



## FLORIDA LEAGUE OF CITIES, INC.

### Memorandum

To: Interested Parties

From: Chip Morrison  
General Counsel

Re: Charter Revision

Date: April 22, 1997

If one is thinking of revising one's charter, several observations appear to be in order.

First, if a municipality's charter has not been revised since July 1, 1973, one should pay particular attention to Sec. 166.021(4) and (5), Fla. Stat. Generally, by operation of law, the legislature took a variety of limitations contained in municipal charters and turned them into ordinances. Hence, if the charter hasn't been revised since July 1, 1973, then one can make a variety of "ministerial" revisions to the charter without following the procedures in Sec. 166.031, Fla. Stat. Of course, any charter provisions enacted or amended after July 1, 1973, cannot be revised without following the procedures in Sec. 166.031, Fla. Stat.

Second, one should bear in mind one doesn't need an 80-page document to organize and run a municipality; a municipality can run just fine on a 9-page charter. Vero Beach's charter, if you remove Sections 209, 505, and 506, represents just such a document. Also, the larger a charter, the more likely it is to contain limitations on the municipality. The publication from the Department of Community Affairs is included to give you a feel for the differences between a "Council-Manager" form of government and a "Strong-Mayor" form of government. If you decide to draw from the publication, one should read it closely to assure limitations aren't inadvertently included in the charter.

Third, one is also well advised to refrain from placing unnecessary provisions in the charter. Examples of these provisions include, for example, procedures governing the adoption of ordinances, the adoption of amendments to the charter, and the recall of the members of the municipality's governing body. Each of these subjects are covered under state law and the state law prevails over the charter provision to the extent the two

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conflict. To the extent there is no conflict, the provisions are simply redundant and therefore clutter up the charter. The least that can be said is that these types of provisions (i.e., those addressing subjects already covered by state law) can confuse the average citizen.

Finally, one should carefully consider whether it is in the best interest of the municipality to appoint a "charter revision commission." Typically, these commissions are made up of a cross-section of the municipality, and appointees to these commissions often come to the table with a fairly limited agenda (e.g., one appointee wants to put an ad valorem mileage cap in the charter, another appointee wants to put a development density cap in the charter, and another appointee wants to put term limitations in the charter). The next thing you know, the charter has so many limitations in it the municipality can't timely respond to the needs and conveniences of the citizens of the municipality.

If you have any questions or if we can be of further service, please don't hesitate to call.

HMj/thr

attachments

PART 1  
CHARTER\*

- Art. I. **Corporate Existence, Form of Government, Boundary, and Power.**  
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§ 6.01. Repeal of Former Charter Provisions.  
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§ 6.05. Effective Date.
- App. A. **Description of Corporate Boundary.**

\*Editor's note—The provisions set out herein contain the new city charter enacted at general election March 9, 1982. Absence of a history note following any section herein indicates that said section derives from said new city charter.

**ARTICLE I. CORPORATE EXISTENCE, FORM OF  
GOVERNMENT, BOUNDARY, AND POWER**

**Section 1.01. Corporate Existence, Form of Government, and Charter.**

The City of Vero Beach in Indian River County, Florida, which was created by the Florida Legislature, shall continue as a municipal corporation with a Council-Manager form of government and with this document as the Charter for the City.

**Section 1.02. Description of Corporate Boundary.**

The area described in Appendix A of this Charter shall constitute the corporate boundary of the City of Vero Beach.

**Section 1.03. General Powers of City.**

The City shall have all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as expressly prohibited by law or this Charter.

**Section 1.04. Construction.**

The powers of the City shall be construed liberally in favor of the City, limited only by the constitution, general and special law, and specific limitations in this Charter.

**ARTICLE II. CITY COUNCIL**

**Section 2.01. Composition of City Council.**

There shall be a City Council of five (5) members elected at large by the electors of the City. Only qualified electors of the City shall be eligible to be members of the City Council.

**Section 2.02. Election and Terms.**

The regular election of City Councilmen shall be held on the second Tuesday in March of each year in the manner provided in Article IV of this Charter and shall be for a term of two (2) years. No election shall be required to be held if the number of vacancies to be filled at the election are equal to or greater than the number of duly qualified candidates for Councilmen. (Ord. No. 86-01, § 2, 1-7-86; Res. No. 86-06, 3-12-86)

**Section 2.03. Compensation of Council.**

The Mayor shall receive a salary of five hundred dollars (\$500.00) per month and the other members of the City Council shall each receive a salary of four hundred dollars (\$400.00) per month.

**Section 2.04. Mayor.**

(a) *Selection.* At the first meeting following the second Tuesday in March of each year the City Council shall elect from the sitting Councilmembers a Mayor and Vice-Mayor.

(b) *Duties.* The Mayor shall preside at meetings of the Council and shall be recognized as head of the City government for service of process, ceremonial matters, and execution of contracts, deeds, and other documents. The Mayor shall have no administrative duties other than those necessary to accomplish these duties.

(c) *Absences.* The Vice-Mayor shall act as Mayor during the absence or disability of the Mayor and if a vacancy occurs or exists in the office of Mayor the Vice-Mayor shall become Mayor for the completion of the unexpired term of the former Mayor and shall also serve his regular term as Mayor. In the temporary absence of the Mayor and Vice-Mayor the remaining Councilmen shall select a Mayor pro tempore. In the event that there is neither a Mayor nor a Vice-Mayor sitting on the Council, then the Council shall select a Mayor to serve in that capacity until the next election. A Mayor or Vice-Mayor designate may refuse such office or once in office may resign from such office and remain on the Council as a member during his term. (Ord. No. 86-01, § 2, 1-7-86; Res. No. 86-06, 3-12-86)

**Section 2.05. General Powers of City Council.**

All powers of the City shall be vested in the City Council except those powers specifically given to the Charter Officers or specifically reserved by this Charter to the electors of the City.

**Section 2.06. Council-Employee Relationship.**

Neither the City Council nor any of its members shall in any manner dictate the appointment or removal of any City employee except the Charter Officers nor shall the Council or any of its members give orders to any employee other than Council orders to a Charter Officer. The Council or its members shall deal on all matters through the appropriate Charter Officer.

**Section 2.07. Vacancies, Filling of Vacancies.**

(a) *Vacancies.* The office of a councilman shall become vacant in accordance with general law or if a Councilman is absent from four (4) consecutive regular Council meetings without being excused by Council prior to the fourth consecutive absence.

(b) *Filling of vacancies.* A vacancy on the Council shall be filled by a majority vote of the remaining members of the Council. Any person appointed by Council to fill a vacancy shall hold office until the next annual election in the City. If at any time the membership of the Council is reduced to less than a quorum, the remaining member or members may by majority vote appoint additional members in conformity with this section or shall call for a special election to be held within sixty (60) days from the date of the vacancy which reduced the Council to less than a quorum. In the event that all seats on the Council become vacant, the Governor shall appoint an interim Council which shall serve until the next regular election.

**Section 2.08. City Council Meetings.**

(a) *Time and place.* The Council shall meet regularly at least once a month at such times and places as the Council may prescribe by rule. Special meetings may be held at the call of the Mayor, or, in his absence, at the call of the Vice-Mayor, or at the request of a majority of the Councilmen; and, whenever practicable, shall provide for not less than twelve (12) hours' notice to each member and the public. The first meeting of each newly elected Council for induction into office shall be held at ten o'clock in the morning on the day following the election.

(b) *Quorum.* A majority of the Council shall constitute a quorum. No action of the Council, except as provided in Section 2.07 shall be valid unless adopted by the affirmative vote of at least three (3) members of the Council.

(c) *Voting.* Voting on ordinances and resolutions shall be by roll call and shall be recorded by the City Clerk in the journal.

(d) *Rules.* The Council shall determine its own rules and order of business.

~~**Section 2.09. Referendum Required.**~~

~~Unless specifically authorized to do so by one or more local binding referendum elections, the City of Vero Beach shall not on beaches owned by or within the municipal limits of the City of Vero Beach, directly or indirectly, expend tax dollars from whatever source (local, state or federal) on beach restoration that involves the direct or indirect placement of sand on the beach except in the amount necessary to protect life or property during storms or other natural disaster. (Res. No. 89-19, 3-15-89)~~

**ARTICLE III. CHARTER OFFICERS****Section 3.01. Designation.**

The City Manager, City Clerk, and City Attorney are designated Charter Officers.

