

# **Citizen Charter Review Committee**

January 21, 2010

11:30 a.m. – 3:00 p.m.

Leon County Courthouse

Commission Chambers, 5<sup>th</sup> floor

- I. Call to Order
- II. Invocation and Pledge
- III. Roll Call
- IV. Approval of Minutes of Previous Meeting
  1. January 14, 2010 Meeting Minutes
- V. Reports of Chairperson
- VI. Presentations by Invited Guests/Consultant
  1. Economic Development Stakeholders Presentation
- VII. Remarks of Interested Citizens
- VIII. Unfinished Business
- IX. New Business
  1. Charter Issues
    - a. Employment Policy of the County Administrator
    - b. Non-interference Clause
    - c. Clarification of Petition Prohibitions
    - d. CRC Membership Eligibility
    - e. CRC Convening Schedule
    - f. Independent/Advisory CRC
    - g. Human Rights Policy
    - h. Citizen Utility Advisory Board
    - i. Campaign Contribution Limitation
  2. Staff/Consultant Discussion (Pertinent Updates)
  3. Member Discussion (Direction to Staff/Consultant)
- X. Adjournment with Day Fixed for Next Meeting

*The next meeting of the Citizen Charter Review Committee is scheduled for  
Thursday, January 28, 2010 at 5:30 p.m.*

**I.**

**CALL TO ORDER**

## **II.**

# **INVOCATION AND PLEDGE**

**III.**

**ROLL CALL**

**IV.**

**APPROVAL OF MINUTES OF  
PREVIOUS MEEINTG**

**Leon County  
2009-2010 Citizens Charter Review (CRC)  
Committee**

The Leon County 2009-2010 Citizens Charter Review Committee (CRC) met on January 14, 2010 in the Commission Chambers with Committee members Marilyn Wills, Chuck Hobbs, David Jacobson, Linda Nichol森, Donna Harper, Larry Simmons, Sue Dick, Jon Ausman, Rick Bateman, Tom Napier, Catherine Jones, Ralph Mason, Lester Abberger, and Lance De-Haven Smith. Absent was Christopher Holley. Also attending were County Administrator Parwez Alam, Assistant County Attorney Patrick Kinni, Facilitator Kurt Spitzer, Special Projects Coordinator Shington Lamy, and Clerk Rebecca Vause.

In Chairman Holley's absence, the meeting was chaired by Vice-Chair Marilyn Wills.

**I. Call to Order**

The meeting was called to Order at 11:35 a.m. by Ms. Wills.

**II. Invocation and Pledge**

The invocation was provided by Tom Napier; who then led the Pledge of Allegiance.

**III. Roll Call**

The Roll was conducted by Shington Lamy; who confirmed a quorum was present.

**IV. Approval of Minutes of Previous Meeting**

*Tom Napier moved, duly seconded by Lester Abberger to approve the January 7, 2010 minutes. The motion carried unanimously.*

**V. Reports of Chairperson**

None

**VI. Presentation by Invited Guests/Consultant**

None

**VII. Remarks of Interested Citizens**

Speaker:

- Sonia Fancher, 3693 Corinth Drive, stated that the Charter should: 1) require that County Commission races remain non-partisan; 2) contain language that requires that candidates for the office of district County Commissioner reside within the district from which such candidate seeks election, and 3) prohibit staff or employees of local government from being appointed to the CRC.

**VIII. Unfinished Business**

None

**IX. New Business**

Ms. Wills led discussion on how charter issues would be addressed by the CRC. It was agreed that members would self-regulate and that a timeframe would not need to be established for each item. Ms. Wills stipulated that there would be no repeating of arguments and that no new ideas would be discussed, only the four charter items listed on the agenda.

## 1. Charter Issues

### a. Petition Thresholds

*Lance deHaven-Smith moved, duly seconded by Tom Napier, to lower the petition threshold requirement for proposed ordinances and/or charter amendments from 10% to 7%.*

*David Jacobsen offered a substitute motion to lower the petition threshold requirement for proposed ordinances and/or charter amendments to 5%. The substitute motion was seconded by Jon Ausman. Mr. Jacobsen commented that this was the recommended threshold of Ion Sancho, Leon County Supervisor of Elections.*

*Mr. de-Haven Smith withdrew his motion.*

Mr. Spitzer advised that the current Charter, for both ordinances and Charter amendments, is 10% of the electorate countywide including 10% in each of the five commission districts. He shared that a table was provided to the Committee to illustrate the practices of other charter counties.

Rick Bateman established with the maker of the motion that the motion proposed petition thresholds of 5% countywide and 5% within each district.

Donna Harper asked that the motion include the understanding that staff are being asked to bring back specific charter language that would meet the concept adopted by the CRC.

The Committee held considerable dialogue regarding the proposed threshold reduction.

Ms. Wills inquired if differences between charter amendments and ordinances had been considered. Mr. Jacobsen responded that he would prefer that the motion remain at 5% for both.

The motion on the floor was restated by Mr. Spitzer:

*Change the threshold from 10% to 5% countywide and for each of the five single-member districts for both ordinances and charter amendments. The 5% would be comprised of the total number of electorate qualified to vote in the last general election.*

*Rick Bateman made a substitute motion offered a substitute motion, duly seconded by Lester Abberger, to decrease the per district threshold to 5% and maintain the 10% countywide, for both ordinances and charter amendments.*

Mr. Mason asked the maker of the motion to consider a 7-8% threshold countywide.

