rules. *Municipal Code 2-121*, however, states that "the committee may adopt such internal procedures and rules as may be necessary to carry out its function, included but not limited to the method by which meetings shall be called and policies relating to attendance." Again, neither the code nor the policy was discussed in our committee meetings.

Policy 2026.006/R5 also dictates that "all new members of Boards and Committees shall attend a workshop to review ethics, protocol, sunshine law, Board and Committee Administrative Policy and other member responsibilities as may be applicable." The policy dictates that such a workshop "shall be presented by both the City Clerk and City Attorney's offices."

When the Mayor spoke to our committee, she had advised that we all read the *Protocol Manual*. I had subsequently suggested to the committee that any city manuals, policies and supporting materials in regards to our review of the Charter should be provided to the committee in the form of a presentation, and that I or various city staff and/or consultants could prepare presentations as needed, even a very simple presentation utilizing PowerPoint slides or reading documents to the Committee and answering questions. I felt this was necessary to ensure that in a volunteer service environment, all members would be presented with information and materials in a manner that would best ensure that they were reviewed by all as well as understood. The Chair and other committee members were not interested in my suggestion, but it does seem that such a procedure in regards to a "workshop" presenting policies and procedures for new board and committee members is a part of city policy, as per *Policy 2026.006/R5*, and I believe that this is for good reason.

It had been decided by our committee that the establishment of a Charter Review Committee would be made a part of the Charter. I had disagreed with that provision, however I had asserted to the committee that should the CRC be included in the Charter, then specific policies and procedures regarding the committee should be included in such a provision. The committee members, with the exception of Mr. Grachow, disagreed with my recommendation. As explicated here, however, city policy had attempted at an earlier time to establish a semblance of such procedures despite city staff not, apparently, following the dictates of that policy. I therefore lay out my recommended policies and procedures for conducting future Charter Review committees further along in this report.

B. PROCESS ENGAGED BY THE 2011 COMMITTEE

1. Committee Clerk

As our Committee progressed, it became immediately apparent and continued to be apparent that policies and procedures in regards to the duties of our Alternate, the specific role of the Chair and the Vice-Chair and the supervision of the committee's Clerk were lacking. Despite the hiring of a Clerk contracted especially for our committee, we had not been provided with minutes for our meetings for a period of three months. While the previous Charter Review Committee had apparently not had any meeting minutes provided to them at all, the city had decided for this year's committee to contract a clerk for the provision of minutes and other clerk duties, and the Clerk was likely paid a reasonable salary in order to accomplish the tasks. I would have expected that city staff as well as our committee would have been proactive in ensuring that the Clerk's tasks were completed proficiently and in a timely manner.

From the beginning of September until the end of November, or at some time during that period, our Chair apparently had possession of meeting minutes that he had found incorrect and unacceptable. Rather than alerting the committee or, I presume, city staff to the problems with our minutes and any procedure to be undertaken in order to correct them as well as a time-line to do so, we simply never received any minutes for our meetings for three months. Any discussion on the matter of missing minutes was not forthcoming despite my attempts to address the matter. Because of continual audio problems in meeting videos posted on the city website and because of the lack of minutes, it became impossible for me to recall precisely what motions had been made, how I had voted, and what had been voted upon in the majority. Our Clerk had been vetted and hired by city staff prior to the commencement of our Committee's proceedings, and, unlike the hiring of our committee's Attorney, members had no involvement in the selection of our Clerk.

2. Categorization of the Charter for the Purposes of Review

In regards to procedures that had been undertaken prior to the submission of our Final Report, particular procedures were either decided by the Chair or informally agreed upon by the members of the committee without taking or recording a formal vote on the matter. This included the creation by the Chair of 12 "categories" under which specific provisions in the charter would fall, and our review and discussion of the charter would fall under those categories as opposed to addressing the charter provisions in the order in which they are presented in the charter. While Mr. Musto's categorization of charter issues was quite brilliant and complex, this established a procedure that had not been formerly agreed upon nor tested as functional or as appropriate.

It is my opinion that this procedure of categorizing the charter according to subject headings created by the Chair violated the spirit of public meetings and caused unnecessary confusion. The categories, as established by the Chair, were never made public beyond the Chair naming them aloud towards the end of our August 31st meeting,⁴ and such categorization made it impossible for members of the public as well as most if not all committee members to follow what portions of the charter were going to be addressed at the next meeting as well as during each meeting. No handout enumerating the categories had been provided to the committee.

⁴ CRC Meeting Minutes August 31st – p.4- number 10- ORGANIZATIONAL CONSIDERATION

Agenda items were listed only by "category" rather than by the title of the *Division* or *Section* in the Charter, and no backup materials were ever included with our agendas that provided the specific text to be reviewed and addressed at our meetings. The text in the charter under review during our meetings was never read allowed for the benefit of the public as well as members of the committee, and I found myself very often scrambling to find the page, the paragraph and the sentence being referred to by the Chair as he attended to subject matters that fell under his own categories.

Diligent study of the charter prior to scheduled meetings was necessary to ensure that any observers as well as committee members were prepared to discuss specific provisions. While we all certainly hope that any participants in the charter review process would be prepared and have carefully studied each provision to be discussed at each meeting, that is unlikely to be the case at all times during every charter review process. Procedures are needed to ensure that all members as well as the public can be certain about what specific items in the Charter and precise language are being addressed.

Backup materials and other documents are regularly included with Commission agendas, but CRC members were instead expected to locate the specific wording and provisions to be addressed in our meetings under agenda headings such as, "City Commission," "City Employees" and "Dissemination of Information," with no further explanation or backup materials. When I brought up my concern about this to our Chair Musto, he appeared to take some umbrage and replied, "OK, thank you for your input" and refused to entertain any further discussion on the matter, nor did any other committee members express any concern of their own. Reverend Johnson had spoken up in defense of the agendas as created.⁵

3. The Spirit of Public Meetings and Volunteer Participation

No member of our Committee had been pre-screened per any City policy or procedure to determine specified abilities, including reading and comprehension skills, nor should appointees undergo such screening. Varying levels of skill should therefore be better accommodated when serving on such a committee. Appointed members of boards and committees have varying levels of experience in reviewing legal and/or governmental documents. Each individual on any volunteer committee will have varying levels of education, abilities of observation and familiarity with the processes at hand, including the utilization of Roberts Rules to initiate discussion and bring forward items for consideration.

The Commission should never, therefore, assume that a specialized categorization of the charter by the Chair of the Charter Review Committee and the utilization of Roberts Rules under the direction and control of the Chair will accommodate both the needs and abilities of various volunteers on the committee. A lack of specified procedures explicated and advised by city staff, including the City Attorney and the City Clerk in the form of a presentation to a newly formed committee as per existing city policy is also likely to inhibit the ability of the public to follow along while meetings are conducted and the charter is reviewed. Appropriate procedures are needed to ensure a clear and concise process.

It should be, I recommend, the responsibility of the Commission, the City Manager, the City Attorney, the City Clerk and their support staff to ensure that the public can perceive the charter review process as accommodating public observation as well as accommodating the ability of the public to participate. The process undertaken during my time serving on the committee has been detrimental, I believe, to encouraging public observation and participation as well as ensuring that all volunteers serving

⁵ CRC Meeting October 19th, 2011- video place mark: 6:07

on the committee were fully engaged in the review and discussion of each item, despite several assertions otherwise by some committee members.

Most distressing was the fact that the meeting minutes covering twelve meetings, the committee's Final Report and the Outline to the report were all submitted to the committee members via email the night before what was supposed to be our final meeting of December 2nd. I found fourteen or more Microsoft Word attachments in at least a dozen emails from our clerk the morning of what was supposed to be our final meeting.

At that 3 o'clock meeting, our Chair had expected the committee to vote to approve the Final Report, and we would also vote to approve the outline and all the previously un-submitted meeting minutes, if time allowed. In fact, the agenda had been resubmitted to us just before the scheduled meeting time so that it reflected that we might not have the time or the ability to vote to approve meeting minutes.

When I and committee member Leo Grachow asserted that there was a need to allow more time for committee members to read and digest the Final Report as well as the Outline and the minutes prior to voting to approve anything, Chair Musto suggested that we recess for 30 minutes so that we could attempt to at least read the Report. Both Mr. Grachow and I objected, and I asserted that, as a matter of policy, any volunteer committee should always be provided a minimum of two weeks to review and be prepared to vote on somewhere in the range of a hundred and fifty pages of documents. Volunteers generally need to ensure that they are able to find the time to be fully prepared to vote on items for approval after reading, studying, seeking reference, asking questions and fully digesting the materials at hand. The time needed to do so isn't always immediately available given that work, family and personal schedules can frequently conflict with any desire to reach an especially rapid conclusion to the volunteer project at hand.

It was decided that we would meet again to vote on approving all the documentation in another six days. This is despite the fact that both Bill Julian and Marc Pomerantz voiced their willingness to immediately approve our Final Report, and Mr. Pomerantz had made a motion to approve "as read."⁶ (I have not been in receipt of minutes for that December 2nd meeting). Mr. Julian asserted that he had read everything that he had needed to read the night before. As I've explained, I hadn't even been aware that the attachments were in my email in-box until that morning.

Ultimately, I voted to approve our Final Report at our subsequent and last meeting, but I voiced a dissenting vote when we were asked to approve the Outline and the twelve meeting minutes because, given my schedule over the prior few days, I could not in good conscience vote to approve documents that I did not believe I had been provided adequate time to study and to fully digest. The Outline alone runs almost eighty pages, and referencing it has been challenging.

Our minutes did contained errors, including mis-reported votes. For example, the minutes for our October 28th meeting list my vote as changing from "NO" to "YES" on a recommended provision that the Charter Review Committee submit its Final Report within six months of commencing meetings, but if anyone were to watch the video, my vote was clearly and unequivocally "NO."⁷

⁶ CRC Meeting December 2nd, 2011- video place mark: 19:30

⁷ CRC Meeting October 28th, 2011- video place mark: 1:54:00

4. Calling for Votes on Motions to Recommend Changes to the Charter

Most regrettably, our committee Chair chose to forgo a customary procedure engaged by our Commission in regards to calling for a vote on complex items. Whenever our Chair felt that discussion had been adequate on any item-- even when discussion had proceeded for only about one or two minutes and the chair had been the only member of the Committee to assert a position on a matter-- the Chair had frequently said, "OK, I'm calling it for a vote" or "Any further discussion? Hearing none, I will call the question." I was in the midst of discussing a motion on the floor on some occasions when the Chair apparently felt that he had heard enough and called on another member of the committee, or he called for a vote. There were occasions when I had leaned toward the microphone to engage in further discussion after the Chair had asked if there was to be any, but I had been cut off as the vote was called. If there were one or more dissenting votes, then the Clerk had called a roll call vote.