**Section 3.02. Appointment.**

The Charter Officers shall be appointed by the Council and shall serve at the pleasure of the Council subject to the provisions of Section 3.03 of this Article.

~~**Section 3.03. Removal.**~~

~~To remove a Charter Officer, the Council shall adopt a preliminary resolution stating reasons for the intended removal and shall offer the Charter Officer an opportunity for a public hearing before the Council on the matters raised by the resolution. This preliminary resolution may also suspend the Charter Officer from duty immediately with pay. The Charter Officer must accept the offer of a public hearing or file a written response within ten (10) days of the adoption of the preliminary resolution or the resolution becomes final at the expiration of this ten-day period and the Charter Officer is terminated on that date. If the public hearing is requested it shall be held not earlier than twenty (20) days nor later than thirty (30) days after the adoption of the~~

~~preliminary resolution. After any such public hearing, or after consideration of any written response, the Council shall adopt a final resolution of removal or let the preliminary resolution lapse.~~

**Section 3.04. City Manager—Powers and Duties.**

The City Manager when necessary shall appoint, suspend, demote, or dismiss any City employee under his jurisdiction in accordance with law and the personnel rules, and may authorize any Department Head to exercise these powers with respect to subordinates in that depart-

ment. The City Manager shall direct and supervise the administration of all departments of the City except the Offices of City Clerk and City Attorney and shall attend all Council meetings unless excused by Council and shall have the right to take part in discussions, but not vote. He shall see that all laws, Charter provisions, ordinances, resolutions, and other acts of the Council subject to enforcement by him are faithfully executed. The City Manager shall also prepare and submit the annual budget, budget message, and capital program to the Council, and shall keep the Council fully advised as to the financial condition and future needs of the City, and shall make such recommendations to the Council concerning the affairs of the City as he deems desirable. The City Manager shall designate a qualified City employee to exercise the powers and perform the duties of City Manager during any temporary absence or disability of the City Manager. The Council may revoke such designation at any time and appoint another eligible person, other than a currently sitting Councilman, to serve as Acting City Manager.

**Section 3.05. City Clerk—Powers and Duties.**

The City Clerk shall give notice of all City meetings to the Councilmen and the public as required by law and shall attend all such meetings in person or by designee and shall keep minutes of the proceedings. The City Clerk shall authenticate by signature and be custodian of this Charter, all ordinances, resolutions, and other City documents and shall perform such other duties as required by law or by the Council. The City Clerk shall be the supervisor of elections for the City. The City Clerk when necessary shall appoint, suspend, demote, or dismiss any employee in the Office of the City Clerk in accordance with law and the personnel rules of the City. The City Clerk shall prepare annual budgets for the operation of the Office of the City Clerk and the City Council and shall submit these budgets to the City Manager for inclusion in the annual City budget in accordance with uniform City procedures.

**Section 3.06. City Attorney—Powers and Duties.**

The City Attorney shall be a member of the Florida Bar and shall be the legal advisor to the City of Vero Beach. The City Attorney or his designee shall attend all City Council meetings and perform such professional duties as may be required of him by law or by the Council. The City Attorney when necessary shall appoint, suspend, demote, or dismiss any employee in the Office of the City Attorney in accordance with law and the personnel rules of the City. The City Attorney shall prepare an annual budget for the operation of the Office of the City Attorney and shall submit this budget to the City Manager for inclusion in the annual City budget in accordance with uniform City procedures.

**ARTICLE IV. ELECTIONS**

**Section 4.01. Electors.**

Any person who is a resident of the City, who has qualified as an elector of this State, and who registers in the manner prescribed by law shall be an elector of the City.

**Section 4.02. Nonpartisan Elections.**

All elections for the Office of City Councilman shall be conducted on a nonpartisan basis without any designation of political party affiliation.

**Section 4.03. Qualifying.**

Candidates for Office of City Councilman shall qualify by filing a written notice of candidacy with the City Clerk at such time and in such manner as may be prescribed by ordinance.

**Section 4.04. Form of Ballots.**

The City Council shall prescribe the form of the ballot by ordinance including the method of listing candidates for City Council election. A Charter or ordinance amendment to be voted on by the electors of the City shall be presented for voting by ballot title. The ballot title of a measure may differ from its legal title and shall be a clear, concise statement describing the substance of the measure without argument or prejudice and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. Below the ballot title shall appear the following question: "Shall the above [Charter amendment] [ordinance] be adopted?" Immediately below such question shall appear in the following order, the words "Yes for Approval" and also the words "No for Rejection" with a sufficient blank space thereafter for the placing of the symbol "X" to indicate the voter's choice, if voting machines are not used.

**Section 4.05. Schedule and Notice of Elections.**

(a) *Regular.* The regular election of Councilmen shall be held on the second Tuesday in March of each year. The election of the Councilmen for a term of two (2) years shall be conducted so that three (3) members shall be elected every even-numbered year and two (2) members shall be elected every odd-numbered year, and continuing in that order until their successors are elected and take office. At all elections the candidates receiving the greatest number of votes corresponding to the number of seats voted upon shall be elected. If there is a tie vote for winner of a seat the City Council shall make provision at its next meeting for a special runoff election between the candidates receiving the tie vote to be held within thirty (30) days.

(b) *Regular unexpired term.* An election to fill an unexpired term shall be held at the same time as the regular annual election in accordance with paragraph (a) of this section.

(c) *Special.* Special municipal elections shall be held in the same manner as the regular annual election except that the City Council, by ordinance, shall fix the time of holding such special elections.

(d) *Public notice.* All elections held pursuant to this Charter shall have at least thirty (30) days' notice of election or referendum by publication in a local newspaper. The publication shall be made at least twice, once in the fifth week and once in the third week prior to the week in which the election or referendum is to be held.

**Section 4.06. City Canvassing Board.**

The City Canvassing Board shall be composed of the Charter Officers and the City Attorney shall act as Chairman. At the close of the polls of any City election, or as soon thereafter as

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practicable, the Board shall meet at a place and time designated by the Chairman and shall proceed to publicly canvass the absentee electors' ballots and then publicly canvass the vote as shown by the returns then on file in the Office of the Supervisor of City Elections. The Board shall prepare and sign a certificate containing the total number of votes cast for each person or other measure voted on. The certificate shall be placed on file with the City Clerk.

**Section 4.07. Recall.**

Any member of the City Council may be removed from office by the electors of the City following the procedures for recall established by general law.

**ARTICLE V. GENERAL PROVISIONS**

**Section 5.01. Charter Amendments.**

This Charter may be amended in accordance with the provisions for Charter Amendments as specified in the Municipal Home Rule Powers Act, Chapter 166, Florida Statutes, or its successor. The form, content, and certification of any petition to amend shall be established by ordinance.

**Section 5.02. Oath of Officers.**

After election or appointment and before taking office each Councilman or Charter Officer of the City shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, honor, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State and under the Charter of the City of Vero Beach; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter so help me God."

~~**Section 5.03. Limitation on Employment of Councilmen.**~~

~~No Councilman shall be employed by the City nor shall a former Councilman be employed by the City until after the expiration of one year from the time of leaving office.~~

**Section 5.04. Budget Adoption.**

The Council shall adopt an annual budget for the City by ordinance before October 1 of each year. An ordinance adopting an annual budget shall constitute appropriations of the amounts specified as expenditures from the funds indicated and shall constitute a levy of the property tax proposed.

~~**Section 5.05. Limitation on Alienation of City-Owned Real Property.**~~

~~(a) Except as provided in subsection (b), the following parks and public lands may not be sold, leased, traded, or given away by the City unless such sale, lease, trade, or gift is approved by a vote of the electors of the City of Vero Beach. The properties are as follows:~~

- ~~(1) Pocahontas Park;~~
- ~~(2) Humiston Beach Park;~~
- ~~(3) Jaycee Beach Park;~~
- ~~(4) South Beach Park;~~
- ~~(5) MacWilliam Park;~~
- ~~(6) Riverside Park;~~
- ~~(7) Memorial Island Park;~~
- ~~(8) Troy Moody Park;~~
- ~~(9) Municipal Marina;~~
- ~~(10) Young Park;~~
- ~~(11) Bob Summers Park;~~
- ~~(12) Any parks acquired after May 1, 1982.~~

~~(b) The foregoing properties may be leased without a referendum only for a public or civic purpose which also serves a recreational, artistic, or cultural purpose, including incidental concessions. (Res. No. 86-06, 3-12-86; Res. No. 88-53, 10-18-88)~~

~~Section 5.06. Zoning Limitations.~~

~~The building height limitations and density levels existing in the "Zoning Ordinance of the City of Vero Beach, Florida," on August 15, 1989, shall not be increased by action of the City Council unless such increase shall have first been approved by the electors of the City of Vero Beach, Florida, at a referendum proposing such a building height or density level increase. (Ord. No. 89-57, § 2, 8-15-89)~~

**ARTICLE VI. TRANSITION SCHEDULE**

**Section 6.01. Repeal of Former Charter Provisions.**

All Charter provisions in effect prior to the effective date of this Charter, including, but not limited to, those contained in Chapter 27943, Special Acts, Laws of Florida 1951, are repealed except those provisions which established the municipal corporation known as the City of Vero Beach.

