

To: City Council, City of Palm Beach Gardens

From: City of Palm Beach Gardens 2017 Charter Review Committee

Brian M. Seymour, Chair
Margret Shannon, Vice-Chair
Craig Allgood
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cc: City Manager and City Attorney, City of Palm Beach Gardens

Pursuant to Resolution 50, 2017, the City of Palm Beach Gardens Charter Review Committee met to review and consider potential changes to the City's Charter. Our meetings were facilitated by Dr. Robert E. Lee, an expert in the area of City management and City Charters. Set forth herein are the Committee's recommendations for Charter Amendments. For ease of tracking, we have identified the areas of proposed change in the order they appear in the Charter. Following each proposed change, we have identified the basis for our reasoning. All of the elements of this report are the consensus of the Committee as a whole as representatives of the citizens of the City. We note that we had open meetings that were properly noticed and invited public comment. Each of these recommendations considered the members of the public who were not members of the Committee. Each of us appreciates the opportunity to participate in this important process and thank the City Council for appointing us for this important task.

The first point of importance that was shared by our facilitator, Dr. Lee, was the purpose of a Charter. A City Charter is meant to be an overall governing document that covers the most critical areas of long term concern for a city that requires direct citizen vote as opposed to the representative democratic process in the election of the City Council. This includes items such as the form of government, elections, number and terms of the Council, and the powers of the council and manager (in the case of a council/manager form of government as is the case for the city). The Charter should not include administrative matters.

We also note that there are various elements of the current charter that (1) are no longer legal as conflicting with state statute, (2) are internally conflicting, (3) deal with administrative matters, or (4) are confusing or unclear. We have tried to identify these issues where appropriate and defer to the city attorney on matters of legality.

General Comments

The Charter uses "his" throughout. We recommend that this be updated to "his/her," "its," "a," or "their" as appropriate. This is merely an administrative matter that we hope would not require a vote of the Citizens.

The organization of the Charter can be somewhat confusing. We recommend considering a reorganization so long as it does not overly confuse the substantive issues that you decide to place on

the ballot. This seems merely administrative and we hope that it can be handled after the final vote on the proposed amendments.

Article III

Section 3.1

Recommendation: We recommend some minor text changes to update terminology, not to change the form of government, as follows: The form of government of the City of Palm Beach Gardens shall be ~~that known as the~~ “Council-Manager-Plan.”

Article IV

Section 4-1

Recommendation: We recommend that term limits remain and that they be provided as three full three (3) year terms and that it be clarified that after being elected to three consecutive three (3) year terms and serving at least one-half of the final term, a person may run again only after sitting out a full three (3) year term. We should also clarify that service of one-half or less than one-half of a full three (3) year term shall not count toward the subject term limit.

Reasoning: The committee believes that three (3) terms of three years would be the optimal choice allowing voters one more opportunity to have a say while providing for enough time for the council members to learn, work, and achieve their goals. The clarification of less than a full term is consistent with the term limits for President of the United States as set forth in the 22nd Amendment to the U.S. Constitution.

Recommendation: We further recommend that some of the language relative to “a majority of the votes cast” be clarified to provide that only votes cast for a qualified candidate whose name appears on the ballot and is eligible to take office at the time of the election shall be counted. No vote for a deceased, withdrawn, or removed candidate should count or contribute toward the total number of votes, number of under votes, or number or over votes.

Reasoning: This would avoid the situation wherein someone qualifies, then withdraws, but votes are cast creating confusion and the possibility of a very expensive (over \$80,000 at this time) run-off election.

Recommendation: We recommend that elections be determined by plurality and not majority of votes cast for a candidate qualified to be on the ballot at the time of the election.

Reasoning: In the past 15 years, there has not been a single election where the winner of the run-off was not the person who received the plurality of the votes in the general election. However, the requirement of a run-off election has cost the tax payers hundreds of thousands of dollars during this time period, money which could have been saved with no change in the election results. For example, our most recent run-off election cost the City’s tax payers \$70,854.28. Further, in the case of the run-off,

even with this money spent, only an extremely small percentage (fewer than 15%) of the electorate chooses the councilmember.

Section 4-2

Recommendation: We recommend that this be deleted in its entirety. The Oath of Office is established by state law, rendering this section unnecessary.

