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M E M O R A N D U M

TO: Alachua County Charter Review Commission
FROM: Wade C. Vose, Esq., General Counsel
DATE: April 13, 2020
SUBJECT: Legal Analysis and Initial Ballot and Charter Language – Creating Environmental Protection Officer

Pursuant to the Charter Review Commission's request, this office has evaluated and prepared draft ballot and charter language for Proposal 17, advanced for legal review at the CRC's February 22, 2020 meeting.

This proposal contemplates the creation of an Environmental Protection Officer as a charter officer, reporting directly to the Board of County Commissioners, rather than the County Manager, and heading the County's Environmental Protection Department. As I have previously advised the CRC, the creation of additional charter officers is generally within the scope of authority of a county charter, and the legal work involved typically focuses on matters of delineating the relative scope of authority amongst charter officers. The potential amendment language provided herein addresses the most common matters of relative authority. In each instance, the language provided establishes a charter Environmental Protection Officer on the "stronger" end of a scale of authority vis-à-vis the County Manager, and each issue addressed represents a decision for the CRC to ultimately make in recommending such a charter amendment to the voters. This memorandum will briefly address each such provision to highlight some available options.

The potential charter language, provided at Exhibit "A" hereto, first amends Section 2.1 (establishing an "Elected commission and appointed county manager form of government") and Section 2.3(A) (creating the County Manager) of the Charter to add the caveats "Except as otherwise provide in Article II, Section 2.3 of this Charter" and "except as otherwise provided in this section". This language is added in general recognition of the fact that the addition of another charter officer with certain executive duties and answerable only to the County Commission is a variation from a pure County Commission/County Manager form of government.

The revision to Section 2.3(B) adds the Environmental Protection Officer to the list of county department heads not appointed by and responsible to the County Manager (the other being the County Attorney).

The newly added Section 2.3(D) creates the Environmental Protection Officer. The first two sentences track those creating the County Attorney as a charter officer, and establish that the Environmental Protection Officer is hired and fired by the Board of County Commissioners ("BOCC"), and reports directly to the BOCC.

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The third sentence of Section 2.3(D) establishes that the Environmental Protection Officer shall serve as department head of the Environmental Protection Department. This fact prompts three questions of practical authority:

First, how will the proposed budget for this department be formulated? Will the County Manager continue to formulate this department's budget as proposed to the BOCC, notwithstanding the fact that the Environmental Protection Officer answers directly to the BOCC, or will the Environmental Protection Officer prepare this proposed budget?

Second, who will hire and fire the employees of the Environmental Protection Department, and to whom will they be responsible: the County Manager, or the Environmental Protection Officer?

Third, how are the functions, duties, and authority of the Environmental Protection Department delineated? Can the County Manager merely transfer functions, duties, and authority out from under the Environmental Protection Department to another department by administrative regulation?

The proceeding fourth, fifth, and sixth sentences of Section 2.3(D) resolve each of these questions in favor of the newly created Environmental Protection Officer. The fourth and fifth sentences track selected language of subsections (h) and (g), respectively, of Section 21.41 of the Alachua County Code, addressing the budgeting and employment authority of the County Attorney, the only other charter officer in a position analogous to that of the newly created Environmental Protection Officer. Specifically, the fourth sentence provides that the Environmental Protection Officer would prepare and submit a proposed budget for the Environmental Protection Department to the County Manager, who would include such budget in the County Manager's recommended budget. The fifth sentence provides that the Environmental Protection Officer will select and employ the employees required to properly perform the duties of the Environmental Protection Department, as funded by the budget adopted by the BOCC.

Finally, the sixth sentence of Section 2.3(D) provides that the functions, duties, and authority of the Environmental Protection Department as they existed on a date certain (here, April 15, 2020), can only be diminished or transferred to another department or office with an affirmative vote of no less than four county commissioners. This, at minimum, attempts to lock in place existing environmental protection authority absent supermajority action by the BOCC.

The resolutions to each of these three questions of practical authority need not be answered in the way they are in the potential charter language attached, but it is recommended that the issues be addressed clearly in any charter amendment, in an attempt to minimize ambiguity and clearly define the relative scope of authority of the County's charter officers going forward.