**Section 6.02. Ordinances Preserved.**

All ordinances in force on the effective date of this Charter, to the extent not inconsistent with it, shall remain in force until repealed or amended.

**Section 6.03. Continuation in Office.**

(a) *Councilmen.* Councilmen shall continue to hold their offices for the term to which they were elected or appointed and to discharge their duties until their successors are elected and take office.

(b) *Mayor.* Notwithstanding the provisions of Section 2.04, for the first year after the March, 1982, General Election, the Councilman who was Vice-Mayor immediately preceding that general election shall become Mayor.

**Section 6.04. Pending Matters.**

No rights, claims, actions, contracts, or legal or administrative proceedings existing on the effective date of this Charter and involving the City shall be affected by the adoption of this Charter, including the number of intoxicating beverage licenses which the City may be presently allowed by law.

**Section 6.05. Effective Date.**

This Charter shall become effective on May 1, 1982, except that Section 6.03(b) shall become effective immediately on becoming law.

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**PART I**

**CHARTER\***

**Article I. Corporate Existence, Form of Government, Boundary, and Power**

- Sec. 1.01. Corporate name, corporate existence, form of government, and Charter.
- Sec. 1.02. Corporate boundary.
- Sec. 1.03. General powers of city.
- Sec. 1.04. Construction.

**Article II. City Council**

- Sec. 2.01. Composition of city council.
- Sec. 2.02. Election and terms.
- Sec. 2.03. Compensation; expenses of council.
- Sec. 2.04. Mayor.
- Sec. 2.05. General powers of city council.
- Sec. 2.06. Council-employee relationship.
- Sec. 2.07. Vacancies, filling of vacancies.
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**Article III. Clerk and City Attorney**

- Sec. 3.01. Appointment.

**Article IV. Elections**

- Sec. 4.01. Electors.
- Sec. 4.02. Nonpartisan elections.
- Sec. 4.03. Qualifying.
- Sec. 4.04. Schedule and notice of elections.
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**Article V. General Provisions**

- Sec. 5.01. Charter amendments.
- Sec. 5.02. Oath of officers.
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- Sec. 5.05. Initiative generally.

**Article VI. Transition Schedule**

- Sec. 6.01. Repeal of former charter provisions.
- Sec. 6.02. Ordinances preserved.
- Sec. 6.03. City official continuation in office.
- Sec. 6.04. Pending matters.
- Sec. 6.05. Provision for referendum; form of ballots.

**\*Editor's note**—Printed herein is the Charter of the City of Apopka, Florida, as adopted by ordinance number 781 on July 7, 1993, and by referendum on September 14, 1993. Amendments to the Charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, citations to state statutes and expression of numbers in text has been used. Additions made for clarity are indicated by brackets.

**State law reference**—Municipal home rule powers, F.S. ch. 166.

APOPKA CODE

Sec. 6.06. Effective date.  
Sec. 6.07. Severability.

**ARTICLE I. CORPORATE EXISTENCE,  
FORM OF GOVERNMENT, BOUNDARY,  
AND POWER**

**Sec. 1.01. Corporate name, corporate existence, form of government, and Charter.**

The municipality hereby established shall be known as the City of Apopka, Florida (the "city"). The City of Apopka in Orange County, Florida, which was created by general law, shall continue as a municipal corporation with a mayor-council form of government and with this document as the Charter for the city (the "Charter").

**Sec. 1.02. Corporate boundary.**

The corporate limits of the city shall consist of the boundaries of the city as established by preceding Charter and Laws of Florida, Ch. 73-402, or as enlarged or contracted pursuant to law, including but not limited to, procedures to be followed in the annexation or contraction of property as set forth in F.S. ch. 171, as it now exists or as it may be renumbered or amended.

All ordinances of annexation of the city heretofore adopted and as may be adopted prior to the effective date of this Charter are hereby incorporated herein and the lands described in such ordinances, together with the boundaries of the city as described in Laws of Florida, Ch. 73-402, are hereby declared to be the corporate limits of the city.

**Sec. 1.03. General powers of city.**

The city shall have all governmental, corporate, and proprietary powers possible for a city to have under the constitution and laws of the State of Florida as though they were specifically enumerated in this Charter to enable it to conduct municipal government, perform municipal functions and render municipal services, and the city may exercise any power for municipal purposes except as expressly prohibited by law or this Charter.

State law reference—Home rule powers, F.S. ch. 166.

**Sec. 1.04. Construction.**

The powers of the city shall be construed liberally in favor of the city, limited only by the constitution and general and special law of the State of Florida and specific limitations in this Charter.

**ARTICLE II. CITY COUNCIL\***

**Sec. 2.01. Composition of city council.**

A mayor and four city commissioners shall constitute the city council of the city (the "city council").

**Sec. 2.02. Election and terms.**

(a) The regular election of the mayor and city commissioners shall be held in the manner now provided by laws and ordinances for holding municipal elections or as may be hereafter provided for by law or ordinance for a term of four years. All elections shall be for a four-year term of office, except as provided in section 2.02(c) of this Charter.

(b) The city council seats are hereby designated as Seats one, two, three and four. The present members of the city council elected to serve on the city council shall serve as the first city council until expiration of their current terms.

(c) A mayor and two city council members shall be elected to serve for four years from the date of the expiration of the term of office of the present mayor and two city council members holding seats designated as one and two, and said election every four years thereafter shall be held as is now or may be hereafter provided by law or ordinance; thus maintaining a five-member city council; two city council members being elected at one time and a mayor and two city council members at another time.

Council members holding seats designated herein as seats three and four, whose terms expire on December 31, 1993, will face election in 1993 for

\*State law reference—Code of ethics, F.S. § 112.311 et seq.

one three-year term. Thereafter, the mayor and city commissioners will face election for four year terms.

When there is only one candidate qualified for an available seat, the name of the candidate shall not be printed on the election ballot, and such candidate shall be declared elected to the seat.

**Editor's note**—Ord. No. 1222, § 2, adopted Sept. 1, 1999, amended Code § 34-36, pertaining the election date for the city. In addition, §§ 3, 4 of Ord. No. 1222 provided as follows:

"SECTION 3. All references to the date of the regular municipal election contained in the City of Apopka Code of Ordinances and the City of Apopka Charter shall refer to such date established by this ordinance for the purpose of the date of the municipal general election.

"SECTION 4. In order to provide for transition the terms of office for the members of the City Council elected in December of the years 2000 and 2002 shall be shortened from the regular four (4) year terms so that the terms of office shall expire on April 30 in the years 2004 and 2006 as follows

<i>"Office</i>	<i>Term Begins</i>	<i>Term Ends</i>
"Mayor	January 1, 2003	4 <sup>th</sup> Tuesday in April 2006
"Seat 1	January 1, 2003	4 <sup>th</sup> Tuesday in April 2006
"Seat 2	January 1, 2003	4 <sup>th</sup> Tuesday in April 2006
"Seat 3	January 1, 2001	4 <sup>th</sup> Tuesday in April 2004
"Seat 4	January 1, 2001	4 <sup>th</sup> Tuesday in April 2004

"Thereafter, all subsequent terms will be for four (4) years in accordance with Section 2.02 of the Charter of the City of Apopka."

**Sec. 2.03. Compensation; expenses of council.**

The mayor and all members of the city council shall receive a salary as now provided by law and ordinance or as hereafter provided by the city council by law or ordinance. No change in the compensation ordinance for a city commissioner shall become effective until the duties of [sic] commencement of the terms of commissioners elected at the next regular election, provided that such election follows the adoption of such law or ordinance by at least six months. The mayor and each city commissioner shall be reimbursed from the city treasury to cover the expenditures naturally and necessarily incurred in the performance

of their duties of office and said reimbursement procedure shall be established by ordinance and/or resolution.