*Mr. Bateman agreed to amend the motion as follows: threshold for charter amendments – 10% countywide and 5% per district and for ordinances - 7% countywide and 5% per district.*

*The motion failed 7-7 (Ralph Mason, Lance de-Haven Smith, Chuck Hobbs, David Jacobsen, Donna Harper, Larry Simmons, Jon Ausman in opposition; Chris Holley absent).*

*The motion on the table is the original motion made by Mr. Jacobson. Change the threshold from 10% to 5% countywide and for each of the five single-member districts for both ordinances and charter amendments. The 5% would be comprised of the total number of electorate qualified to vote in the last general election.*

*The motion failed 7-7 (Cathy Jones, Tom Napier, Rick Bateman, Sue Dick, Linda Nichol森, Lester Abberger, Marilyn Wills in opposition; Chris Holley absent).*

*Donna Harper moved, duly seconded by Lester Abberger, to reduce the threshold to 7% countywide for both ordinances and charter amendments and 5% per district for both ordinances and charter amendments. The motion carried 9-5 (Cathy Jones, Rick Bateman, Tom Napier, Lester Abberger and Sue Dick in opposition; Chris Holley absent)*

b. Board of County Commission Chairman Position

Mr. Spitzer provided a summary of the current and proposed methods.

*Donna Harper moved, duly seconded by Lester Abberger, that the CRC recommend that no change be made to the Charter on this issue. The motion carried 14-0 (Chris Holley absent).*

c. County Commission Districting Scheme

Mr. Spitzer explained that there are numerous options that could be presented to the voters for consideration. He noted that previous suggestions have included a change to four single member districts and three at-large; however a number of options are available, including doing nothing. He noted that the courts would review any change.

Ms. Dick questioned if the entire county was represented by a 5-2 Commission make-up and offered that new census data may ultimately change the districting schemes.

Ms. Harper asked that consideration be given to representative government and access noting that populations within each district continue to grow which makes access to the district representative more difficult.

Mr. Spitzer pointed out that the “drawing of the lines” is not within the CRC’s purview; this is reserved by law to the legislative body and will be addressed by the County Commission in 2010/2011. He shared that districts must always be nearly equal in population, as is practical.

Mr. Jacobsen and Mr. Bateman both expressed support for keeping the current scheme as the NAACP has made it clear to the CRC that they would not support a revamping of districts at this time.

Ms. Wills confirmed that district lines are reviewed after each new census.

Ms. Harper pointed out that the NAACP indicated a willingness to review any action that would increase representation.

*Jon Ausman moved, duly seconded by David Jacobsen, to increase the County Commission to seven single-member districts and two at-large.*

Mr. Ausman offered that the increase in district would lower campaign costs, thus allowing more individuals to become involved in the political process. He added that this action would increase voter turnout, lower campaign costs, provide for more personal contact during a campaign and result in better representation.

*The motion failed 4-10 (Lester Abberger, Lance de-Haven Smith, Cathy Jones, Tom Napier, Rick Bateman, Sue Dick, Linda Nicholzen, David Jacobsen, Chuck Hobbs, and Marilyn Wills in opposition; Chris Holley absent).*

Mr. Bateman voiced opposition to the motion noting the increased budget that would be required by the additional of two commissioners.

Ms. Harper opined that not enough information has been received or dialogue conducted regarding increasing number of districts of County Commission; although the issue of increased district populations should be reviewed further.

*Ms. Harper moved, duly seconded by Lester Abberger, to bring to the attention of the County Commission the impact of increasing population on voter representation and access and suggest that they review this for possible future action.*

There was concern expressed that there was no data to support this assertion and seemed to be a minority opinion.

Mr. Hobbs suggested that the CRC recommend to the County Commission that a Committee be convened to study the feasibility, based on the population shifts, to determine if in the best interest of the County to have more commissioners.

In response to Ms. Wills inquiry, Mr. Spitzer advised that it is the CRC's responsibility to look at the Charter; however, there is nothing to bar the CRC from making non-binding recommendations.

Mr. de-Haven Smith pointed out that the by-laws have a defined process and there is nothing that authorizes the proposed action. Ms. Harper responded that offering policy issue recommendations was appropriate action by the CRC.

Mr. Abberger suggested that he and Ms. Harper write a letter expressing their ideas and concerns on this issue and invite any other CRC members to sign that wish to do so. Ms. Harper indicated a willingness to do this, if the motion fails.

*Rick Bateman made a substitute motion, duly seconded by Lance de-Haven Smith, that the CRC recommend that no change be made to the Charter on this issue. The substitute motion carried 9-4 (Jon Ausman, Donna Harper, Chuck Hobbs and Larry Simmons in opposition; Dave Jacobsen out of Chambers; and Chris Holley absent)*

d. Non-partisan elections

Mr. Spitzer remarked that the County Attorney has advised that the option of keeping elections non-partisan, but identifying on the ballot party affiliations, would not be permitted and is preempted by general law.

*Jon Ausman moved, duly seconded by Ralph Mason, to change County elections to partisan elections.*

Mr. Ausman stated that voter turnout for partisan elections is higher and cited numerous other arguments to support approval of the motion. Mr. Ausman also referred to documents he had distributed to the Board to further validate his assertions.

Mr. Bateman voiced opposition to the motion commenting that non partisan elections make for a “kinder and gentler electorate” and opined that an individual should not be elected based on party affiliations.