Exhibit “A”

QUESTION #X

Ballot Proposal: The ballot title and ballot summary for Question #X are as follows:

COUNTY CHARTER AMENDMENT CREATING
ENVIRONMENTAL PROTECTION OFFICER

Shall the Alachua County Charter be amended to create an Environmental Protection Officer, who shall be hired, fired, and responsible directly to the County Commission (rather than the County Manager), and who shall serve as department head for the County’s Environmental Protection Department, with authority to propose Department budgets and hire and fire Department employees, while also providing that transfers of authority from the Department must be approved by supermajority vote of the County Commission?

_____ Yes
_____ No

Text Revisions: Upon approval of this question at referendum, the following portions of the Alachua County Charter are amended to read as follows:

Sec. 2.1. - Elected commission and appointed county manager form of government.

Alachua County shall operate under an elected county commission and appointed county manager form of government with separation of legislative and executive functions in accordance with the provisions of this home rule charter. The legislative responsibilities and powers of the county shall be assigned to, and vested in, the board of county commissioners. Except as otherwise provided in Article II, Section 2.3 of this Charter, ~~t~~The executive responsibilities and power of the county shall be assigned to and vested in the county manager, who shall carry out the directives and policies of the board of county commissioners and enforce all orders, resolutions, ordinances, and regulations of the board, the county charter, and all applicable general law, to assure that they are faithfully executed.

...

Sec. 2.3. - Executive branch.

(A) *The county manager.*

- (1) The county manager shall be appointed by and serve at the pleasure of the board of county commissioners. The county manager shall be the chief executive officer of the county and all executive responsibilities and power shall be assigned to and vested in the county manager, except as otherwise provided in this section. The county manager shall exercise all executive authority provided by this home rule charter in addition to all other powers and duties authorized by general or special law, except as otherwise provided in this section.
 - (2) The county manager shall be qualified by administrative and executive experience and ability to serve as the chief administrator of the county. [The] minimum qualifications for the county manager shall be established by county ordinance. The county manager shall be appointed by an affirmative vote of a majority of the membership of the board of county commissioners. The county manager may be removed at any time by an affirmative vote, upon notice, of not less than a majority of the membership of the board, after a hearing if such a hearing is requested by the county manager. The county manager need not be a resident of the county at the time of appointment, but during the tenure in office the county manager shall reside within the county.
 - (3) The compensation of the county manager shall be fixed by the board of county commissioners.
 - (4) The office of county manager shall be deemed vacant if the incumbent moves his residence from the county or is, by death, illness, or other casualty, unable to continue in office. A vacancy in the office shall be filled in the same manner as the original appointment. The board of county commissioners may appoint an acting county manager in the case of vacancy or temporary absence or disability until a successor has been appointed and qualified or the county manager returns.
- (B) *County department heads.*
- (1) The county department heads, with the exception of the county attorney and the environmental protection officer, shall be appointed by and shall be responsible to the county manager. The board of county commissioners shall by majority vote confirm the appointment of department heads.

- (2) The county manager shall have the sole authority to suspend or discharge any department head with or without cause.
- (C) *County attorney.* There shall be a county attorney selected by the board of county commissioners who shall serve at the pleasure of the board. The county attorney shall report directly to the board of county commissioners. The county attorney shall provide legal services to the board of county commissioners, county departments, and county boards and agencies as specified by county ordinance.
- (D) *Environmental protection officer.* There shall be an environmental protection officer selected by the board of county commissioners who shall serve at the pleasure of the board. The environmental protection officer shall report directly to the board of county commissioners. The environmental protection officer shall serve as department head for the Environmental Protection Department. The environmental protection officer shall prepare and submit a proposed annual budget to the county manager, for inclusion in the county manager's recommended budget, for appropriations necessary for the Environmental Protection Department to carry out the full and faithful performance of its responsibilities. The environmental protection officer shall select and employ such employees as are required to properly perform the duties of the Environmental Protection Department and as are funded by the budget adopted by the board of county commissioners. The functions, duties, and authority of the Environmental Protection Department as they existed on April 15, 2020 shall not be diminished or transferred to any other department or office without the affirmative vote of no less than four county commissioners.