

# CHARTER REVIEW



## C O M M I S S I O N

### Members

Hyatt Brown  
Chair

Glenn Ritchey Sr.  
Vice Chair

Dr. T. Wayne Bailey

Frank Bruno Jr.

Frank Darden

Patricia Drago

Ambassador  
Stanley Escudero

Dr. Philip Fleuchaus

David Haas

Peter Heebner

James Morris

Patricia Northey

Glenn Ritchey Sr.

Derek Triplett

Mark Watts

Lisa Ford Williams

## CHARTER REVIEW COMMISSION DAYTONA BEACH INTERNATIONAL AIRPORT VOLUSIA ROOM

Monday, November 9, 2015  
5:30 p.m.

### A G E N D A

- I. Call to Order
- II. Roll Call
- III. Approval of minutes of October 12, 2015.
- IV. Public Participation (Limit 3 minutes)
- V. Code of Ordinances Discussion  
[https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTIICOOR](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTIICOOR)
- VI. Draft Charter Schedule Discussion
- VII. Volusia County's Home Rule Charter – Article I. Creation of Government
- VIII. Volusia County's Home Rule Charter – Article II. Powers and Duties of County  
A. Guest Speakers – Audubon & Sierra Club
- IX. Repeal of ineffectual charter provisions – Daniel D. Eckert, County Attorney
- X. Reimburse County Council Members Draft Language – James Dinneen, County Manager
- XI. Discussion by Commission of matters not on the agenda
- XII. Adjourn – next meeting, December 14, 2015 at 5:30 in the DBIA – Volusia Room

CHARTER REVIEW COMMISSION  
VOLUSIA COUNTY, FLORIDA

MINUTES OF THE MEETING OF OCTOBER 12, 2015  
DAYTONA BEACH INTERNATIONAL AIRPORT  
VOLUSIA ROOM

**CALL TO ORDER/ROLL CALL**

Chair Brown called the meeting to order at 5:33 p.m. in the Volusia Room at the Daytona Beach International Airport, 700 Catalina Drive, Daytona Beach, Florida. Roll call was conducted by Administrative Aide Christine Beccaris. The following members were present: Hyatt Brown, Frank Bruno Jr., Frank Darden, Patricia Drago, Ambassador Stanley Escudero, Dr. Phillip Fleuchaus, David Haas, Peter Heebner, Patricia Northey, Derek Triplett, Mark Watts, and Lisa Ford Williams. Also present were County Manager James Dinneen, County Attorney Dan Eckert, Dona DeMarsh Butler, Tammy Bong, George Recktenwald, Mary Anne Connors, Deb Denys, Volusia County Council Member, and county support staff: Corry Brown, Brittany Scott, John Duckworth, and approximately 22 members of the public. Chair Brown requested that both Dr. Bailey and Mr. Ritchey be marked as excused due to illness.

**APPROVAL OF MINUTES**

Mr. Escudero made a motion to approve the minutes of the September 3, 2015 meeting of the Charter Review Commission, as well as the minutes of the listening sessions of September 15, 2015; September 16, 2015; September 21, 2015; September 23, 2015; and September 29, 2015. The motion was seconded by Mr. Bruno. The motion was approved unanimously.

**PUBLIC PARTICIPATION**

Chair Brown opened the floor to public participation noting that each speaker is allotted three minutes to speak.

**John Bandorf** addressed the Waverly investigation. He stated that the Sheriff should be a constitutional sheriff and should take over the jail. He also feels that the Medical Examiner's office should be run by the State of Florida.

Chair Brown addressed the video camera in the room and Mr. Bandorf stated that he was recording for the volusiaexposed.com website.

**Greg Gimbert** agreed with statements made by John Bandorf concerning the sheriff being a constitutional sheriff. He would also like a two year term limit for elected officials. He asked that beach driving be voted on by citizens. He stated that there should be a prohibition of beach tolls. Mr. Gimbert provided handouts to the

commission. Questions were presented and discussion ensued between Mr. Escudero, Dr. Fluehaus and Mr. Gimbert in regards to the cost associated with two year terms.