Mr. Napier indicated that, throughout his discussions with other residents, there was support to maintain the current non partisan process.

Mr. Simmons reminded the Committee that Ion Sancho, Supervisor of Elections, indicated that his office receives a number of calls inquiring of a candidate’s party affiliation

Mr. Mason asserted that a lot of decisions are made in the August primary; which is the time voter turnout is the lowest; for example, FSU’s Sallie Hall has an 86.1% voter turnout in the general election and drops to 1.6% for the August primaries. He opined that by switching to partisan elections, decisions would be made in the general election, when voter turnout is the highest.

Ms. Dick voiced support for non partisan elections stating that elections should be based on an individual, not a party and would keep elections consistent with other local governments, i.e., School Board and City Commission. She submitted that absentee balloting is available for students, and others, who are not available to vote in person.

Cathy Jones commented that non partisan elections require voters to become better educated about the candidates.

Mr. Hobbs confirmed with Mr. Ausman that according to his research, partisan elections are less expensive. Mr. Ausman noted that information on this and other topics being considered by the CRC had been presented at a previous CRC meeting. Mr. Hobbs asserted that it is a citizens’ right to know a candidates party affiliation and it should be made as simple as possible for vote for someone they believe holds the same concerns as they do.

There continued to be significant dialogue among the members regarding this matter.

*Mr. Bateman called the question. The motion to call the question carried 13-1 (Jon Ausman in opposition and Chris Holley absent)*

*The motion to change County Commission races to partisan elections failed 6-8 (Rick Bateman, Tom Napier, Cathy Jones, Lester Abberger, Lance de-Haven Smith, Marilyn Wills, Sue Dick, Linda Nichol森 in opposition and Chris Holley absent).*

**Other Issues:**

1. *Lester Abberger moved, duly seconded by Ralph Mason, to revisit the issue of limiting of campaign contributions at a subsequent meeting. The motion carried 14-0 (Chris Holley absent).*
2. Mr. Ausman established with Mr. Kinni that there was no human rights provision of non discrimination in the Charter. Mr. Mason confirmed with Mr. Kinni that the CRC has authority to present this issue to the County Commission for their consideration.

*Ralph Mason moved, duly seconded by Jon Ausman, to waive the rules to address the issue of Human Rights Amendments to the Charter. The motion carried 13-0 (Lester Abberger and Chris Holley absent).*

*Ralph Mason moved, duly seconded by Jon Ausman, to place on a future agenda discussion of a human rights amendment to the Charter.*

*Ms. Harper offered a friendly amendment suggesting that staff be asked to present suggested language. The friendly amendment was accepted by Mr. Mason. The motion carried 12-0 (Lester Abberger, Chuck Hobbs and Chris Holley absent).*

3. Ms. Dick advised that the Workforce Development presentation is being scheduled and will be coordinated with staff for placement on agenda.
4. Shington Lamy shared that information regarding the TallahasseeVoices Survey has been provided to the Committee.
5. Mr. Lamy shared that there is a possibility that the April 1 CRC meeting may be cancelled due to Spring Break.

**X. Adjournment with Day Fixed for Next Meeting**

The next meeting of the Citizen Charter Review Committee is scheduled for Thursday, January 21, 2010 at 11:30 a.m.

*Tom Napier moved, duly seconded by David Jacobsen, to adjourn the meeting. The motion carried unanimously and the meeting was adjourned at 1:40 p.m.*

LEON COUNTY:

ATTEST:

\_\_\_\_\_  
Christopher Holley, Chairman

\_\_\_\_\_  
Bob Inzer, Clerk of Court

**V.**

**REPORTS OF CHAIRPERSON**

## **VI.**

### **PRESENTATIONS BY INVITED GUESTS/CONSULTANT**

#### **1. Economic Development Stakeholders Presentation**

## **VII.**

### **REMARKS OF INTERESTED CITIZENS**

**VIII.**

**UNFINISHED BUSINESS**

**IX.**

**NEW BUSINESS**

## **IX. (1): Charter Issues**

- a. Employment Policy of the County Administrator**
- b. Non-interference Clause**
- c. Clarification of Petition Prohibitions**
- d. CRC Membership Eligibility**
- e. CRC Convening Schedule**
- f. Independent/Advisory CRC**
- g. Human Right Policy**
- h. Citizen Utility Board**
- i. Campaign Contribution Limitation**



**MEMORANDUM**

**TO:** Leon County Charter Review Committee  
**FROM:** Kurt Spitzer  
**DATE:** January 19, 2010  
**RE:** January 21<sup>st</sup> Meeting Materials

Attached please find a copy of a memorandum on miscellaneous issues that I had previously provided to the Review Committee for your consideration. Those issues will be discussed during the early stages of this Thursday's Agenda.

A memorandum from the County Attorney on the ability of charters to place additional limitations on campaign contributions include in your packet under separate cover.

You had added a discussion of policy on "Human Rights." In searching the other charters, I found policies on "Citizens Rights" in the Broward and Miami-Dade charters but not human rights. Copies of the policies from Broward and Miami-Dade are attached.

Also calendared for this Thursday is the subject of the Utility Advisory Board. If the objective is to create a body that has authority over rates, the location of services or other matters relating to electric and water utilities, I would advise that you do not have time to adequately consider this subject as it is an extremely complicated matter that could take many months to study. Not also that such an amendment would face a difficult approval process (i.e. a dual vote of the voters and joint resolutions of both governing bodies) and likely years of litigation.

