



MEMORANDUM

Office of the City Attorney

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TO: Members of the General Policy Committee **DATE:** January 12, 2015
FROM: Nicolle Shalley, City Attorney *nms*
SUBJECT: Utility Governance Changes and Examples

At the October 21, 2014 meeting of the General Policy Committee, the Committee discussed GRU governance issues and requested the City Attorney's Office report back to the Committee on the differences between an independent board and a dependent board and what governance changes would require Charter revisions. In addition, on November 6, 2014, the City Commission referred the establishment of a citizen rate review advisory committee to the Regional Utilities Committee. This memorandum addresses the creation of an advisory board and other possible governance changes.

Any utility governance changes will require amendments to the City Charter, Code or Rules as outlined below. Different governance structures are listed below (in order from easiest to accomplish to most difficult) with examples that are described in more detail in the chart at the end of this memorandum. You will see that utility governance structures come in many varieties. As such, any specific change(s) to the governing structure that may be considered by the City Commission will need to be carefully reviewed for additional issues, such as existing bond indebtedness, dual office holding and employment matters.

1. Creation of an advisory board: This will require a Code Amendment to add a section to address the creation, powers and duties of the advisory board. *Example: the City's existing Energy Advisory Committee.*
2. Creation of a governing body that is separate from the City Commission, but utility is owned by City and utility employees remain City employees: This will require a Charter Amendment to amend Section 3.06 since the General Manager for Utilities would no longer be a Charter Officer reporting to the City Commission. This will also require a Charter Amendment or a Code Amendment to address the creation, powers and duties of the new utility governing board. *Example: JEA*
3. Creation of the utility as a governmental unit that has its own governing body and employees, but is still owned by the City: This will require a Charter Amendment to amend Section 3.06 since the General Manager for Utilities would no longer be a Charter Officer reporting to the City Commission. This will also require a Charter Amendment or a Code Amendment to address the creation, powers and duties of the new utility governing board; transition employees; and address other employment issues. This may also require a Special Act of the Legislature. *Examples: Fort Pierce Utilities Authority, New Smyrna Beach Utilities Commission*
4. Creation of the utility as a separate public entity with no relationship to the City: This will require a voter referendum (because the City is disposing of the utility), Charter Amendments,

Ordinance Amendments and a Special Act of the Legislature. *Example: Florida Keys Aqueduct Authority.*

In considering any governance changes, it helps to be familiar with the provisions of the City Charter, City Code and City Commission Rules that address utility operation, governance, and disposal. They are as follows:

EXCERPTS FROM THE CITY CHARTER

1.04. - Special powers. In addition to its general powers, the city may:

(2) Acquire, purchase, hire, construct, extend, maintain, own, operate, or lease local public utilities, including: cable television, transportation, electric, telephone, and telegraph systems; wastewater and stormwater facilities; works for supplying the city and its inhabitants with water, gas, and electric energy for illuminating, heating, or power purposes; water, electric, and gas production, transmission, and distribution systems; sanitary sewage facilities; wastewater transmission and disposal facilities; and any and all other utilities as the welfare of its residents reasonably demands.

(3) Finance local public utilities through the sale of bonds, pledging revenue, general taxation, or otherwise; sell water, electricity, gas, wastewater, or any other service, product, or commodity gathered, provided, produced, or manufactured by the city from the public utilities systems and facilities owned or operated by the city to any consumer within or without the limits of the city; and locate utility plants, distribution facilities, or any appurtenances either within or without Alachua County.

(4) Enter into agreements with other municipalities either within or without Alachua County, or with governmental units or private utility companies, for selling or buying utility services or other municipal services of any kind, wherever located; sell any surplus of water or electric energy it may have over and above the amount required to supply its own inhabitants and any other services to persons, firms, and corporations, public or private, on such terms and conditions as the commission considers appropriate; exercise all powers and authority of the city to acquire by purchase, gift, lease, lease-purchase, or otherwise, real or personal property; and exercise the power of eminent domain within Alachua County, and exercise the power of eminent domain anywhere outside the county where permitted by general law.

(5) Make reasonable rules and regulations for promoting the purity of its water supply and for protecting it from pollution, and for this purpose may exercise full police powers and sanitary control over all lands comprised within the limits of the watershed tributary to any such supply wherever such lands may be located in this state; impose and enforce any such rules and regulations; and prevent, by injunction, any pollution or threatened pollution of such water supply and any act likely to impair the purity of the water.

(6) Acquire, build, construct, erect, extend, enlarge, improve, furnish, equip, and operate as a separate bulk power supply utility or system, electric generating plants, transmission lines, interconnections, and substations for generating, transmitting, distributing, and exchanging electric power and energy both within and without the limits of the city, including specifically all powers and immunities granted by chapter 75-375, Laws of Florida.

