

Memorandum

To: Members of the City Charter Review Commission

**From: Ed Bielarski, General Manager for Utilities
Lee Feldman, City Manager
Teneeshia Marshall, Equal Opportunity Director
Omichele Gainey, Clerk of the Commission
Len Loria, Interim City Auditor
Nicolle Shalley, City Attorney**

Date: January 30, 2020

Re: Analysis of Proposed City Charter Amendments for November 2020 ballot

This Memorandum provides the written analysis prepared by the City Charter Officers for each City Charter amendment that has been proposed by the City Charter Review Commission (CCRC). This written analysis is required by Section 5.01(2)(e) of the City Charter. The analysis reflects the input of the Charter Officers as a group and where a particular Charter Officer had additional analysis they wished to share individually, it is attached to this Memorandum. As the Charter Officers are, individually (within their respective areas of authority) and collectively (in areas that cross/affect the entire City organization), the management team for the City, the Charter Officers analyzed only those proposed amendments that they believe would have an operational or fiscal impact on the management functions of the City. The City Attorney's Office provided notes for those amendments that either appear to have no legal effect or that are not permissible under current law.

(1) Add the following sentence to the end of **2.03 Eligibility** "The City Commission shall define resident and residency." (approved by the CCRC on 8/5/19)

No analysis provided by the Charter Officers, as they did not identify an operational or fiscal impact on the management functions of the City.

Legal note from the City Attorney's Office: This Charter amendment directs the City Commission to define terms (presumably by ordinance) which the City Commission already has the authority to do. Further, even if the Commission defines these terms (such as by codifying the judicially developed residency factors) that would not prevent or resolve residency challenges, as most challenges are brought because of the particular facts involved and must be resolved in court. The City is not a party to such challenges.

(2) Amend 2.03 Eligibility to revise City Commissioner term limits from two consecutive terms to three consecutive terms. (approved by the CCRC on 7/1/19)

No analysis provided by the Charter Officers, as they did not identify an operational or fiscal impact on the management functions of the City.

(3) Amend 2.04 Election and Terms to require the use of Instant Runoff Voting (IRV). (approved by the CCRC on 1/6/20) According to information provided by Jon Severini, Chair of Rank My Vote Florida, at the request of the CCRC, IRV enables voters to rank all of the candidates for an office in order of preference on a single ballot: first, second, third, etc. Votes are then counted in rounds until one candidate (or two candidates in an at large election) emerges with a majority of votes cast.

The City currently contracts with the Supervisor of Elections to conduct City Elections. The Clerk of the Commission verified with the Supervisor of Elections that the elections equipment is not equipped to process IRV. Even if the Supervisor procured elections equipment that could process IRV, it must be certified by the Secretary of State. It is the reported (article in Sarasota Herald Tribune dated August 31, 2019) opinion of the Secretary of State Laurel Lee that IRV “doesn’t currently comply with statute and constitutional provisions that govern elections in our state.”

Therefore, if a Charter amendment mandated the use of IRV, the City would be required to procure its own elections equipment and conduct its own separate elections, both of which would create a fiscal impact to the City. Furthermore, this is not a workable solution because of a City Charter Amendment Referendum that passed in November 2018, which requires that “commencing with the regular election held in 2022, the regular municipal election shall be held on the date to coincide with the statewide primary election.” Therefore, the City and Supervisor of Elections would be holding separate elections on the same day which would be inefficient and confusing to voters.

(4) Amend Article II City Commission to allow City Commission candidates the option to collect petitions in lieu of paying the election assessment to qualify for office and include same provisions on population used by the County (approved by the CCRC on 8/5/19)

No analysis provided by the Charter Officers, as they did not identify an operational or fiscal impact on the management functions of the City.

Legal note from the City Attorney’s Office: Section 9-10. Qualifications of candidates for city commission of the City Code reads “Provided, however, as a condition precedent to having his/her name printed on the ballot for such election such person shall pay to the supervisor the election assessment imposed by F.S. § 99.093(1), or be exempted from such payment of assessment pursuant to the provisions of F.S. § 99.093(2).” The election assessment (and undue burden exemption) is established and required by State

Law and is paid to the State, as such the City does not have the legal authority to create an alternative.