Section 4-4

Recommendation: We recommend that the charter be amended as previously suggested by the city attorney, with a clarification that the “next available election” be the next available uniform municipal election.

Reasoning: The reasoning is as provided by the city attorney and would be in line with better process and the requirements of the agreements with the Supervisor of Elections.

Article V

Section 5-1

Recommendation: We recommend a slight change in the wording for the purposes of clarity as follows: “... functions of municipalities ~~prescribed, authorized, and provided in unless prohibited by~~ the Constitution or general laws of the State of Florida ~~fully and completely unless prohibited by or contrary to the provisions of this act [Charter].~~”

Reasoning: We believe that the City should be authorized to undertake any action deemed necessary unless prohibited by law. We believe this is the intent of this section and clarifies that intent. Additionally, Chapter 166, Fla. Stat. (the Home Rule Powers Act) already empowers the City in this regard.

Section 5-2

Recommendation: We recommend removing this section in its entirety.

Reasoning: The City’s powers should be anything allowed by law, as noted above. This could create confusion and is unnecessary.

Article VI

Section 6-1(a)

Recommendation: We recommend removing the residency requirement for the city manager as follows: “The city manager need not be a resident of the city ~~at the time of appointment, however, must be a resident within one year following the appointment, though residency as soon as practical after appointment is encouraged.~~”

Reasoning: This is not typical of a charter. This is something that may be adopted by ordinance or could properly be put into the contract for the city manager. Making it a charter requirement could severely limit the opportunities for the hiring of a future qualified city manager. We believe it is best for the city council to make the determination of an appropriate city manager based on numerous factors, which may include residency, but not be hamstrung to this particular requirement.

Section 6-1(b)

Recommendation: We recommend that this be clarified that the city manager is responsible to the council for the regular administration of all city affairs and employees. We further recommend that the designation of an acting manager be deleted from this section. The section would then read as follows: "The city manager shall be the administrative head of the municipal government under the laws and Charter of the city responsible to the city council for the administration of all city affairs and employees ~~placed in the manager's charge by tor under this Charter or city ordinances. In the event of his/her absence or disability, the city manager may designate an employee or other charter officer as the acting city manager limited to the time of the manager's absence or disability.~~"

Reasoning: The city manager is responsible for the day to day operations of the City and should be. Members of the council should not directly interfere with the day to day operations or employees due to the likelihood of creating conflict. This is not to say that the council cannot discuss matters with city employees, only that the city manager would be engaged and involved so that he or she can properly manage the city. The deletion of the last sentence is due it being duplicative of Section 6-1(f).

Section 6-1(c)(4)

Recommendation: We recommend deleting "and to submit for its consideration an annual budget."

Reasoning: This is duplicative of Section 6-1(c)(2)

Section 6-1(c)(5)

Recommendation: We recommend clarifying that all employees, with the exception of the city attorney, be hired or terminated by the city manager as follows: "To appoint all department heads and to employ and remove all employees of the city, except for the city attorney."

Reasoning: The city manager knows best the day to day operations of the city, what employees are needed, and which employees are performing their jobs to city standards. It is customary, and appropriate, in a council-manager form of government that this authority be vested in the manager. The exception of the city attorney is because the city attorney is in a unique position to advise the council of its legal rights and obligations as the representatives of the city.

Section 6-1(c)(8)

Recommendation: We recommend that this be clarified to identify federal law as well as state and local law.

Reasoning: Practically speaking, the city manager must follow all applicable laws. This simply clarifies that federal laws are not intended to be excluded from the manager's obligations.

Section 6-1(d)

Recommendation: We recommend excluding the city attorney from the last sentence regarding council and its members dealing with employees solely through the manager.

Reasoning: The city attorney is in a unique position to advise the council and its members of their legal rights and obligations.

Section 6-1(e)

Recommendation: There are two typos in this section. On the fourth line, "manager" is missing an "a" and is typed as "manger." Later in that line, "replay" should be "reply."

Section 6-1(f)

Recommendation: We recommend removing this section.

Reasoning: This is duplicative of language already in Section 6-1(a).

