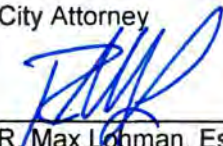

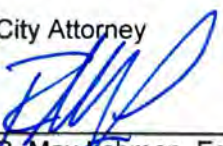



**CITY OF PALM BEACH GARDENS
CITY COUNCIL
Agenda Cover Memorandum**

**Meeting Date: December 7, 2017
Ordinance 26, 2017
Ordinance 27, 2017
Ordinance 28, 2017
Ordinance 29, 2017**

Subject/Agenda Item: Proposed Charter changes. Ordinance 26, 2017 – Update the 1976 City Charter to be in compliance with State Law. Ordinance 27, 2017 – Extend Term Limits to three – three year terms, Ordinance 28, 2017 – Councilmembers leaving office due to term limits may not be elected again for a period of three years, Ordinance 29, 2017 – elect Councilmembers by Plurality rather than by Majority.

- Recommendation to APPROVE**
 Recommendation to DENY

<p>Reviewed by:</p> <p>City Attorney</p>  <p>_____ R. Max Lohman, Esq.</p>	<p>Originating Dept.:</p> <p>City Attorney</p>  <p>_____ R. Max Lohman, Esq.</p>	<p>Costs: \$ <u>NA</u> (Total)</p> <p>\$ <u>NA</u> Current FY</p>	<p>Council Action:</p> <p><input type="checkbox"/> Approved</p> <p><input type="checkbox"/> Approved w/ Conditions</p> <p><input type="checkbox"/> Denied</p> <p><input type="checkbox"/> Continued to:</p>
<p>Submitted by:</p> <p>City Attorney</p>  <p>_____ R. Max Lohman, Esq.</p>	<p>Advertised: NA</p> <p>Date:</p> <p>Paper:</p> <p><input checked="" type="checkbox"/> Not Required</p>	<p>Funding Source:</p> <p><input type="checkbox"/> Operating</p> <p><input checked="" type="checkbox"/> Other</p> <p>-----</p> <p>Contract/Agreement:</p> <p>Effective Date: N/A</p> <p>Expiration Date: N/A</p>	<p>Attachments:</p> <ul style="list-style-type: none"> • Ordinance 26, 2017 - Exhibit "A" • Ordinance 27, 2017 • Ordinance 28, 2017 • Ordinance 29, 2017
<p>Approved by:</p> <p>City Manager</p>  <p>_____ Ronald M. Ferris</p>	<p>Affected parties</p> <p><input type="checkbox"/> Notified</p> <p><input checked="" type="checkbox"/> Not required</p>	<p>Budget Acct.#: NA</p>	

BACKGROUND: On July 13, 2017 via Resolution 49, 2017, the City Council created the Charter Review Committee (CRC) and on August 3, 2017 via Resolution 50, 2017 the members were appointed to the Committee. The Committee was formed to review and recommend amendment(s) to the City Charter, in whole and/or in part.

The CRC met on August 18, 2017, August 29, 2017, September 6, 2017 and September 25, 2017.

At the conclusion of these meetings, a final report was prepared and presented by Chairperson, Brian Seymour at the October 12, 2017 City Council meeting.

Below are the recommendations contained in the October 12, 2017 final report from the Charter Review Committee.

- *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.*
- *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. 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.*
- *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.*
- *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. 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.*
- *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. 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.*

During this same meeting, the City Council directed the City Attorney to review the recommended changes and prepare appropriate language to implement the recommended changes and to prepare ordinances and ballot language to propose four questions to the voters for the March 13, 2018 Uniform Municipal Election. The proposed Ordinances, Ballot Summaries, and Ballot Questions are listed below.

1. Ordinance 26, 2017 – Charter Language Revisions:

The current City Charter was adopted in 1976 and was subsequently amended in 1983, 1994, and 2004. Each of the previous amendments were limited in scope, effecting only portions of the Charter, which has resulted in certain internal inconsistencies and conflicts with state law. For example: References to a City Treasurer, references to the manner in which City Department Heads will address complaints, and references to a “merit system” and a “personnel system” established by the City Council in conflict with the authority over such matter that is specifically conferred upon the City Manager in another section of the Charter. The proposed revisions to the City Charter incorporate the CRC’s recommendations by relying on language that comports with the requirements of Chapter 166, *Florida Statutes*, providing for a short, concise, better organized, and legally sufficient City Charter.