**Sandra Snodgrass** would like the charter to consider a two year term limit for county council members. She also recommended prohibiting beach fees and allowing the voters to decide what happens to the beach.

**Linda McIntyre** recommended saving beach driving and letting the voters decide. She is opposed to beach tolls for residents but would like visitors to be charged. She also stated she would like term limits set for elected officials, she did not state what term limits would be preferred.

**Judge Michael McDermott** feels the county council members should have staff. He also wanted to clarify what was discussed at the September 29, 2015 listening session in regards to where courthouses can be built and the handout that he provided. He feels that the people of Volusia County should be given a voice.

**David Davis** spoke about creating an ethics commission. He spoke about corruption and the distrust in government and that we have to build back up public trust. Mr. Davis provided a handout from the Palm Beach County Commission on Ethics for the commission to review.

**Lori Waters** spoke on many issues. She stated that the public education system doesn't work. In addition she spoke about low income housing, section 8, fair housing, Veteran's assistance, child and family services, reporting abuse, and the salary of the county manager.

**Vernon Weatherholtz** would like beach driving on the ballot. He feels that hotels should provide and purchase land for adequate parking. He stated that there should be access to the beach as well as showers for the public. He supports two year term limits of elected officials. He stated that people don't trust the government. He began to mention the compensation of the County Chair; he then referred to handout which he provided to the commission.

**Michael Porter** spoke about the beach, fishing and how the state regulates fishing on the beach. He also discussed bike paths and sidewalks being ADA accessible. He discussed creating an ADA advisory board.

**Linda Smiley** would like two year term limits for elected officials. She supports removing beach tolls. She wants to change the way the Charter Review Commission is selected as she feels that there is a conflict of interest with those who have served. She discussed the need for higher paying jobs and health care for unemployed people. She feels if hotels do not want beach driving, then they should provide the parking and maintain it.

**Peter Kouracos**, representative of Volusia Republican Assembly, supports letting citizens vote to resolve issues and look to the public for guidance.

**Lori Waters** spoke again, wanting to know who hired Mr. Dinneen. She also spoke about jail issues.

**Christine Bejune** would like shorter term limits on county council members. She would like the voters to make decisions on beach driving. She stated that she does not oppose beach tolls. She suggested charging for parking at the beachfront parks. She finds the number of homeless people near the beach disturbing.

Public participation ended.

## **RULES & PROCEDURES**

Dona DeMarsh Butler referred to the handout presented to the commission. She gave an overview of the changes from the previous set of rules and procedures. This included location of subcommittees if created, audio recordings of meeting instead of tapes, and posting to website instead of libraries. Motion for approval was made by Mr. Watts and seconded by Ms. Northey. The motion was approved unanimously.

## **ISSUES SUBMITTED FOR CONSIDERATION**

Chair Brown read aloud the list of issues that have been submitted by commission members for consideration. He asked the commission how they would like to handle the issues. He suggested breaking issues into pods. Mr. Bruno wants speakers and wants to group together the issues and be put into separate pods. Mr. Escudero liked the pod idea. Chair Brown would like to discuss as a whole not as a subcommittee. Mr. Haas would like the discussion topics to occur consecutively starting from the beginning of the charter. Discussion ensued and Chair Brown asked Mr. Eckert to speak about transitional provision.

Chair Brown stated that he would like everything that is submitted to the chair be numbered and date stamped. Chair Brown asked if there were any easy topics that the commission would like to discuss. Chair Brown stated that he was not aware that the County Council members were not reimbursed for travel. Discussion ensued about what is reasonable and who determines the justification on who attends what event. Mr. Haas would like the language changed to allow council members to be reimbursed. Discussion in regards to a cap on reimbursement was discussed. Ms. Northey stated that an office account should be set up

Mr. Dinneen stated that they can keep mileage logs and receipts for expenses as well as an agenda. Chair Brown asked that staff create an amendment and provide it at the next meeting. He also asked that staff create pods about issues.