The mayor shall receive the salary established for the mayor in the annual budget.

**Sec. 2.04. Mayor.**

The mayor shall be the chief executive officer of the city and shall be responsible to the electorate for the administration of all city affairs placed in his/her charge by or under this Charter. The mayor shall:

- (a) Appoint and, when the mayor deems it necessary for the good of the city, suspend or terminate all city employees and appointive administrative officers provided for by or under this Charter. Department heads shall be appointed by the mayor and ratified by the city council. The mayor may authorize any administrative officer who is subject to the mayor's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency.
- (b) Direct and supervise the administration of all departments, offices, and agencies of the city, except as otherwise provided by this Charter or by law.
- (c) Chair and be a voting member of the city council.
- (d) See that all laws, provisions of this Charter and acts of the city council, subject to enforcement by the mayor or by officers subject to the direction and supervision of the mayor, are faithfully executed.
- (e) Prepare, or have prepared, and submit the annual budget, budget message and capital program to the city council as provided by law or ordinance.
- (f) The vice-mayor will be the senior commissioner and shall serve as chair of city council meetings in the absences of the mayor. In the event the senior commissioner declines the vice-mayor position,

the city council will elect the vice-mayor from among the remaining members of the city council.

**Sec. 2.05. General powers of city council.**

All powers of the city shall be vested in the city council except those powers specifically reserved by this Charter to the electors of the city.

**State law reference**—Municipal home rule powers, F.S. ch. 166.

**Sec. 2.06. Council-employee relationship.**

No city commissioner shall in any manner dictate the appointment or removal of any city employee, nor shall a city commissioner give orders to any employee other than orders by action of the city council to the city clerk and/or city attorney. Nothing herein shall be construed to deny a city commissioner access to records or information maintained by city employees.

**Sec. 2.07. Vacancies, filling of vacancies.**

(a) *Vacancies.* The offices of mayor and city commissioner shall become vacant in accordance with general law or by absence from four consecutive regular city council meetings without being excused by the city council prior to the fourth consecutive absence.

(b) *Filling of vacancies.* If any vacancy occurs on the city council, except for extraordinary vacancies, and the unexpired term is less than one year, the remaining members of the said city

council shall appoint a person to fill such vacancy on or before the second regular meeting of the city council following the office becoming vacant. If the unexpired term exceeds one year, the remaining members shall call an election to be held within 60 days, or as soon thereafter to comply with state election laws, to fill such vacancy. The person so elected shall hold office for the unexpired term.

(c) *Extraordinary vacancies.* In the event that a member of the city council is removed temporarily from office, the remaining members of the city council shall appoint an interim city council member to serve until the council member being replaced returns to office or until the next city general election, whichever first occurs.

State law reference—Filling of vacancies, F.S. § 166.031(6).

#### Sec. 2.08. City council meetings.

(a) *Time and place.* The city council shall meet regularly at such times and places as the city council may prescribe by rule. Special meetings may be held at the call of the mayor, or, in the mayor's absence at the call of the vice-mayor, or at the request of a majority of the city council; and, whenever practicable, shall provide for not less than 12 hours' notice to the public.

(b) *Quorum.* A majority of the city council shall constitute a quorum. No action of the city council shall be valid unless adopted by the affirmative vote of a majority of the city council present and voting.

(c) *Rules.* The city council shall determine its own rules and order of business.

State law reference—Open meetings law, F.S. § 286.011.

### ARTICLE III. CLERK AND CITY ATTORNEY

#### Sec. 3.01. Appointment.

The city clerk and city attorney shall be appointed by the mayor and ratified by the city council. The city clerk and city attorney shall serve at the pleasure of the mayor and the city council.

### ARTICLE IV. ELECTIONS\*

#### Sec. 4.01. Electors.

Any person who is a resident of the city, who has qualified as an elector of the State of Florida, and who registers in the city in the manner prescribed by law shall be an elector of the city.

State law references—Qualifications and registration of electors, F.S. ch. 97; municipal electors, F.S. § 166.032.

#### Sec. 4.02. Nonpartisan elections.

All elections for the offices of mayor and city commissioner shall be conducted on a nonpartisan basis without any designation of political party affiliation.

#### Sec. 4.03. Qualifying.

Candidates for the offices of mayor and city commissioner shall qualify by filing a written notice of candidacy with the city clerk at such time and in such manner as may be prescribed by ordinance. Each member of the city council, which includes the mayor, shall be a resident of the City of Apopka, Florida, for a period of one year next preceding his or her election to office and shall be a registered voter pursuant to Florida law.

#### Sec. 4.04. Schedule and notice of elections.

Elections within the city shall be held on the first Tuesday in December in those years when required for the election of a city official, or as amended by ordinance or law at least six months prior to the city general election.

#### Sec. 4.05. Recall.

Any member of the city council may be removed from office by the electors of the city following the procedures for recall established by general law and ordinances of the city.

State law reference—Recall of municipal officials, F.S. § 100.361.

\*State law reference—Florida election code, F.S. chs. 97 through 106.

## ARTICLE V. GENERAL PROVISIONS

### Sec. 5.01. Charter amendments.

This Charter may be amended pursuant to the home rule powers in the Municipal Home Rule Powers Act, F.S. ch. 166, or its successor and/or pursuant to the home rule powers granted under the Constitution of the State of Florida.

State law reference—Charter amendments, F.S. § 166.031.

### Sec. 5.02. Oath of officers.

After election or appointment and before taking office the mayor and each commissioner of the city shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the constitution of the state and under the Charter of the City of Apopka; and I will well and faithfully perform the duties of (title of office) on which I am now about to enter so help me God."

State law reference—Oath, F.S. § 876.05.

### Sec. 5.03. Budget adoption.

The city council shall adopt an annual budget for the city by ordinance or resolution before October 1 of each year in accordance with Florida law. An ordinance or resolution adopting an annual budget shall constitute appropriations of the amounts specified as expenditures.

State law reference—Adoption of budget, F.S. § 200.065.

### Sec. 5.04. Annual audit.

The city shall have an annual audit in accordance with Florida law.

State law reference—Annual audit required, F.S. §§ 166.241, 218.32.

### Sec. 5.05. Initiative generally.

(a) Any proposed ordinance may be submitted to the city council by a petition signed by 25 percent of the total number of votes cast at the last preceding general election of the city. Procedure and format for petitions will be as established by general law or ordinances of the city.

(b) Prior to submission to city council, any such proposed ordinance will be reviewed by the city attorney as to form and compliance with state law and the constitution.

(c) Within 60 days of submission of the petition to city council or as soon thereafter to comply with state law, the city council may adopt the ordinance or shall call a special election to be held within 60 days or as soon thereafter to comply with state law, at which the adoption or rejection of such ordinance shall be submitted to the qualified voters of the city.

(d) If a majority of the qualified voters voting on the proposed ordinance shall vote in favor thereof, the ordinance shall thereupon become a valid ordinance in the city.

(e) Any number of proposed ordinances may be voted upon at the same election according to the provisions of this section.

## ARTICLE VI. TRANSITION SCHEDULE

### Sec. 6.01. Repeal of former charter provisions.

All Charter provisions in effect prior to the effective date of this Charter are repealed except those provisions which established the municipal corporation known as the City of Apopka, Laws of Florida, ch. 67-1080, and the city boundary, Laws of Florida, ch. 73-402.

### Sec. 6.02. Ordinances preserved.

All ordinances in force on the effective date of this Charter, to the extent not inconsistent with it, shall remain in force until repealed or amended.

### Sec. 6.03. City official continuation in office.

All elected city officials shall retain their respective positions until expiration of their current terms of office.

### Sec. 6.04. Pending matters.

No rights, claims, actions, contracts, taxes, or legal or administrative proceedings existing on the effective date of this Charter and involving

the city shall be affected by the adoption of this Charter as allowed by law.

