

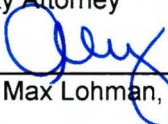



**CITY OF PALM BEACH GARDENS  
CITY COUNCIL  
Agenda Cover Memorandum**

**Meeting Date: April 19, 2018  
Ordinance 7, 2018  
Ordinance 8, 2018  
Ordinance 9, 2018**

**Subject/Agenda Item:** Proposed Charter revisions: Ordinance 7, 2018 – Change existing Term Limits from two three-year terms to three three-year terms; Ordinance 8, 2018 – repeal all portions of the Charter except for the description of the boundaries, and adopt a new City Charter; Ordinance 9, 2018 – establish the City Manager’s residency requirements.

**First Reading and Public Hearing.**

- Recommendation to APPROVE**  
 **Recommendation to DENY**

<b>Reviewed by:</b>  City Attorney  R. Max Lohman, Esq.	<b>Originating Dept.:</b> City Clerk  Patricia Snider, CMC. City Clerk	<b>Costs: \$</b> <u>NA</u> (Total)  <b>\$</b> <u>NA</u> Current FY	<b>Council Action:</b>  <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/ Conditions <input type="checkbox"/> Denied <input type="checkbox"/> Continued to:
	<b>Advertised: Palm Beach Post</b>  Dates: Monday, April 16, 2018; Wednesday, April 18, 2018  Paper: <input type="checkbox"/> Not Required	<b>Funding Source:</b>  <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Other  <b>Contract/Agreement:</b>  Effective Date: NA Expiration Date: NA  <b>Budget Acct.#:</b> NA	<b>Attachments:</b>  <ul style="list-style-type: none"> <li>• Ordinance 7 2018</li> <li>• Ordinance 8, 2018: - Exhibit "A"</li> <li>• Ordinance 9, 2018</li> </ul>
<b>Submitted by:</b>  City Clerk  Patricia Snider, CMC	<b>Affected parties</b>  <input type="checkbox"/> Notified <input checked="" type="checkbox"/> Not required		
<b>Approved by:</b>  City Manager  Ronald M. Ferris			

**BACKGROUND:** As a result of the final judgment by Judge G. Joseph Curley, Jr., Circuit Judge, Questions 1 and 2 on the March 13, 2018, Referendum Election Ballot were considered invalid, and any votes cast on these questions were deemed void.

Therefore, at the April 5, 2018, City Council meeting, City Council approved and adopted Resolution 21, 2018 that directed the City Attorney to draft Charter Ballot language, call for a Special Election, and enter into an Agreement with the Palm Beach County Supervisor of Elections to conduct the Special Election in conjunction with the August 28, 2018, Primary Election.

The City Attorney has developed the following three questions to be placed onto the August 28, 2018, Primary Ballot.



**Ordinance 7, 2018** – term limits from two three-year terms to three three-year terms.



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 August 28, 2018.

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

**SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED TO CHANGE FROM THE EXISTING TERM LIMIT WHICH PROHIBITS A COUNCIL MEMBER FROM BEING ELECTED TO MORE THAN TWO CONSECUTIVE FULL TERMS TO A TERM LIMIT THAT PROHIBITS A COUNCIL MEMBER FROM SERVING FOR MORE THAN THREE CONSECUTIVE FULL TERMS AND MAKING THE CHANGE APPLY TO ALL SITTING COUNCIL MEMBERS?**

SHALL THE ABOVE DESCRIBED QUESTION NO. 1 BE ADOPTED?

\_\_\_\_\_ YES        

\_\_\_\_\_ NO        

**Ordinance 8, 2018** – proposing that all portions of the Charter be repealed, except that part thereof describing the boundaries of the City, and that a new City Charter be adopted.

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

**SHALL THE CITY CHARTER BE AMENDED TO REMOVE PROVISIONS THAT ARE OUTDATED, UNNECESSARY OR CONFLICT WITH STATE LAW INCLUDING MUNICIPALITY, CITY CLERK, AND CITY TREASURER SPECIFIC POWERS/DUTIES; OATH OF OFFICE; MERIT SYSTEM; PROCEDURE REMOVING COUNCILMEN, QUALIFICATION OF ELECTORS, COUNCIL MEETING AND PROCEDURE, AND OTHER PROVISIONS; REVISE COUNCIL-MANAGER RELATIONSHIP; CHANGE FILLING OF VACANCIES; LIMIT INITIATIVE/REFERENDUM; DEFINE “FULL TERM”; REMOVE COUNCIL CONFIRMATION OF EMPLOYEES AND OTHER CHANGES; AS PROVIDED IN EXHIBIT A, ORDINANCE 8?**

SHALL THE ABOVE DESCRIBED QUESTION NO. 2 BE ADOPTED?