(7) Fix the maximum rate and establish, impose, and enforce, by ordinance, the rates to be charged for gas, electric, wastewater, and all other public utilities or other services or conveniences whether operated, rendered, furnished, or owned by the city or by any person, firm, or corporation.

(8) Require that all electric wires and all telephone and telegraph wires be placed in underground conduits; prescribe rules and regulations for constructing and using the conduits; enforce compliance with such rules and regulations; and, if the public utilities company fails or refuses to comply with such rules and regulations, construct such conduits and place the wires underground and maintain a lien against the franchises and property of such company.

3.06. - General manager for utilities.

(1) *Appointment; administrative head of municipal utilities; qualifications; terms.* The commission shall appoint a general manager for utilities ("general manager") who shall be responsible to the commission. The general manager shall be responsible for the efficient administration of the Utility System. The general manager for utilities shall serve at the will of the commission.

(2) *Powers and duties generally.* The general manager:

(a) Shall be responsible for and have exclusive management jurisdiction and control over operating and financial affairs of the Utility System including, but not limited to, the planning, development, production, purchase, sale, exchange, interchange, transmission and distribution of all electricity; the planning, development, purchase, sale, exchange, interchange, transmission and distribution of all natural gas; the planning, development, supply, treatment, transmission, distribution and sale of all potable water; and the planning, development, collection, treatment, disposal and billing of all wastewater now or hereafter provided by the city;

(b) Shall submit to the commission for its consideration a yearly budget for the operation of the Utility System;

(c) Shall be the purchasing agent for all equipment, materials, supplies and services necessary for operating and maintaining the Utility System subject to policies promulgated by the commission;

(d) Shall propose ordinances to designate the job titles of subordinates that are to be considered directors of departments;

(e) Shall appoint and, except as otherwise provided in this charter, remove all directors of departments at will;

(f) Shall recommend to the commission all measures necessary and expedient for the proper governance and management of the Utility System;

(g) Shall keep the commission fully advised as to the management, governance and needs of the Utility System;

(h) Shall perform all other duties prescribed by law, this charter, ordinance, or direction of the commission.

5.01. - Charter amendments. This act may be amended pursuant to this section or as otherwise provided by general law.

(1) *Petition.* An amendment may be proposed by a petition signed by 10 percent of the registered voters of the city, or by an ordinance adopted by a four-fifths vote of the membership of the commission. The commission shall place the proposed amendment to a vote of the electors at the next general election or at a special election called for that purpose.

(2) *Notice.* The full proposed amendment must be published once each week for 4 consecutive weeks prior to the election in a newspaper of general circulation published in the city.

(3) *Effect of election.* A proposed amendment receiving an affirmative vote of a majority of the votes cast shall be effective as an amendment to this act not later than the 90th calendar day after the day on which the vote was taken unless otherwise provided in the proposed amendment.

5.04. - Disposal of utilities. The commission may not, in any manner, dispose of or agree to dispose of the city's electrical or water production or distribution facilities or any part thereof so as to materially reduce the capacity of the city to produce or distribute electrical energy or water, unless the commission does so by ordinance with the prior approval of a majority vote of the qualified electors of the city voting at an election for the purpose of approving the ordinance.

REFERENCES TO CHAPTERS/SECTIONS OF CITY CODE

Chapter 2, Sections 2-356 to 2-360 - Energy Advisory Committee: Creates and sets forth powers and duties of a 9 member citizen (must reside within the County and preference is given to those who also reside in the City) committee that is appointed by and advisory to the City Commission on energy matters.

Chapter 27 Utilities: Establishes terms, rates and regulations for the provision of electric, solid waste, water, sewer, storm water and natural gas utilities.

REFERENCES TO CITY COMMISSION RULES

Rule II. Order of Business: Creates a regular afternoon meeting each month devoted to utility business.

Rule VII. Committees-Appointment-Procedure-Referrals: Creates the Regional Utilities Committee, a standing committee comprised of at least two City Commissioners and one County Commissioner.

In considering any utility governance changes, you may wish to examine examples from across the State of Florida. The chart beginning on the next page provides summary governance information from various utilities throughout the State of Florida. Please note that the following information is not intended as, nor did this Office undertake, an exhaustive review of all of the Special Acts, Charters, Ordinances, Resolutions and Policies that govern each of the utilities listed below. In addition, this is not an exhaustive list of all utilities in the State of Florida.

