



**PERSSON, COHEN, MOONEY, FERNANDEZ & JACKSON, P.A.**  
ATTORNEYS AND COUNSELORS AT LAW

David P. Persson\*\*

Andrew H. Cohen

Kelly M. Fernandez\*

Maggie D. Mooney\*

R. David Jackson\*

Regina A. Kardash\*

Lori M. Dorman<sup>∞</sup>

\* Board Certified City, County and Local Government Law

\*\* Of Counsel

<sup>∞</sup> Also licensed in Colorado

Telephone (941) 306-4730

Facsimile (941) 306-4832

Email: kfernandez@flgovlaw.com

Reply to: Venice

**M E M O R A N D U M**

**DATE:** November 10, 2022

**TO:** Mayor Pachota and Members of the City Council  
Ed Lavallee, City Manager  
Kelly Michaels, City Clerk

**FROM:** Kelly M. Fernandez, City Attorney

**SUBJECT:** Charter Amendment Update

---

Of the thirteen questions presented to the electorate related to the City Charter, only two did not pass. The purpose of this memorandum is to provide direction as to what action is needed, if any, to effectuate the approved Charter amendments and/or remove inconsistencies in the City Code of Ordinances. All approved Charter amendments are effective as of December 1, 2022.

**I. CHARTER AMENDMENTS REQUIRING OR ALLOWING FURTHER ACTION**

**QUESTION 1. BOARD APPOINTMENTS**

Sec. 3.01. City council, powers, composition.

There shall be a city council which shall be the governing body of the city with all legislative powers of the city vested therein, composed of six councilmembers and a mayor, hereafter referred

---

Lakewood Ranch  
6853 Energy Court  
Lakewood Ranch, Florida 34240

Venice  
236 Pedro Street  
Venice, Florida 34285

to as the city council; all to be elected at large. They shall assume their offices upon certification of their election. The city council shall make all appointments of operating and advisory boards.

Sec. 3.02. Mayor and vice-mayor.

- (a) *Duties of mayor.* The mayor shall preside at meetings of the city council and shall have a vote on all matters. The mayor shall have no veto power. The mayor shall be recognized as head of city government for all ceremonial purposes; by the governor for purposes of military law; for service of process; for execution of contracts, deeds and other documents, as signer of checks for payment of obligations, and as the city official designated to represent the city in all agreements with other governmental entities. ~~The mayor shall make all appointments of principal officers mentioned in this Charter and all operating and advisory boards, with the advice and consent of the city council, as provided in this Charter.~~ The mayor shall have only those administrative duties required to carry out the above responsibilities.

**ACTION NEEDED** – Resolution 2020-38 that defines the Board appointment process will need to be revised.

## QUESTION 2. PRESIDING AT A MEETING

Sec. 3.02. Mayor and vice-mayor.

- (a) *Duties of mayor.* The mayor shall preside at meetings of the city council and shall have a vote on all matters. If the mayor is not physically present at a meeting where a physical quorum is required, the vice-mayor shall preside at the meeting if physically present or, in the alternative, one of the other city councilmembers in physical attendance elected to serve as chairperson. The mayor shall have no veto power. The mayor shall be recognized as head of city government for all ceremonial purposes; by the governor for purposes of military law; for service of process; for execution of contracts, deeds and other documents, as signer of checks for payment of obligations, and as the city official designated to represent the city in all agreements with other governmental entities. The mayor shall make all appointments of principal officers mentioned in this Charter and all operating and advisory boards, with the advice and consent of the city council, as provided in this Charter. The mayor shall have only those administrative duties required to carry out the above responsibilities.

**ACTION NEEDED** – Section 2-75(a) of the City Code will need to be revised as it states that the mayor shall moderate and chair all meetings.

## QUESTION 3. DELEGATIONS TO CITY MANAGER

Sec. 3.02. Mayor and vice-mayor.

- (a) *Duties of mayor.* The mayor shall preside at meetings of the city council and shall have a vote on all matters. The mayor shall have no veto power. The mayor shall be recognized as head of city government for all ceremonial purposes; by the governor for purposes of military law; for service

of process; for execution of contracts, deeds and other documents, except as otherwise delegated by the city council to the city manager or a designee; as signer of checks for payment of obligations, except as otherwise delegated by the city council to the city manager or a designee; and as the city official designated to represent the city in all agreements with other governmental entities. The mayor shall make all appointments of principal officers mentioned in this Charter and all operating and advisory boards, with the advice and consent of the city council, as provided in this Charter. The mayor shall have only those administrative duties required to carry out the above responsibilities.