Ballot Summary:

AMENDMENT OF THE CITY CHARTER TO ADOPT AND IMPLEMENT THE RECOMMENDATIONS OF THE CHARTER REVIEW COMMITTEE IN ORDER TO ELIMINATE INTERNAL INCONSISTENCIES, CONFLICTS WITH STATE LAW, CONFLICTS WITH THE COUNCIL-MANAGER FORM OF GOVERNMENT, AND TO REORGANIZE THE CHARTER TO CONFORM WITH COMMONLY ACCEPTED CONSTITUTIONAL CONSTRUCTION AND FORMATTING AS SET FORTH IN ORDINANCE 26, 2017.

Ballot Question:

CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 1

SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED AND REORGANIZED?

_____ YES – In favor of amendment and reorganization

_____ NO – Not in favor of amendment and reorganization

2. Ordinance 27, 2017 – Term Limits:

Proposed Language:

The elective officers under this Charter shall be the five (5) members of the city council. The selection of members of the city council shall be by groups to be known as Groups 1, 2, 3, 4, and 5. The council members in Groups 2 and 4 shall, in the year 1977, be elected for a term of three (3) years, and for three- (3) year terms thereafter; council members in Groups 1, 3, and 5 shall be elected for a term of three (3) years in the year 1978 and for three- (3) year terms thereafter. The term of office of council members shall commence on the first regularly scheduled meeting of the city council following the date of their election and shall continue for three (3) years thereafter until their successors are elected and qualified. No individual shall be elected to the office of council member for more than ~~two (2)~~ three (3) consecutive full terms. Service in a term of office that commenced prior to the effective date of any term limit enacted on council members will be credited against any term limitation approved by the Palm Beach Gardens' electorate.

Ballot Summary:

AMENDMENT OF THE PALM BEACH GARDENS CHARTER TO CHANGE THE EXISTING TERM LIMIT FROM TWO (2) CONSECUTIVE FULL TERMS TO THREE (3) CONSECUTIVE FULL TERMS?

Ballot Question:

CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 2

SHALL COUNCIL MEMBERS BE LIMITED TO THREE (3) CONSECUTIVE FULL TERMS?

YES In favor of amendment

NO Not in favor of amendment

3. Ordinance 28, 2017 -- Councilmembers leaving office due to term limits may not seek election for a period of three years.

Proposed Language:

The elective officers under this Charter shall be the five (5) members of the city council. The selection of members of the city council shall be by groups to be known as Groups 1, 2, 3, 4, and 5. The council members in Groups 2 and 4 shall, in the year 1977, be elected for a term of three (3) years, and for three- (3) year terms thereafter; council members in Groups 1, 3, and 5 shall be elected for a term of three (3) years in the year 1978 and for three- (3) year terms thereafter. The term of office of council members shall commence on the first regularly scheduled meeting of the city council following the date of their election and shall continue for three (3) years thereafter until their successors are elected and qualified. No individual shall be elected to the office of council member for more than two (2) consecutive full terms. ~~Service in a term of office which commenced prior to the effective date of any term limit enacted on council members will be credited against any term limitation approved by the Palm Beach Gardens' electorate.~~ Any council member who has left office due to term limits must be out of office for three (3) years prior to being elected again, such that they shall not be eligible to file or qualify to run for city council again until the second regularly scheduled Palm Beach Gardens municipal election following that council member leaving office.

Ballot Summary:

AMENDMENT OF THE PALM BEACH GARDENS CHARTER TO ESTABLISH THAT ANY COUNCIL MEMBER WHO HAS LEFT OFFICE DUE TO TERM LIMITS MUST BE OUT OF OFFICE FOR THREE (3) YEARS PRIOR TO BEING ELECTED AGAIN, SUCH THAT THEY MAY NOT FILE OR QUALIFY TO RUN FOR CITY COUNCIL AGAIN UNTIL THE SECOND REGULARLY SCHEDULED PALM BEACH GARDENS MUNICIPAL ELECTION FOLLOWING THAT CITY COUNCIL MEMBER LEAVING OFFICE.