NAME OF UTILITY and HOW CREATED	WHO IS THE GOVERNING BOARD? IS THERE AN ADVISORY COMMITTEE?	DOES CITY/COUNTY EXERCISE ANY OWNERSHIP OR OPERATIONAL CONTROL?	DOES REVENUE FLOW FROM UTILITY TO CITY/COUNTY EACH YEAR?	TYPE OF SERVICES PROVIDED? OUTSIDE THE CITY LIMITS?	WHO IS THE EMPLOYER?
CLAY COUNTY UTILITY AUTHORITY By Special Act (Ch. 94-491, Laws of FL)	7 members: 6 appointed by County Commission and 1 by Governor No	No	Yes, a payment in lieu of taxes	Water and wastewater Yes	All utility staff are employees of the Authority
FORT PIERCE UTILITIES AUTHORITY By Ordinance F-399 adopted April 24, 1972	5 members: Mayor and 4 citizens appointed by the city commission. No	Yes, City Commission reviews budget and can (by 4/5 vote) disapprove line items	Yes, 6% of gross utility revenues from the preceding year to City	Water, wastewater, electric and gas Yes	All utility staff are employees of the Authority
JEA By Special Act (Ch. 92-341, Laws of FL)	7 members appointed by Mayor, confirmed by Council. Each member must be a resident and elector of the City for at least 6 months No	Yes, City Council and Mayor review and approve the budget	Yes, City can appropriate up to 30% of estimated gross utility revenues for city uses and purposes	Yes	All utility staff are employees of the City
KEYS ENERGY SERVICE By Special Act (Ch. 69-1191, Laws of FL)	5 members (must be qualified electors of the City) elected at large by the electors of City of Key West. Yes, 5 members from 5 districts, appointed by the governing board	Yes, City Commission reviews and approves the issuance of bonds	Yes, payment amount to City is the greater of: \$200,000 (adjusted annually by the CPI), or 1% of Gross Revenues	Electric Yes	All utility staff are employees of Keys Energy Service.
FLORIDA KEYS AQUEDUCT AUTHORITY By Special Act (Ch. 76-441, Laws of FL)	5 members appointed by the Governor (1 from each County Commission District, must be registered electors of County and a resident at least 6 months) No	No	No	Water and wastewater Serves all of Florida Keys	All utility staff are employees of the Authority
LAKELAND ELECTRIC Resolution dated August 8, 1904	The City Commission Yes, 13 members: Mayor, 6 City Commissioners and 4 citizen members appointed by Mayor (1 city resident and 1 non-resident, each from residential rate class; 1 city resident whose company/ employer is in industrial rate class; and 1 city resident whose company/ employer is in commercial rate class)	Yes, full control	Yes, transferred \$27.6 million in FY2012	Electric Yes	All utility staff are employees of the City

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	▪ 2 customers in the residential rate class residing in electric service area.				
LEESBURG ELECTRIC AND WATER DEPARTMENTS Section 5 of City Charter and Sections 2-233 to 235 and Chapter 22 of City Code	The City Commission No	Yes, full control	Yes, an amount not to exceed 10% of operating revenues; provided it does not cause net loss to utility enterprise fund	Water, wastewater and electric Yes	All utility staff are employees of the City
NEW SMYRNA BEACH UTILITIES COMMISSION By Special Act (Ch. 85-503, Laws of FL) Ch.15, City Charter	5 members appointed by City Commission, must be qualified electors and freeholders of the city No	Yes, City Commission reviews and approved budget, issuance of debt, and contracts over 4 years	Yes, 6% of gross utility revenues	Water, wastewater and electric Yes	All utility staff are employees of the Utilities Commission
ORLANDO UTILITIES COMMISSION By Special Acts (Ch. 9861 in 1923 and Ch. 82-415, Laws of FL) Chapter 15, City Charter	5 members: Mayor (serving ex-officio) and 4 other members selected by the City Council (all must be customers & qualified electors living in area served by the utility, the Mayor and at least 2 members must live in city limits and 1 member must live in unincorporated service area No	Some financial reporting requirements	Yes, 60% of budgeted income before contributions. Transferred \$48.6 million to the City of Orlando in FY2014.	Water and electric Yes	All utility staff are employees of the Utilities Commission
CITY OF TALLAHASSEE UTILITIES Chapter 21, City Code of Ordinances	The City Commission Yes, advisory to City Manager: 15 members (must be residential or business customers of the utility)	Yes, full control	Yes, was changed from fixed 6.99% to a base amount with annual CPI increase	Electric, water, wastewater and natural gas Yes	All utility staff are employees of the City
CITY OF VERO BEACH ELECTRIC and WATER/SEWER UTILITIES Chapter 78, City Code of Ordinances	The City Council Yes, 5 regular voting members and 2 alternates appointed by city council (at least 1 member each from Towns of Indian River and Indian Shores)	Yes, full control	Yes, 6% was paid to City last year	Water, wastewater and electric Yes	All utility staff are employees of the City