\_\_\_\_\_ YES    ←    ←  
\_\_\_\_\_ NO     ←    ←

**Ordinance 9, 2018** – establish the City Manager residency requirements.

The city council, by a majority vote of its 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 council. ~~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.~~ The compensation, and benefits, and any residency requirement of the city manager shall be as determined by the city council in the city manager’s employment contract. The city council shall annually review the manager’s performance. 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.

**CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 3**

**SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED TO REMOVE THE REQUIREMENT THAT THE CITY MANAGER BE A RESIDENT WITHIN ONE YEAR OF APPOINTMENT AND INSTEAD PROVIDE THAT ANY RESIDENCY REQUIREMENT FOR THE CITY MANAGER BE DETERMINED BY THE CITY COUNCIL IN THE CITY MANAGER’S EMPLOYMENT CONTRACT?**

SHALL THE ABOVE DESCRIBED QUESTION NO. 3 BE ADOPTED?

\_\_\_\_\_ YES    ←    ←  
\_\_\_\_\_ NO     ←    ←

The Palm Beach County Supervisor of Elections has established the deadline of May 11, 2018, to receive the ballot language.

The City received the Special Election Agreement on April 13, 2018, and it has been prepared for the Mayor's signature and transmittal to the SOE for final execution. One original will be on file with the City Clerk.

As required by Section 18-1, 3 (a), a proposed ordinance may be read by title, or in full, on at least two separate days and shall at least 14 days prior to adoption be noticed once in a newspaper of general circulation in the Municipality. The 14<sup>th</sup> day prior is Wednesday, April 18, 2018. The advertisement was published on Monday, April 16, 2018, and Wednesday, April 18, 2018.

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.

As required in 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 as set forth in the Ordinances shall become effective as of 12:01 a.m. on August 29, 2018, if the questions to be voted upon provided hereinabove receive affirmative votes of the majority of the valid votes cast and counted at the election held on August 28, 2018.

**STAFF RECOMMENDATION:** Staff recommends approval of Ordinance 7, 2018, Ordinance 8, 2018, and Ordinance 9, 2018 as presented on first reading.

ORDINANCE 9, 2018

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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 AUGUST 28, 2018,  
8 PROPOSING TO THE ELECTORATE OF THE CITY THAT THE CITY  
9 CHARTER BE AMENDED AT SECTION 6-1(a) TO REMOVE THE  
10 RESIDENCY REQUIREMENT FOR THE CITY MANAGER IN ORDER  
11 TO EMPOWER THE CITY COUNCIL WITH THE AUTHORITY TO  
12 DETERMINE ANY RESIDENCY REQUIREMENT AS PART OF THE  
13 CITY MANAGER'S EMPLOYMENT CONTRACT; PROVIDING THAT  
14 THE REMAINDER OF THE CHARTER, AS MAY BE AMENDED BY  
15 THE ELECTORATE, SHALL REMAIN IN FULL FORCE AND EFFECT  
16 AS PREVIOUSLY ENACTED; PROVIDING FOR SUBMISSION OF  
17 THE PROPOSED BALLOT QUESTION TO THE ELECTORS OF THE  
18 CITY; SETTING FORTH THE FORM OF THE QUESTION TO BE  
19 VOTED UPON AT SUCH ELECTION; PROVIDING A CONFLICTS  
20 CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO  
21 CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER  
22 PURPOSES.  
23  
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25 **WHEREAS**, the City Council of the City of Palm Beach Gardens directed the City  
26 Attorney to review the City Charter and propose recommended changes to the City  
27 Charter; and  
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29 **WHEREAS**, the City Council has reviewed the recommendations of the citizen  
30 Charter Review Committee ("CRC"), and the City Council has determined that it would be  
31 in the best interests of the City of Palm Beach Gardens to accept such recommendations;  
32 and  
33