Sec. 4.04. - Powers and duties of the city manager.

The city manager shall have the following powers and duties:

(a)-(h) No change.

(i) Miscellaneous duties. Perform such other duties as are prescribed by general law, specified in the Charter, by ordinance or resolution of the City, or by direction of ~~as may be required by the city council as a whole.~~

**ACTION NEEDED** - Resolution 2022-19 (which establishes protocols for the execution of documents by the mayor and vice-mayor) should be revised upon the adoption of a resolution delegating duties to the City Manager that otherwise would be the responsibility of the mayor.

## **QUESTION 6.** MAYOR AND COUNCILMEMBERS' COMPENSATION

Sec. 3.05. Compensation and expenses.

The annual salary of city councilmembers shall be equal to 20% of the annual salary of Sarasota County Commissioners, which is determined by the state legislature. The annual salary of the mayor shall be equal to the annual salary of a city councilmember plus \$1,200. ~~An ordinance by the city council increasing or decreasing the compensation of the mayor and other city councilmembers shall be submitted to referendum at the next regularly scheduled election, and shall become effective immediately if approved. In addition, an ordinance increasing or decreasing the compensation of the mayor and other city councilmembers may be approved by the registered voters of the city via an initiative proceeding under Article IX, and shall become effective immediately if approved.~~

**ACTION NEEDED** - Subsections 2-31(a) & (b) of the City Code will need to be revised as they state specific salaries. The new salaries will go into effect on December 1, 2022 regardless of the City Code.

## **QUESTION 7.** CITY COUNCIL MEETING ATTENDANCE REQUIREMENTS

Sec. 3.07. Vacancies, forfeiture of office, standard of conduct, filling of vacancies, emergency succession, procedure of forfeiture.

(a) *Vacancies.* The office of the mayor or a city councilmember shall become vacant upon death, resignation, forfeiture of office or removal from office in any manner authorized by law. Such

forfeiture to be declared by the remaining members of the city council or upon the assumption of duties of another office pursuant to subsection 3.07(d)(1).

- (b) *Forfeiture of office.* A councilmember shall forfeit that office if the councilmember:
- (1) lacks at any time during the term of office for which elected any qualification for the office prescribed by this Charter or by law,
  - (2) violates any express prohibition of this Charter,
  - (3) is convicted of a crime involving moral turpitude, or
  - (4) fails to attend in-person three ~~consecutive~~ regular meetings in a calendar year of the city council without being excused by the city council.

**ACTION NEEDED** - Resolution 2022-25 that establishes attendance policies will need to be revised.

## II. CHARTER AMENDMENTS NOT REQUIRING FURTHER ACTION

### QUESTION 4. SELECTION OF VICE-MAYOR

Sec. 3.02. Mayor and vice-mayor.

- (b) *Vice-mayor.* A vice-mayor shall be elected by and from the members of the city council at the first regular council meeting following the certification of the results of the city election. The vice-mayor shall act as mayor during the absence or disability of the mayor.

**NOTE** - No additional action is needed; however, this removes an obstacle to having a regular meeting in November prior to the certification of election results.

### QUESTION 5. TERM LIMITS

Sec. 3.04. - Elections, terms of office and term limits.

- (a) The elected term of office for the mayor shall always be three years and no person shall serve as mayor for more than three consecutive elected terms.
- (b) The elected term of office for city councilmembers shall be three years. The terms shall be staggered so that two city councilmembers shall be elected each year. Under certain circumstances as specified in Section 3.07, a city councilmember may be elected to serve the remaining portion of an unexpired term. No person shall serve as a city councilmember for more than three consecutive elected terms.
- (c) No person shall serve as mayor and as a city councilmember in any combination for more than ~~three~~six consecutive elected terms.
- (d) Appointed or elected partial terms of office to fill vacancies pursuant to section 3.07 shall not be counted for the purpose of computing term limits under section 3.04.

## QUESTION 8. STANDARD OF CONDUCT

Sec. 3.07. Vacancies, forfeiture of office, standard of conduct, filling of vacancies, emergency succession, procedure of forfeiture.