Ballot Question:

CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 3

SHALL TERM LIMITED COUNCIL MEMBERS BE REQUIRED TO WAIT THREE YEARS BEFORE BEING ELECTED AGAIN?

_____ YES in favor of amendment

_____ NO not in favor of amendment

4. **Ordinance 29, 2017 -- Plurality:**

Proposed Language:

~~Whenever a general or special election is held to fill any elective office in the City of Palm Beach Gardens, the candidate receiving a majority of the highest number of votes, cast at such election to fill such office even if it is not a majority of the valid votes counted for that seat, shall be declared to be duly elected. However, should two (2) or more candidates tie for the highest number of valid votes received for that seat, then the candidates receiving the highest number of votes shall be declared candidates for the second or "runoff" election. Such second or "runoff" election shall be held as soon as practicable, but in no case more than sixty (60) days after the election producing the tie. In the second or "runoff" election, the council seat shall be filled by the candidate receiving the highest number of votes, even if it is not a majority of the votes counted for that seat. In the event a candidate dies, withdraws their candidacy, is disqualified, or is removed from the race and/or ballot before any election, leaving only one (1) candidate for the seat to be filled, then an election for that seat shall not be held. The remaining single candidate shall be deemed to have voted for him or herself and/or shall be elected by acclamation. ; provided that in the event no candidate for a particular elective office shall receive a majority of the votes cast for such election to fill such office, then a run-off election shall be held on the fourth Tuesday in March of the same calendar year said general election was held; and in the event a special election is held, and a run-off election is required, then said run-off election shall be held two (2) weeks from date of said original special election; provided further, that in such event only the names of the two (2) candidates having received the greatest number of votes in the general or special election for such office shall be submitted to the voters and the one of these two (2) receiving the majority number of votes in such run-off election shall be declared to be duly elected to such office; provided further, that should two (2) or more candidates receive an equal number of votes to any such office, so that it cannot be determined which two (2) had received the greatest and the next greatest number of votes, then the names of all such candidates shall be submitted at the run-off election and the candidate receiving the greatest number of votes at such election shall be declared elected to such office, regardless of whether such candidate received a majority of the votes cast to fill such office at such run-off election.~~

Ballot Summary:

CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 4

AMENDMENT OF PALM BEACH GARDENS CHARTER TO CHANGE THE METHOD OF ELECTION FROM MAJORITY VOTE TO PLURALITY VOTE, SUCH THAT THE CITY COUNCIL CANDIDATE WHO RECEIVES THE HIGHEST NUMBER OF VOTES FOR A PARTICULAR COUNCIL SEAT SHALL BE DEEMED TO BE ELECTED.

Ballot Question:

SHALL THE CANDIDATE RECEIVING THE MOST VOTES BE DEEMED TO BE ELECTED.

_____ YES – In favor of election by plurality

_____ NO – Not in favor of election by plurality

As required by Florida Statutes, Section 100.342 and the City Code of Ordinances Section 26-11, the City Clerk shall cause a notice of this election to be published in a newspaper of general circulation within the City at least once in the second, third, fourth and fifth weeks, provided the first publication shall take place at least thirty (30) days before the date fixed for the referendum.

In addition, in accordance with Section 26-14 (d) of the City Code of Ordinances, the City Clerk shall publish a sample ballot in a newspaper of general circulation prior to the day of the election, but no more than ten (10) days prior to the election. Such publication shall be conspicuous and not be included within the legal notices and advertisements being published per Chapter 50, *Florida Statutes*.

These Ordinances shall become effective immediately upon adoption. The revised language in Sections 4-1 and 4-2 of Charter as set forth in Section 1 hereinabove shall become effective as of 12:01 a.m. on March 14, 2018, if the question to be voted upon provided hereinabove receives an affirmative vote of the majority of the valid votes cast and counted at the election held on March 13, 2018.