## **DISCUSSION**

Chair Brown wants whomever the commission would like to attend future meeting to be invited to speak. There was a discussion about what groups will attend and what issues will be discussed. Ms. Northey mentioned that charter members had previously submitted lists of groups or individuals they were recommending to invite to speak. Recommendations discussed by the committee included: Kent Sharples; Douglas Gibson, Mayor of Oak Hill; Team Volusia; and the Volusia County Association for Responsible Development (VCARD). The commission discussed which topics they would like to talk about with each group.

Chair Brown stated that at the December charter meeting the commission would discuss the Volusia Growth Management Commission (VGMC). How county council approves and rejects the VGMC budget was discussed. The commission discussed having topics in sections 205.1 through 205.6 on the agenda at the November charter meeting. Discussion of these topics would exclude beach driving, which the commission agreed will not be a topic for discussion as it is currently in litigation, it will be discussed after it is out of the court system.

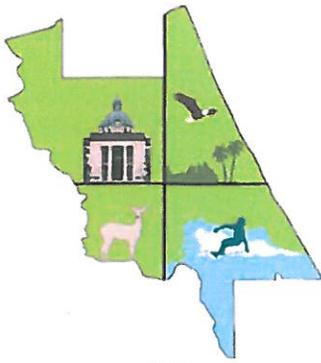
The commission would like to establish an order of discussion for the next meeting on how they will go through the charter. They discussed how to invite groups to meetings. Mrs. Butler stated that we can extend invitations to agencies, post on social media, issue press releases, and post on our website. Mr. Watts asked if an area was set up to receive notifications about issues. Mrs. Butler responded that it is not currently set up, but it can be done. Mr. Dinneen stated that we can do a media blast and notify everyone so no one will be left out.

Chair Brown asked that the commission review the data that was prepared by staff so that it can be discussed at the November charter meeting if time allows and if not it will be discussed at the December meeting. Discussion at the November meeting will be article 1 and article 2 of the charter, except for the VGMC.

Mr. Darden withdrew the motion that he made at the September 3, 2015 meeting.

## **ADJOURNMENT**

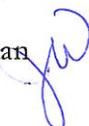
There being no further business for discussion, the meeting was adjourned at 7:16 p.m. The next meeting will take place on November 9, 2015 at 5:30 p.m. in the Volusia Room at the Daytona Beach International Airport, 700 Catalina Drive, Daytona Beach, Florida.



## Volusia Growth Management Commission

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TO: Members of the Volusia County Charter Review Commission

FROM: James Wachtel, VGMC Chairman 

DATE: October 12, 2015

RE: Volusia Growth Management Commission

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First, I would like to thank you for the opportunity to address the Charter Review Commission at the September 29, 2015 listening session. The time, effort and experience each of you are contributing to the large undertaking of reviewing the County's Charter is admirable.

Based upon recent media reports, we understand the Charter Review Commission has been asked to look at the Volusia Growth Management Commission (VGMC), specifically to evaluate the need for the commission's continued existence.

We'd like to take this opportunity to invite each of you to attend the October 28, 2015 regular meeting of the commission where VGMC's Planning Consultant Jim Sellen, VHB and Legal Counsel Paul Chipok, GrayRobinson will be presenting an educational and historical overview of the VGMC to the commission members. We feel confident you, too, will benefit from the presentation and the information will prove valuable to your review of the VGMC. We also welcome the opportunity to create an open dialogue with each of you relating to any questions, comments or concerns you may have regarding the commission.

The meeting is scheduled to begin at 7:00 p.m. in the County Council Chambers in DeLand on Wednesday, October 28, 2015. We hope to see you there.

cc: Volusia County Chairman and Council Members  
VGMC Members & Staff

9/26/2015 1.

Volusia Cty. Charter Review Commission Ros C. Campbell, Esq.  
Thomas E. Kelly Admin. Center BOX 1422  
123 W. Endiara Ave. Ormond Beach, FL 32175  
De Land, FL 32720 PCPFS Perm. file, Reagan White House

Dear Sirs,

I propose the following changes to the County Charter:

1. Hon. Jason Davis should get no pay raises.

2. All of our founding fathers in this country were true statesmen, get no pay - only a small stipend to get them to and from the seat of government.