Section 6-2(a)

Recommendation: We recommend clarification in the first sentence on the vote to retain (or remove) the city attorney. The section would read as follows: "The city council, by a majority vote of its total membership, shall appoint or remove a city attorney."

Reasoning: This clarifies the required vote so that not less than a majority could hire or remove the city attorney.

Section 6-2(b)

Recommendation: We recommend removing "or the city manager" at the end of the first sentence.

Reasoning: The city attorney is a unique position and the city manager should not be determining the role of the city attorney, which should remain with the city council.

Section 6-2(b)(2)

Recommendation: We recommend removing "as may be approved by the city manager" from this provision.

Reasoning: The city attorney should answer to the city council, as discussed above.

Section 6-2(b)(5)

Recommendation: We recommend that this be clarified to identify federal law as well as state and local law.

Reasoning: Practically speaking, the city manager must follow all applicable laws. This simply clarifies that federal laws are not intended to be excluded from the manager's obligations.

Section 6-2(c)

Recommendation: We recommend that this be clarified to identify federal law as well as state and local law.

Reasoning: Practically speaking, the city manager must follow all applicable laws. This simply clarifies that federal laws are not intended to be excluded from the manager's obligations.

ARTICLE VII

Recommendation: We recommend removing all of Article VII.

Reasoning: This is not a critical issue that belongs in a City Charter. The determination of employment should be by the city council or city manager in accordance with employment laws.

ARTICLE VIII

Section 8-1

Recommendation: We recommend removing this section in its entirety.

Reasoning: This is duplicative of what is in the Charter regarding the city manager or otherwise is not proper for a broad governing document such as the City Charter.

Section 8-2

Recommendation: We recommend removing "but it may raise or lower salaries of all members of future councils, to take effect during the fiscal year following the adoption of an ordinance to that effect."

Reasoning: We found the reference to "future councils" to be confusing. Further, we do not believe that this is needed in a charter. The city council salaries are included in the annual budget. We believe the voters would immediately take action on any council members that authorized an inappropriate raise for themselves.

ARTICLE IX

Section 9-1

Recommendation: We recommend removing "... and as the city official designated to represent the city in all other governmental meetings..." and to clarify so that it would read as follows: "The mayor shall preside... for purposes of military law, for service of process, and execution of contracts, deeds and other documents. ~~_and as the city official designated to represent the city in all other governmental meetings, but~~ The mayor shall have..." We further recommend adding clarifying language that allows the city manager to sign contracts as delegated to the manager by the city council.

Reasoning: It is not practical for the mayor to be the only official allowed to represent the city in all governmental meetings. The council should make this determination as appropriate. Further, there may be meetings with staff of other governmental agencies wherein only city staff are required or appropriate. Further, it should be clear that this provision is not in conflict with the city manager's obligation to administer the day to day operations of the city and the use of "other documents" could cause such confusion.

Section 9-2

Recommendation: We recommend removing this section in its entirety.

Reasoning: The duties of the city clerk should be established by the city manager. It is not typical for the clerk's duties to be in a charter in a council/manager form of government where the clerk reports to the manager. Additionally, designating specific duties in the charter for the city clerk conflicts the city manager's authority over all city employees.

Section 9-3

Recommendation: We recommend removing this in its entirety.

Reasoning: The city need not have a city treasurer. The city has both internal and external auditors as well as a finance director. It is not typical for such a role to be identified in a charter.

ARTICLE X

Section 10-1

Recommendation: We recommend removal of this provision.

Reasoning: Section 100.361, Florida Statutes sets forth the sole method for recall of public officials.

ARTICLE XII

Recommendation: We recommend removing this article in its entirety.

Reasoning: This is unnecessary and not typical of a charter.

ARTICLE XV

Section 15-1

Recommendation: We recommend removing this section in its entirety (we note that this would mean that the entire article could be removed).

Reasoning: This is duplicative of other elements of the charter.

ARTICLE XVII

Section 17-1

Recommendation: We recommend clarifying the language by removing “and regulate” and by adding the laws of the United States to the law of Florida.

Reasoning: This clarifies what the city can do and clarifies that it will abide by federal election law as applicable.

ARTICLE XVIII

Recommendation: We recommend removing this article in its entirety.

Reasoning: These are all matters governed by state law.