

CITY OF PALM BEACH GARDENS CITY COUNCIL
Agenda Cover Memorandum

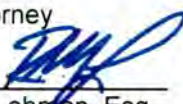

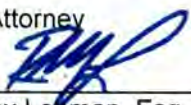

Meeting Date: January 4, 2018
Ordinance 26, 2017
Ordinance 27, 2017
Ordinance 28, 2017
Ordinance 29, 2017

Subject/Agenda Item: Proposed Charter revisions: Ordinance 26, 2017 – Update the 1976 City Charter to be in compliance with State Law; Ordinance 27, 2017 – Change existing Term Limits from two three-year terms to three three-year terms; Ordinance 28, 2017 – Council Members who left office due to term limits must be out of office for three years prior to be elected again; and Ordinance 29, 2017 – Elect Council Members by Plurality rather than by Majority.

Second and Final Reading and Public Hearing.

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. City Attorney</p>	<p>Costs: \$ NA (Total)</p> <p>\$ NA 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: Palm Beach Post</p> <p>Date: December 20, 2017</p> <p>Paper:</p> <p><input type="checkbox"/> Not Required</p>	<p>Funding Source:</p> <p><input type="checkbox"/> Operating</p> <p><input checked="" type="checkbox"/> Other</p> <p>Contract/Agreement:</p> <p>Effective Date: NA</p> <p>Expiration Date: NA</p> <p>Budget Acct.#: NA</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>		

BACKGROUND: On July 13, 2017, the City Council adopted Resolution 49, 2017 creating the Charter Review Committee (CRC), and on August 3, 2017, the City Council adopted Resolution 50, 2017 appointing the members to the CRC. The CRC 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 to the City Council 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 CRC :

- *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 of 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) runoff 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 runoff was not the person who received the plurality of the votes in the general election. However, the requirement of a runoff 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 runoff election cost the City's tax payers \$70,854.28. Further, in the case of the runoff, even with this money spent, only an extremely small percentage (fewer than 15%) of the electorate chooses the council member.*

At the October 12, 2017 meeting, the City Council directed the City Attorney to review the recommended changes, to determine the appropriate ballot language and to submit four questions to the electors 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 to portions of the City Charter that has resulted in certain inconsistencies and conflicts over time, 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 City Manager's specific authority. The proposed new language relies heavily on Chapter 166, *Florida Statutes*, and provides a short, concise, and legally sufficient City Charter.

CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 1

SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED 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 EXHIBIT "A" OF ORDINANCE 26, 2017.

SHALL THE ABOVE DESCRIBED QUESTION NO. 1 BE ADOPTED?

_____ YES ← ←
_____ NO ← ←

2. Ordinance 27, 2017- Terms Limits.

(a) Ordinance 27, 2017 A – Term Limits.

Proposed Charter Revision:

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 person may serve the office of as a city 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.

CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 2

SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED TO CHANGE THE EXISTING TERM LIMIT OF TWO (2) CONSECUTIVE FULL TERMS TO THREE (3) CONSECUTIVE FULL TERMS.

SHALL THE ABOVE DESCRIBED QUESTION NO. 2 BE ADOPTED?

_____ YES ← ←
_____ NO ← ←

(b) Ordinance 27, 2017 B – Term Limits.

Proposed Charter Revision:

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 person may serve the office of as a city 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. This limitation shall apply retroactively to all city council members who are holding office as of March 13, 2018.

CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 2

SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED TO PROVIDE FOR TERM LIMITS FOR CITY COUNCIL MEMBERS WHICH SHALL BE EFFECTIVE RETROACTIVELY FOR ALL SITTING COUNCIL MEMBERS; PROVIDING THAT NO PERSON MAY SERVE MORE THAN THREE (3) CONSECUTIVE FULL TERMS.

SHALL THE ABOVE DESCRIBED QUESTION NO. 2 BE ADOPTED?

_____ YES ← ←
_____ NO ← ←

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

Proposed Charter Revision:

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.

CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 3

THE CURRENT CHARTER DOES NOT SPECIFY THE MINIMUM TIME THAT A TERM LIMITED COUNCIL MEMBER MUST BE OUT OF OFFICE BEFORE RUNNING FOR COUNCIL AGAIN. SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED TO ESTABLISH THAT TERM LIMITED COUNCIL MEMBERS MUST BE OUT OF OFFICE FOR THREE YEARS PRIOR TO BEING RE-ELECTED, SUCH THAT THEY MAY NOT RUN FOR CITY COUNCIL AGAIN UNTIL THE SECOND REGULARLY SCHEDULED CITY MUNICIPAL ELECTION FOLLOWING THAT MEMBER LEAVING OFFICE.

SHALL THE ABOVE DESCRIBED QUESTION NO. 3 BE ADOPTED?

___ YES  
___ NO  

4. Ordinance 29, 2017 – Plurality.

Proposed Charter Revision:

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.~~

CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 4

SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED 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.

SHALL THE ABOVE DESCRIBED QUESTION NO. 4 BE ADOPTED?

_____ YES ← ←
_____ NO ← ←

As required by Section 100.342, *Florida Statutes*, and Section 26-11 of the City Code of Ordinances, 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*.

The Ordinances shall become effective immediately upon adoption. The revised language in Sections 4-1 and 4-2 of the 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.

