

MEMORANDUM

TO: Kurt Ardaman

FROM: Lance King

DATE: 8/19/20

RE: Winter Park / City Charter Citizen Petition Amendment Process

Issue:

The City Charter, Sec. 5.10, allows for Charter amendment by citizen petition and prescribes the requirements for such petitions. Does this process apply, or can it be modified, in light of the COVID-19 pandemic?

Discussion:

Section 5.10(b) of the City Charter provides the following requirements for citizen Charter amendment petitions:

(b) Initiation by petition. The electors of the city may propose amendments to this Charter by petition signed by at least ten (10) percent of the total number of qualified voters registered to vote in the last regular city election.

(1) Form and content. All papers of a petition shall be uniform in size and style and shall be assembled as one (1) instrument for filing. **Each signature shall be executed in ink or indelible pencil** and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the proposed Charter amendment. The clerk or other official designated by the commission may, at an elector's request, issue the appropriate petition blanks to the elector at the elector's expense.

(2) Affidavit of circulator. Each paper of a petition shall have attached to it when filed, an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, **that all the signatures were affixed in his presence**, that he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the proposed Charter amendment.

Based on the above, there are two petition requirements that are potentially problematic in the age of COVID-19: 1) physical signatures and 2) physical presence between the petition circulator and signees.

The Governor and various State agencies have issued orders modifying certain political processes in light of the COVID-19 pandemic. For example, the Secretary of State issued an emergency order (1SER20-2) allowing electronic signatures for qualification petitions for candidates for state office, notwithstanding the physical signature requirements under Fla. Stat. 99.095. However, I am not aware of any order that would apply to or override the City Charter provisions at issue here.

Further, I have assessed the possibility that Florida Statutes allowing for electronic signatures could override the City Charter requirements. I have concluded that the relevant statutes do not apply to or override the Charter.

Fla. Stat. 668.50(7) provides that, “A record or signature may not be denied legal effect or enforceability solely because the record or signature is in electronic form.” However, the statute goes on to state that, “This section applies only to transactions between parties each of which has agreed to conduct transactions by electronic means.” Fla. Stat. 668.50(5)(b). The foregoing underlined language appears to limit the statute to matters that do not include City Charter amendments.

Another statute, Fla. Stat. 668.004, provides that, “Unless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature.” Since the City Charter provision appears to trigger the “otherwise provided by law” exception and for other reasons, we believe the statute does not allow electronic signatures for citizens’ initiatives under the City Charter.

In sum, there appears to be no legal basis for varying the City Charter’s requirements re. physical signatures and physical presence by the petition circulator. The above analysis deals with citizen initiative requirements and not the City Commission’s separate authority to propose Charter amendments by ordinance and to submit such to referendum vote. *See* Sec. 5.10(a), City Charter.

Finally, under Section 5.06 of the City Charter, the citizen initiative process requires the City Clerk to determine the sufficiency of the citizens’ petition. If the City Clerk determines the petition insufficient and the petitioners’ committee timely requests the City Commission review the Clerk’s determination, the City Commission could overturn the Clerk’s determination of insufficiency. However, a Commission decision inconsistent with the Charter requirements could likely be challenged judicially.

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