**Sec. 6.05. Provision for referendum; form of ballots.**

The city council shall submit to a referendum election the question as to the adoption of this amended Charter. Such election shall be held at the next regularly scheduled election of the city or at a special election to be held within 90 days of the passage of the ordinance amending this Charter by the city council and shall be held in conformity with the laws and ordinances in force relating to elections in the city. The ballot to be used in the referendum election shall be substantially in the following form:

**CITY CHARTER AMENDMENT:  
PROPOSING A REVISED AND UPDATED  
CITY CHARTER**

Should the Apopka City Charter be amended, as proposed in Ordinance No. 781, amending the entire city Charter except for boundaries, providing for corporate existence, form of government, boundary, and power; providing for a mayor-council form of government; providing duties of mayor as chief executive officer; updating and modernizing the Charter; providing four year terms for mayor and commissioners; providing for change in general provisions; and providing for transition schedule, effective date and severability?

Yes for Approval

No for Rejection

**Sec. 6.06. Effective date.**

Provided a majority of the registered voters of the city voting in the referendum election vote "For Adoption" then this amended Charter shall immediately be filed with the Department of State pursuant to Florida law, and the provisions hereof shall become operative and be in full force and effect on October 1, 1993.

**Sec. 6.07. Severability.**

If any provision of this Charter is held invalid, the other provisions of the Charter shall not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstances is held invalid, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby.

# **CITY AND COUNTY CHARTERS: DRAFTING, REVISING AND INTERPRETING**

## ***PRACTICAL ISSUES AND A MODEL APPROACH BASED ON THE ORANGE COUNTY 2000 CHARTER REVIEW COMMISSION***

by

R. Dean Cannon, Jr.

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### **I. Introduction**

Drafting, revising, and interpreting local government charters can be a great opportunity to codify the will of the people and provide for strong local government. It can also be a political quagmire and a legal headache. Because the adoption of a charter and the charter review process involve a mixture of law, politics, and public opinion, it can be volatile, but it can also be orderly and effective.

This presentation is not designed to be a comprehensive analysis of specific charter cities and counties in Florida. Rather, this outline will highlight practical issues which may face local governments and attorneys who become involved with the charter adoption or charter review/revision process. Hopefully, these materials will provide a framework for anyone involved in adopting or revising a local government charter. Most of the suggestions and ideas presented below are based on the experience of the Orange County 2000 Charter Review Commission (the "Orange County CRC").

#### **A. Historical Background**

Prior to the 1968 Constitution, neither counties nor municipalities had independent governing powers because they both derived their authority from legislative acts. The traditional rule of statutory construction was that any doubt as to the grant or extent of the powers granted to counties or municipalities should be resolved against the county or municipality asserting the power. See, e.g., Amos vs. Matthews, 99 Fla. 1, 126 So. 308 (Fla. 1930), Williams vs. Dunnellon, 125 Fla. 114, 169 So. 631 (Fla. 1936), and Heriot vs. City of Pensacola, 108 Fla. 480, 146 So. 654 (Fla. 1933).

Charter government was designed to help relieve the state legislature of the details of local government and grant the city and county electorate greater control over their own affairs. By broadening the power of local governments to deal with their own affairs, it became possible to address more effectively the problems of local government as they arose. Numerous counties have investigated the possibility of adopting the charter form of government, and presently 16 counties operate as charter counties.

## **B. Legal Background**

This presentation is not intended to address in detail the scope and application of home rule powers under Article VIII of the Florida Constitution. Generally speaking, however, home rule powers of charter counties are granted directly under Article VIII, Section 1(g) of the Constitution (1968), which provides:

(g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

With respect to municipalities, Article VIII, Section 2(b) of the Florida Constitution (1968) provides:

(b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

The general rule is that unless the Florida Legislature has pre-empted a subject by either general or special law approved by vote of the electors, or has enacted a general law that conflicts with the local law, a charter county or municipality has full authority to act through the exercise of its home rule powers. For counties, one benefit of adopting a charter form of government is that it limits the extent to which the legislature may modify a county's authority by future legislative act. For example, charter counties have the power to pre-empt conflicting municipal ordinances and the power to avoid intervention of the legislature by certain special laws. (See, e.g., Broward County vs. City of Ft. Lauderdale, 480 So.2d 631 (1985).

For the purposes of this presentation, it is assumed that a county or municipality desires to adopt, review, or revise a charter.

## **II. Getting Started**

### **A. Appointment of a Charter Commission or Charter Review Commission**

When a local government seeks to adopt a charter form of government, it may do so by ordinance pursuant to Section 125.82 of the Florida Statutes, or by adopting a resolution to appoint an official "Charter Commission" as provided for in Section 125.61 of the Florida Statutes (1999). A Charter Commission may also be convened upon the submission of a petition

to the county commission signed by at least 15 percent of the qualified electors of the county requesting that a charter commission be established. § 125.61(1), Fla. Stat. (1999). The Charter Commission must be composed of an odd number of not less than 11 or more than 15 members, and may be appointed by the county commission or by the legislative delegation of the county. § 125.61(2), Fla. Stat. (1999). No member of the Legislature or board of county commissioners may be a member of the Charter Commission. § 125.61(2), Fla. Stat. (1999).

Section 125.63, Florida Statutes, provides that the Charter Commission “shall conduct a comprehensive study of the operation of county government” and of the ways in which the conduct of county government might be improved. Within 18 months of its initial meeting (which must occur within 30 days of formation), a Charter Commission must present to the board of county commissioners a proposed charter, upon which it has had three public hearings at intervals of not less than 10 nor more than 20 days. § 125.63, Fla. Stat. (1999). After a Charter Commission submits a proposed charter to the board of county commissioners, the board must call a special election to be held not more than 90 nor less than 45 days subsequent to its receipt of the proposed charter, at which time a referendum election determines whether the proposed charter is adopted. § 125.65(1), Fla. Stat. (1999).

In the case of a local government which already has a charter, a “Charter Review Commission” (or “CRC”) is usually convened in a manner similar to that of a Charter Commission. If a charter already exists, it usually establishes the composition of this Charter Review Commission and empowers the CRC to conduct a comprehensive study of the local government and to propose amendments or revisions to the charter. For Orange County, Section 702 of its Charter provides that the CRC closely follows the language of Section 125.61, Florida Statutes, regarding the appointment of Charter Commissions, and provides that the CRC shall consist of not less than 11 members and not more than 15 members, and which shall be appointed by the Board of County Commissioners. (A copy of Orange County’s Charter is available as a handout.)

Whether it is a Charter Commission considering adoption of a charter or a CRC reviewing an existing charter, the commission will include a fairly large number of people as contrasted with a typical elected board of city or county commissioners. In some cases, the Charter Commission or CRC members will have little or no experience with local government, or they may be very familiar with the local government and have specific agendas to promote. To the greatest extent possible, establishing an enhanced “comfort level” among the commission members at their early meetings will likely make things run more smoothly towards the end of the study or review process.

#### **B. Hiring of staff and legal counsel**

The Charter Commission or CRC may hire administrative support staff, and should retain legal counsel as soon as practical. Staff can be especially helpful in preparing historical materials or documents for review by the commission members. More importantly, staff can provide an

excellent means to keep interested citizens and/or the commission members aware of meeting dates, agenda items, etc. As a practical note, the commission staff can handle publication of notices of public meetings to comply with the Sunshine Law. It will also help to brief the Charter Commission or CRC members on the Sunshine Law restrictions regarding communication between members.

Legal counsel should be retained by the Charter Commission or CRC as soon as is practical. It will be helpful if the attorney is familiar with operational aspects of the local government, and it is equally important that they be able to work well with the various members of the Charter Commission or Charter Review Commission. For the Orange County CRC, competitive proposals were received from law firms before a general counsel was selected. Regardless of how counsel is selected, it is probably preferable for the Charter Commission or CRC to retain counsel entirely independent of the local government attorney's office, because it may reduce any appearance of bias in advising the committee regarding potentially significant changes to the local government structure. Hiring independent legal counsel also allows for independent representation of the Charter Commission or CRC in the event of litigation, and may increase the comfort level of the commission members.

If you are advising a Charter Commission or CRC, be sensitive to the fact that public dollars are being spent, and attempt to establish ground rules early in the process for how work will be assigned, when work will be done, and so on.

If the local government attorney has not already briefed the Charter Commission or CRC on Sunshine Law requirements regarding communications between members and public meetings, the attorney will probably want to do this as soon as possible after being retained.

### **C. Issues Relating to Adopting New Charters**

If a local government is considering adopting a charter where none has previously existed, a few additional practical considerations are worth noting. Voters may be naturally resistant to change. This inertia may be overcome, however, by several means.