The deadline for submitting the proposed ballot language to the Supervisor of Elections is Friday, January 19, 2018, at noon.

STAFF RECOMMENDATION: Staff recommends approval of Ordinance 26, 2017, Ordinance 27, 2017, Ordinance 28, 2017, and Ordinance 29, 2017 as presented on first reading.

ORDINANCE 26, 2017

1
2
3
4 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM
5 BEACH GARDENS, FLORIDA, ADOPTED IN ACCORDANCE WITH
6 SECTIONS 101.161 AND 166.031, *FLORIDA STATUTES*, CALLING
7 FOR A REFERENDUM TO BE HELD ON MARCH 13, 2018,
8 PROPOSING TO THE ELECTORATE OF THE CITY THAT THE CITY
9 CHARTER BE AMENDED AND REORGANIZED IN ORDER TO
10 ADOPT AND IMPLEMENT THE RECOMMENDATIONS OF THE
11 CITIZEN CHARTER REVIEW COMMITTEE; PROVIDING FOR
12 SUBMISSION OF THE PROPOSED BALLOT QUESTION TO THE
13 ELECTORS OF THE CITY; SETTING FORTH THE FORM OF THE
14 QUESTION TO BE VOTED UPON AT SUCH ELECTION; PROVIDING
15 A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND
16 AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND
17 FOR OTHER PURPOSES.
18

19
20 WHEREAS, the City Council of the City of Palm Beach Gardens directed the City
21 Attorney to review the City Charter and propose recommended changes to the City
22 Charter; and
23

24 WHEREAS, the City Council has reviewed the recommendations of the citizen
25 Charter Review Committee ("CRC"), and the City Council has determined that it would be
26 in the best interest of the City of Palm Beach Gardens to accept such recommendations;
27 and
28

29 WHEREAS, the City Council has concluded that the CRC's recommendation to
30 amend and reorganize the Charter and calling for a referendum election in accordance
31 with the provisions of Section 166.031, *Florida Statutes*, for the electorate of the City of
32 Palm Beach Gardens to consider such amendment and reorganization of the Charter is
33 in the best interest of the City of Palm Beach Gardens; and
34

35 WHEREAS, the City Council deems approval of this Ordinance to be in the best
36 interest of the health, safety, and welfare of the residents and citizens of the City of Palm
37 Beach Gardens and the public at large.
38

39
40 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
41 OF PALM BEACH GARDENS, FLORIDA, that:
42

43 SECTION 1. The proposed amendment and reorganization of the City Charter
44 shall read as follows:
45
46

1 The proposed new City Charter is attached hereto and incorporated herein as
2 Exhibit "A".
3

4 **SECTION 2.** The Charter amendment proposed by this Ordinance shall be
5 submitted to the electors of the City of Palm Beach Gardens, Florida, at the general
6 municipal election to be held on the 13th day of March, 2018, in the form of the following
7 question:
8

9 **CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 1**

10
11 **AMENDMENT OF THE CITY CHARTER TO ADOPT AND IMPLEMENT**
12 **THE RECOMMENDATIONS OF THE CHARTER REVIEW COMMITTEE**
13 **IN ORDER TO ELIMINATE INTERNAL INCONSISTENCIES, CONFLICTS**
14 **WITH STATE LAW, CONFLICTS WITH THE COUNCIL-MANAGER**
15 **FORM OF GOVERNMENT, AND TO REORGANIZE THE CHARTER TO**
16 **CONFORM WITH COMMONLY ACCEPTED CONSTITUTIONAL**
17 **CONSTRUCTION AND FORMATTING AS SET FORTH IN ORDINANCE**
18 **26, 2017.**

19
20 SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED AND
21 REORGANIZED?
22

23 _____ YES – In favor of amendment and reorganization

24 _____ NO – Not in favor of amendment and reorganization
25
26

27 **SECTION 3.** The City Clerk shall cause a notice of this election called for the
28 purpose of presenting the subject Charter revision to a vote of the electorate to be
29 published in accordance with the provisions of Section 100.342, *Florida Statutes*, at least
30 twice: once in the fifth week and once in the third week prior to the week in which the
31 referendum is to be held; provided that the first publication shall take place at least 30
32 days before the date fixed for the referendum and shall be published in a newspaper of
33 general circulation within the City.
34