Even if the concept is to create a board that is only advisory in nature, the Committee will need to provide further direction as to the purpose and objectives of that entity, given that Leon County does not provide water or electric services and the board's recommendations would not be binding on the existing providers.

Please feel free to contact me if you have any questions.



## MEMORANDUM

**TO:** Leon County Charter Review Committee

**FROM:** Kurt Spitzer

**DATE:** January 4, 2010

**RE:** January 7<sup>th</sup> Meeting – Miscellaneous Issues

The purpose of this Memorandum is to highlight policies within the Charter that the Charter Review Committee (CRC) may wish to examine but have not yet been identified for discussion. They are presented below in the order that they appear in the Charter.

### 1. Section 2.3 Executive Branch

The Leon Charter adopts the Commission-Administrator form of government, with legislative responsibilities vested in the elected County Commission and executive responsibilities assigned to the County Administrator, who is hired/fired based on professional qualifications. The County Administrator is the chief executive officer of the county and is responsible for the day-to-day operation of the county and discharging the policies of the County Commission. This basic form of government is common in most medium to large cities and counties in Florida and the nation.

Critical to the operation of the Commission-Administrator form of government is a clear separation of duties and responsibilities between the legislative and executive branches of the county. The County Commission's responsibilities should be limited to setting policy, while leaving the operation of the county to the Administrator.

There are two policies that further the concept of separation of powers that are common in most charters but do not exist in the Leon charter. Sample language for both policies is attached.

- ♦ Non-interference clause – Non-interference policies bar individual members of the County Commission from giving instructions to the Administrator or to personnel who

report to the Administrator, furthering the policy that the Commission sets legislative policy but the Administrator remains responsible for implementation of policy and management of staff.

- ♦ Termination Policy – Less common than a non-interference clause but frequently occurring in other charters are policies designed to ensure strong support for the employment or termination of the County Administrator through the use of an extraordinary process to hire or fire the Administrator.

Problems arising from the lack of such policies in the charter may or may not have previously occurred in Leon County. The CRC may wish to address the topic proactively because if a “problem” does arise, addressing the issue via a charter amendment will not be timely. Further, the lack of such provisions may be a concern for future candidates for County Administrator once current staff leaves employment.

## 2. Section 5.2(1) Charter Amendments Proposed by Petition

The charter provides for a procedure by which charter amendments may be proposed by petition of the electorate. The procedure used for charter amendments references the process embedded in Section 4.1 relating to ordinances proposed by petition, which includes a list of subject matter that an ordinance proposed by petition is prohibited from addressing. Such a list of prohibited subjects is common in the petition processes in most charters. Language could be added to Section 5.2(1) to specifically identify the list of prohibited subjects for charter amendments proposed by petition. Alternatively, Section 4.1(4) could be revised so as to also apply to charter amendments.

## 3. Section 5.2(2) Charter Review Advisory Committee

The charter provides for the appointment of a CRC every eight years. Several revisions could be considered to this subsection, including:

- ♦ The timing of the start of the next CRC could be adjusted sooner or later so that its recommendations will appear on a Presidential election ballot (when voter turnout is typically higher) and thereafter resume the normal eight-year cycle.
- ♦ The Leon CRC is advisory to the Board of County Commissioners. Most other charters provide that the CRC is independent, with recommendations being presented directly to

Leon CRC  
January 7, 2010  
Page three

the voters for their consideration. Such policies help to ensure that there is a more independent review of the county "constitution." Making the CRC independent could be paired with a voting policy embedded in the charter designed to guarantee strong support for measures approved by the CRC for the consideration of the electorate. Numerous options exist. Sample language is attached.

- Eligibility for membership on the CRC could be addressed. It is common that charters contain policies that attempt to ensure an independent review of the charter and therefore bar certain persons from being appointed to a CRC, such as elected officials and staff of local government. Sample language is attached.

## Miscellaneous Issues

### Example Policies

#### County Administrator – sample employment/termination policy

The County Administrator shall be appointed by the affirmative vote of five (5) members of the Board of County Commissioners, who shall serve until such time as the County Administrator shall be removed either by a vote for removal of four (4) members of the board of county commissioners voting for removal in two (2) consecutive, regularly scheduled meetings of the board, or by a vote for removal of five (5) members of the board of county commissioners at any one meeting of the board.

#### County Administrator – sample non-interference clause

Except for the purpose of inquiry and information, members of the Board of County Commissioners are expressly prohibited from interfering with the performance of the duties of any employee of the county government who is under the direct or indirect supervision of the County Administrator by giving said employees instructions or directives. Such action shall be malfeasance within the meaning of Article IV, Section 7(a) of the Florida Constitution. However, nothing contained herein shall prevent a County Commissioner from discussing any county policy or program with a citizen or referring a citizen complaint or request for information to the County Administrator or County Attorney.