- (a) *Vacancies.* The office of the mayor or a city councilmember shall become vacant upon death, resignation, forfeiture of office or removal from office in any manner authorized by law. Such forfeiture to be declared by the remaining members of the city council or upon the assumption of duties of another office pursuant to subsection 3.07(d)(1).
- (b) *Forfeiture of office.* A councilmember shall forfeit that office if the councilmember:
  - (1) lacks at any time during the term of office for which elected any qualification for the office prescribed by this Charter or by law,
  - (2) violates any express prohibition of this Charter,
  - (3) is convicted of a crime involving moral turpitude, or
  - (4) fails to attend three consecutive regular meetings of the city council without being excused by the city council.
- (c) *Standard of conduct.* The public officials and employees of the City of Venice are governed by the Florida Code of Ethics (F.S. § 112.311 et seq., as amended) and by those additional standards of conduct that are or may be adopted by the City of Venice. Violation of any provisions of such codes of ethics or standards of conduct ~~may~~ shall constitute grounds for forfeiture of office as well as be subject to any civil and/or criminal penalties provided by law.

## QUESTION 10. FILLING OF VACANCIES IN OFFICE

Sec. 3.07. Vacancies, forfeiture of office, standard of conduct, filling of vacancies, emergency succession, procedure of forfeiture.

- (a) - (c) No change.
- (d) *Filling of vacancies.*
  - (1) In the event of a vacancy in the office of mayor, the vice-mayor shall assume the duties of mayor until the next regular city council meeting at which time the city council shall appoint a mayor from amongst its members. The appointed mayor shall serve until the next municipal election when a mayor shall be elected to serve a three-year term of office; the acting mayor shall then resume his or her seat on the city council for his or her remaining unexpired term. The vacancy created by the appointment of the mayor shall be filled by appointment by the city council for the duration of that vacancy.
  - (2) Vacancies in the office of city council shall be filled by the city council with any qualified resident so appointed to serve until a successor is elected at the next regular municipal election or special election earlier called for that purpose. A person elected in such election will serve the remaining unexpired term of the city councilmember whose vacant office is being filled.

- (3) ~~At a vacancy shall be is not~~ filled by the city council within ~~6030~~ 60 days after the vacancy occurs, ~~a special election shall be held within 60 days after such a vacancy occurs, and the person so elected shall serve the remaining unexpired term of office.~~ Plurality voting shall be used with a tie decided by drawing lots.

## QUESTION 11. DEVELOPMENT OF PROPOSED BUDGET

### Sec. 5.02. Submission of proposed budget and budget message.

At least two months prior to the beginning of the fiscal year, the city manager shall submit to the city council a proposed balanced budget and additional recommendations of needs of the city for the ensuing fiscal year and an accompanying message. Without prior city council approval, the city manager's proposed general fund component of the budget shall not be increased by greater than three percent of the approved general fund component of the initial adopted budget for the prior year, or the percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics, whichever is greater. Nothing herein shall prohibit the city council from adopting a budget in excess of this limitation, so long as the approved budget is otherwise in accordance with law.

## QUESTION 12. MISCELLANEOUS REVISIONS, CLARIFICATIONS, AND CORRECTIONS

### Sec. 5.06. City council action.

The city council shall adopt a balanced budget. The city council shall publish notice ~~in one or more newspapers of general circulation in the city the places and times where~~ of public hearings on the budget pursuant to state law ~~and capital program will be held~~. After such public hearings the city council may adopt the budget with or without amendment, provided that the total authorized expenditures shall not be greater than the total anticipated funds for any fiscal year. If the budget is not adopted by the city council before the first day of any fiscal year, the amounts appropriated for current operations for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis until such time as the city council adopts a budget for the ensuing fiscal year. The budget shall be adopted in the form of an ordinance and shall constitute appropriation of the amounts specified therein as expenditures of the funds indicated.

### Sec. 6.01. Power to issue.

The city council shall have the power to authorize the issuance of bonds, certificates ~~or~~ ~~of~~ indebtedness or any form of tax anticipation certificates as provided by law. The city council shall provide for an independent financial advisor prior to any bond issuance. The independent financial advisor shall be prohibited from acting either directly or indirectly as a vendor or purchaser of the bonds.

Sec. 7.04. Form of ballots.

~~The city council by ordinance shall prescribe the form of the ballot including the method for listing candidates for mayor or city council elections and any other city election.~~ A Charter amendment, ordinance or resolution derived from initiative or referendum, as provided for in Articles VIII and IX, respectively, to be voted on by the electors shall be presented for voting by ballot title. The ballot title of a measure may differ from its legal title and shall be a clear statement describing the substance of the measure without argument or prejudice. Below the ballot title shall appear the following question: "Shall the above described (ordinance) (amendment) (resolution) be adopted?" Immediately below such question shall appear, in the following order, the word "yes" and also the word "no" with a sufficient space provided to indicate the voter's choice.