(5) Amend Article II City Commission to calculate the annual salary for each City Commissioner based on the City population as provided in Sections 145.031 and 145.19, Florida Statutes, with the Mayor receiving an additional \$10,000. To be implemented evenly over a five-year period beginning October 1, 2021. (approved by the CCRC on 12/2/19)

City Commissioner annual salaries are currently calculated pursuant to Section 2-66. - Salaries of the City Code, and can be revised by adoption of an ordinance. This allows for budget flexibility. Placing the salaries in the Charter removes that flexibility. The current 2020 salaries are \$34,736.32 for City Commissioner and \$44,209.91 for Mayor and the salaries (if calculated by the 2020 statutory formula) would be \$60,550.08 for City Commissioner and \$70,550.08 for Mayor. At the 2020 amounts, that would create an additional fiscal impact of \$181,222.73 that the Commission would be required to budget for the increased salaries.

(6) Amend 3.03. City attorney, 3.04. Clerk of commission and 3.05. City internal auditor to state the commission "shall" (rather than "may") appoint these Charter Officers to serve at the will of the commission. (approved by the CCRC on 10/7/2019)

No analysis provided by the Charter Officers, as they did not identify an operational or fiscal impact on the management functions of the City.

(7) 3.06. - General manager for utilities – the CCRC motion was to lower the GRU Manager from a Charter Officer to be under the City Manager (approved by the CCRC on 9/16/2019)

The Charter Officers note that this proposed Charter amendment should be worded to delete **3.06. General manager for utilities** from the Charter and amend **3.02. City Manager** to include the utilities powers and duties from 3.06.

As the Charter addresses only Charter Officers, not other employees of the City, if the General Manager is deleted as a Charter Officer and the utilities powers and duties are vested in the City Manager, the City Manager would then determine the appropriate position(s) needed to handle the City's utilities operations.

The Charter Officers are unclear what purpose this amendment would serve because: an experienced utilities manager and likely multiple assistant utilities managers would still need to be employed by the City Manager, the utilities would still be required to function as an enterprise fund with rates set accordingly (utility funds could not be commingled or used for General Government purposes), borrowings and debt would continue to be issued separately, and any desired sharing of operational functions (such as Human Resources, Information Technology, Procurement and Legal Services) can and already does occur across the City organization. The Charter Officers note that such a

change would place approximately 2,217 City employees under the direction of the City Manager and approximately 38 City employees under the remaining 4 (Equal Opportunity Director, Internal Auditor, City Attorney and Clerk of the Commission) Charter Officers. The Current General Manager for Utilities provided additional written analysis that is attached to this Memorandum as Attachment A.

(8) Create a new section in Article V – Special Provisions to allow City registered voters to initiate City ordinances via a referendum process and set the threshold of signatures for an ordinance petition at 15% of the registered voters (approved by the CCRC on 11/4/2019)

No analysis provided by the Charter Officers, as they did not identify an operational or fiscal impact on the management functions of the City merely from creating such a process; however, voter initiated and approved ordinances (depending on their substantive provisions) could create substantial operational and fiscal impacts for the City and/or could be unlawful. For this reason, if the CCRC moves forward with this proposed amendment they should consider a model that allows such ordinances to be amended or repealed by the City Commission.

(9) Amend 5.01. - Charter Amendments as follows: a Charter “amendment may be proposed by a petition signed by ~~10~~ 20 percent of the registered voters of the city.” (approved by the CCRC on 11/4/2019)

No analysis provided by the Charter Officers, as they did not identify an operational or fiscal impact on the management functions of the City.

(10) Amend 5.04 Disposal of utilities as follows: “The commission may not, in any manner, dispose of or agree to dispose of the city's electrical, wastewater, reclaimed water, GRUCOM, or water production or distribution facilities; future utility-related enterprises or intellectual processes; 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.” (approved by the CCRC on 12/2/2019)

The Charter Officers are of the opinion that this proposed amendment, which both deletes a materiality determination and adds utilities services/functions that are not essential services, is unworkable. It would require a referendum vote for even minor business transactions. It leaves no room for recognition that it is a business necessity from time to time, through action of the City Commission, to dispose of, shut down, or decommission utility facilities, without compromising the City's ability to continue to provide essential utilities services. In addition, it is unclear what is meant by “future utility-related enterprises or intellectual processes.” And finally, the Charter Officers note that the gas utility is not included in this proposed amendment and question whether that was intentional or an oversight.