#### Charter Review Commission – sample language

Not later than July 1 of the year \_\_\_\_\_ and of every eighth year thereafter, the Board of County Commissioners shall appoint a Charter Review Commission to review the Charter of the county. The Charter Review Commission shall consist of 15 electors of the County and shall be funded by the Board of County Commissioners pursuant to a budget set by said Board. Elected officials and their employees, and employees of local governments in Leon County shall be prohibited from serving on the Charter Review Commission. The Charter Review Commission shall, within one (1) year from the date of its first meeting, present to the Board of County Commissioners its recommendations for amendment, revision or repeal of the Charter or its recommendation that no amendment, revision or repeal is appropriate. If amendment, revision or repeal of the charter is to be recommended, the Charter Review Commission shall conduct at least two (2) public hearings, at intervals of not less than ten (10) nor more than twenty (20) days, immediately prior to the transmittal of its recommendations to the Board of County

Commissioners. Such recommendations shall be approved by an affirmative vote of not less than ten (10) members of the Charter Review Commission. The Board of County Commissioners shall schedule a referendum on the proposed charter amendments, revisions or repeal concurrent with the next general election. After adoption of its recommendations, the Charter Review Commission may remain in existence until the general election for purposes of conducting and supervising public educational programs concerning the proposed amendments, revisions or repeal.

## ARTICLE I

### CREATION OF COUNTY AND POWERS OF GOVERNMENT

#### Section 1.01 CORPORATE NAME AND BOUNDARIES

- A. A political subdivision is hereby created pursuant to the Florida Constitution and laws of the State of Florida to be known as Broward County.
- B. The County's seat and boundaries shall be those designated by the laws of the State of Florida.

#### Section 1.02 GENERAL POWERS OF THE COUNTY

- A. Unless provided to the contrary in this Charter, the County shall have all powers of local self-government not inconsistent with the United States Constitution, the Florida Constitution, general law, or with special law approved by vote of the electors and this Charter.
- B. All powers of the County shall be carried into execution as provided by this Charter or, if the Charter makes no provision, as provided by ordinance, resolution of the County Commission, or by the Constitution and laws of the State of Florida.
- C. This Charter hereby establishes the separation between the legislative and administrative functions of the County government.
- D. The County has the authority to accept the transfer of a specific function or obligation upon the request of a Municipality, Special District or Agency.
- E. The County shall use its powers to contribute to and to enhance the civic lives of its citizenry by the provision of design excellence in its facilities and programs and in relation to providing parks and recreation, libraries, arts and culture, and the preservation of historic sites.

#### Section 1.03 TAXATION FOR COUNTY SERVICES

Property situated within Municipalities shall not be subject to taxation for County services rendered exclusively for the benefit of the property or residents not within Municipalities. Property situated in the County's unincorporated areas shall not be subject to taxation for County services provided exclusively for the benefit of the property or residents within Municipalities.

#### Section 1.04 CITIZENS' BILL OF RIGHTS

The citizens of the County establish this County government in order to protect and serve the citizens of the County. In order to secure to the County's citizens protection against abuses and encroachments by County government, and to insure all persons fair and equitable treatment, the following rights are guaranteed:

- A. Access to Government - Each Person has the right to transact business with the County with a minimum of personal inconvenience. It is the duty of the County to provide reasonably convenient times and places for transacting business with the County.
- B. Truth in Government - Each Person has the right to truthful and accurate information from Commissioners and County employees. Commissioners and County employees shall not knowingly omit any information or significant facts when disseminating public information.
- C. Public Records - Each Person has a right to access County records. All audits, reports, minutes, documents and other County public records shall be open for public inspection at reasonable times and places.
- D. Right to be Heard - Any Person has the right to appear before the County Commission, a Board, or Committee for the presentation, adjustment or determination of an issue, matter or request within the County's jurisdiction. Matters shall be scheduled for the convenience of the public, and specific portions of each agenda shall provide for designated times so that the public may know when a matter may be heard. The County may establish reasonable procedures relating to public hearings, including limitations on the time members of the public may speak on an issue.
- E. Right to Notice - The County shall provide timely notice to Persons entitled to notice of a hearing before the County Commission, Board, or Committee. The notice shall include the time, place and nature of the scheduled hearing, and the legal authority which forms the basis for the hearing. The County shall provide copies of proposed ordinances and resolutions at a reasonable time prior to the hearing, unless the matter involves the adoption of an emergency ordinance or resolution.
- F. Right to Notice of Decision and Reasons - The County, if requested, shall provide members of the public notice of the County's denial of a Person's request made in connection with any County decision or proceeding. A statement indicating the grounds for denial shall accompany the notice provided by the County.
- G. Right to County Administrator's Report - The public is entitled to a status report, on a periodic basis, from the County Administrator on all major matters which are either still pending or have been concluded.