The Clerk had not, however, *read the motions* on the floor that were called for a vote, even when the motions were on very significant matters and had been amended several times. There were occasions when the Chair called for a vote, but I was entirely unsure as to what precisely we were voting on. A very good example of this was when we had voted on a term limit for the Mayor. Both Leo Grachow and I had not even called out our votes because we had both been unsure as to what the motion was. On that particular occasion, I had sat there stunned that a vote was being called after a motion had been made by Mr. Julian before being amended and then *re-amended* several times. A vote was suddenly called without a reading back of the motion. I urge each Commissioner to watch the video of that portion of our meeting. The discussion, the motion, the amendments to the motion and the call for a vote in regards to setting a term limit for the city's Mayor were, to me, evocative of a casino game.⁸ I had even asked at one point during the discussion if Mr. Grachow might have had any dice on hand.

Earlier in that meeting, a vote had been called by the Chair after a brief discussion, and I remain unable to determine what had been the question before us. The Chair had stated, "I have a motion and a second to take no action on that regard, any further discussion? Hearing none I will call the question..."⁹ As I will discuss in this Report in addressing specific recommendations for which I was a dissenting vote, I voted against a motion in regards to residential districting because the motion on the floor was too unclear and the discussion too abbreviated, despite my overall and adamant support for residential districts with city-wide voting for each member of the Commission.

I am a frequent observer of our city Commission meetings, as well as our *Workshop* and *Budget* meetings. I know that the Chair of those meetings, Mayor Cooper, allows each member of the Commission as well as staff, the Manager and the Attorney all the time they need to discuss, ask questions and bring forward ideas. While our meetings were set at a two-hour time limit, which I felt was very beneficial, and we met far more frequently than most other charter review committees in the state, according to what our committee Attorney had told me, the amount of discussion and consideration for vital issues that could change our charter was frequently inadequate. On one item, a vote had been called and recorded prior to hearing testimony on the issue from invited guests and experts on the issue.¹⁰

⁸ CRC Meeting October 28th, 2011- video place mark: 1:30:00

⁹ CRC Meeting October 28th, 2011- video place mark: 1:02:09

¹⁰ See: City Clerk provision in this Report, p. 37

5. Duties of the Chair

As explained above, after selecting a Chair for our committee, the members were never provided nor did we discuss the specific role and the duties of the Chair. It had been assumed, I imagine, that the Chair's role is explicated by Roberts Rules. While each Chairperson of any board, committee, council or commission likely operates differently and with an individual style, I believe that the function of our committee Chair differed too sharply from what I have observed in our city Commission meetings, where each member of the Commission as well as city staff, including the Manager and the Attorney, and additionally guests presenting to the Commission are given plenty of time and consideration to gather their thoughts, provide their insights, voice their opinions and even lodge their complaints. Our committee, however, operated very tightly under the direction of Chair Musto, to the point that should any subject be brought up that displeased the Chair, the most frequent refrain I heard was, "I don't want to get into that!" or "I will only entertain..." this or that.

When I had attempted to ask if campaign financing would be brought up for discussion, the Chair advised that I was "out of order," and the issue was never subsequently addressed beyond the Chair deciding that it would not be brought up because he asserted that the US Constitution has already decided the issue.¹¹ Furthermore, both Chair Musto and Mr. Julian asserted that any campaign financing issues in regards to the city's elected officials and candidates for seats are "on the website." The information in regards to campaign spending on our city website, however, is hardly clear to the average user of the site.

While such consistently abrupt control of the proceedings may fall under the purview of Roberts Rules, inhibiting consideration of thoughts, ideas and concerns from volunteers on any board or committee can likely foster two outcomes- *one*: members may feel disinclined to address discrepancies, concerns and recommendations- and *two*: other members will likely feel inclined to align themselves with the strongest and the more autocratic personality on the board and thus enable dysfunction that should otherwise be avoided. I have observed such behaviors as a very frequent course of human nature in business and volunteer operations.

Direction is required, I believe, from city staff in regards to ensuring that new members of boards and committees in our city understand policies and procedures and what the specific roles and duties are for each member, including the Chair, the Vice-Chair and the Alternate. As I had stated at our first committee meeting and in at least two subsequent meetings, many people want to believe that they are operating in the best interests of their organization. It is my business philosophy as a writer and editor of standardization materials, however, that people would act in the *better* interests of their organizations if they followed procedures and adhered to policy.

6. Attendance

Chair Musto did an exceptional job of scheduling committee meetings. This required utilizing the Commission chambers when not in conflict with Commission meetings and other meetings scheduled to take place in the chambers. He also had to account for the family, work and personal schedules of each

¹¹ CRC Meeting Minutes October 28th 2011– p.3
and
CRC Meeting October 28th, 2011- video placemark:1:14

member of our committee while ensuring that all subjects relating to the Charter could be covered and a Final Report submitted within six months. Our committee typically met two to three times per week.

During our first discussion regarding our schedules, I had mentioned that I had expected to attend Palms Community Action Coalition meetings once per month. Mr. Julian responded, however, that we would all have to sacrifice to participate in the Charter Review Committee, and that he would be giving some things up in order to do so. As it turned out, Chair Musto was accommodating to everyone's schedules, but both he and I were the only members to attend each and every meeting during the months that the committee was in process.

Some members took vacations out of town- one member even leaving for a cruise in Europe. Vacations, family events, business trips, a funeral, reunions and work conflicts resulted in all of the members of the committee with the exceptions of the Chair, the Vice-Chair and the Attorney and Clerk missing several meetings. This is why I address the six month requirement in regards to Charter Review Committee policies and procedures in this report, and why I am concerned about the immense amount of materials to review and documents produced within a short time-frame.

I recommend that the Commission addresses the expectation that there will be significant absences; that the role of the Alternate is established in city code; that city staff should provide an orientation of sorts that complies with city policy; and that back-up materials as well as documents produced by the committee require adequate time for review, discussion and revision. These recommendations are further explicated in the next section of this report, which includes recommended Policies & Procedures for the CRC.

7. Venue

The city Commission arrives at meetings with agendas that detail the wording of proposed ordinances prepared by the City Manager's office as well as back-up materials and documentation provided for specific issues at hand for that particular meeting. The city provides for Commissioners an office, a desk, a phone and a computer as well as support staff and other amenities. The Commissioners are generally expected—as well as salaried—to come to meetings prepared to deliberate and to vote on agenda items that have been thoroughly vetted by the City Manager and other administrative and technical departments in the city. The Commission chambers therefore provide a useful venue for Commission meetings and board meetings utilizing a quasi-judicial review.

The Charter Review Committee, however, is confronted with the entire city Charter as well as a dense array of supporting materials that must be organized for discussion as the meetings progress over several months. Such operations make the venue of the Commission chambers cumbersome for volunteer members who have great difficulty seeing one another on the Commission dais while deliberating. The committee does not operate on a quasi-judicial basis, and is therefore able to discuss and deliberate on matters without adhering only to any evidence presented before them at the meeting by visitors and city staff and/or outside persons. The Charter Review Committee members should therefore be seated in a venue more akin to a conference room, with a table at which members can readily see one another and react to the reactions and expressions of other member while deliberating and organizing the documentation, the information and the issues at hand.

The City Clerk's office has asserted to our committee that a conference room or conference table set-up in the Commission chambers would prohibit the CRC meetings from being live-streamed on the internet as well as televised. I disagree. Quite frankly, if retired grandparents can post audio and visual materials depicting grandchildren either recorded or live-streamed on the web utilizing a hand-held recording device and other easily-obtained equipment, then city staff can accomplish similar measures in regards to CRC and other public meetings conducted in a conference fashion. If some technologically challenged city residents can phone Comcast to install the necessary technology to gain access to cable television in various rooms of private homes, then city staff can surely do the same and more at city hall.

It was more than apparent throughout my time on the Charter Review Committee that the majority of members were unaware of the audio requirements in the chambers, which requires speaking closely and directly into the microphones installed on the dais. There are several videos of our meetings in which the dialogue is almost entirely inaudible. When PowerPoint presentations were brought to our meetings, the technological aspects of projecting slides had failed us on occasion.¹² The basic technology utilized in the Commission chambers was therefore not amenable to a volunteer committee not engaged in quasi-judicial proceedings, as the Planning and Zoning Board engages in while meeting in the chambers, and staff were mostly unavailable to assist.

8. Preparation of the Committee's Final Report

One role that had never been discussed in our committee proceedings that I can recall is the writing of the committee's Final Report. We had also never been advised as to a specific date on which the report could be expected to be submitted for approval by the committee, nor were we advised, according to my recollection, as to a time-line for committee members to review the draft of the Final Report prior to voting to approve it. I also do not recall being advised as to the format of the Final Report that we should expect, including a supplemental Outline.

Upon receiving the Final Report draft, I voiced my concern to the committee that the public and the Commission may be led to believe that the report was prepared and written by our committee. I suggested that, instead, the Final Report should state on its cover page that it was written by our Chair, Tony Musto-- because it had been. The Chair and the rest of the committee rejected my suggestion, however.

The Committee members all expressed how pleased they were with the report, and they were appreciative of both Chair Musto's and Attorney Susan Churuti's efforts in preparing the report and its outline. What was missing in their consideration, however, was the matter of designating the role of writing the Final Report in its entirety to our Chair. Some may assert that it is customary for a committee Chair to write and submit a Final Report, and our committee was most certainly exceptionally fortunate in having a Chair who is a law professor with extraordinary talents for document analysis and the explication of recommended changes and amendments. The rest of the committee did not share my concern, however, in regards to policies and procedures that could carry over to *future* Charter Review committees.

I recommend that the Commission consider the fact that there may never again be an opportunity for a future Charter Review Committee in Hallandale Beach to have the resource of a Chair, let alone an

¹² CRC Meeting October 26th, 2011- video
PowerPoint presentation by *Florida Initiative for Electoral Reform*.

appointed member, possessing the extraordinary talents of Tony Musto in regards to the analysis of legal documents and the acumen for completing a report in its entirety on his or her own. As a matter of policy, I address a process for explicating the duties of a Charter Review Committee Chair in this report, because even though our committee members were very pleased with Mr. Musto's efforts after we were notified by email that the Final Report draft had been completed by the Chair, I am the sole member, it seems, who is concerned that our good fortune was a matter of the circumstances at hand rather than a policy set forth by city ordinance, the Charter or by a discussion and vote by committee members.

In response to my concern, one committee member explained to me that when we had voted to select Mr. Musto as our chair, we had turned over a variety of duties, including the writing of our Final Report, over to him. This was never discussed, however, so the completion of our Final Report by our Chair is a product of the committee's good fortune in having Chair Musto's talent available to us rather than a product of policies and procedures set forth by the city or decided upon by our committee.

9. Submission of the Final & Dissenting Reports

After voting to approve the Final Report on the evening of December 8th, the Chair asked if anyone intended to submit a Minority Report. I said that I would, and the Chair asked when it would be completed. I repeated again that as a matter of policy, volunteer committee members should expect a minimum of two weeks to review documentation and/or submit a report. Instead, the Chair asked if my report could be completed by that Monday. I knew that my weekend schedule would not allow me enough time to complete a report, but the Alternate, Alicia Moreno, spoke up with some annoyance and said that it had been her understanding from speaking with me on Veteran's Day at City Hall that I had been writing a Minority Report. I had only mentioned, however, that those in dissent on items that would be recommended to the Commission would submit a Minority Report. It therefore appears that not only the Chair but other committee members as well believe that the receipt of all documentation, including most but not all of our meeting minutes, our Final Report draft and the Outline to that report should result in not only a very rapid review and approval of those documents, but also result in very rapidly produced dissenting as well as concurring reports being completed over the weekend.