35 **SECTION 4.** In accordance with Section 26-11 (a) of the City Code of Ordinances,
36 the City Clerk shall cause a notice of election to be published in a newspaper of general
37 circulation within the City at one time during the fourth week and at one time in the second
38 week preceding the week in which the election is held.
39

40 **SECTION 5.** In accordance with Section 26-14 (d) of the City Code of Ordinances,
41 the City Clerk shall publish a sample ballot in a newspaper of general circulation prior to the
42 day of the election, but no more than ten days prior to the election. Such publication shall
43 be conspicuous and not be included within the legal notices and advertisements being
44 published per Chapter 50, *Florida Statutes*.
45
46

1 **SECTION 6.** All ordinances or parts of ordinances in conflict be and the same are
2 hereby repealed.

3
4 **SECTION 7.** Should any section or provision of this Ordinance or any portion
5 thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction
6 to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

7
8 **SECTION 8.** Specific authority is hereby given to codify this Ordinance.

9
10 **SECTION 9.** This Ordinance shall become effective immediately upon adoption.
11 The amended and reorganized Charter language as set forth in Section 1 hereinabove
12 shall become effective as of 12:01 a.m. on March 14, 2018, if the question to be voted
13 upon provided hereinabove receives an affirmative vote of the majority of the valid votes
14 cast and counted at the election held on March 13, 2018.

15
16
17 (The remainder of this page intentionally left blank)

PASSED this ____ day of _____, 2017, upon first reading.

PASSED AND ADOPTED this ____ day of _____, 2018, upon second and final reading.

CITY OF PALM BEACH GARDENS	FOR	AGAINST	ABSENT
-----------------------------------	------------	----------------	---------------

BY: _____ Maria G. Marino, Mayor	_____	_____	_____
-------------------------------------	-------	-------	-------

_____	_____	_____	_____
Mark T. Marciano, Vice Mayor			

_____	_____	_____	_____
Carl Woods, Councilmember			

_____	_____	_____	_____
Matthew Jay Lane, Councilmember			

_____	_____	_____	_____
Rachelle A. Litt, Councilmember			

ATTEST:

BY: _____ Patricia Snider, CMC, City Clerk	
-----------------------------------------------	--

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY: _____ R. Max Lohman, City Attorney	
-------------------------------------------	--



Exhibit "A"

ARTICLE I: TRANSITION SCHEDULE

Section 1-1. Ordinances preserved.

All ordinances in effect upon adoption of this Charter, to the extent not inconsistent with it, shall remain in full force and effect until repealed or changed as provided herein.

Section 1-2. Rights of officers and employees.

Nothing in this Charter, except as otherwise specifically provided, shall affect or impair the rights or privileges of persons who are city officers or employees at the time of adoption. Elected officials shall continue to hold their offices and discharge the duties thereof until their successors are duly elected.

Section 1-3. Pending matters.

All rights, claims, actions, orders, contracts, and legal or administrative proceedings involving the city shall continue, except as modified pursuant to the provisions of this Charter.

ARTICLE II: BOUNDARIES

Section 2-1. Boundaries.

(This section shall remain in full force and effect as previously enacted.)

ARTICLE III: FORM OF GOVERNMENT

Section 3-1. Form of government.

The form of government of the City of Palm Beach Gardens shall be that known as the "Council-Manager" form of government, as more particularly set forth hereinbelow.

ARTICLE IV: LEGISLATIVE

Section 4-1. Authority under state law.

The said City of Palm Beach Gardens, Florida shall be and constitute a body politic and corporate and as such shall have perpetual existence and may sue, be sued, defend, plead, and be impleaded in all courts and places and shall exercise all the powers, privileges, and functions of municipalities unless prohibited and/or preempted by the Constitution and general laws of the State of Florida.

Section 4-2. City Council; powers, composition, and method of election.