- H. Right to Public Budget Process - The County Administrator shall annually prepare a budget which illustrates the cost of each County program. Prior to the County Commission's first public hearing on a proposed budget, the County Administrator shall publish a budget summary which sets forth the proposed cost of each individual program, all major proposed increases and decreases in funding and personnel for each County program, the reasons for any increase or decrease, the estimated millage cost of each program, and the amount of any contingency and carryover funds for each program.
- I. Right to a Management Report on the Performance of County government - The public is entitled to have access to a Management Report published by the County Administrator, and made public on a quarterly basis, detailing the performance of the County government offices, divisions and departments. The Management Report shall include, but not be limited to, a report on the receipt and expenditure of County funds by each County office, division and department, and a report of the expected and actual performance of the activities of each County office, division and department.
- J. Right to Prohibit Conflicts of Interest and the Implementation of a Code of Conduct - The County Commission shall enact, by ordinance, a conflict of interest section in the County Code that requires Commissioners, County employees, and individuals appointed to Boards, Committees, Agencies, and Authorities to avoid even the appearance of impropriety in the performance of their duties and responsibilities. The County Commission shall also enact, by ordinance, a Code of Official Conduct that shall apply to Commissioners, County employees, and individuals appointed to Boards, Committees, Agencies, and Authorities. In the ordinances enacted pursuant to this sub-section, the County Commission shall provide procedures for the examination of matters related to the conduct of Commissioners, County employees, and individuals appointed to Boards, Committees, Agencies, and Authorities. The ordinances enacted pursuant to this sub-section shall also provide procedures for the removal of an employee or individual, other than a Commissioner.
- K. Just and Equitable Taxation - The County shall prevent the imposition of any tax within the County in excess of the limitations imposed by Article VII, Section 9, of the Florida Constitution or by the laws of the State of Florida.
- L. Proper Use of Public Property - The County shall prevent the use of public property or its taxing power for the benefit of private individuals, partnerships or corporations, in violation of the restrictions imposed by Article VII, Section 10, of the Florida Constitution, or by the laws of the State of Florida.
- M. Power of Recall - The public shall have the power to recall any Commissioner in accordance with the laws of the State of Florida.
- N. Protection of Human Rights - The County shall establish provisions, for protection of citizen human rights from discrimination based upon religion, political affiliation, race, color, age, gender, disability, familial status, marital status, or national origin by providing and ensuring equal rights and opportunities for all citizens of the County.
- O. Protection of Consumer Rights - The County shall enact ordinances for protection of citizen consumer rights from unfair trade practices by all Persons.
- P. Sustainable Environment - Broward County shall enact ordinances which protect its citizens' right to a sustainable environment, including clean air and clean water, while encouraging the stewardship of natural resources.

All provisions of this Article shall be construed to be supplementary to and not in conflict with the laws of the State of Florida. If any part of this Article shall be declared invalid, such invalidity shall not affect the validity of the remaining provisions.

**Section 1.05 CONSTRUCTION**

The powers granted by this Charter shall be construed liberally in favor of the County government. The specified powers in this Charter shall not be construed as limiting, in any way, the general or specific power of the County, as stated in this Article. For purposes of this Charter, the singular includes the plural and vice versa.

**Section 1.06 BROWARD COUNTY COUNTYWIDE AND REGIONALISM POLICY STATEMENT**

Broward County government shall be considered a regional governmental entity and, as such, shall develop and implement the County's programs, policies and budget with a regional or countywide focus on issues including, but not limited to, the airport, seaport, transportation, economic development, parks, and libraries; provided however, that nothing contained herein shall prevent the County from delivering services on a less than countywide basis.

## CITIZENS' BILL OF RIGHTS

---

(A). This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administrative management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed:

1. **Convenient Access.** Every person has the right to transact business with the County and the municipalities with a minimum of personal inconvenience. It shall be the duty of the Mayor and the Commission to provide, within the County's budget limitations, reasonably convenient times and places for registration and voting, for required inspections, and for transacting business with the County.

2. **Truth in Government.** No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.

3. **Public Records.** All audits, reports, minutes, documents and other public records of the County and the municipalities and their boards, agencies, departments and authorities shall be open for inspection at reasonable times and places convenient to the public.

4. **Minutes and Ordinance Register.** The Clerk of the Commission and of each municipal council shall maintain and make available for public inspection an ordinance register separate from the minutes showing the votes of each member on all ordinances and resolutions listed by descriptive title. Written minutes of all meetings and the ordinance register shall be available for public inspection not later than 30 days after the conclusion of the meeting.

5. **Right to be Heard.** So far as the orderly conduct of public business permits, any interested person has the right to appear before the Commission or any municipal council or any County or municipal agency, board or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the governmental entity involved; provided, nothing herein shall prohibit the Commission or any municipal council from referring a matter to a committee of each of their respective bodies to conduct a public hearing, unless

prohibited by law. Matters shall be scheduled for the convenience of the public, and the agenda shall be divided into approximate time periods so that the public may know approximately when a matter will be heard. Nothing herein shall prohibit any governmental entity or agency from imposing reasonable time limits for the presentation of a matter.

6. **Right to Notice.** Persons entitled to notice of a County or municipal hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held. Failure by an individual to receive such notice shall not constitute mandatory grounds for cancelling the hearing or rendering invalid any determination made at such hearing. Copies of proposed ordinances or resolutions shall be made available at a reasonable time prior to the hearing, unless the matter involves an emergency ordinance or resolution.

7. **No Unreasonable Postponements.** No matter once having been placed on a formal agenda by the County or any municipality shall be postponed to another day except for good cause shown in the opinion of the County Commission, the municipal council or other governmental entity or agency conducting such meeting, and then only on condition that any person so requesting is mailed adequate notice of the new date of any postponed meeting. Failure by an individual to receive such notice shall not constitute mandatory grounds for cancelling the hearing or rendering invalid any determination made at such hearing.

8. **Right to Public Hearing.** Upon a timely request of any interested party a public hearing shall be held by any County or municipal agency, board, department or authority upon any significant policy decision to be issued by it which is not subject to subsequent administrative or legislative review and hearing. This provision shall not apply to the Law Department of the County or of any municipality, nor to any body whose duties and responsibilities are solely advisory.

At any zoning or other hearing in which review is exclusively by certiorari, a party or his counsel shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The decision of any such agency, board, de-

partment or authority must be based upon the facts in the record. Procedural rules establishing reasonable time and other limitations may be promulgated and amended from time to time.

9. **Notice of Actions and Reasons.** Prompt notice shall be given of the denial in whole or in part of a request of an interested person made in connection with any County or municipal administrative decision or proceeding when the decision is reserved at the conclusion of the hearing. The notice shall be accompanied by a statement of the grounds for denial.