In conclusion, it had been and continues to be my expectation that committee members would more clearly be advised as to what to expect at the upcoming meeting, throughout the process, and in regards to the preparation, review, revision and submission of a final report. I offer recommendations in this report for implementing better defined procedures for the Charter Review Committee. The background provided above in regards to my experience on the CRC over the prior six months may highlight the necessity of implementing such procedures.

II. POLICIES & PROCEDURES FOR ADVISORY BODIES

A. PURPOSE & FUNCTION

The City of Hallandale Beach establishes Advisory Boards and Committees by ordinance, not in the city Charter. The purpose of each board and committee is set forth in the individual ordinance that establishes each, according to my reading of the code. There is apparently no overall mission stated in a city ordinance in regards to all citizen advisory bodies. The purpose of each board and committee is stated individually in each ordinance that had created them. Under the "Established" section of the code, a brief sentence is included to state an overall purpose for each of the currently established boards and committees. The city's code is not up to date in regards to listing current advisory boards and committees.¹³

It has been apparent to me that members of Hallandale Beach's boards and committees too often feel that their recommendations are not taken seriously enough by the Commission, and/or their recommendations are too often not implemented by the Commission. Many participants in boards and committees, it seems, believe that they engage in deliberation and research on the issues at hand in their meetings that are equal to the deliberation and research engaged by the Commission. I disagree with any such presumptions.

The City Manager's office as well as most other departments in the city are obligated to provide research, situational as well as other kinds of evidence, financial records, reports and projections and a myriad of other materials to the Commission to be weighed in the discussion of issues at hand. Furthermore, the City Manager brings to the Commission the precise wording of ordinances under consideration for approval, along with backup materials and recommendations from his/her office. Just those factors alone are not equal to the materials and the subject matters at hand in an advisory body.

As most of the city's advisory boards and committees currently function, I cannot conclusively state that they are for the most part unproductive in advising the Commission on matters that can and will be put into action after any reports from its members are submitted. I will say, however, that I am currently skeptical, and our citizen advisory bodies could benefit from generous attention and reformation by the Commission.

1. Involvement of the Commission

Citizen advisory bodies in the city can potentially benefit the city, but I am greatly concerned that without a request from the Commission for research, background, information and recommendations on a specific issue under consideration in the city and by the Commission, the advisory boards and committees are instead left to generate their agendas as they go along while lacking some needed specificity. The Charter Review Committee is a good example of an advisory body that is established on an *ad-hoc* basis and with a specific mission: to review the Charter and make recommendations for changes.

¹³ ARTICLE III. - BOARDS, COMMITTEES, DISTRICTS AND AUTHORITIES
<http://library.municode.com/index.aspx?clientId=14646&stateID=9&statename=Florida>

It would likely benefit the city's advisory bodies, I believe, if two basic principles are established by the Commission:

- 1) Each advisory body should be regarded by the Commission as more like an *ad-hoc* body with a specified purpose. Because most boards and committees are not established on an *ad-hoc* basis, the mission of each of the advisory bodies should frequently change according to the needs of the Commission in regards to generating background research, information and advice from the advisory bodies based on the board or committee's overall purpose. The Commission would therefore be far more engaged in assuring that appointed members of advisory boards and committees have a specific pursuit in their meetings in regards to advising the Commission. The appointed members could also pursue their own agendas as a group in the hopes of bringing useful recommendations to the Commission, but as the city develops its plans for the future and works to continually improve our quality of life, citizen advisory bodies can surely have a role in assisting those efforts in a far more focused manner. Advisory bodies in the city can perhaps be enabled in helping the Commission each and every month by examining various questions and proposals being addressed in city Commission meetings as they relate to a board or committee's overall purpose.
- 2) The Commission should counsel appointees to advisory bodies that the role of the committees and boards is to issue recommendations, not to alter city rules, write and/or pass ordinances or to direct city staff. Should individual appointees feel that recommendations are not in themselves useful or effective enough to engage members in their mission, then such appointees will be in need of advice and encouragement from the Commissioner who made the appointment. Such attention to each appointee's productivity and attitude will help to ensure that the Commission is involved in ensuring that advisory boards and committees are entrusted with a specific advisory purpose rather than only as a general effort at involving city residents to some limited extend in city affairs.

The Mayor mentioned at a very recent Commission meeting that the structure of advisory boards and committees needs to be addressed by the Commission, and I trust that the issue of motivating and engaging appointees and potential appointees to the advisory bodies will be attended to in the near future. I hope that my suggestions here as a member of an advisory committee that had a very direct and specified purpose will be helpful to such efforts.

2. Advisory Boards and Committees Rules & Procedures

Should the board and committee members adopt internal procedures and rules as necessary to carry out their advisory functions, then the Commission should either directly or through city staff ensure that such rules and procedures are thorough enough to address all issues in regards to the function of the committee.

B. WORKSHOPS FOR BOARD & COMMITTEE APPOINTEES

As mentioned earlier in my report, city policy appears to dictate that new advisory board and committee members be provided with an orientation Workshop prior to commencing participation as an appointee. While the majority of my CRC colleagues disagreed with me, I believe that it is vital that such participation of city staff and the provision of the basic tools of board and committee participation be provided to appointees. Such tools include a basic presentation of Roberts Rules of Order, even if appointees have read or carry with them a Rules handbook. Such a presentation can be in the form of a video, even if appointees could choose to view such a video on-line and on their own time.

The Commission should not assume, however, that appointees will take the time and make the effort to locate a video and written material providing instruction on Roberts Rules on their own without such materials being available directly from city staff as part of a Workshop curriculum. The city staff should also engage with appointees in ensuring that a program of instruction in Ethics applicable to an advisory body be provided, as well as instruction on Sunshine Law as applicable.

C. POLICIES & PROCEDURES FOR THE CRC

1. Workshop

As stated above, the city had apparently established a procedure to help ensure that new members of boards and committees are provided some basic tools for functioning productively as appointed members. My first recommendation in regards to the Charter Review Committee is that all factors regarding *Policy 2026.006/R5* should be implemented in regards to all CRC appointees. In order to ensure that the Policy is thoroughly complied with, the Workshop should be conducted by city staff, not by contracted employees serving the committee, including a separately contracted committee attorney and/or clerk.

2. Role of the Chair

The role of the Chair must be clearly defined by the Commission. It should not be assumed that any and all committee members will agree on a standard role of a Chair according to Roberts Rules or any other factors. Should the committee members decide for themselves precisely what duties will be performed by the Chair-- including what information and functions may be handled by the Chair without the Chair advising the other members of the committee-- such duties should be reviewed by city staff as directed by the Manager in order to ensure that conflicts and dysfunction might be avoided. Should the committee members adopt internal procedures and rules as necessary to carry out the CRC's function, the Commission should either directly or through city staff ensure that such rules and procedures thoroughly address all issues in regards to the function of the committee.

3. Committee Attorney & Clerk

The Attorney advising the CRC as well as its Clerk should not, I believe, be contracted from outside city staff except for the necessity, should the Commission agree, that the attorney should specialize in counseling charter review committees.

As far as I can tell, the city code does not specify that the organization of the CRC should entail the participation of an attorney and a clerk. Should this specificity be stated elsewhere in Municode, then such wording should be moved into the Organization portion of Sec. 2-121.

In incorporating an organizational structure for the CRC into the code or-- should the Commission accept the recommendation of my committee's report and include the CRC in the Charter and additionally create an organizational structure for the CRC in a Charter provision--then the Commission should specify its reasoning for hiring an attorney and a clerk from outside city staff. The Commission should also explain its reasoning for prohibiting administrative and advisory support from city staff to the CRC in the code and/or in the Charter provision concerning the CRC.

From what I understand, it is not a customary procedure to prohibit the administrative support of city staff in municipal charter review advisory committees. Neighboring governments utilize their own staff, including a city attorney and/or assistant city attorney and city clerk in providing support for charter review committee meetings. Should our Commission be under the assumption that some kind of inappropriate and undue influence may be inflicted upon CRC members by a staff attorney, clerk or other city staff, I cannot agree that your appointees would be so susceptible.

From my experience, appointees initiate their involvement in reviewing the charter and recommending changes with a great deal of skepticism in regards to both the Commission and city staff. In fact, members of my committee were consistently eager to alter our Charter in an apparent attempt to pre-empt the actions of the Commission and staff, which will be the main thrust of the Minority opinion portion of this report in regards to committee recommendations. I am skeptical that the administrative involvement of city staff would unduly influence the members of the Charter Review Committee.

Should the committee's clerk be hired by city administrative staff, then the committee's clerk must be supervised by city staff, and city staff must immediately attend to the concerns of the CRC in regards to the performance of the committee's clerk. The committee and its Chair should only supervise the committee's clerk if the clerk had been selected by the committee after a vote. The committee over the prior six months did not select nor supervise our clerk.

4. Support Staff

It has been my impression that the lack of involvement of city staff in researching background information, providing statistical and comparative research and providing insight into city functions here and elsewhere at each CRC meeting is atypical of the function of charter reviews throughout the state. While our committee did benefit from the testimony of the Manager, the interim Clerk, the Human Resources director and some of the Commission, the lack of support staff on the dais at our meetings- prepared to answer questions from the Chair and other members- inhibited the functioning of our committee.

An undue burden had been placed on our Chair to provide an extraordinary amount of information and background to our committee, especially in regards to any kind of comparative research. Each and every committee member is, I am certain, extraordinarily grateful to Tony Musto for his consistent acumen and unfailing energies and interest in the mission at hand, but I believe that Chair Musto had been deprived of administrative and research support from city staff that is customary in other cities undertaking a charter review process.

I recommend to the Commission that the CRC process for Hallandale Beach be structured in a fashion more akin to other municipalities in the state in regards to administrative, research and other informational support by city staff assigned to attend each and every committee meeting.

5. Venue

The Charter Review Committee regular meetings should be conducted in a conference setting rather than on the Commission dais. The dais should remain available to the CRC as needed in regards to presentations and testimony, should the Commission chambers be preferable to members in those circumstances.

6. Budget

The Charter Review Committee is not in need of a budget or spending authority. Request for expenditures should be made through the City Manager's office. Expenditures in regards to reasonable travel expenses for guests providing testimony or presentations to the committee may be requested by the committee Chair, and reimbursement for certain administrative costs may also be requested from time to time. It is not the purview of the Charter Review Committee, however, to hire expert consultants from outside city staff to conduct extensive research, issue reports or to provide exacting proposals that mimic

the research materials and ballot language that the Commission might initiate after voting to approve committee recommendations.

7. Report

Division 3 Section 2-121 of the city code specifies that "within six months of the committee's first meeting, the committee shall prepare a written report to the city Commission detailing its findings and recommendations."¹⁴ The committee believes that six months is an entirely adequate period of time in order to complete a review of the entire Charter and issue a set of recommendations, despite numerous absences and very minimal time to review the Final Report.