There shall be a city council with all legislative powers of the city vested therein consisting of five (5) members who shall be electors of the city, who shall be elected by the electors of the city. The selection of members of the city council shall be by groups to be known as Groups 1, 2, 3, 4, and 5. The council members in Groups 2 and 4 shall, in the year 1977, be elected for a term of three (3) years and for three- (3) year terms thereafter; council members in Groups 1, 3, and 5 shall, in the year 1978, be elected for a term of three (3) years and for three- (3) year terms thereafter. The term of office of council members shall commence on the first regularly scheduled meeting of the city council following the date of their election and shall continue for three (3) years thereafter and/or until their successors are elected and qualified. No individual shall be elected to the office of council member for more than two (2) consecutive full terms. Service of one-half or less than one-half of a full three- (3) year term shall not count toward the subject term limit. Service in a term of office that commenced prior to the effective date of any term limit enacted on council members will be credited against any term limitation approved by the Palm Beach Gardens' electorate.

General elections shall be held on the second Tuesday of March or as may be established by ordinance. Any candidate seeking election as a council member shall file with the city clerk a written notice to such effect at such time and in such manner as established by ordinance and shall pay such filing fee or otherwise qualify as shall be established by ordinance. Such notice shall state the number of the group to which he or she seeks to be elected, and any additional information as may be required by ordinance. All candidates shall be registered electors of the city.

Whenever a general or special election is held to fill any elective office in the City of Palm Beach Gardens, the candidate receiving a majority of the votes cast at such election to fill such office shall be declared to be duly elected; provided that in the event no candidate for a particular elective office shall receive a majority of the votes cast for such election to fill such office, then a runoff election shall be held on the fourth Tuesday in March of the same calendar year said general election was held or as soon as practicable thereafter if such runoff election cannot be held on the fourth Tuesday in March as set forth above; and in the event a special election is held, and a runoff election is required, then said runoff election shall be held two (2) weeks from the date of said original special election; provided further, that in such event only the names of the two (2) candidates having received the greatest number of votes in the general or special election for such office shall be submitted to the voters and the one of these two (2) receiving the majority number of votes in such runoff election shall be declared to be duly elected to such office; provided further, that should two (2) or more candidates receive an equal number of votes to any such office, so that it cannot be determined which two (2) had received the greatest and the next greatest number of votes, then the names of all such candidates shall be submitted at the runoff election and the candidate receiving the greatest number of votes at such election shall be declared elected to such office, regardless of whether such candidate received a majority of the votes cast to fill such office at such runoff election.

If death, withdrawal, or removal from the ballot of a qualified candidate occurs after the ballots have been submitted for printing, have been printed, and/or after the deadline for mailing vote-by-mail ballots, any such previously qualified candidate shall no longer be considered and shall no longer be a candidate, qualified or otherwise, for the office for which their name

appeared on the subject ballot. Such deceased, withdrawn, disqualified, or removed candidate shall be defined as and referred to as a "former candidate." Accordingly, votes cast for or ballots submitted in favor of any former candidate shall not be counted in the total number of votes and/or ballots. No vote for a former candidate shall count or contribute toward the total number of votes, number of under votes, or number of over votes. A ballot marked, annotated, or that in any way could be interpreted to constitute a vote in favor of a former candidate shall be treated as a nullity, as it relates to that specific contest for election. It is the express intent of the City of Palm Beach Gardens that votes cast and ballots submitted for a former candidate shall have no effect on the outcome or results of any city election. This provision shall be strictly construed by all courts having jurisdiction in the State of Florida.

Section 4-3. Quorum, meetings, organization, and election of mayor and vice mayor.

No less than three (3) members of the city council must be present in order to constitute a quorum for the conduct of city council business. The city council shall meet no less frequently than once per month and at such time and place as the city council may prescribe. Notwithstanding the foregoing, any city council meeting may be cancelled by the mayor or city manager in case of a recognized emergency or disaster. If a city council meeting is so cancelled, the matters that were to be considered will be placed on an agenda for the next available city council meeting subject to required notice. Special meetings may be held at the call of the mayor or by a majority of the members present. The members of the city council elected pursuant to this article shall meet for organization at the next regularly scheduled meeting of the city council following the date of their election or as may be established by a majority vote of the city council's total membership. At said meeting, the city council shall appoint one (1) member a mayor and another member a vice mayor of the city, each of whom shall hold such office for a term of one (1) year or until his/her successor shall be appointed. The city council may also appoint a third member vice mayor pro tempore, who shall have the same term as the mayor and vice mayor, if a majority of the city council present deems such appointment appropriate and prudent.