First, effective communication about the prospect of adopting a charter is essential. It may be helpful to emphasize the fact that adopting a charter does not necessarily cause any significant restructuring of a local government, except as the citizens may deem appropriate. It will likewise be important to solicit a good sampling of public opinion about various basic operational issues which may be addressed in the new charter. (See discussion of Potential Charter Issues, below.) Finally, it also may be helpful to point out that the prospective charter, if adopted, may later be re-examined and amended on a regular basis if the citizens so desire.

### **III. Before Considering Adoption or Amendments, Review History**

#### **A. Review the Documentary History**

When considering adoption of a charter or reviewing an existing charter, a good first step is to review the local government's existing structure (in the case of a potential charter adoption) or to review the existing charter (if considering revisions to an existing charter). It is important to not assume that the members of the Charter Commission or CRC are aware of the structure of the existing local government or the provisions of the existing charter. It may seem overly fundamental, but a clear understanding of what the government or charter does (and does not do) will save time later on in the process.

The attorney for the Charter Commission or CRC can go a long way towards helping the members understand the limits of home rule powers, the meaning of provisions of an existing charter, and any other aspect of the legal or political landscape which may affect the charter adoption or review process.

If a local government is reviewing (as opposed to adopting) a charter, the charter review commission should also examine previous amendments or alternative charter provisions which were or were not adopted. In Orange County, 14 charter related questions have appeared on ballots since the charter took effect on January 1, 1987. Of those 14 proposals, only three have been voted down. Ensuring that the commission members have a thorough understanding of previous successful and unsuccessful proposed charter amendments may help them to better evaluate prospective future amendments to the charter.

If possible, the charter review commission may enlist the help of the supervisor of elections to summarize the history of previous proposed charter amendments. For the Orange County CRC, Supervisor of Elections Bill Cowles prepared an excellent summary of all previous proposed charter amendments, and included detailed voter turn-out and vote total summary information to assist the CRC members. (A copy of the "Election History of the Orange County Charter - 1986 through 1996" is available as a handout.)

Finally, the review of past charter provisions and relevant local government issues should include an analysis and discussion of previous litigation or appellate decisions addressing the validity of ballot questions, prospective amendments, or government structure issues. If there have been problems in the past, it may be instructive to know the outcomes of those disputes before proposing any future charter provisions or amendments.

#### **B. Obtain Input from Appropriate Groups**

After (or in conjunction with) a review of appropriate written historical information, a Charter Commission or CRC should hear input from people who may have knowledge germane to a prospective charter or charter amendment. A Charter Commission or CRC may wish to

begin by hearing from sitting or former commissioners of the local government entity. Since many of the issues which may be governed by a charter (see discussion of Potential Charter Issues, below) can affect the powers and duties of the elected officials, it is helpful to understand their perspective. With respect to issues like salaries of commissioners or whether constitutional officers such as the property appraiser or sheriff should be made into "charter offices" may be benefitted by having input from the sitting commissioners and/or the sitting constitutional officers.

In addition, the County staff may be able to identify "nuts and bolts" issues of local government structure or operation which might be addressed by a prospective charter or charter amendment. Also, members of previous charter review commissions may provide helpful historical perspective when reviewing a charter for possible revision.

For the Orange County CRC, input was also obtained from mayors or representatives of nearly all the municipalities within the county. For the most part, few municipal officers proposed changes to the county's charter, but the effort was still worthwhile in the eyes of most of the CRC members.

Finally, the Charter Commission or CRC will want to obtain input from the public. Because the work product of the Charter Commission or Charter Review Commission will ultimately be placed on the ballot for consideration by the voting public, it makes sense to solicit widespread and thorough public input in deciding what questions to put forward for consideration.

At the outset, a Charter Commission or CRC will benefit from a "big picture" approach to soliciting public input. For the Orange County CRC it was decided to solicit public input at "public hearings" and then to have intermediate "workshops" to discuss prospective charter amendments and other administrative matters. The CRC adopted a plan to keep track of every potential charter amendment which was suggested by a member of the public, a government official, or any other person who proposed an idea for a charter amendment. These ideas were recorded on a "master list," which enabled staff and the CRC members to easily identify the person who proposed a potential charter amendment along with the substance of the amendment. Staff and general counsel for the CRC then sorted the master list by subject matter and identified sections of the existing charter which might be affected by the proposed amendments or additions. Citizens were allowed to clarify or supplement their proposed ideas before a pre-set deadline, after which the list was finalized and submitted to the CRC for review.

The benefits of this approach are several. First, it has been extremely helpful to have a single focus for each meeting, either hearing input from the public or others, or else discussing and debating the business of the CRC, but not both. Second, by assembling and organizing a "master list" of prospective charter amendments or ideas, the CRC members are able to identify broad areas of concern, as well as easy "grouping" of prospective ideas together to determine their relative merits. Finally, many suggestions from the public may not be suitable for inclusion in the charter or even relate to local government (e.g., federal questions like the income tax or issues relating to immigration, etc.), but having the list simplifies debate when it comes time to

consider actual ballot questions for submission to the voters.

Lastly, most members of the public are not even aware of how local governments are structured, let alone issues relating to charter government or the charter review process. To help overcome this lack of information, a Charter Commission or CRC may wish to have numerous meetings around the geographic limits of the city or county, and to seek out citizen groups in order to make them aware of the consideration of a charter or charter review process.

#### **IV. Consider the Implications of Community Trends and Future Changes in the City or County**

Because a charter defines the very structure of local government, and because local government must deal with local changes in demographics, economics, land use, the environment, and political issues, any consideration of a prospective charter or charter amendment may benefit from researching any one of these areas. In Florida, the population grows daily, and because of Florida's geography and economy, unique forces are applied to local governments. Because most members of a Charter Commission or Charter Review Commission will not typically be experts in economics, demographics, environmental issues, and other relevant subject matters, it may be worthwhile to retain experts to prepare reports or answer questions as they may relate to restructuring local government. Obviously, cost will be a major consideration in determining whether to hire experts. In some cases, professors, consultants, or other experts may be willing to volunteer to research particular issues for the Charter Commission or CRC.

Because local governments vary so widely in size and type, any consideration of a prospective charter or charter amendment must be tailored to the needs of the community involved. In some areas of Florida, growth and territorial issues will predominate, whereas in others economic and demographic issues may be pushed to the forefront by, for example, a large populations of retirees. In any event, a Charter Commission or charter review commission should be sensitive to the demographic makeup of the citizens which will be affected the prospective charter, and it may be wise to obtain specialized research on these issues.

Finally, Charter Commissions and CRCs should remember that they do not operate in a vacuum. Rather, charter consideration and charter review are cyclical processes and a particular Charter Commission or CRC may not adopt or change a charter, but can still produce beneficial work product for future committees. Therefore, it would be prudent for a Charter Commission or CRC to generate meaningful archives of research and/or keep track of public input which can be reconsidered by future Charter Commissions or charter review commissions.

#### **V. Potential Charter Issues**

Any analysis of local government structure will probably include certain fundamental

issues of structure and organization. Set forth below are some basic practical issues which may be suitable for consideration by a Charter Commission or CRC. However, no matter which issues are considered, it is important that a Charter Commission or CRC do two things: first, establish a means to keep track of ideas, suggestions, and proposals for charter provisions from the beginning; and, second, establish a means to prioritize prospective suggestions and then narrow the field of ideas to a manageable level.

The Orange County CRC decided to develop the comprehensive master list of proposed charter suggestions, and then have one or more meetings where the only order of business was to “narrow the field” by going through the list and considering each prospective proposal. (A copy of a draft Master List of proposals/suggestions for the Orange County CRC is available as a handout.) Before this meeting, staff and general counsel grouped the prospective ideas according to subject matter, and identified which charter section or sections might be affected by the proposed amendment. From a practical standpoint, this approach significantly expedites consideration of prospective charter amendments as a Charter Commission or CRC contemplates finalizing its work.

#### **A. Consider Adopting “Threshold Rules”**

As a means to narrow the field, the Orange County CRC adopted certain “threshold rules” to govern its evaluation of prospective charter amendments. These rules basically provided that the master list of prospective charter amendments would be presented to the Commission, and that each prospective amendment be further considered only upon “an affirmative vote of one-third or greater of the Commissioners present and voting” at the Commission meeting. Thus, if a prospective charter amendment was not supported by one-third of the Commissioners, it was dropped from further consideration.