As detailed in my dissenting opinion regarding the CRC in PART TWO of this report, I am in disagreement with the provision of a six month deadline. In order to ensure that volunteers can attend meetings and address all relevant issues and to ensure that the preparation, review and revision of the Final Report can be completed in accordance with a reasonable schedule, I recommend that the Commission amend the ordinance to increase that time period.

Should the Commission agree with the committee's recommendation that the CRC be included in the Charter and the recommendation is successful as a referendum, then the Charter should be amended to reflect an increased time period for the issuance of the committee's report to the Commission or refer to city code that ensures an extended deadline.

Whether in the city code or included in the city Charter, the CRC Final Report should not be due in less than eight months-- and perhaps longer should discussion of the issue indicate that a lengthier process should be beneficial to the city and to the Commission's appointees.

¹⁴ Hallandale Beach, Florida, Code of Ordinances: PART II - CODE OF ORDINANCES, Chapter 2 - ADMINISTRATION, ARTICLE III. - BOARDS, COMMITTEES, DISTRICTS AND AUTHORITIES, DIVISION 3.- CHARTER REVIEW COMMITTEE

III. THE DEMOCRATIC PROCESS

A. THE PEOPLE vs. ELECTED REPRESENTATIVES

I was continually dismayed by the skepticism I perceived from CRC members in regards to the ability and the willingness of elected representatives to attend to the interests of city residents. The assumption by most if not all committee members other than myself seemed to be that the city Charter is in place to inhibit elected officials from making decisions that might steer the managerial direction of the city towards a place that members of the committee might find undesirable.

It is my feeling, however, that the direction of our city is best engendered by participation of voters, candidates for seats, and residents who take the time and make the effort to become familiar with current, past and future city issues. Our Charter is best served by amending it in ways that might foster and increase participation rather than in ways that pre-empt the decisions of our Commission during specific circumstances that arise over the coming eight years.

B. ENHANCING DEMOCRACY

I strongly encourage each Commissioner to watch the video of our CRC meeting of October 26th, 2011 during which Yury Konnikov of *Florida Initiative for Electoral Reform* (FLIER) presented a thorough, engaging and enlightening talk on various methods of conducting elections, increasing participation, widening ballot access and reforming our methods of financing political campaigns.

Mr. Konnikov is not supportive of term limits for any elected officials-- nor am I. While it is understandable that voters would like to see access to entrenched political seats opened up, term limits only offers a very artificial way of doing so. Mr. Konnikov had presented a multitude of ways to increase access to as well as participation in the political process, including the aspirational provision of adding *single-transferable voting* to our election process for seats not representing a defined district, even though changing the ballot method would likely require certification by the Florida Secretary of State. Additionally, aspirational methods of limiting campaign funding and expenditures in our Charter are in line with Congressman Ted Deutch's proposed amendment to our US Constitution that cannot get a vote in today's Congressional environment but that was supported by our Commission in a Resolution passed unanimously just weeks ago.

Our committee was not particularly interested in exploring the potential of enhancing our Charter with electoral reform measures beyond residential districting. I could not, however, vote affirmatively on the districting in our meeting of October 28th because the motion called for a vote had been so entirely unclear and the Chair had been disinterested in engaging in any discussion in regards to the potential of more than three districts. My position on residential districting is further explained in PART TWO.

C. AMENDING THE CHARTER TO INHIBIT THE COMMISSION

I'm concerned that our committee may have been representative of the sentiments of many of our city's residents who believe that they have little sway with their elected representatives on the Commission. Residents have opportunities to petition our Commissioners on issues important to us through personal contact, attendance at community meetings, involvement in community organizations and events as well as participation at public meetings, including Commission meetings. We can even gather signatures for a written petition and/or run for seats.

The members of our committee were more intent, however, on bypassing the deliberations of elected representatives and going directly to the few residents who show up to vote through "direct ballot access." The committee also appears intent on altering our Charter so that items that "sound good" are inserted despite minimal consideration of the ramifications and often very brief deliberation.

Too many of the recommended provisions would take away the decision making process from the Commission in regards to various circumstances as they arise. Such recommendations would place those decisions as items fixed into the Charter for at least eight years. Other recommendations attempt to take management decisions away from the professional manager and place such decisions in the hands of representatives continually seeking electoral advantage over the more immediate or the longer-term interests of residents.

The Commission should always remember that they are elected to carry out the interests of Hallandale Beach residents, to encourage investment in our city and to promote the buying and selling of homes and properties. The city Charter, however, is designed to *define* our city government. The Charter is not designed, however, to *carry out* the act of governance as each and every circumstance arises in regards to infrastructure, maintenance, changing demographics, economic circumstances, changing personnel needs and a myriad of other issues.

There are several recommendations in our Final Report for which I have dissented. Much of the reason for my dissent is for the reasons stated above. I will further address the issue of democracy accessed through elected representatives in the Conclusion to this report.

D. THE COUNCIL-MANAGER FORM OF GOVERNMENT

Our form of governance in Hallandale Beach is typical of the type of government implemented throughout South Florida, throughout the rest of the state and in most of the nation in regards to the municipal management of substantially-sized cities.¹⁵ Professional managers are hired by the elected representative body to make decisions based on the immediate and longer-term needs of a city in regards to the maintenance of infrastructure, the vetting and hiring of personnel, the organization of departments, the preparation of budgets and many other administrative functions.¹⁶

The functions of a city manager allow independent discretion and authority in overseeing city operations as set forth in the city Charter, except in specified areas-- namely in legislation. The city manager advises the council or commission on technical matters as well as on legislative matters that elected officials will be voting for or against. The city manager, however, has no vote.

The purpose of the city manager is to provide objective outside council and administrative oversight of city operations-- separate from political and electoral concerns. It is vitally important, I believe, that political considerations and electoral advantages for one or more individuals in the elected body are kept separate from the managerial oversight of our city. That should be, I presume, the standard in the Council-Manager form of government.

Our city can quite easily fall below that standard should changes to our city Charter allow for political considerations in the day-to-day operation, management and administrative functions of the city. My recommendations in this report should, I hope, encourage that personal political considerations are removed from not only the managerial functions of our city, but from the consideration of electoral reforms as well.

Our committee considered but did not pursue changing the name of our Commission to "Council." I know of at least one nearby city, Miami Gardens, that uses the term "Council." That term may better reflect the role of the elected body in "counseling," if you will, the Manager in a supervisory role. Our Commission may, perhaps, take that thought into consideration in regards to reflecting our form of government in our city Charter.

Our Charter should reflect an unwavering, proud and self-aware recognition that our elected body, our administrative and technical staff and our city manager all operate within a Council-Manager form of government.

¹⁵ Advice from committee attorney Susan Churuti as well as Lynn Tipton of *The Florida League of Cities* to the committee during discussions and presentations.

¹⁶ *International City/County Management Association (ICMA) "Council-Manager Form of Government."*

PART TWO

Charter Review Committee Recommendations to the Commission

IV. DISSENTING OPINIONS ON RECOMMENDATIONS

RESIDENTIAL DISTRICTING

Amending Art. III, Sec. 3.05, Art. IV, Secs. 4.01(3), 4.07(1): 53-54, 71-72, 74-75

I am in support of residential districting, and yet I was in dissent on the motion called for a vote in our committee.

Residential districting had been proposed by the previous Charter Review Committee in 2003, and it has been recommended again by this committee. The concept allows for residents of the city to ensure that at least one seat on the Commission is held by a resident of their area of the city while continuing to elect the *entire* Commission at large.

The change proposed by the Committee would require that at least three candidates for the Commission would run in the district in which they reside. Should no candidate(s) emerge within a district, the committee has proposed that the candidate receiving the greatest number of votes among the losing candidates for other seats would serve a two-year term as opposed to a full four-year term. The district in question would have the opportunity to see a candidate residing in that district running in the next election.

This concept should foster and encourage participation of residents within neighborhoods to run for representation of their area of the city. Even if no candidate emerges within a district during one election cycle, that situation should encourage residents of that area to become engaged in seeking out a resident who would be best qualified to represent their area of the city on the Commission. Becoming engaged entails getting to know one's neighbors; defining qualifications and expectations for representing the neighborhood; and encouraging fellow residents to run for a seat rather than fostering mistrust and disengagement in our municipal political process.

Many incumbent elected officials express opposition to residential districting, and incumbents often express their opposition by referring to *single-member* districting. Residential districting differs significantly from single-member districts, however. Only some Commissioners are required to live in the designated residential districts, yet they represent the entire city, not just their district. They are also elected by the entire city, not just by those living within their district.

Single-member districting would be entirely detrimental to our city, I believe, and the dissention engendered by single-member districting in certain South Florida communities has been voiced by some who live where it has been implemented. Single-member districts had never been under consideration by our committee, however, as no member of the committee had voiced any support, although I had voiced my lack of support for the single-member districts.

What appears to concern some incumbent politicians most, however, is the increased competition for seats that any kind of districting, including residential districting, would engender. Increased competition is good for democracy, however, as well as for more effective representation. Residential districting has the potential to engender more qualified and attentive candidates. Residential districting is

likely to produce elected representatives who possess a keener awareness of the areas of the city that had previously been under-represented for long periods of time. This electoral method helps to ensure a diversity of socio-economic backgrounds on the elected body, and it should also help to ensure that a greater area of our city is represented by residents who live there while they serve on the Commission.

Our former Vice-Mayor, Bill Julian had repeatedly asserted on our committee that our city is and has been well represented by our Commissioners without the need for a consideration of districting. Mr. Julian cited an African-American who currently serves as Vice-Mayor on the Commission and who resides in the Palms neighborhood (Northwest). Vice-Mayor Sanders, however, had been appointed to the Commission after a nomination by Mayor Cooper due to the resignation of Commissioner Schiller, who had been in ill health. This was a pro-active attempt by Mayor Cooper to ensure that a resident of an under-represented neighborhood had a seat on the Commission as well as giving an African-American resident an opportunity to sit on what had previously been an entirely Caucasian city Commission consisting entirely of residents from the East side of the city. Pastor Sanders was subsequently elected by the voters as a Commissioner as well as being elected by his colleagues on the dais to be designated Vice-Mayor of Hallandale Beach.

I would very much like to see a resident from the Southwest area of the city sitting on the Commission. I perceive my area as seriously neglected in regards to everyday quality of life. An individual who walks my streets and maintains a home in my district sees the swales, the properties, the roadsides and the condition of commercial properties around me every day. Those who live in my district hear about the concerns of residents and business owners who are faced with continual crime, dissention, littering and other negative aspects of daily life. They also see and hear about the transitions within families as children grow (rapidly, it always seems); new residents and businesses come in; and people find ways to come together and make their area into a neighborhood. Of course, my area isn't currently a district in regards to representation, but I would like to see that happen.

Unfortunately, the discussion on the Charter Review Committee was abbreviated by a determination to call a vote and end discussion with only three districts proposed to the Commission. While three districts may, in the end, be the most feasible approach to residential districting as well as the most viable on a ballot, the consideration of other approaches had not been deliberated, despite my attempt to initiate that discussion. It was Bill Julian, ironically, who had made the motion to increase the Commission to seven members, which would entail three districts.