Section 4-4. Vacancies.

The office of a council member shall become vacant in the event of death, resignation, or removal from office of any member of the city council. The method of filling any such vacancy shall be as follows:

(a) Filling of vacancies. The city council, or so much of it as shall remain, shall have the power by a majority vote of the remaining members to fill a vacancy on the city council by the appointment of a qualified elector to hold such office until the next general municipal election when a successor shall be elected and take office. Should the city council decline to fill a vacancy, the vacant seat shall be filled by a successor at the next available general municipal election. The successor so elected shall then serve the remaining portion of the three- (3) year term for the city council seat in which the vacancy occurred.

(b) **Extraordinary vacancies.** In the event that all members of the city council are removed from office such that each city council seat is vacant, the governor shall appoint an interim city council, comprised of five (5) qualified electors, who shall call a special election that shall be held in the same manner as the first election under this Charter. (See Section 4-2.) However, if a national, countywide, or general municipal election is scheduled to be held within one hundred eighty (180) days of the interim city council taking office, then no such special election shall be required.

Section 4-5. Compensation for mayor and council members.

The salaries of the mayor and council members shall be fixed by ordinance; provided, however, that the city council shall not raise the salaries of the city council or the mayor during any fiscal year in which the ordinance raising salaries is adopted. Any increase or decrease in the city council's or mayor's salary shall not take effect until the fiscal year immediately following the fiscal year in which the ordinance was adopted.

Section 4-6. Powers and duties of the mayor.

The mayor shall preside as chairman at meetings of the city council; shall be recognized as head of city government for all ceremonial purposes; shall be recognized by the governor for purposes of military law; for service of process, and execution of contracts, deeds, and other documents. However, the city manager may also execute contracts, deeds, and other documents as such authority may be delegated to him/her by city council action, resolution, or ordinance. The mayor shall have no administrative duties except as required to carry out the responsibilities herein. The mayor shall have a voice and vote in the proceedings of the city council.

The vice mayor shall assume the duties of the mayor during the absence or disability of the mayor.

In the absence or disability of both the mayor and vice mayor, the city council may appoint a vice mayor pro tem to fulfill the duties and functions of said office, if one has not been previously appointed.

Section 4-7. Prohibitions.

(a) **Appointment and removals.** Neither the city council nor any of its members shall in any manner dictate the appointment or removal of any city administrative officers or employees whom the city manager or any of his/her subordinates are empowered to appoint, but the city council may express its views and fully and freely discuss with the city manager anything pertaining to appointment and removal of such officers and employees.

(b) Interference with administration. Except for the purpose of inquiries, the city council or its members shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the city council nor its members shall give orders to any such officer or employee either publicly or privately. Recommendations for improvement in city government operations by individual city council members shall be made to and through the city manager, so that the city manager may coordinate efforts of all city departments to achieve the greatest possible savings through the most efficient and sound means available.

Section 4-8. Turnover of documents.

It shall be the duty of every officer of the city within ten (10) days after the expiration of his/her term of office or his/her removal therefrom to deliver to his/her successor in office or to such other person as the city council may designate all books, records, papers, vouchers, and property of every kind in his/her possession or control belonging to the municipality.

Section 4-9. City council-appointed advisors, consultants, and officials.

The city council shall have the power and authority to employ and retain engineers, auditors, and attorneys and other professional advisors and consultants. The city council shall have the power to create and abolish all offices and fix and determine the authority, duties, and compensation of all appointed officers.

Section 4-10. Mayor, any council member, or any elected official may be recalled.

The mayor, any council member, or any other elected official may be recalled and removed from his or her respective office as provided under the general law of the State of Florida.

ARTICLE V: ADMINISTRATION AS COUNCIL-MANAGER GOVERNMENT

Section 5-1. City manager.