34 **WHEREAS**, the CRC has recommended that the City Manager residency  
35 requirement be removed from the Charter, but that residency should be encouraged; and  
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37 **WHEREAS**, the City Council has accepted such recommendation and finds that it  
38 is in the best interests of the City of Palm Beach Gardens for the electorate to consider  
39 whether to empower the City Council to negotiate the City Manager's residency as part  
40 of the City Manager's contract and calling for a referendum election in accordance with  
41 the provisions of Section 166.031, *Florida Statutes*; and  
42

43 **WHEREAS**, the City Council deems approval of this Ordinance to be in the best  
44 interests of the health, safety, and welfare of the residents and citizens of the City of Palm  
45 Beach Gardens and the public at large.  
46

1           **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY**  
2 **OF PALM BEACH GARDENS, FLORIDA, that:**

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4           **SECTION 1.** The proposed amendment to Section 6-1(a) of the City’s Charter  
5 shall read as follows:  
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7           (a) The city council, by a majority vote of its membership, shall appoint a city  
8 manager who shall serve at the pleasure of the city council. The city manager shall be  
9 appointed on the basis of executive and administrative qualifications as established by  
10 the council. ~~The city manager need not be a resident of the city at the time of appointment,~~  
11 ~~however, must be a resident within one year following the appointment.~~ The  
12 compensation, ~~and benefits, and any residency requirement~~ of the city manager shall be  
13 as determined by the city council in the city manager’s employment contract. The city  
14 council shall annually review the manager’s performance. The city manager shall  
15 designate in writing, filed with the clerk, an individual who shall perform the duties of the  
16 city manager during his/her temporary absence.  
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 28th day of August, 2018, in the form of the following  
21 question:  
22

23           **CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 3**

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25           **SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED TO**  
26 **REMOVE THE REQUIREMENT THAT THE CITY MANAGER BE A**  
27 **RESIDENT WITHIN ONE YEAR OF APPOINTMENT AND INSTEAD**  
28 **PROVIDE THAT ANY RESIDENCY REQUIREMENT FOR THE CITY**  
29 **MANAGER BE DETERMINED BY THE CITY COUNCIL IN THE CITY**  
30 **MANAGER’S EMPLOYMENT CONTRACT?**  
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32           **SHALL THE ABOVE DESCRIBED QUESTION NO. 3 BE ADOPTED?**

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34           \_\_\_\_\_ YES

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36           \_\_\_\_\_ NO  
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38           **SECTION 3.** The City Clerk shall cause a notice of this election called for the  
39 purpose of presenting the subject Charter revision to a vote of the electorate to be  
40 published in accordance with the provisions of Section 100.342, *Florida Statutes*, at least  
41 twice: once in the fifth week and once in the third week prior to the week in which the  
42 referendum is to be held; provided that the first publication shall take place at least 30  
43 days before the date fixed for the referendum and shall be published in a newspaper of  
44 general circulation within the City.  
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1        **SECTION 4.** In accordance with Section 26-11 (a) of the City Code of Ordinances,  
2 the City Clerk shall cause a notice of election to be published in a newspaper of general  
3 circulation within the City at one time during the fourth week and at one time in the second  
4 week preceding the week in which the election is held.

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

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

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

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

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21       **SECTION 9.** This Ordinance shall become effective immediately upon adoption.  
22 The revised language in Section 6-1(a) of the Charter as set forth in Section 1  
23 hereinabove shall become effective as of 12:01 a.m. on August 29, 2018, if the question  
24 to be voted upon provided hereinabove receives an affirmative vote of the majority of the  
25 valid votes cast and counted at the election held on August 28, 2018.

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1 PASSED this \_\_\_\_ day of \_\_\_\_\_, 2018, upon first reading.

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3 PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2018, upon  
4 second and final reading.

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6  
7 CITY OF PALM BEACH GARDENS FOR AGAINST ABSENT

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9

10 BY: \_\_\_\_\_  
11 Maria G. Marino, Mayor

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13 \_\_\_\_\_

14 Carl W. Woods, Vice Mayor

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16 \_\_\_\_\_

17 Mark T. Marciano, Councilmember

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19 \_\_\_\_\_

20 Matthew Jay Lane, Councilmember

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22 \_\_\_\_\_

23 Rachele A. Litt, Councilmember

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25

26 ATTEST:  
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29 BY: \_\_\_\_\_  
30 Patricia Snider, CMC, City Clerk

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33 APPROVED AS TO FORM AND  
34 LEGAL SUFFICIENCY

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37 BY: \_\_\_\_\_  
38 R. Max Lohman, City Attorney

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