After the first “round” of sorting through the list, the Orange County CRC rules provided as follows:

“Before a proposed charter amendment shall be sent to the general counsel for drafting proposed ballot language and proposed charter amendment language, such proposed amendment must receive an affirmative vote of one-half or greater of the Commissioners present and voting on the proposed amendment.”

The practical effect of this rule is that attorney time and CRC member time is focused on evaluating only those prospective charter amendments which are supported by at least half of the CRC members for further consideration.

Finally, the Orange County CRC established that a proposed charter amendment and ballot question may be submitted to the ballot “only upon an affirmative vote of two-thirds or greater of the Commissioners present and voting on the proposed amendment.” This requirement of a two-thirds majority reflected the consensus opinion by the CRC that a prospective charter

amendment would probably have difficulty garnering support from a majority of the voting public if it could not get two-thirds of the CRC to agree to allow its consideration. Other local governments may justify an alternative approach, but it will depend largely on the philosophies and attitudes of the Charter Commission or CRC members.

## **B. Basic Charter Issue Check List**

The following reflects a general list--in outline form--of issues which may be addressed by a Charter Commission or CRC. It is by no means exhaustive, but may provide a framework for local governments considering adoption or revision of a charter.

### **I. Powers of County Government**

#### **1. What powers and duties should the County have?**

- A. The powers and duties as specified by the Constitution and State Statutes.**
- B. The powers and duties as specified by the Constitution and State Statutes plus those not inconsistent with general law.**
- C. The powers and duties as specified by the Constitution and State Statutes plus only those as specified in the Charter, such as:**
  - i. Separation of Powers**
    - a) Legislative Branch**
    - b) Executive Branch**
    - c) Power to set salaries of officers and employees**
    - d) Power to create special taxing districts**

### **II. County Legislative Branch**

#### **1. How should the County Commission be organized?**

- A. How many members?**
- B. How are they elected?**
- C. Should there be a Party Affiliation?**
- D. What should be the Length of Term?**
- E. What Type of Position should it be?**

- F. Should there be a Residency Requirement?
  - G. How should the Commissioners be paid?
  - H. How should Vacancies in Office be filled?
  - I. How should Election Districts be handled?
  - J. What powers and duties should be given to the County Commission?
  - K. What presiding officers should the Commission have?
  - L. Where are the meetings held?
  - M. What constitutes a Quorum and Majorities?
  - N. How should the Recording, Printing, & Codification of records be handled?
2. County Attorney
- A. What method should be used to select a County Attorney?
  - B. How should the County Attorney be removed?
  - C. How should the salary level of the County Attorney be set?
  - D. What requirements should be specified for the position of the County Attorney?
3. County Auditor
- A. Should the position of internal auditor be established in the Charter?
  - B. What method should be needed to select an Internal Auditor?
  - C. How should the Internal Auditor be removed?
  - D. How should the salary level of the Internal Auditor be set?
  - E. What requirements should be specified for the position of Internal Auditor?

### III. County Executive Branch

#### 1. County Administrator

- A. What method should be used to select/appoint a County Administrator?
- B. How should the Administrator be removed?
- C. How should the salary level of the Administrator be set?
- D. What Requirements should be specified for the Position of County Administrator?
- E. What Powers and Duties should be assigned to the County Administrator?
- F. What should be the line of succession for the County Administrator?
- G. Should there be a provision to specify Non-Interference of Legislative Branch?

#### 2. Should the offices and departments of County government be specified in the Charter? If yes, how should they be organized?

- A. The office and department should be organized according to the function being performed and would include which of the following:
  - i. Planning
  - ii. Administration
  - iii. Support
  - iv. Operations
  - v. Finance Department
  - vi. Engineering
  - vii. Other

#### 3. With regard to the various Administrative Heads and their duties, which of the following should apply?

- A. Should there be Elected Administrative Heads and if so, what should they be?

- B. Should there be appointed Administrative Heads and if so, what should they be?

IV. County Elected Officials

- 1. Should the elected officials be elected or appointed?

- A. Office Elected Appointed

Sheriff  
 Property Appraiser  
 Tax Collector  
 Supervisor of Elections  
 Clerk of Court  
 Comptroller

- B. Who should have Final Authority for Budget Approval?

- Office County Comm State

Sheriff  
 Property Appraiser  
 Tax Collector  
 Supervisor of Elections  
 Clerk of Court  
 Comptroller

- C. Should the Constitutional Officers be required to use Central Service?

- Office Yes No

Sheriff  
 Property Appraiser  
 Tax Collector  
 Supervisor of Elections  
 Clerk of Court  
 Comptroller

- D. Should the County Attorney Represent the Other Elected Officials?

V. Standing Boards and Authority

1. Should the Charter specify that a Zoning Board be established? If so, how?
  - A. Members
  - B. Duties should include?
  - C. The authority of the Zoning Board should be?
  - D. Decisions of the Zoning Board could be appealed to?
2. Should the Charter specify that a Planning Commission be created? If so, how?
  - A. Members
  - B. Duties should include?
  - C. The Authority of the Planning Commission should be?
  - D. Decisions of the Planning Commission could be appealed to?

VI. Initiative, Referendum and Recall

1. Should Citizen Initiative to Enact Laws be permitted?
  - A. Petition of Voters--how many?
  - B. Subject to Referendum--thresholds?
  - C. Initiative prohibited with regard to?
2. Should Citizen Referendum to Repeal Laws be permitted?
  - A. Petition of Voters
  - B. Subject to Referendum
3. Should there be a method to Recall County Commissioners and Other Elected Officials from office?
  - A. Petition of Voters?
  - B. By Governor for cause

- C. Scheduling of Referendum
- D. How to Fill Vacancy?
- E. In accordance with general law procedures, or?

VII. General Provisions

1. Should the Charter limit the ability of the County Commission to issue bond and/or other debt instruments? If so, how?
  - A. Commission shall have the authority to issue general obligation bonds paid for property taxes only with approval of a county-wide referendum.
  - B. Commission shall have the authority to issue revenue bonds, where the revenue from the project pays the debt service, only with the approval of a referendum of the people from the area encompassed or served by the project.
  - C. Bonds can be issued by negotiated contract
  - D. Bonds can be issued only by competitive bidding based upon lowest net interest cost.
2. How should Ordinance Adoption be handled?
  - A. Public Notice
  - B. Public Hearings
  - C. Emergency Procedures
  - D. As specified in general law
3. How should a Conflict of a County Ordinance with a Municipal Ordinance be handled?
  - A. County Ordinance prevails
  - B. City Ordinance prevails
  - C. City Ordinance prevails except in areas of?
4. What should be the effect, if any, of the Charter with regard to local laws and their Special Acts?
5. How should a conflict of a County Ordinance with a Municipal Ordinance

be handled?

6. Should the Charter specify a Code of Ethics for County Government?
7. Who shall be named as a party for the County in legal actions involving the County?
8. Should the Charter address the appointment or employment of former elected officials and employees?
9. What method(s) should be specified in order to amend the Charter?
10. Shall the Charter specify a method for repeal of the Charter?
11. Should the Charter establish a method for periodic or continual review of the Charter?
12. Should the Charter contain a provision permitting the County Commission to review, establish or terminate special districts?

## **VI. Ballot Questions/Prospective Amendments**

Finally, after sifting through the proposals, a Charter Commission or CRC may ultimately decide to propose adoption of a charter or propose amendments to an existing charter. Counsel should be sure to draft BOTH ballot questions and proposed charter amendment language, because both are necessary, and reviewing both may crystallize concerns not readily observable by just reading the proposed ballot questions. In fact, it is important to have the proposed ballot questions and amendment language prepared to allow the CRC adequate time to review and approve the final versions of each.

In cooperation with the Supervisor of Elections, the CRC should ensure compliance with any technical requirements of an already existing charter regarding publication and notification of the proposed ballot questions and amendment language. Although it is not necessary, adherence to a "single subject rule" when drafting ballot questions and amendment language will probably reduce the potential for voter confusion and later litigation.

## **VII. Conclusion**

With careful planning and a practical approach, the task of adopting or revising a local government charter can be a positive experience. The Orange County CRC methodology will hopefully provide a helpful framework for local governments and attorneys involved in the charter adoption or review process.