Sec. 11.02. Oath of office.

Every elected or appointed officer of the city shall, before entering upon the duties of office, take and subscribe an oath in the form required for state and county officers under the laws of the State of Florida. Such oath shall be kept on file with the city ~~filed in the office of the city clerk.~~

**QUESTION 14.** NO CANDIDATES AND ONE CANDIDATE FOR OFFICE

Sec. 7.05. Elections.

- (a) *Regulation of elections.* Except as otherwise provided by the Charter, the provisions of the election laws of the State of Florida shall apply to elections held pursuant hereto. All elections provided for by the Charter shall be conducted by the election authorities established by law. The city council shall adopt by ordinance all regulations which it considers desirable, consistent with law and this Charter regarding the conduct of city elections, for the prevention of fraud in such elections and for the recount of ballots in cases of challenge.
- (b) *Multiple candidates.* At the regular municipal election, the person receiving the highest number of votes cast for the office of mayor or a particular council seat shall be elected to office. In case two or more persons receive an equal and highest number of votes for the same office, such persons shall draw lots to determine who shall be elected to the office.
- (c) One candidate. If only one candidate qualifies for mayor or a council seat within the time limit for qualifications, or if a vacancy in candidacy caused by death, withdrawal or removal from the ballot of qualified candidates, following the end of the qualifying period, leaves fewer than two candidates for the office, that candidate shall be declared elected to the office of mayor or that seat.
- (d) No candidate. If no candidate qualifies for mayor or a council seat, or if all candidates for mayor or a council seat either withdraw, are removed from the ballot or die, after the close of the qualifying period, but before the election, the term of the mayor or city council member holding that seat shall be extended until the next regular election, notwithstanding any applicable term limits.

## QUESTION 15. INITIATIVES AND REFERENDUMS

### Sec. 9.03. Petitions.

- (a) *Number of signatures.* Initiative and citizen referendum petitions must be signed by registered voters of the city equal in number to at least ten percent of the total number of registered voters of the city.
- (b) *Form and content.* All papers of a petition shall be uniform in size and style. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing and the date of signing. Initiative and citizen referendum petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance or resolution proposed or the ordinance or resolution sought to be reconsidered as the case may be.
- (c) *Affidavit of circulator.* All papers of a petition shall have attached to them when filed an affidavit executed by the person circulating them stating that he or she personally circulated the papers, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance or resolution proposed or the ordinance or resolution sought to be reconsidered as the case may be.
- (d) *Time for filing final petition signatures.* All signatures on final petitions must be ~~signed~~ dated within the six months prior to ~~of~~ submission to the city clerk.

## III. CHARTER AMENDMENTS THAT DID NOT PASS

### QUESTION 9. TERM FOR FILLING OF A VACANCY

#### Sec. 3.07. Vacancies, forfeiture of office, standard of conduct, filling of vacancies, emergency succession, procedure of forfeiture.

- (a) - (c) No change.
- (d) *Filling of vacancies.*
  - (1) In the event of a vacancy in the office of mayor, the vice-mayor shall assume the duties of mayor until the next regular city council meeting at which time the city council shall appoint a mayor from amongst its members. The appointed mayor shall serve until the next municipal election when a mayor shall be elected to serve a three-year term of office; the acting mayor shall then resume his or her seat on the city council for his or her remaining unexpired term. The vacancy created by the appointment of the mayor shall be filled by appointment by the city council for the duration of that vacancy.
  - (2) Vacancies in the office of city council shall be filled by the city council with any qualified resident pursuant to section 3.03 so appointed to serve for~~until a successor is elected at the~~



~~next regular municipal election or special election earlier called for that purpose. A person elected in such election will serve the remaining unexpired term of the city councilmember whose vacant office is being filled.~~

- (3) If a vacancy is not filled by the city council within 30 days after the vacancy occurs, a special election shall be held within 60 days after such a vacancy occurs; and the person so elected shall serve the remaining unexpired term of office.

### QUESTION 13. SURETY BONDING

#### ~~Sec. 5.09. Surety bonding.~~

~~The city council shall determine what city positions shall be bonded and the amount of such bond.~~

**ACTION NEEDED** - Since this deletion was not approved by the voters, Council should formally determine what positions, if any, should be bonded.