All elected County officials should get a 50% pay cut, and pay for their own health & life insurance, 401(k), etc.

3. No more pensions or "Golden Parachutes" for them at retirement.

4. All elected <sup>CITY</sup> officials should get 1 County car/gas card for CITY use only.

5. Absolutely NO secret notes or meetings - we have gov't. of

the people & The FL Open Records Law & FL GOVT. in the Sunshine Laws. I don't want to sue under the FOIA, or contact the FL First Amendment Foundation to find out what (over, please)

the Volusia County leaders did in each particular case.

6. The County Charter must be amended to respect the property and hard earned money of the private citizens; whose taxes keep getting raised to give "incentives" to private corporations worth hundreds of millions, or billions of dollars. If County officials want to fund such groups, let them do so with their own money. The moment the idea is admitted into society that property is not as sacred as the laws of GOD & that there is not a force of law & public justice to protect it, anarchy & tyranny <sup>(Tax \$)</sup> must be secure or liberty cannot exist. <sup>"See 5th Amend., U.S. Constitution."</sup> John Adams: "The Utopian schemes of leveling [re-distribution of wealth] & a community of goods [central ownership of the means of production & distribution], are as visionary & impracticable as those which vest all property in the [British] Crown; [they] are arbitrary, despotic, & insupportable, unconstitutional." <sup>"Samuel Hon. Adams"</sup>

7. Immediately fire John Poor. Put head of Ocean Center / intl Airport on yearly / performance based contract. No reasonable profit & growth each year results in termination; new director at each location.

8. Phase in all electric & hydrogen buses & County vehicles. <sup>9. Make all city, bus, ETC Green-certified</sup>

<sup>9a. Look at geothermal heating / cooling</sup> Sincerely, Roy C. Campbell <sup>Eng. Systems for Bldg. & B.</sup>

Paul E. Campbell, Esq.  
Box 1482  
Ormond Beach, FL 32175  
PCPFS Farm, Jule, Regan Wildlife House

ORLANDO FL 328

29 SEP 2015 PM 4 L



Volusia Cty. District Review Commission  
Thomas C. Kelly Admin. Center  
123 W. Indiana Ave.  
De Land, FL 32720

3272094515



**From:** "Mikedenis@cfl.rr.com" <mikedenis@cfl.rr.com>  
**To:** <vccharterreview@volusia.org>  
**Date:** 10/29/2015 2:56 PM  
**Subject:** I would like to talk about a proposal to add a time limits to vacated beach approaches

I would like to speak on Section 205. Unified Countywide Beach Regulations at the Nov 9th Review Meeting

I am not sure which section (.1 to .6 or?) my issue fits into, as I am not a lawyer. What I am speaking about is the results of Ordinance in Chapter 20 (Beach Code), Article III, Section 20-83 Preservation of access through existing approaches, see below

Sec. 20-83. - Preservation of access through existing approaches.

Neither the county nor any municipality shall vacate any approach to the beach or allow the same to be used for private purposes not otherwise preserved to a property owner as a matter of law; provided that, the county may vacate an approach if it determines that equal or superior access is created within 1,000 feet of the vacated approach. No approach may be vacated until the new access is constructed and accepted for maintenance by the county or the affected municipality.

This Ordinance gives the power to the Volusia County Commission to vacate beach approaches within certain guide lines and criterion. This has been done in the past less than a half dozen times since the County has taken control of Volusia's Beaches. Let's take a look at the last 3 that the Volusia Council voted on;

1. Lenox Ave June 2013 Awaiting the Hard Rock Project
2. Vermont Ave Nov of 2004 Vacant Land Sold to a new Owner (Purchased @ \$1.45M sold @ \$2.1M Aug 2015)
3. Ocean Dunes Dec 2004 Vacant Land Same Owner, as I could not find listing of owners on the Property Appraiser's website.