I could not determine from the committee's deliberation at the time if the motion on the table would involve specifically conjoining the Northwest and the Southwest together as one district, as had been the recommendation of the previous Charter Review Committee when considering three districts, or if the recommendation would allow the Commission the flexibility to make that determination. Although the committee's recommendation does not, it now appears, make that specification, I do not support the Northwest and the Southwest being combined into one district. District lines should be drawn to foster unity, not the potential for dissention between the Northwest neighborhood- which has had a history of many generations living and raising families within the community- and the far more transitory area of the Southwest- which has had, as far as I know, less of a commercial and generational history. (The Northwest has been named *The Palms* in tribute to a renowned nightclub and music hot-spot that had once been situated in the neighborhood).

Whatever my opinion, however, my point is that the number of districts needed to best achieve residential districting should be *deliberated by the Commission*, not decided upon by a temporary, ad-hoc committee without a budget and without substantial administrative support. Our committee had been faced with every provision of the entire Charter as well as ensuring that its precise wording is appropriately updated. We had not also deliberated the specifics of drawing districts, let alone the number of districts. A specific and restrictive recommendation as to the precise number of districts in the committee's recommendation is not, in my opinion, appropriate.

I am therefore *in support* of residential districting, but I was not in support of the motion as proposed and called for a vote at our October 28th meeting.

I implore the Commission to engage in a vigorously thorough and thoughtful consideration of how residential districting may be best achieved in our city-- no matter any restrictions entailed by the Charter Review Committee's recommendation on the matter.

MAYORAL TERM LIMIT

Amending Art. III, Sec. 3.04: 63-64

I am opposed to term limits in the City Charter.

A Mayor elected at-large serves several valuable purposes for our city, not the least of which is a leadership role in supporting legislation and in encouraging business and intellect to invest resources into our city. A Mayor selected by the Commission alone is less likely, I presume, to broadly reflect the interest of the public at large. An elected Mayor often runs on two or three major ideas during an election cycle that energize the electorate and excite residents who want to see a vigorous approach to creating a positive living and business environment in the city.¹⁷

Even in the Council-Manager form of government, the leadership role of the city's Mayor goes well beyond ceremonial duties and chairing city meetings. A Mayor who has engendered the support of a majority of the voting public can utilize leadership skills from a higher-profile commission seat to foster a decisive direction for city government. A Mayor elected at large involves the public at large in generating ideas, providing consistent feedback and paying continual attention to the machinations of local government.

An elected Mayor helps to ensure that the city leader is engaged with residents throughout the city. An elected Mayor represents the city as an individual chosen at large through one or more campaign cycles, and that image of electoral success can be utilized to *advocate* for the better interest of the city. The leadership image of an elected-at-large Mayor can project a positive profile of the city to the public well beyond the city's borders. Some are better than others in such skills, but our Mayor has been re-elected as both a Commissioner and as Mayor multiple times, and our Mayor ran unopposed in her last election cycle.

The committee is concerned that a politician who may be perceived as entrenched in the position of Mayor has developed a support network of businesses, political figures and residents over many years. Such a network has thus, the committee presumes, constructed an electoral wall around his/her seat in the elected body. The solution, many assume, is to term such politicians out of office. That, in my opinion, is an artificial *Band-Aid*.

As presented to the committee by Yury Konnikov of *Florida Initiative for Electoral Reform* (FLIER), governments have a plethora of opportunities for political reform. We can both advocate for as well as accomplish legislative efforts that create greater opportunities for political candidates and constituents to enhance our democracy. Term limits is not a concept amongst the many reforms advocated by FLIER.¹⁸

A successful politician who has held a political seat over several election cycles may have learned the ropes in regards to ensuring that district lines are gerrymandered to cage the voters most entrusted to support one party and/or one style of candidate (including one particular race, religious affiliation or style of political rhetoric). A long-time office holder may also be entirely familiar with what levers to pull and

¹⁷ Florida League of Cities, *Responsibilities and Roles of Mayors and (Commissioners) in Florida*

¹⁸ CRC Meeting October 26th, 2011- video- Mr. Konnikov responds to Vice-Chair Markoff on term limits.

buttons to push to keep the campaign cash flowing from interested parties, including corporate interests and real estate developers.

To combat such unpleasanties familiar to all of us who watch the political game within our state and throughout the nation, we need to look well beyond throwing the bums out via legislation. We need to instead focus on both the voters and the laws that participate in entrenching politicians who mostly ill-serve their constituents and the public at large. Our city Charter can be reformed in ways that at least aspirationally (the state is unlikely to certify certain electoral changes given current political dynamics) create opportunities for more voters to vote and more ordinary residents to participate in the political process—and do so without having to pay good money in campaign contributions for the opportunity.

There are other kinds of levers, buttons and ropes to push and pull, however, in order to be a successful politician. Learning the political processes and the machinations of our municipal governance can be extraordinarily complex. The complexities may often extend beyond what is encountered in a state legislature or in Congress, which are in session for shorter periods of time. Long speeches while standing alone on the floor are part of the show in a state legislature or on the floor of Congress. The complexities of infrastructure spending, maintenance and creation are entrusted in county, state and national politics to legislative staff, lobbyists and one of the two major political parties, amongst many other organizations and interested parties. They all advocate for political positioning on everything from infrastructure spending to social issues.

Our city Commission acts in a supervisory role over professional city management, and our Commissioners and our Mayor delve into an extraordinarily wide variety of issues, from grants to plumbing to local schools to crime to land usage and to the precise wording of ordinances, amongst so many other areas under the purview of our Commission. It takes time to learn it all, and to get good at it. For many issues attended to by any kind of Mayor, it can take a lot of time to get really good at the job.

Our city benefits from having a Mayor who has been thoroughly educated not only in the political machinations of the Commission, but in becoming thoroughly familiar with what residents want and what they expect over several terms as Mayor. Local businesses, both commercial and non-profit, have demands and expectations as well to ensure that our local economy is thriving and that our city remains appealing in regards to services, to properties and to sales. Our educational environment not only serves residents and their children but helps to foster economic development and employment.

A Mayor thoroughly experienced and aware of the community's needs in such regards can be invaluable. Our Mayor should serve our city as a visionary as well as a catalyst for progress, ensuring that we remain a *City of Choice*.

Changing up the individuals who either operate or are manipulated by the machinations of local government by implementing any legislation in regards to term limits rather than through regular election cycles is a very bad idea. We should always allow the opportunity for individual *city residents* to choose when to change their mayoral representation, not our Charter.

The Charter could provide for, at least aspirationally, campaign finance restrictions that could make running for seats easier as well as make trusting candidates and office holders easier. I was in the minority on our committee in regards to addressing how campaign finance rules could be incorporated into our Charter, but I do not regard term limits as a solution to encouraging new faces and new ideas in the seat of Mayor. That should occur when the voting public finds it necessary to make that happen.

I understand that a referendum on the ballot years ago had eliminated a prior term limit for the Mayor when the position was changed to an elected-at-large seat, but our committee has made the assumption that a choice had been taken away from the voters. I posit that no-- the voters, in fact, made a choice. The electorate very frequently inhibits acts whose ramifications go beyond the crux of the intent. The referendum in question, however, passed with an electoral reform that went beyond electing the Mayor city-wide. The voters have continued to make a choice, and we currently have a Mayor who has retained her seat at the will of the electorate in Hallandale Beach.

Should the voters be provided with an option to re-instate a term limit upon the position of Mayor, that would not necessarily reflect a will of the people at large. It would, however, necessarily reflect the will of the voters who show up and act according to the profound dissatisfaction voters have with politicians across the nation. Our local and national politics function in an extraordinarily divisive and economically distressed social environment presently reflected in politics across the country.

The committee's Final Report posits that changing the individuals holding the position of city Mayor would create a "broadening of networking possibilities" and provide an "injection of new approaches." That is not for the Charter to decide, or for an electorate to decide in one election. That is for the electorate to decide over many subsequent elections from next year and into the future, because the public mood changes, as does our economic and social environment. The public mood should be reflected in each and every election, not only those that fall within the confines of term limits affecting an individual who may be popular, appreciated and well-served by his or her experience as Mayor.

While the committee believes that the recommended term limit is not applicable to Commissioners because a Mayor who is termed out may run for a Commission seat, this notion fails to account for the leadership and advocacy role of an effective elected at-large Mayor as I have described above.

I do not support term limits of any kind for elected representatives, but I do support other kinds of electoral reforms that are far more substantial, genuinely beneficial and better reflect the will of the electorate in every election cycle.

CITY MANAGER RESIDENCY REQUIREMENT

Amending Art. VI, Sec. 6.03: 13-14

I am opposed to a residency requirement for the City Manager of Hallandale Beach being provided in the City Charter.

Hallandale Beach is a city of approximately four square miles. The demographics in each section of our city are quite specific, as are the housing opportunities. The city had accommodated a prior City Manager by amending the Charter so that a residency requirement had been eliminated. This had apparently allowed a City Manager's family of five to find suitable housing within the proximity of Hallandale Beach.

The Manager selected by the Commission at that time could then commence his duties without being required to acquire housing in the eastern portions of the city that were apparently unsuitable and/or unaffordable for a family of his size, and housing in the western side of the city was also apparently unsuitable at that time for a Manager's income level and a large family. Despite the assertions of the committee's majority otherwise, the housing choices remain limited within the borders any small city situated within a larger metropolitan area.

Even more significant, however, is an attempt by a Charter Review Committee to pre-empt the deliberative and decision-making abilities of the elected Commission. Economic circumstances and demographic profiles in our city are likely to change in some fashion as the years progress, whether rapidly or more gradually. The Commission must confront varied circumstances at hand and assess whether the preferred candidate for the position of City Manager should be someone who expresses a willingness and an intent to live within the city, or someone who is superbly qualified but intends to reside outside the city limits.

Either scenario is a possibility, and residents can advocate for one option over the other. Should the Charter be amended in this regard, however, the Commission's options and the potential for our city to select the very best candidate would be squashed by a limitation imposed in the Charter and fixed for years to come. Limiting options and the limited demographics and housing options within condensed municipal limits are why no other surrounding or nearby municipalities include a residency requirement of their city managers in their charters or ordinances, excepting only the much larger municipalities in the county, such as Hollywood and Davie.¹⁹

The circumstances evaluated in regards to residency when selecting a City Manager should remain under the purview of the Commission, and the City Charter should remain unchanged in this regard.

¹⁹ Handout provided by city staff to the CRC of comparative city residency requirements for city managers in Broward County.

CITY CLERK

Amending Art. III, Sec. 3.07, Art. VI, Secs. 6.02, 6.05: 10-11, 16-19, 24-35

The Commission is obligated under our form of governance to ensure that political considerations are not enjoined into a decision to amend the Charter in regards to the City Clerk.

The committee recommendation in regards to amending the position of City Clerk in our Charter was an especially difficult item to consider, especially because expert testimony on this issue had been provided to the Charter Review committee *after* the vote had already been taken. Experienced opinion on the subject of the City Clerk had included testimony from a former employee of the city in the clerk's office, Shari Canada. I am unable to locate minutes reflecting that testimony either in a hard copy or in my email in the time allowed to prepare and submit this report, and those minutes may have not been submitted or included by our clerk.