## Advisory Legal Opinion

**Number:** AGO 88-30

**Date:** July 26, 1988

**Subject:** Amendments and conflicting provisions in charter

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Mr. Richard L. Doody  
City Attorney  
City of Tamarac  
5811 Northwest 88th Avenue  
Tamarac, Florida 33321

Dear Mr. Doody:

You have asked substantially the following questions:

(1) Do the provisions of s. 166.031, F.S., providing for charter amendments, prevail over conflicting provisions contained in a municipal charter?

(2) May only the governing body of a municipality submit proposed amendments to the charter for referendum?

(3) Should the governing body propose an amendment to the charter by ordinance?

(4) Does the language in s. 166.031(3), F.S., stating that the provisions of the section are supplemental to the provisions of all other laws, refer to state laws?

In sum, it is my opinion that:

(1) The provisions of s. 166.031, F.S., prevail over conflicting provisions contained in a municipal charter.

(2) Section 166.031, F.S., permits changes to a municipal charter to be proposed by the governing body or by petition of the electors of the municipality.

(3) The governing body must submit its proposed amendment to the municipal charter to the electors by ordinance.

(4) The provisions of s. 166.031(3), F.S., are supplemental

to other provisions of state law.

#### QUESTION ONE

Section 2(a), Art. VIII, State Const., provides that municipal charters may be amended pursuant to general or special law. Section 166.031(1), F.S., states:

The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose. (e.s.)

A legislative directive as to how a thing shall be done is, in effect, a prohibition against it being done in any other way. (FN1) This office has previously concluded that any charter provision adopted or readopted subsequent to the effective date of the Municipal Home Rules Powers Act, Ch. 166, F.S., can only be amended in accordance with the provisions of s. 166.031, F.S. (FN2) In addition, this office in AGO 75-223 specifically advised the City of Tamarac that its charter could not be amended except as provided in s. 166.031, F.S.

Moreover, while Florida courts have recognized that legislation may be concurrent, that is, enacted by both state and local government in areas which have not been specifically preempted by the state, concurrent legislation enacted by municipalities may not conflict with state law. (FN3)

Therefore, based upon the above, I am of the opinion that the procedure for amending municipal charters set forth in s. 166.031, F.S., would prevail over a conflicting provision in the City of Tamarac charter.

#### QUESTION TWO

Section 166.031(1), F.S., authorizes the governing body by ordinance, or the electors of the municipality by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, to submit to the electors of the municipality a proposed amendment to its charter. The governing body is responsible for placing the

proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for that purpose. Section 166.031, F.S., thus authorizes the amendment of a municipal charter by two methods, by ordinance or by initiative petition.

As noted in Question One, concurrent legislation enacted by a municipality may not conflict with state law; if such conflict arises, state law will prevail. As a corollary, a municipality cannot forbid that which the Legislature has licensed, authorized or required, nor may it authorize that which the Legislature has forbidden. (FN4)

Accordingly, inasmuch as s. 166.031, F.S., authorizes both the governing body and the electors to submit proposed amendments to the charter for referendum, I am of the opinion that a municipal charter may not limit the authority to propose amendments to its terms to only the governing body of a municipality.

#### QUESTION THREE

Section 166.031(1), F.S., states that the governing body of a municipality may, by ordinance, submit to the electors a proposed amendment to the charter. The statute further provides that the governing body shall place the proposed amendment contained in the ordinance to a vote of the electors. As stated previously, a legislative direction as to how a thing shall be done is, in effect, a prohibition against it being done in any other way. (FN5)

Based upon the above language, it appears clear that the municipal governing body may propose an amendment to the municipal charter only by ordinance. (FN6)

#### QUESTION FOUR

Section 166.031(3), F.S., provides in part that "[t]his section shall be supplemental to the provisions of all other laws relating to the amendment of municipal charters and is not intended to diminish any substantive or procedural power vested in any municipality by present law." You ask whether the reference to law in the above statute refers to state law.

The term "by law" as used in the Constitution or statutes has generally been interpreted to mean a statute adopted by both houses of the State Legislature. (FN7) Accordingly, the reference in s. 166.031(3), F.S., to "laws" would appear to refer to other state statutes relating to the amendment of municipal charters. (FN8) It would not appear

to authorize a municipality by ordinance or charter to alter the terms of s. 166.031, F.S.

Sincerely,

Robert A. Butterworth  
Attorney General

RAB/tjw

FN1 *Alsop v. Pierce*, 19 So.2d 799, 805-806 (Fla.1944);  
*Thayer v. State*, 335 So.2d 815, 817 (Fla.1976).

FN2 See, AGO 77-135; and see, AGO 79-80 in which this office concluded that the Lake Wales City Commission may not unilaterally amend its municipal charter but rather was bound by the provisions of s. 166.031. Cf., s. 166.031(3), F.S., authorizing the amendment of a municipal charter pursuant to s. 166.031, F.S., notwithstanding any charter provisions to the contrary.

FN3 *City of Miami Beach v. Rocio Corporation*, 404 So.2d 1066 (3 D.C.A. Fla., 1981), pet. for rev. denied, 408 So.2d 1092 (Fla.1981); *Board of Trustees of City of Dunedin v. Dulje*, 453 So.2d 177 (2 D.C.A.Fla., 1984), stating that a municipality may not enact legislation which directly conflicts with a state statute; where a conflict arises, the state statute must prevail. And see, *City of Hialeah v. Martinez*, 402 So.2d 602 (3 D.C.A.Fla., 1981), pet. for rev. dismissed, 411 So.2d 380 (Fla.1981) (municipal charter cannot make unlawful that which the Legislature has made lawful).

FN4 *Rinzler v. Carson*, 262 So.2d 661, 668 (Fla.1972); *City of Hialeah v. Martinez*, supra. See generally, *Scavella v. Fernandez*, 371 So.2d 535 (3 D.C.A.Fla., 1979) (where state had granted right or permission to do something within a certain period of time, county could not prohibit or restrict the exercise of that right); AGO 82-92. Cf., *Gaines v. City of Orlando*, 450 So.2d 1174, 1177 n. 2 (5 D.C.A.Fla., 1984) (upon submission of petition signed by 15 percent of city's registered voters, city had clear legal duty to verify those signatures and then to hold the election pursuant to Ch. 166, F.S.).

FN5 See, footnote 1, supra.

FN6 See, *Reino v. State*, 352 So.2d 853 (Fla.1977) (where language of statute is clear and unequivocal, legislative

intent may be gleaned from words used without applying incidental rules of construction); *Citizens of State v. Public Service Commission*, 425 So.2d 534 (Fla.1982) (where language of statute is plain and unambiguous as to fix legislative intent, courts should not depart from plain language used by Legislature).

And see, AGO 78-61 stating that the governing body may propose an amendment to the municipal charter by ordinance and submit the same to the electors of the municipality for approval.

FN7 See, *Advisory Opinion to Governor*, 22 So.2d 398 (Fla.1945) (term "by law" as used in Constitution means a statute passed by both houses of the Legislature); *Grapeland Heights Civic Association v. City of Miami*, 267 So.2d 321, 324 (Fla.1972) (" 'law' in our constitution means an enactment by the State Legislature ... not by a City Commission or any other political body"); *Broward County v. Plantation Imports, Inc.*, 419 So.2d 1145 (4 D.C.A.Fla., 1982); AGO's 84-51, 84-39 and 79-109. And see, *State ex rel. Veale v. City of Boca Raton*, 353 So.2d 1194 (4 D.C.A.Fla., 1977) (term "provided by law" means provided by statute); AGO 85-19.

FN8 See, e.g., ss. 101.161 (referenda; ballots); 100.342, F.S. (notice of special election or referendum).

## CHARTER REVIEW/REVISION MEMORANDUM

For additional legal guidance in the process of charter review, revision, and implementation, questions are welcomed by the following:

Weiss, Serota, Helfman & Guedes, P.A.

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Miami, Florida 33133  
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Jamie A. Cole  
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954/763-4242

# **CHARTER AMENDMENTS—REQUIRED FILING** **WITH FLORIDA DEPT OF STATE**

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FYI:

By statute, once a municipality has completed a charter amendment, the amended charter needs to be filed at the following location:

Florida Department of State  
Ms. Liz Cloud  
Collins Building, Suite L-43  
107 West Gaines Street  
Tallahassee, FL 32399-0250

A phone number for that office is:

(850) 245-6270 or (850) 245-6277.

An e-mail address for that office is:

[lcloud@mail.dos.state.fl.us](mailto:lcloud@mail.dos.state.fl.us)