CITY COUNCIL ACTION

The City Council approved Ordinance 26, 2017, Ordinance 27, 2017, and Ordinance 29, 2017 at the December 7, 2017 meeting by a vote of 4-1 with Council Member Lane opposed. Ordinance 28, 2017 was postponed to a date certain Special Meeting of December 21, 2017 at 7:00 p.m. At the Special Meeting of December 21, 2017, the City Council approved Ordinance 28, 2017 by a vote of 3-2 with Vice Mayor Marciano and Council Member Lane opposed.

STAFF RECOMMENDATION: Staff recommends approval of Ordinance 26, 2017, Ordinance Ordinance 27B, 2017, Ordinance 28, 2017, and Ordinance 29, 2017 as presented on Second and Final Reading.

ORDINANCE 27, 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 AT SECTION 4-1. TO CHANGE THE
10 EXISTING CITY COUNCIL TERM LIMITS FROM TWO (2)
11 CONSECUTIVE FULL TERMS TO THREE (3) CONSECUTIVE FULL
12 TERMS; PROVIDING THAT THE REMAINDER OF THE CHARTER,
13 AS MAY BE AMENDED BY THE ELECTORATE, SHALL REMAIN IN
14 FULL FORCE AND EFFECT AS PREVIOUSLY ENACTED;
15 PROVIDING FOR SUBMISSION OF THE PROPOSED BALLOT
16 QUESTION TO THE ELECTORS OF THE CITY; SETTING FORTH
17 THE FORM OF THE QUESTION TO BE VOTED UPON AT SUCH
18 ELECTION; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY
19 CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN
20 EFFECTIVE DATE; AND FOR OTHER PURPOSES.
21

22
23 **WHEREAS**, the City Council of the City of Palm Beach Gardens directed the City
24 Attorney to review the City Charter and propose recommended changes to the City
25 Charter; and
26

27 **WHEREAS**, the City Council has reviewed the recommendations of the citizen
28 Charter Review Committee ("CRC"), and the City Council has determined that it would be
29 in the best interest of the City of Palm Beach Gardens to accept such recommendations;
30 and
31

32 **WHEREAS**, the City Council has concluded that the CRC's recommendation to
33 change the existing city council term limits from two (2) consecutive full terms to three (3)
34 consecutive full terms and calling for a referendum election in accordance with the
35 provisions of Section 166.031, *Florida Statutes*, for the electorate of the City of Palm
36 Beach Gardens to consider such amendment to the Charter is in the best interest of the
37 City of Palm Beach Gardens; and
38

39 **WHEREAS**, the City Council deems approval of this Ordinance to be in the best
40 interest of the health, safety, and welfare of the residents and citizens of the City of Palm
41 Beach Gardens and the public at large.
42

43
44 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY**
45 **OF PALM BEACH GARDENS, FLORIDA, that:**
46

1 **SECTION 1.** The proposed amendment to Section 4-1 of the City's Charter shall
 2 read as follows:

3
 4 The elective officers under this Charter shall be the five (5) members of the city
 5 council. The selection of members of the city council shall be by groups to be known as
 6 Groups 1, 2, 3, 4, and 5. The council members in Groups 2 and 4 shall, in the year 1977,
 7 be elected for a term of three (3) years, and for three- (3) year terms thereafter; council
 8 members in Groups 1, 3, and 5 shall be elected for a term of three (3) years in the year
 9 1978 and for three- (3) year terms thereafter. The term of office of council members shall
 10 commence on the first regularly scheduled meeting of the city council following the date
 11 of their election and shall continue for three (3) years thereafter until their successors are
 12 elected and qualified ~~No individual shall be elected to~~ person may serve the office of as
 13 a city council member for more than two (2) three (3) consecutive full terms. Service in a
 14 term of office that commenced prior to the effective date of any term limit enacted on
 15 council members will be credited against any term limitation approved by the Palm Beach
 16 Gardens' electorate.

17
 18 **SECTION 2.** The Charter amendment proposed by this Ordinance shall be
 19 submitted to the electors of the City of Palm Beach Gardens, Florida, at the general
 20 municipal election to be held on the 13th day of March, 2018, in the form of the following
 21 question:

22
 23 **CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 2**

24
 25 **SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED TO**
 26 **CHANGE THE EXISTING TERM LIMIT OF TWO (2) CONSECUTIVE**
 27 **FULL TERMS TO THREE (3) CONSECUTIVE FULL TERMS.**

28
 29 SHALL THE ABOVE DESCRIBED QUESTION NO. 2 BE ADOPTED?

30
 31 _____ YES

32
 33 _____ NO

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

42
 43 **SECTION 4.** In accordance with Section 26-11 (a) of the City Code of Ordinances,
 44 the City Clerk shall cause a notice of election to be published in a newspaper of general
 45 circulation within the City at one time during the fourth week and at one time in the second
 46 week preceding the week in which the election is held.

PASSED this 7th day of December, 2017, upon first reading.

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

CITY OF PALM BEACH GARDENS	FOR	AGAINST	ABSENT
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BY: _____	_____	_____	_____
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Maria G. Marino, Mayor

_____	_____	_____	_____
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Mark T. Marciano, Vice Mayor

_____	_____	_____	_____
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Carl Woods, Councilmember

_____	_____	_____	_____
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Matthew Jay Lane, Councilmember

_____	_____	_____	_____
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Rachelle A. Litt, Councilmember

ATTEST:

BY: _____

Patricia Snider, CMC, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY: _____

R. Max Lohman, City Attorney