(11) Delete 5.06. **Funds for construction of paved surfaces in designated areas** (approved by the CCRC on 12/2/2019) in its entirety as follows: ~~5.06. Funds for construction of paved surfaces in designated areas. "The City of Gainesville, Florida shall not expend, use, seek, permit or allow the use of any city, county, state, private or federal funds for the construction of any paved surfaces for trails or transportation corridors on City owned land designated as Conservation, as shown on the map dated May 1998 and on file in the Office of the Clerk of the Commission, within the Hogtown Creek Watershed. This provision is not intended to restrict paving for parking or recreational facilities constructed on land designated as Recreation on the aforementioned map."~~

The Charter Officers note that this section was added to the Charter via a citizen initiative approved by the voters at the city regular election on March 17, 1998 and was then subsequently amended (to its current version) by Commission initiative approved by the voters at the city regular election on March 7, 2006. The map dated May 1998 that is referenced in this section is attached to this Memorandum as Attachment B. Deletion of this section would allow the City to construct paved surfaces within the mapped Conservation Land Use areas.

Attachment "A"

General manager's response to CRC proposed amendment under which the general manager of utilities would be removed as a charter officer of the city.

Introduction

The Gainesville Charter Review Commission (CRC) has proposed an amendment to the city charter removing the general manager of the utility as a charter officer and, instead, having the general manager report directly to the city manager. The CRC first discussed this change to the charter during a meeting on Sept. 16, 2019. During this conversation, George Forbes, a former city manager in Jacksonville Beach and Clermont, Fl., points out, "One of the things you're going to find, if you are going to make this change, you have to have a very good reason for why you want to do this so the public will understand so they will support it." Based on the meeting transcript, the CRC chair ultimately concludes, "... We have too many charter officers, basically." Yet, through my lenses, the CRC never satisfactorily explains why they believe the city has too many charter officers or why it is in the best interest of our community to make the extreme and problematic decision of removing the general manager as a charter. In fact, at one point in the conversation, a CRC member makes a case for adding the chief of police as a charter member because the chief would be "directly accountable in handling problems and community complaints." Adding a charter member clearly contradicts the premise that the city has too many charters, but the CRC member makes an excellent point: One of the reasons the general manager should remain a charter officer is because I am now directly accountable to the public and engage with them frequently during City Commission meetings. In the following paragraphs, I offer more insight into why the general manager of utilities should remain a charter officer.

My Viewpoint

General manager's independence is no less important or critical to the city than having an independent city auditor, city attorney or equal opportunity director

Maintaining independence is a hallmark of good government. It is important for commissioners to be able to hear the legal, accounting and business side of decisions from different charter officers who have reached a decision, not because they all work for one boss, but because they have worked diligently toward the right solution, asking questions, testing their theories and challenging one another.

In that spirit, I was able to shepherd the buyout of the biomass PPA. The decision passed the scrutiny of an independent city attorney, an independent city auditor and ultimately the independent Utility Advisory Board and City Commission, before we closed the book on the biomass PPA.

General manager as a charter officer better serves the complexities of the utility

The complexities in both operational functions and financial areas of the utility cannot be overstated. A five-system utility represents a significant portion of overall city governmental operations and must be allowed to operate with the utmost safety and reliability of its infrastructure. The utility's financial health must be supported and protected in order to support overall city operations in what is truly a symbiotic relationship.

Reducing the role of the general manager to a subordinate of the city manager would have the unintended consequences of making GRU compete for resources across the city based not on utility best practices such as life-cycle management of assets, but on the annual needs of the city manager. Managing and maintaining assets with useful lives of up to 50 years should not be marginalized this way. The utility could be moved toward running its assets to failure and reducing its stellar record of reliability simply to cover general government shortfalls.

General manager as a charter officer allows more public access to the utility and transparency

Currently, the utility has a voice at the table that represents the interests of not only GRU customers but of investors in the utility's debt.

In my role as a charter officer, I represent the utility at City Commission meetings, where I am able to respond to the public, as well as the commissioners. I am also able to meet with the City Commissioner's directly to address constituent concerns. I also have the ability to bring high-level, tough topics and issues to the commission for discussion and approval without fear of reprisal. As a charter, I report directly to the decision makers. As many are well aware, the utility model is changing and we will be having difficult discussions and asking the City Commission to make difficult decisions in the near future. The public should be privy to these discussions and decisions without first filtering them through the city manager.

As an example, there's a real possibility a white paper I wrote last year would never have been viewed by the public if I reported to the city manager instead of the City Commission. The paper, titled GRU at a Crossroads, presented an in-depth history of the financial decisions that have led to GRU's current situation and the financial decisions such as refinancing debt and reducing the general fund transfer (GFT) that are critical to future success. Had I worked directly for the city manager, I may not have had an opportunity to publicly vet the multiple options presented in the white paper during the budget process.

General manager as a charter officer protects the integrity of the General Fund Transfer

In the CRC meeting on Jan. 16, former Jacksonville Beach City Manager Forbes noted: "Yeah, there's going to be some [tension] over the rated transfer to the general fund. No matter what you do or what governance you go to, that's going to exist."

