

## **Summary of Substantive and Technical Issues in Proposed Charter Revision**

**(6/24/2012)**

### **Substantive issues**

1. Should elections remain in March or as soon as practicable thereafter? Should elections be held in connection with state and federal elections in November? (Council has power to pass ordinance to set election date at either time under current or proposed Charter) This could be broken out as a separate ballot issue.
2. Should the number of votes required for election remain a majority or change to a plurality of votes cast? (This change was proposed to avoid expense of run-off elections. About 12 or 14 other local communities use the plurality vote method. This could be a separate ballot issue)
3. If there is a tie in an election, how should the run-off election be handled or should it be decided by lot as allowed by state law? (This could be done either way depending on what the public wants) This could be a separate ballot issue.
4. Should the city manager be required to be a resident within one year of appointment? (Rationale is that it avoids problem of recruiting people who can't sell their house, etc. and could be handled by contract signed with a candidate for city manager. Rationale for retaining residency requirement is that person has self-interest as a resident of the city)
5. Should the Charter be revised to preclude the ability of voters to have an initiative and referendum on the budget, a capital program, any ordinance or resolution relating to appropriation of money, levy of taxes, or salaries of city officers, employees, or agents, professional or otherwise? (Some of these such as budget, capital program, appropriations, levy of taxes are not really appropriate for initiative and referendum because they are inherent fiduciary duty of city government to carry out. Arguably it may be appropriate to keep ability of initiative and referendum for salaries, although if this is a problem in the future the proposed amendment precluding this authority could be reversed itself by an initiative and referendum. If voters have a problem with any of these issues, they can always vote against incumbents who are taking actions not favored by voters. In other cities and counties around the nation, voters have taken action by referendum to put limits on government spending and restructuring health care and pension for public employees.)
6. Should the council lose its existing power to remove any city administrative officers or employees whom the manager or a subordinate has power to appoint? (Rationale is that this current provision conflicts with the role of City Manager who is responsible for supervising such officers and employees. Council probably retains the power anyway under the Home Rule Act.)
7. Should the existing provisions specifying powers of the council regarding franchises be eliminated, including limitations on the length of time such franchises may last? (The only

remaining franchises handled by the city are ones for FPL and Waste Management. The state has preempted the role of municipalities in telecommunications franchise arrangements.)

8. Should the requirement for periodic review of the Charter be eliminated? If not, how often should such reviews be conducted? (The rationale is that this is a burdensome process. With the proposed revisions there will be fewer opportunities for conflicts due to changes in state law and therefore less need for periodic reviews).
9. Should the issue of term limits be addressed in the Charter revisions? (There are arguments that can be made for and against term limits. Arguments against term limits include the arbitrary loss of “institutional knowledge” of incumbents, causing even well liked incumbents to be replaced due to the limits, and the ability of voters to limit terms of any incumbent at election time. Arguments for term limits include the difficulty in electing a non-incumbent over an incumbent and the need to prevent entrenched interests from remaining on the council.)

### **Technical Issues**

1. The section providing an oath of office is being deleted. (The council can adopt an oath by ordinance which is usually how municipalities handle oath of office requirements.)
2. In the event of a vacancy on the council which leaves an even split of votes between remaining members, how can the council function until the next general election if no agreement can be reached on a candidate acceptable to both factions? (Either the remaining council members fill the vacancy by selecting a qualified elector, or the seat remains unfilled until the next available election. Presumably this won’t affect the council acting on routine matters, but it might cause a problem on controversial issues. The process does avoid the expense of calling for a special election.)
3. Authority was deleted for council to make appointments of city engineer and city auditor although council’s power to appoint the city attorney is provided under 5-2(a) and authority to employ and retain engineers, auditors, and attorneys and other professional advisors and consultants is provided under 4-9. The requirement that such appointments be based upon merit and fitness alone has been eliminated. (State law already establishes the method for selection of an auditor. These changes do not present any substantive problems.)
4. Language allowing an ordinance to change the method of qualification for candidates should be reviewed to assure compliance with state law. (The rationale is that this would allow the council to provide an alternative to paying a filing fee by requiring a designated number of signatures to be obtained.)
5. Should language be added to allow less than a majority of the council to vote to establish the date of an adjournment? (This is a very minor issue. The council could address this by ordinance.)

6. Revise language in proposed 4-3 to clarify current language stating “for a term of one (1) year or until his/her successor shall be appointed and qualified.” The City Attorney is considering adding “whichever is earlier” or otherwise redraft the language to clarify the intent.)

### **Clarifications/Explanations Needed**

1. Why delete the powers of council to set its own rules and to punish its own members and compel attendance? (The council would have this authority under the state Home Rule Act.)
2. Why delete existing language in the current charter as reflected in proposed 4-1 that states “unless prohibited by or contrary to the provisions of this [Charter]”? (This language is probably superfluous)
3. Why do procedures regarding vacancies no longer deal with disability of a council member? (Rationale is that it would be difficult to establish when someone is disabled and who would make this decision unlike the other reasons for a vacancy being established.)
4. Why delete the requirement that council’s appointments of attorney, engineer and auditor be based on merit and fitness alone? (Rationale is that method of selection of auditor is set forth in state law, and there may be other reasons on which appointments should be based.)
5. Why was language added in proposed 6-1 stating “Notwithstanding the provisions set forth at Sections 4-2 and 4-4 of this Charter”? (The city attorney will redraft this provision for greater clarity.)
6. Why was the requirement for a merit system and a personnel system deleted? (Rationale is that these are logically something that the city manager would develop and implement and does not need to be spelled out in the Charter.)
7. Why was the ability of council to confirm appointment of department heads eliminated? (Rationale is that this is viewed as inconsistent with the respective roles of the Council and the Manager and could politicize employment decisions. Additionally, the ability of Council to fire the Manager if the Manager makes inappropriate appointments to head departments precludes the need to confirm. The City Attorney will consider adding an exception to clarify that the Council appoints the city attorney and city auditor.)
8. Despite the deletion of specific language giving the council power (a) to prescribe the powers, duties and compensation of all employees, and (b) to request financial reports other than the annual audit, does the council retain these powers under the Florida Home Rule Act? (Rationale is that the proposed change eliminates this authority regarding employees, but retains this authority for all offices and all appointed officers as set forth in Section 4-9 of the proposed Charter. The Home Rule Law would inherently give the Council power to request additional financial reports.)

9. Why are the provisions requiring certain city employees to be bonded being eliminated?  
(Rationale is that the City already provides bonds to all its employees rather than requiring that employees obtain bonds.)
10. Why are existing provisions dealing with procedures for adopting ordinances and resolutions being deleted? (Rationale is that the state Home Rule Law already provides for specified procedures and the only difference is the number of days separating first and second readings. The current Charter requirement of 14 days created logistical problems getting notices published when the council holds meetings twice a month.)
11. Why are the provisions requiring appointment of and setting the duties of a city clerk and city treasurer being eliminated? (Rationale is that the state Home Rule Law inherently gives the council the power to do this. Listing specific duties in the charter give more opportunities for future conflicts as state law is changed over time)
12. Why delete an annual performance review for the city manager? (Rationale is that the council has this power under the state Home Rule Law and this level of detail should not be in the Charter.)
13. Why delete the provisions currently set forth in Section 18-1 regarding required record keeping?  
While state law establishes procedures for record retention, existing provisions in the Charter do not seem to conflict with or be superseded by state law. (Rationale is that this level of detail does not need to be in the Charter. The clerk maintains records consistent with state law now, so having it in the Charter is superfluous).