(a) The city council, by a majority vote of its total membership, shall appoint a city manager who shall serve at the pleasure of the city council. The city manager shall be appointed on the basis of executive and administrative qualifications as established by the city council. The compensation and benefits of the city manager shall be as determined by the city council. The city council may annually review the city manager's performance at a time and in a manner determined by the city council. The city manager shall designate in writing, filed with the clerk, an individual who shall perform the duties of the city manager during his/her temporary absence.

(b) The city manager shall be the chief administrative officer 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. To that end, the city manager's powers and duties include, but are not limited to:

- (1) See that the laws and ordinances are enforced.
- (2) Prepare and submit an annual budget to the city council for its consideration.

- (3) Attend all meetings of the city council with a right to take part in the discussion but without having a vote.
- (4) Recommend to the city council for adoption such measures as he/she may deem necessary or expedient in the interest of the city. To keep the city council fully advised as to the financial condition and needs of the city and to prepare and submit for its consideration an annual budget.
- (5) Appoint all department heads, to employ and remove all other employees of the city, except for the city attorney.
- (6) Make such reports as the city council may require concerning the operations of the city departments.
- (7) Perform such other duties as may be specified in this Charter, by law, or as the city council may prescribe.
- (8) Retain such specialized professional services as may be necessary to effectively and efficiently conduct the city's affairs in accordance with federal, state, and local laws.

(c) No member of the city council shall dictate the appointment of any person to office or employment by the city manager or in any manner interfere with the city manager or prevent him/her from exercising his/her own judgment in the appointment of officers and employees in the administrative service. The city council and its members shall deal with city employees solely through the city manager. The foregoing sentence does not apply to the city attorney.

(d) The city council may remove or suspend the city manager by a majority vote of the total membership of the city council. The city manager shall hold office and serve at the pleasure of the city council. The city manager shall continue to receive full salary and benefits until the effective date of such removal.

(e) By letter or memorandum filed with the city clerk, the city manager shall designate a city officer or employee to exercise the powers and perform the duties of city manager during the city manager's absence or disability. The city council may revoke such designation at any time and appoint another officer or employee of the city to serve until the city manager returns.

Section 5-2. City attorney.

(a) The city council, by a majority vote of its total membership, shall appoint a city attorney who may be removed in the same manner. The compensation and benefits of the city attorney shall be as determined by the city council. The city may appoint a firm or an individual to serve as the city attorney.

(b) The city attorney shall be the chief legal officer of the city responsible for all legal affairs of the city, and shall serve as chief legal advisor to the city council, the city manager, the city departments, and such boards or committees as are placed in the city attorney's charge by the city council. The city attorney's powers and duties shall include:

- (1) Preparing or reviewing as to form and legal sufficiency all contracts, resolutions, ordinances, or other documents of the city.

- (2) Appointing such assistant city attorneys to perform the duties of his/her office so long as such appointments/assignments do not negatively impact the budget for the city attorney's office, which would require the city manager's consent.
- (3) Prosecuting and defending all legal or administrative law actions wherein the city is a party.
- (4) Performing such other legal services as may be requested by the city council or the city manager.
- (5) Performing such other duties as may be required by federal and state law, this Charter, or ordinance.

(c) The city council or the city manager may also appoint one or more special counsel to serve as legal advisors to the city council, the city manager, and city departments, officers, and agencies with respect to specific legal proceedings or matters to conduct city affairs in an efficient manner in accordance with federal and state law, this Charter, or ordinance of the city.

ARTICLE VI: ELECTIONS

Section 6-1. Regulation by ordinance.

Notwithstanding the provisions set forth at Sections 4-2 and 4-4 of this Charter, the city council shall provide by ordinance for the conduct of elections in accordance with state law.

ARTICLE VII: INITIATIVE AND REFERENDUM

Section 7-1. Passage or repeal of ordinance; petition; procedure.

The qualified electors of the city shall have the power to institute initiative and referendum procedures as provided by general law of the State of Florida and/or by ordinance. However, such power shall not extend to the budget or capital program or to any ordinance or resolution relating to appropriation of money, levy of taxes, or salaries of city officers, employees, or agents, professional or otherwise.