As a charter officer, the general manager has full management responsibility for the utility, while the city manager has full management responsibility for general government. The point of merger between GRU and general government is the funding of the general fund transfer to support general government operations and services. In practice, the city manager seeks to maximize the amount of GFT in order to keep other city taxes as low as possible.

On the GRU side, the general manager seeks to keep rates as low as possible, while still providing safe, reliable and environmentally responsible utility services. The general manager should optimize the GFT within the confines of their mission while supporting the financial metrics of the utility in a manner that allows GRU to fund the GFT for many years to come.

These two somewhat conflicted roles and responsibilities between the general manager and the city manager naturally create a positive force, not a negative one. The independence of both charter officers ensures an arms-length negotiation concerning the GFT, which is important to a host of GRU stakeholders as well as general government stakeholders. The process played out that way this year, with the City Commission ultimately deciding to freeze the GFT.

Forbes further addressed the complexities of the GFT: "And you're not going to change the problem of having the electric director have conflicts with the city manager because the city manager is still going to want the same thing — as much money as he can to do things and the electric director wants the same

thing. The only way to solve that in my opinion is to have ordinance by the charter. Really it ought to be an ordinance, not in the charter, what that rate of transfer should be. It needs to be a really public discussion about that.”

General manager as a charter officer ensures representation of more stakeholders in city business

As the general manager, I have a fiduciary responsible to treat GRU customers “fairly and equitably.” These are the values placed on GRU by the Florida Public Service Commission. Having the general manager continue as a charter officer allows me to bring rate requests and proposed budgets directly to the City Commission, with an unbiased interest in the customers we serve, 40 percent of which reside outside city limits and depend on fair and equitable rate setting practices.

In my aforementioned white paper, I advocated for stakeholders of GRU by suggesting a \$6 million reduction in the GFT in order to share the pain of the disruptive change being felt in the utility industry. Until I wrote the white paper and made it the center of the budget process, general government had budgeted a 1.5 percent annual increase in the GFT and had not considered reducing or freezing the GFT. The white paper was only delivered to the commission and the public because of my position as a charter officer and the decision-making balance this arrangement affords.

General manager as a charter officer more effectively balances the duties of a true city manager and a general manager

Managing a city the size of Gainesville, with its own police and fire departments, as well as extensive partnerships with a top 10 university, another leading college and hosts of public interest groups is a challenging, fulltime and demanding job. Only a small population of people are qualified to fulfill those demands successfully. Layer on the management of a more than \$400 million in revenue utility, with all five services, and the candidate pool might dip to but a few, if any.

To expand this idea, it’s as though the CRC has a vision of the city manager as the CEO of the city. While this may be an interesting theoretical exercise, the practicalities of such an organizational change are not in keeping with the nuances of city government, or demands of running the fifth-largest municipal utility in the state.

The reality is the general manager would continue to drive the operations and initiatives of the utility, while also having to coordinate with a city manager, without the time or experience to add value to the decision-making in managing a utility.

Having the city manager and the general manager simply report up to the City Commission is much more effective and avoids the incredibly difficult task of finding a city manager who could run a city and a utility, while still being paid to run just one organization.

General manager as a charter officer provides a comfort level to investors that the GFT is not being biased towards general government

During their discussion on Sept. 16, a CRC member asked, "If we did this, what impact would that have on bond ratings for the utility and the city?"

The short answer is a negative one. If the general manager were removed as a charter officer, bond rating agencies, such as Fitch and Standard and Poor's, would see it as a credit negative action, and it could downgrade GRU and cause upward rate pressure.

Put simply, investors are skeptical of arrangements in which the GFT is approved by the user and provider of the GFT, as would be the case with the general manager reporting to the city manager.