10. **Mayor's, City Managers' and Attorneys' Reports.** The County Mayor and County Attorney and each City Manager and City Attorney shall periodically make a public status report on all major matters pending or concluded within their respective jurisdictions.

11. **Budgeting.** In addition to any budget required by state statute, the County Mayor shall prepare a budget showing the cost of each program for each budget year. Prior to the County Commission's first public hearing on the proposed budget required by state law, the County Mayor shall make public a budget summary setting forth the proposed cost of each individual program and reflecting all major proposed increases and decreases in funds and personnel for each program, the purposes therefore, the estimated millage cost of each program and the amount of any contingency and carryover funds for each program.

12. **Quarterly Budget Comparisons.** The County Mayor shall make public a quarterly report showing the actual expenditures during the quarter just ended against one quarter of the proposed annual expenditures set forth in the budget. Such report shall also reflect the same cumulative information for whatever portion of the fiscal year that has elapsed.

13. **Adequate Audits.** An annual audit of the County and each municipality shall be made by an independent certified public accounting firm in accordance with generally accepted auditing standards. A summary of the results, including any deficiencies found, shall be made public. In making such audit, proprietary functions shall be audited separately and adequate depreciation on proprietary facilities shall be accrued so the public may determine the amount of any direct or indirect subsidy.

14. **Regional Offices.** Regional offices of the County's administrative services shall be maintained at locations in the County for the convenience of the residents.

**15. Financial Disclosure.** The Commission shall by ordinance make provision for the filing under oath or affirmation by all County and municipal elective officials, candidates for County and municipal elective offices, such employees as may be designated by ordinance, and such other public officials, and outside consultants who receive funds from the County or municipalities, within the County and who may legally be included, of personal financial statements, copies of personal Federal income tax returns, or itemized source of income statements. Provision shall be made for preparing and keeping such reports current from time to time, and for public disclosure.

The Commission shall also make provision for the filing annually under oath of a report by full-time County and municipal employees of all outside employment and amounts received therefrom. The Mayor and any City Manager may require monthly reports from individual employees or groups of employees for good cause.

**16. Representation of Public.** The Commission shall endeavor to provide representation at all proceedings significantly affecting the County and its residents before State and Federal regulatory bodies.

**17. Commission on Ethics and Public Trust.** The County shall, by ordinance, establish an independent Commission on Ethics and Public Trust comprised of five members, not appointed by the County Commission, with the authority to review, interpret, render advisory opinions and enforce the county and municipal code of ethics ordinances, conflict of interest ordinances, lobbyist registration and reporting ordinances, ethical campaign practices ordinances, when enacted, and citizens' bill of rights.

- (B). The foregoing enumeration of citizens' rights vests large and pervasive powers in the citizenry of Dade County. Such power necessarily carries with it responsibility of equal magnitude for the successful operation of government in the County. The orderly, efficient and fair operation of government requires the intelligent participation of individual citizens exercising their rights with dignity and restraint so as to avoid any sweeping acceleration in the cost of government because of the exercise of individual prerogatives, and for individual citizens to grant respect for the dignity of public office.
- (C). **Remedies for Violations.** In any suit by a citizen alleging a violation of this Article filed in the Dade

County Circuit Court pursuant to its general equity jurisdiction, the plaintiff, if successful, shall be entitled to recover costs as fixed by the Court. Any public official or employee who is found by the Court to have willfully violated this Article shall forthwith forfeit his office or employment.

- (D). **Construction.** All provisions of this Article shall be construed to be supplementary to and not in conflict with the general laws of Florida. If any part of this Article shall be declared invalid, it shall not affect the validity of the remaining provisions.

**Leon County Attorney's Office**

**November 30, 2009 Memorandum on Campaign  
Finance Reform**

# BOARD OF COUNTY COMMISSIONERS

## INTER-OFFICE MEMORANDUM

To: Members of the Citizen Charter Review Committee

From: Herbert W.A. Thiele, Esq.   
County Attorney's Office

Date: November 30, 2009

Subject: Campaign Finance Reform / State Election Code Preemption

---

Pursuant to the direction provided to our office at the November 12, 2009 meeting of the members of the Citizen Charter Review Committee, this memorandum will outline the State's implied preemption of regulations concerning local campaign finance reform.

Article VI, Section 1 of the Florida Constitution, which is entitled "Regulation of elections," provides that "Registration and elections shall... be regulated by law." This law is set forth by the Florida Legislature in Chapters 97 through 106, Florida Statutes, and is known as "The Florida Election Code." Section 97.011, Florida Statutes (2009). The intent of the Election Code is to "[o]btain and maintain uniformity in the interpretation and implementation of the election laws." Section 97.012(1), Florida Statutes (2009).

Chapter 106 of the Election Code is entitled "Campaign Financing," and Section 106.08 of same sets forth a limit on the dollar amount of contributions allowable in a campaign for elected office. For example, Section 106.08(1)(a), Florida Statutes, provides that:

Except for political parties, no person, political committee, or committee of continuous existence may, in any election, make contributions in excess of \$500 to any candidate for election to or retention in office or to any political committee supporting or opposing one or more candidates.

Pursuant to Article VIII, Section 1(g), Florida Constitution, "Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors."