Should the Commission determine on what date Shari Canada had visited our committee, I recommend watching the video of that meeting. In the video, I can be seen questioning Ms. Canada as to the nature and the functions of the City Clerk position. I ask if those various aspects of the position would change should the Charter be amended as per the committee's recommendation. Ms. Canada had replied that the nature and the functions of the Clerk position would not change, but the Chair cut off my opportunity for further questioning or to make a statement in regards to Ms. Canada's reply.

The majority opinion asserts that the current approach to hiring and supervising the City Manager has been "proven problematic." The discussion in regards to that assertion had not, however, included any specific anecdotal or tangible evidence of that, although such evidence may have been available. There is tangible evidence available, however, that recent legal action taken against and by the city in regards to requests for information have been ruled in favor of the city.

Individual circumstances and events indicating a provably problematic functioning of the City Clerk's office had also not been described during the committee's deliberations. Overall, it had been asserted, public information had not or has not been made available in a timely and efficient manner, including the delay of information requested by the public while such requests awaited the signature of the City Attorney and the City Manager.

I disagree that reforms in regards to ensuring that information requests are efficiently as well as courteously honored cannot or will not be implemented by the City Manager under the supervision of the Commission. It has been and currently remains the responsibility of the city Commission to ensure that the Manager is performing his or her job according to code as well as according to applicable state and federal law and professional standards, even as applicable to the position of Clerk and even if the Clerk should be liable to statute for lack of performance.

The committee's assumption is that the Commission has not been able and/or willing to ensure that its supervisory responsibility over the Manager is vigorously enacted in regards to requests for information. There may be some veracity to that assumption, but amending the Charter is not necessarily the appropriate response. I voted in the majority-- again given that the testimony requested and scheduled had yet to be provided—so that I could vote for reconsideration. Although committee member Bill Julian

had vigorously requested reconsideration of the matter due to his absence when the vote had been taken, he immediately withdrew his request once the committee had voted to initiate reconsideration of the matter, and no further discussion on the matter had thus ensued.

The committee asserts that the Clerk must comply with statutory requirements, including in the area of public records, and that insufficient resources allocated by the City Manager may inhibit compliance. The committee also asserts that "it has become clear to the Committee that this approach has resulted in the City Clerk not receiving the level of resources needed to meet the obligations imposed by law." It is unclear to me, however, what evidence had been brought to the committee to validate that claim.

While any clerk may personally feel uncomfortable alerting any council/commission to inadequate resources for the purposes of complying with statute, I'm uncertain that such a scenario is inevitable under the current Charter provisions on the matter of our Clerk. Should a city manager be displeased or seek retaliation for a clerk's expression of concern about meeting statutory requirements, I assert that it is the role of the Commission to ensure that the Manager reacts appropriately and pro-actively in regards to both allocating the necessary resources and the management of personnel.

If the Commission was to allocate resources separately from the recommendation of the manager to any particular department, our city residents are at risk of finding that critically needed resources have been diverted by the Commission for political purposes. In other words, in order to enhance an electorally advantageous image for elected officials, certain budget items may be allocated for the purposes of image over substance.

This is not an issue under consideration at the moment, but for the purposes of illustration, let's imagine that the Police Department requests enhanced funding-- but the Manager ascertains that infrastructure deficiencies are more critical for the budget in question. The Manager under our system is expected to allocate limited resources where they are most needed. Politicians, however, may ascertain that allocating funds to the Police Department will create an image of getting "tough on crime" during the election season—even though doing so would be a regressive act against our Council-Manager form of government.

Elected representatives are professional by the nature of their salaried positions and the vetting by elections. Professional managers are professional not only because of salary but because of professional standards. Such professional standards are generally accrued through advanced degrees as well as professional associations that bestow peer-reviewed assessments of qualifications and performance. Budget proposals presented to the city Commission should be from Management, not from fellow politicians.

If city residents believe that public records requests should be attended to with more immediacy and that the process should be less cumbersome, then such residents have the opportunity to demand that their Commission instructs the Manager to make the needed reforms in the Clerk's office. Should the Commission fail to attend to the matter of supervising the Manager in that regard, then the residents can petition for a referendum on the matter, complain to state authorities and/or run other candidates and change up the Commission.

It should be noted that a recent change in leadership of the City Clerk's office has been implemented. The Commission and the Manager are currently attentive to reforming and improving the

performance of that office, as evidenced by the recent initiation of a certified Clerk for the city. The recent actions of both the Commission and the Manager should indicate that a more pro-active approach in regards to improving the office of City Clerk may be underway.

I look forward to the Commission's deliberation in regards to an independent budget for the City Clerk. I voted in favor of that item so that the Commission would have the opportunity to examine its possibilities, as I did in regards to the Commission vetting and hiring a Clerk. If the nature of the Clerk's job should not change, however, and if the Clerk will not be directly advising the Commission as do the City Attorney and the City Manager, then the purview of both the Commission and the Manager in regards to the Clerk should not change, either.

I recommend that the Commission consider the reasoning behind my vote with the majority in regards to the hiring and supervision of the City Clerk. The Commission should then demonstrate a thoroughly rigorous debate on matter.

If the nature of the City Clerk's duties do not change, and the Clerk will not directly be advising the Commission-- as do the city's Manager and Attorney--then the Charter should not be amended in regards to the committee's recommendation.

CITY ATTORNEY

Amending Art. III, Sec. 3.07, Art. VI, Secs. 6.01, 6.05: 10-11, 16-19, 21-22

It is and should remain the purview of the Commission to hire an Attorney full-time or to contract a law firm.

The committee's majority expressed strong feelings that the city benefits from full-time, in-house counsel and that contracting a firm to advise the city would be detrimental in many respects. The Commission is faced with a variety of circumstances that arise during different times, however, and it needs to attend to the circumstances at hand. Our city's residents continually have opportunities to express their opinions to the Commission in regards to hiring the Manager and the Attorney, but that does not automatically translate into the Commission making decisions in opposition to public opinion or to the city's better interests.

The committee's expression of "alarm" that the Commission "gave serious consideration to the possibility of engaging the services of a law firm" before choosing to hire in-house counsel is, I believe, inappropriate. The Commission engages in a variety of considerations, and the alarm of some residents that pros and cons might be weighed in certain regards should not result in amending the city Charter so that deliberative efforts are prohibited.

The benefits of hiring a full-time city employee as the City Attorney are enumerated in the committee's recommendation, but the implication that the Commission would not or will not take those benefits into serious consideration is unfortunate. Our residents need to feel that the deliberative process in representative government is consistent, vigorous and healthy. The recommendation from the committee in this regard is entirely unhealthy.

Like the choice between a resident City Manager or a City Manager residing elsewhere, the Commission has the opportunity under our current Charter provision to make the best choice-and one that will please the members of the Charter Review Committee who express alarm that another choice might be made instead. The purview of the elected body is far more important than the comfort of Charter Review Committee members who would prefer to feel cushioned by provisions in the Charter that settle matters in spite of whatever circumstances may arise in the future.

Should circumstances entail political benefits to Commissioners by choosing a firm over an individual attorney, then the electorate should have the opportunity to respond to their Commissioners in writing, verbally, and at the ballot box.

The committee's recommendation in this regard had not been unanimous, despite that assertion in the draft of the Final Report. I had been the lone dissenting vote on the matter, although an independent budget may be a valid item for consideration.

The Commission should evaluate the city's needs in regards to hiring the City Attorney during the vetting process. The Charter cannot fulfill that evaluation.

CHANGING THE CHARTER BY COMMISSION

Repealing Art. VII, Sec. 8.01(1): 48-50

A uniquely dynamic provision of our Charter should remain.

The committee asserts that if the Commission makes changes to the Charter under specific restrictions-- namely when the electorate had not already voted in favor of a provision and/or if state statute does not already dictate provisions, amongst other specifics enumerated in the Charter-- then the Commission can and will "emasculate the charter, turning it into a charter in name only."

The committee is under the impression that if the Commission retains the ability to change the Charter under certain very narrowly defined restrictions, then "it has no framework. It has no limits." The provision is *not* unlimited, however. It is, in fact, very limited by statute as well as by its own framework. The framework is as stated below from our Charter:

The Commission may, by ordinance, amend this Charter, except that amendments affecting the following subjects shall require approval by referendum of the electors:

- a) Terms of elected officers and manners of their election.**
- b) Distribution of powers among elected officers.**
- c) Matters prescribed by this Charter relating to appointive boards.**
- d) Any change in the form of government.**
- e) Any other subject so provided by general law.**

Outside of such very narrow restrictions, the Commission may evaluate the Charter and initiate changes in accordance with the most basic principal of our government: *representative democracy*. The People have elected their representatives, and representation in the form of amending the Charter while respecting specified matters as listed above ensures that our Charter can be a dynamic document that is updated in accordance with changing times.

Furthermore, the Commission is answerable to the People. Should members of the Charter Review Committee believe that the Commission is not answerable, then a fundamental mistrust and misunderstanding of our democracy is occurring in the City of Hallandale Beach. People must feel that they have the means to hold their elected official accountable, even if some degree of struggle is involved in alerting state officials when necessary, initiating political campaigns and petition drives and generally contacting and imploring the people we elect to do the People's bidding.

Our committee was intensely engaged in analyzing, questioning and recommending very precise changes to the very wording of almost every single provision in our City Charter. It is apparent to me that updating language, eliminating undue gender biases and generally modernizing the communicative ability of our Charter may not benefit solely from a volunteer, ad-hoc committee review every eight years. The Commission may perhaps engage the services of counsel specializing in Charter language to ensure that our Charter is relevant and precise on a more continual basis. Section 8.01(1) may enable our representatives—although I cannot attest to the veracity of this statement without the advice of counsel in the hours prior to the deadline for this report-- to attend to the refinement of language in the Charter in a manner that does not otherwise change the efficacy of provisions and the application of law. The People's

representatives may also see fit to amend the Charter in regards to areas that are determined to have evidenced neglect in ensuring our better interests.

Should changes directed by the Commission via ordinance prove unpopular with the People, public deliberations in the spirit of self-governance should ensure that residents have every opportunity to voice their discontent and pre-empt actions taken via ordinance that would change the Charter in any way that causes disturbance and mistrust. This is a unique provision that creates and allows a representative approach to governance in a very restricted way that can and should be well-observed by the public.

The committee complains that Hallandale Beach is "out of step...with every local governmental entity in Florida." *Direct democracy* treading amongst the principles of *self-governance* can, however, result in legislative acts that inhibit needed flexibility and better interests over the long term. Prohibiting infrequent, extraordinarily narrow changes in the Charter by repealing this provision that had been enacted by representative action discourages the reactive, observant and vigilant involvement of the People. The notion that the People are involved in Charter via *only* direct democratic action discourages the electorate from interacting with and cajoling their elected representatives.

The people of Hallandale Beach should be continually aware of the acts of their legislative body and voice their approval as well as their discontent. Our representatives on the Commission should make their case in regards to change of any kind to the public before changes are enacted. That is the crux of a vibrant representative democracy. To assert or to assume that our Commission will likely or perhaps only act to the detriment of the People when attending to matters in our Charter that very narrowly and only so very rarely can fall within the restrictive precepts of Section 8.07(7) and state law portrays a soggy and callow public. I assert that our city residents should not be portrayed as such.