Summary

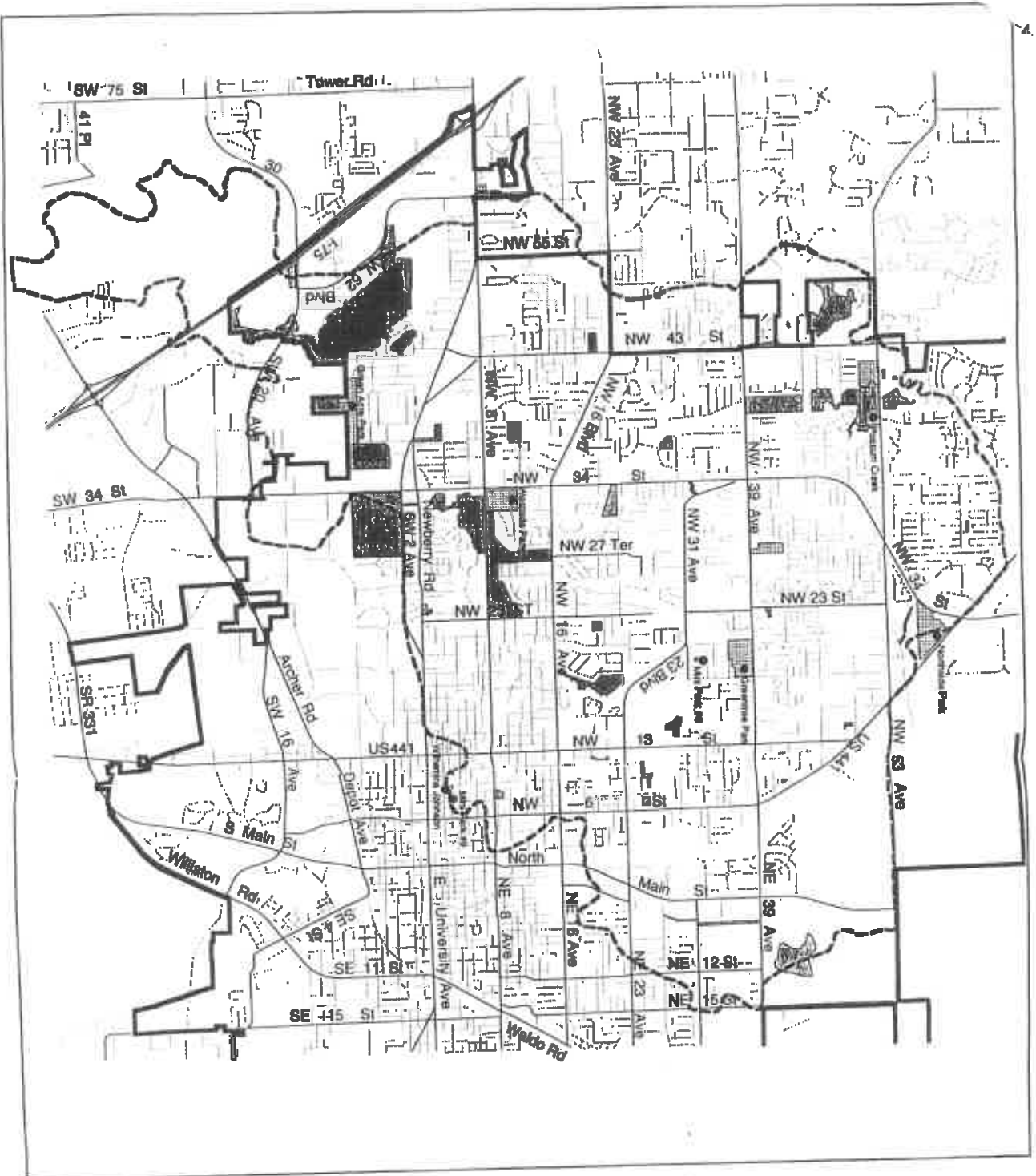
It's important to return to the original question asked by Mr. Forbes and ask yourselves, what is the very good reason to remove the general manager as a charter officer? It certainly doesn't make the position more independent. It doesn't make it more accessible and/or transparent to the public. Bond Rating agencies will see it as a credit-negative action. There will be unintended consequences of trying to fill the city manager and general manager positions in the future with qualified individuals.

Additionally, the integrity of the GFT will be further questioned by not only those who live outside the city, but those in the financial community. Finally, the main pillars of GRU's existence have been safety and reliability in accordance with Good Utility Practices. The resources necessary to accomplish that will be measured against all of the other general government requests and demands, as compared to the separate needs of the utility.

All of these consequences weigh against the idea that Gainesville has “too many charter officers.” I think the answer is clear. There is not a “very good reason” to remove the general manager as a charter officer. However, there are many good reasons to keep the general manager as a charter officer.

I will be glad to meet with the CRC to discuss the viewpoint I have expressed herein.






Attachment "B"



HOGTOWN CREEK WATERSHED

Recreation & Conservation Lands

Legend

-  Recreation Land Use
-  Conservation Land Use
-  Hogtown Creek Watershed
-  City Limits
-  Parks

Note: Information is shown for areas inside the city limits only.

City of Gainesville, Florida
 Prepared by the Department of Community Development
 May 1988