The issue of setting limits to political contributions has been addressed by the United States Supreme Court. For example, in the case of Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 (1976), the U.S. Supreme Court held that provisions of the Federal Election Campaign Act of 1971, as amended, which limited political contributions to candidates for federal elective office, were constitutional despite First Amendment objections. The Court wrote that contribution limits were permissible as long as the state demonstrated a "sufficiently important interest," such as preventing corruption and the appearance of corruption, and employed a "means closely drawn to avoid unnecessary abridgment of associational freedoms." 424 U.S. at 25. Several

years later, in the case of Nixon v. Shrink Missouri Government PAC, 528 U.S. 377, 120 S.Ct. 897 (2000), the U.S. Supreme Court found that its decision in Buckley v. Valeo was also the authority for a state to set limits on campaign contributions. Since Buckley, the U.S. Supreme Court has consistently upheld contribution limits in other state statutes. Randall v. Sorrell, 548 U.S. 230, 247, 126 S.Ct. 2479 (2006).

However, in a recent case, Randall v. Sorrell, 548 U.S. 230, 126 S.Ct. 2479 (2006), the U.S. Supreme Court found that a Vermont statute set campaign contribution limits "too low," and thus violated the First Amendment's free speech protections. Specifically, the Vermont statute limited the amount an individual, political party, and political committee could contribute to a campaign for governor at \$400, state senator at \$300, and state representative at \$200, per election cycle. These limits were "substantially lower" than the limits previously upheld by the Supreme Court and comparable limits in other states. 548 U.S. at 253. The Court noted that "we must recognize the existence of some lower bound" and that "contribution limits that are too low can also harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability." 548 U.S. at 248-249.

As to the issue of state preemption in the field, there is a recent court case in Florida that addresses the preemption of the Election Code over local government regulations. In Browning v. Sarasota Alliance for Fair Elections, Inc., 968 So. 2d 637 (Fla. 2d DCA 2007), the Second District Court of Appeal reversed the holding of the trial court and found that proposed amendments to Sarasota County's charter were impliedly preempted by the Election Code. The charter amendments, which were proposed by a political action committee, required paper ballots, mandatory audits of the voting system, and certification of elections after the mandatory audit was completed. The Court explained that preemption is implied "when the 'legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.'" 968 So. 2d at 645. (Citations omitted.)

In determining whether or not the Election Code preempted the proposed Sarasota County charter amendments, the Second District Court of Appeal noted that the Election Code's ten chapters of regulations established a "detailed and comprehensive statutory scheme for the regulation of elections in Florida, thereby evidencing the legislature's intent to preempt the field of elections law, except in those limited circumstances where the legislature has granted specific authority to local governments." 968 So. 2d at 646. The Court goes on to state, "[t]his pervasive state control of the election process is a compelling indicator that the legislature did not intend for local governments to enact their own individual election laws," and the "legislature has enacted the Election Code with such detailed depth and breadth that its intent to occupy the entire field is forcefully implied." 968 So. 2d at 647. One of the cases that is cited by the Court is a Maryland case styled County Council for Montgomery County v. Montgomery Association, Inc., 333 A.2d 596 (Md. 1975), which held that the state's election code completely occupied the field of regulation of campaign finances, to the exclusion of any local legislation on the subject.

Therefore, Montgomery County's limits on campaign contributions were found to be invalid. The Second District Court of Appeal also certified a question to the Florida Supreme Court on the matter of the state's preemption in the field of elections law, but there has been no further activity in the case.

In addition, Florida Attorney General Opinion 074-263, rendered in 1974, determined that Chapter 106, Florida Statutes applied to candidates for elective municipal office and that the regulation of campaign contributions was preempted to the state.

It has been pointed out that there are local regulations in Florida that provide for campaign finance reforms, including campaign contribution limits. For example, the Alachua County Charter provides for a \$250 limit on campaign contributions. However, it should be noted that the Alachua County regulations were authorized by a special law enacted by the Florida Legislature and were approved by a majority vote of the electors in a general election held November 2, 2004. As these regulations were enacted pursuant to special law of the Florida Legislature, these regulations are not preempted by the Election Code.

In addition, Sarasota County's charter sets campaign contribution limits of \$200.00 per contributor. In 1999, the campaign contribution limits and other related issues were the subject of a lawsuit in the Twelfth Judicial Circuit styled Ciaravella v. Board of County Commissioners of Sarasota County, Florida, Case No. 99-4201-CA, in which the Circuit Judge for the Twelfth Circuit held that the campaign contribution limits were constitutional and enforceable. This holding was not appealed. However, a holding in the Twelfth Judicial Circuit would not be binding or authoritative in the Second Judicial Circuit in and for Leon County. Furthermore, in light of the Second District Court of Appeal's more recent holding in Browning v. Sarasota Alliance for Fair Elections, Inc., 968 So. 2d 637 (Fla. 2d DCA 2007), which found that the Election Code did impliedly preempt local regulations in the field of elections, Sarasota County's campaign contribution limits would also likely be found impliedly preempted by the State.

In conclusion, pursuant to the detailed, comprehensive and pervasive regulations set forth in the ten chapters of Florida law constituting the Florida Election Code, including Chapter 106 on campaign financing, it is the opinion of the County Attorney's Office that campaign contribution limits are impliedly preempted by the State of Florida.

HWAT/PTK/plp

## **IX. (2): Staff/Consultant Discussion**

## **IX. (3): Member Discussion**

**X.**

**ADJOURNMENT WITH DAY FIXED FOR  
NEXT MEETING**