The provision in our Charter allowing changes enacted by the Commission within extraordinarily narrow guiderails that are unique in our state is splendidly emblematic of "The City of Choice."

PROTECTING THE REQUIREMENT FOR PERIODIC REVIEW

Creating Art. VIII, Sec. 8.01(3): 66-69

The Commission should continue to determine the construct of the Charter Review Committee and to evaluate the efficacy of the committee's efforts.

I had advised the committee that I would be in support of inserting periodic reviews of our Charter into the Charter itself if the provision were to specify policies and procedures for reviews of the charter that might otherwise be neglected by city code. The committee reacted with disinterest at this notion.

As per my recommended very general policies and procedures for the Charter Review Committee that I had enumerated in PART ONE of this report, I do feel strongly that not only the code but the weakly implemented city policy and the disengagement of the review process by administrative staff has been detrimental to the Charter Review Committee. I would prefer to see the Commission-- with administrative advice from staff-- implementing policies and procedures that might make the Charter Review Committee more efficient, diplomatic and amenable to volunteer service.

If the only way to see that accomplished is by amending the Charter, then go for it. Otherwise, the Commission should reform, revise and generally improve the process of review by attending to the city code. Should the Commission choose not to continue a periodic review of the Charter or to minimize the involvement of a committee of volunteers, then the Commission should be answerable to the people it serves as a result of such action, and the people should be attentive to the actions as well as the inactions of its elected officials.

A pro-active approach by the Commission in attending to city code referencing periodic review of the Charter may be preferable to review procedures inserted into the Charter by referendum.

DIRECT BALLOT ACCESS

Creating Art. VIII, Sec. 8.01(3)(h): 67, 69

The deliberative and the evidentiary efforts of the Charter Review Committee are insufficient to warrant direct access to the municipal ballot.

I do trust that I have thoroughly described in PART ONE of this report my perspectives and my concerns engendered while serving on the Charter Review Committee for the City of Hallandale Beach. The process is currently confined within an advisory body that has no budget and no requirements, policies, procedures or supervisory precepts that dictate particular conduct in the process of generating conclusions. Such a process allows for recommendations that are insufficiently vetted even when passed by a super-majority of the committee. Further vetting and, if you will, a *cooling of the plate* are a necessity in any principled approach to representative democracy.

The city Commission draws from a plethora of support staff when vetting recommended changes to the Charter. Staff brings forward research materials that include advice and opinion from not only legal counsel to the Commission but managerial and other administrative advice as well. Commissioners have been vetted themselves through an electoral process, and perhaps several campaign cycles. The city sends Commissioners to a multitude of educational and collegial symposiums, conferences and issue-related gatherings. Commissioners confer in these settings with experienced and professional administrative and political forces throughout the state and the nation. The Commission is experienced in quasi-judicial examinations of issues faced at city hall, where such deliberations are based solely on the evidence at hand.

Such educational and networking experiences continually engaged in by elected officials go far beyond the requirements for serving on the Charter Review Committee, which are barely enumerated in the city code as currently written. Not even a residency requirement is currently enumerated in *Section 2-112* of the code. Any educational level, any level of experience and any level of comprehension can gain appointment to the committee, while Commissioners are more thoroughly vetted by both the electorate and by the Charter.

Our representative democracy enables a filter between residents of the city and referendums placed on the ballot. Such filtering serves the better interests of the voting public, who must attend to their daily lives above and beyond stirring through ballot items amending the city Charter. Items not placed on the ballot as part of purely political maneuvering should result in the involvement and democratic action of citizens who voice their discontent at election time as well as during city meetings and in other public discourse.

Most distressing about the direct democracy movement is that items that "*sound good*" can be easily passed by a small sliver of the potential electorate who shows up to vote. Municipal machinations, even as related to the Charter, can seem extraordinarily complex-- even to individuals like myself who generally pay attention and who appreciate learning the issues. Actually, I am losing any notion that there is anybody like me, but the issues confronted by our city continually confuse me and require patience, time and gradual research and discussion to draw out the crux of the matter. The longer-term ramifications can easily slip past adequate consideration for the average voter, and even items passed by a

super-majority of the committee can be based on a recommendation that the Commission further deliberate the issue, not on a determination to go directly to a referendum.

The Commission should continue to vet and to thoroughly deliberate recommendations by the Charter Review Committee. The committee should remain an advisory body that aids the Commission in filtering the timely and significant issues to be addressed in the Charter.

I am soundly opposed to direct ballot access by the Charter Review Committee.

NEPOTISM

Art. V, Sec. 5.09: 30-31, 77-78

The employment of relatives is a matter addressed by human resources policy. Chartering such policy weakens the purview of both the Commission and the Manager in the area of distinct and dynamic personnel decisions within the city.

Our committee discussed and deliberated anecdotal evidence brought forth by committee members on the issue of relatives of city employees being barred from employment consideration by the city. The nepotism rules in the city of Hallandale Beach may be too restrictive as well as detrimental to residents and to city functions. The matter should be settled, however, by the Manager conferring with the Human Resources Director and reporting to the Commission.

The committee may have been assuming that a failure to amend the Charter translates to the city's policy on issues of nepotism remaining as is. That is certainly not the case. The job of the Manager as well as the Commission is to ensure that the Human Resources Director is directing the city's personnel decisions towards the best interests of the city in accordance with state law at all times. Failure to ensure that the Director's function is modern, efficient and entirely reasonable is a matter to be attended to via residents communicating to the Commissioners, the Manager conferring with the Human Resources Director, and all parties reaching a sound conclusion.

I am most certainly in favor of the deletion of language in the Charter providing that candidates for employment should be vetted by an "examination or other evidence of competence" if such language is not in compliance with state and federal law. The inclusion of language, however, that requires that the possibility of employing relatives of city employees be consistent with general law implies that the "general law" in question is specific to issues of nepotism. It is not.

Matters of ethics are continually reforming. Broward County as well as our city have only very recently addressed and re-considered matters of ethics as they pertain to ordinances and other legal matters. Such reformations are and should be conducted at the legislative level and in continual response to public pressures and various situations that occur in politics and otherwise in governance. A provision in the Charter in relation to ethics should not dictate Human Resources policy.

City policies regarding the issue of nepotism should be continually evaluated and reformed as necessary as an administrative function, not by the City Charter.

V. CONCURRING OPINIONS ON RECOMMENDATIONS

I concur with the committee on all issues regarding Referendum and Initiative in our Final Report, and I implore the Commission to affirm each of the recommendations in this area. There is one recommendation in that area for which I would like to add my emphasis:

ABOLISHING THE PRESUMPTION THAT ORDINANCES ARE INVALID

Repealing Art. IV, Sec. 4.13: 43

It is my hope that throughout this *Minority & Concurring Report*, I have convincingly expressed my perspective on representative democracy (I am in favor of it ☺). The Charter recommendation in question is a very good example of how we should endeavor to enhance participation by residents in the democratic process.

Certainly, the *motives* of individuals who initiate referendum petitions can be called into question in specific circumstances as described in the committee's report on this matter. It should be noted, however, that if certain residents believe that an ordinance should be repealed, then I recommend that the effects of the ordinance in question should be felt and observed by those who presume to object to it. Otherwise, an approach utilizing direct democracy can immediately apply an analgesic to what would otherwise be a robust democratic process engendered by a system of representation.

Let the residents feel and experience what their representatives had actually intended in passing an ordinance, and then let the effort to repeal the ordinance, should that continue, also be a vigorous effort to balance representative democracy against direct democracy. Immediate suspension of an ordinance in question creates a vacuous setting for political participation. The participation of city residents in the representative setting of our democracy should entail living with the results of actions taken by the Commission until such time as the will of the People is otherwise sorted out.

Repeal the Charter provision suspending ordinances petitioned for referendum.

COMMITTEE DIVERSITY

Creating Art. VIII, Sec. 8.01(3)(b): 66, 68

A reformation of the method for appointing the Charter Review Committee as described in the committee's Final Report is essential.

Chair Musto had brought forward a proposal to change the method of selecting future Charter Review Committee members that is quite brilliant as well as dynamic. This method, which involves appointed committee members also selecting two appointees under the directive that any deficiencies in diversity on the committee be addressed, is a splendid idea that also instills an enhanced sense of fairness in the committee appointment process.

Chair Musto should be commended for his consideration of the profile of the Charter Review Committee in regards to the diversity of appointments and for bringing this idea forward to the committee. The Commission should share in his effort and affirm the committee's recommendation in this regard.

The committee's recommended method of achieving a full complement of appointed members to the CRC should be advocated by the Commission.

VI. OTHER RECOMMENDATIONS

A. ELECTORAL REFORM

The Charter Review Committee lacked the time and the inclination to explore a variety of electoral reforms, but I recommend that the Commission brings the following forward for discussion:

1. Proportional Representation

I had suggested that Mr. Yury Konnikov, President of *Florida Initiative for Electoral Reform* (FLIER), speak to our committee. Our Chair was considerate enough to arrange for Mr. Konnikov to come into Hallandale Beach to present an array of reform measures that have been implemented in the United States and had been proven effective in enhancing democracy. Too often, however, such measures have faded away when the determination of political interests to game the system has overtaken the efficacy of efforts to enhance democratic participation amongst the electorate.

I concur with Mr. Konnikov and with FLIER that specific reforms should be under consideration for our city Charter. Residential Districting is one issue recommended by Mr. Konnikov and his organization, and our committee has passed along that recommendation to the Commission. As I have explicated earlier in this report, I am a strong supporter of residential districting, and I am advocating for a thorough deliberation on the Commission as to how to best put a viable residential districting plan on the ballot.

There is an additional reform not taken under consideration by the committee because it is so profoundly unfamiliar to most Americans: *ranked choice voting*. The single transferrable voting system is a form of ranked choice voting amenable to a pairing with residential districts that involve multiple open seats not assigned to a district. Our city can generate a better representative democracy by utilizing this form of proportional representation.

This voting system is used in Australia and Ireland as well as in Cambridge, Massachusetts and in Minneapolis, Minnesota. It is a form of voting for multiple open seats that had been more prevalent in the United States prior to the machinations of political parties determined that more diverse participants in the electoral process did not serve the entrenched political interests as well as our *winner-take-all* system.

Ranked choice voting is a preferential voting system that allows voters to vote for more than one candidate by ranking their choices. This is especially beneficial in regards to voter dissatisfaction with entrenched political parties and the frequently tepid choice of voting for the lesser of evils. Hallandale Beach can demonstrate support for an enhanced method of elections even on the municipal scale. Sarasota is waiting for certification for the method of ranked choice voting it hopes to implement, and I recommend that Hallandale Beach adds a system of *single transferrable voting* for unassigned Commission seats and *ranked choice voting* for seats assigned to a district.

2. Campaign Finance Reforms

Both the committee Chair and the committee Attorney asserted that our city has no options in regards to regulating the method of financing political campaigns and how much candidates will realistically have to spend in order to be viable. Because of the equivalency of money and speech as

interpreted by the United States Supreme Court, a city's attempt to restrain the influence of money on the choices voters have at the polls can possibly be thwarted by federal law.

Our committee did not consider aspirational measures as per the Commission's recent Resolution in support of a constitutional amendment in the same regard. I recommend, however, that the Commission examine the intent and the message behind Congressman Ted Deutch's proposed amendment that addresses the intimidating and pervasive influences of money and politics in electoral efforts. The Commission should apply the same consideration in the way of aspirational measures in regards to our city Charter that could further enhance our motto as a *City of Choice*.

The Fair Elections model, however, which has been proposed in Congress despite the political environment opposed to reform, is a *constitutional* method of campaign finance reforms. Candidates foregoing private funding would receive a lump sum after meeting specified qualifications, such as a certain amount in small donations from a certain number of people. Candidates for the Commission could also be allowed to raise more in small dollar donations in order to match privately funded candidates who surpass a specified limit. The City of Hallandale could be a model for initiating and advocating for campaign finance reforms should the Commission explore its options in relation to the City Charter.

3. The Hallandale Beach Voters' Pamphlet

The Oregon Voters' Pamphlet is a national model for encouraging voter participation in our democracy. Since 1903, the Pamphlet allows candidates and ballot measure efforts to purchase or petition for one column of space for a 325 word statement and a photograph advising on the measure or a candidate.

Should Hallandale Beach vote to provide such an electoral enhancement in our Charter, then one copy of a Hallandale Beach Voter's Pamphlet would be mailed to each household—with more Pamphlets available in government buildings.

The Pamphlet could include federal, state as well as local offices, and the city could, perhaps, sell space to county, state and federal candidates and supporters of ballot measures as well. I recommend the idea as an item for consideration by the Commission in the Charter Review process.

B. GREEN INITIATIVES

The city of Hollywood has an advisory committee exploring green initiatives for their city, and a friend of mine is involved in that effort. Here in Hallandale Beach, we do not as yet have a citizen advisory body that examines environmental issues for which our city government and the residents can be pro-active under the direction of the Commission. Our committee had decided not to pursue such green initiatives as they may relate to our Charter, but I recommend that environmental issues related to available means of transportation, waste disposal, recreation, the conduct of business and daily life amongst other aspects of living in Hallandale Beach be continually explored. Living green can become second nature to more and more of us if we find the means of accomplishing it.

I have another friend who exhibits a brilliant mind in regards to many aspects of civil life, including increasing respect of our environment in how we live. He had served on our committee, and his name is Leo Grachow. Mr. Grachow had brought a list to our committee as our efforts had commenced, and he read to us a plethora of ideas he had hoped that we could consider relating to green initiatives. Our city Charter leaves such initiatives to the purview of our Commission, but as the Commission reviews issues of governance explicated in our Charter, I recommend that the means of Hallandale Beach getting into the forefront of green initiatives be part of the discussion.

VII. CONCLUSION

I am immensely grateful for my appointment to the Hallandale Beach Charter Review Committee. In regards to the benefit I have received from serving, the lessons in our form of governance and how we got here as explained by Lynn Tipton from the *Florida League of Cities* have been enriching to me and fascinating. My eyes have been opened to what could have been, what should have been, what has been and what could be in the way of the People's local governance. Municipal government is now an area of study I very much look forward to further exploring.

The efforts made by Yury Konnikov on behalf of *Florida Initiative for Electoral Reform* to provide a thoroughly in-depth and persuasive overview of the potential the People have to make democracy a more vibrantly participatory effort was gratifying. Too many Americans are either disengaged or disenchanting with the political process. Hallandale Beach has the potential to be a model city in reforming and enhancing representation in government, and FLIER is a valiant assertion of that potential available to us as a city and as a state.

A former city manager as well as a former member of the City Clerk's office provided their insights and their opinions, all in the cause of improving Hallandale Beach and encouraging members of our committee to be continually engaged in seeking the means of creating more choice and greater efficiency. City staff and a majority of our Commission visited our committee to provide insight as well—insight that was widely varied and immensely helpful.

The efforts of our attorney were so enormous that I was consistently overwhelmed by the dedication she had brought to our committee. Susan Churuti accomplished Herculean tasks in the forms of detailed documentation and such thoroughly intimate and scholarly knowledge of everything related to the law and to governance. Our clerk, Bob King, not only provided his diligent service but a warmly kind demeanor that aided me through this experience more than the millions of pieces of information that swam across my desk and filtered through my head.

Our Chair is a man of such profound ability that I spent much of my time on the committee stunned at the level of skill he was able to bring to every single area under the purview of this committee. Tony Musto has a mind like a machine when it comes to legal analysis and generating brilliant ideas. His intentions are consistently for the better—no-- the *best* interests of his community. Every individual appointed to serve on that dais was interested, interesting and fully equipped with their perspectives and their own experiences... and they certainly put up with me.

In regards to what I brought to the committee, I frankly spent much of my time on the dais as a committee member experiencing bewilderment. I have no experience whatsoever in examining a city charter, and I was educated over the time I served on the committee in law and government. My perspective differed in many respects from the rest of committee, perhaps, in that I believe in fostering trust and participation in our community's representative government rather than a greater degree of surety that the community will be trapped by the conclusions reached by our elected representatives.

The system of governance will operate as intended by design if we are only engaged and vigilant, including in creating and implementing electoral reforms that increase true representation of the people's interests. Our government can be manipulated by interests in competition with the people served rather than engaged in a mutual effort towards a sustainable system and a continual sense of community. The

push and pull of interests and the deliberation of choices to be made are part of our system of governance, however, and such dynamics cannot be fixed in place by the Charter.

Those of us serving on the Charter Review Committee have, I'm sure, a greater interest in a sustainable community than any drive for short-term success. What I hope that I brought to the committee and turned over to the Commission is a respectfully reasonable approach to the balance between our Charter and the continually moving parts of the representative body. This report, I hope, has helped to better define how to best utilize both our representative government and the Charter for the community we want.

A few words about our current Commission:

A few words about Mayor Cooper:

The Mayor expressed to our committee a solid respect for the Council-Manager form of government. She shared an article from the *Economist* explaining the gradual and troubling results of direct democratic action now festering in the state of California, where the state legislature is bound and tied by direct initiatives concerning every imaginable aspect of governance.

Given too much direct access to legislation rather than filtering every desire through the elected body, citizens are prone, as evidenced in California, to vote for increased government funding while simultaneously voting for decreased taxes and revenue. I'm not sure that every committee member read the article provided to us, but I highly recommend it. Legislation from a representative body as opposed to a direct referendum is the preferable means of government, and I think that the Mayor agrees with me on that. The Mayor brought new ideas to the committee for our consideration, and I respect new ideas even when or if they do not ultimately result in implementation.

I had been nominated for an appointment to the committee by Mayor Cooper, but she had remained entirely disengaged in all efforts at deliberation on the Charter issues at hand, even when she sometimes reacted with some astonishment at a couple of conclusions reached by the committee. She did, however, provide moral support to me when I sorely needed it, and I greatly appreciated it.

A few words about Vice-Mayor Sanders:

I conferred with the Vice-Mayor on issues confronted by our committee, and I appreciate the time he gave to me. The sense of community that I feel when serving in an appointed position and participating in community organizations is very gratifying to me. The Vice-Mayor and his wife have provided me with opportunities to see how community action is formed and implemented, and I'm grateful and admiring of their efforts. They both operate within as well as outside government to organize residents in bettering our community.

A few words about Commissioner Ross:

Commissioner Ross had said something at a Commission meeting some time ago that I found very relevant to our review of the Charter. Every citizen has the right, she had asserted, to go about their daily lives raising their children and going to work and caring for their homes and increasing their quality of life without being obligated to get under the hood of the local government and ensure that every piece was operating hummily at every moment. Some degree of confidence in our system of governance and

the public servants who are entrusted to do their jobs is a valid approach to living in our community. The reality may be far less than ideal, but our expectations should be high, not lowered.

A few words about Commissioner London:

Commissioner London expressed his pervasive concern to our committee about the ramifications of violating the Charter and engaging in dealings that serve the interests of a few individuals over the expectations of the community. He was asked during his visit to our meeting what he might suggest that we amend in our Charter to address violations of code and of the Charter itself, but he replied that he remained unsure.

Many people may feel that consequences are too infrequent and too light if the precepts of our Charter are violated. If the Commission declines to vigorously exercise its supervisory role over the manager and the attorney-- and county and state officials are otherwise too preoccupied to attend to Hallandale Beach, then the concern arises that no one will be *punished*.

Our city has moved on, however, with another City Manager and another City Attorney. We have a new Clerk. We have a new CRA Director nearing his one year mark in the city. We have new CRA plans currently being formulated and implemented. We have a new addition to the Commission since the last election.

Reformations do occur, and discrepancies are attended to. The manner of attending to poor performance in city government may be more diplomatic and gradual than some might otherwise want to see. A truly professional organization overseeing and running our city, however, ensures that changes are made and past mistakes do not occur again. Doing so professionally rather than reactively may involve a continual attempt to ensure that a positive image of terrific potential is projected to the wider community rather than a disturbing projection of failure and incompetence. We can do better, and we will... we are.

A few words about Commissioner Lewy:

Commissioner Lewy was engaged in the Charter Review process. He brought ideas, he brought in expert testimony to aid deliberations on his ideas and he provided encouragement. As expressed in this report, I approached many issues to do with the Charter with a greater concern for maintaining the foundation of our form of government than for the machinations of its operations, which can, I believe, be continually improved. I am open to the Charter improving the machinations of government, but keeping an eye on the foundation is important to me, too.

I look forward to the deliberations of the Commission in regards to the committee's recommendations as well as those I posit in this report. Commissioner Lewy should be commended by everyone for being both willing and able to bring ideas vetted through his education, his political experience and his experience helping communities. Our committee greatly appreciated his interest and involvement in our review of the Charter, and I suggest that the Commission appreciate the Commissioner's vigorous efforts as well in that regard. I find myself on both sides of what Commissioner Lewy has proposed in regards to the Clerk, and I trust that he and his Commission will figure out the best course better than I can.

Lastly, at the conclusion of the committee's Final Report, Chair Musto compares the proposed changes to our Charter and the committee's will to see them implemented to jumping aboard the "fired up the engines of a train to a better future for Hallandale Beach," I offer another scenario-- one of more quiet deliberation...

I think that the following illustration is apt. It involves two of the founders of our nation discussing the form of our representative government they had created:

Of what use is the Senate?" Jefferson asked Washington, as he stood before the fire with a cup of tea in his hand. As he asked the question, Jefferson poured some of the tea into his saucer, swirled it around a bit, and then poured it back into the teacup.

"You have answered your own question," Washington replied.

"What do you mean?" Jefferson asked.

"Why did you pour the tea into your saucer?"

"To cool it," said Jefferson.

"Just so," said Washington, "that is why we created the Senate. The Senate is the saucer into which we pour legislation to cool."

Our elected representation can be a means for cooling off the "fired up" sentiments of the public at large and for allowing a fuller deliberation.

I think that is good.

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Hallandale Beach Charter Review Committee

Minority & Concurring Report

Respectfully submitted,



ANDREW S. MARKOFF, Vice-Chair

December 21, 2011