The Vermont Ave Approach became Part of the Lifeguard Headquarters, and the Original 7 foot wide access at Ocean Dunes, became two pathways to the beach. But in these two cases, the original project never became reality. Nothing prevents a developer to buy two or more small parcels of land adjacent to a beach approach, request the County abandon the beach approach, trade it for a 15 foot strip of land on one end or the other, and sit on the project for many years, and trade some other east of A1A land to the county to meet Florida Stature 161.55 This blights our beach and has been done in the past.

What I am proposing is that there is a time limit for vacated approaches in the 205 section of the Charter to prevent such tactics of developers. Say, if an approach is vacated by Commission action, and the project is not built with 10 years, the trades become null and void. Of course the above three project would have to be "grandfathered" in, I think. again not being a lawyer..

Mike Denis

625 Lenox Ave

Daytona beach, FL 32118

(386) 310-7141

**From:** Greg Gimbert <greggimbert@hotmail.com>  
**To:** Charter Review <vccharterreview@volusia.org>  
**CC:** Fox35 Kelly Joyce reporter <kellyjoyce2@yahoo.com>, Blaine Tolison <blai...>  
**Date:** 10/30/2015 8:37 AM  
**Subject:** November 9th Meeting

Good Morning Chairman Hyatt Brown,

At the last meeting you introduced your idea to bring in presenters representing local groups with relevant subject matter information and experience. It was said that such input requires more than the three minutes given individuals. I agree that taking on complex charter review topics requires more than three minutes. I further agree that large groups deserve consideration for additional speaking time, in proportion to their size. So I am asking for the opportunity to do the same on behalf of Let Volusia Vote, which is by far the largest group of issue voters ever in Volusia.

While the desire of county officials is for charter review to side step the beach vote issue it would not be prudent or honest (or even legal?) for that decision to be made by only yourself or even just a couple of the committee members. Worse still is that thus far the process has proceeded without full disclosure to all members of controlling state constitutional and state statute facts as they pertain to not just our issue but others. Such full disclosure adds the missing and necessary understanding of these aspects and how they also apply to other controversial proposals before your committee such as ethics reform, the return to a constitutional status for our County Sheriff, and the removal of the growth management protections now in our charter.

Please reply to confirm receipt of this email and to inform our members if Let Volusia Vote will be extended the same opportunity as you will be offering the Chamber and Team Volusia and have agenda placement at the November 9th meeting.

Very truly yours,

Greg Gimbert - ChairmanLet Volusia Vote

**From:** John M Bandorf <jbandorf@cfl.rr.com>  
**To:** <VCCharterReview@volusia.org>  
**CC:** <chris.graham@news-jrnl.com>, <jdavis@volusia.org>, <jwagner@volusia.org...>  
**Date:** 9/23/2015 10:25 PM  
**Subject:** Charter Review Public comments

Volusia County Charter Review Commissioners:

As a follow-up to my comments at this afternoon's meeting of the Volusia County Charter Review Commission - I would like to put my suggestions in writing, and further explain why I think these changes to the charter would be in the best interest of the citizens of Volusia County.

1. Return the Office of Medical Examiner back to the State of Florida. Most county Medical Examiners in the State of Florida are state employees - however, in Volusia County the ME is part of the Volusia County Department of Public Protection (VCDPP).  
<http://www.volusia.org/services/public-protection/>

Also under VCDPP are the division of corrections (jail), EVAC, the Beach Patrol Division, etc. (All of these divisions are supervised by the same department director)

If corrections (jail), EVAC or the Beach Patrol have an in-custody death - a member of their very same department (VCDPP) conducts the autopsy in that death (Conflict of Interest). The County ME has recently had it's share of scandals (examples below).

DR. Bao - Trayvon Martin Autopsy  
<http://www.cbsnews.com/news/shiping-bao-medical-examiner-in-trayvon-martin-case-fired/>

<http://www.news-journalonline.com/article/20130910/NEWS/130919984>

Marlon Brown's Death Investigation  
<http://www.wesh.com/news/central-florida/volusia-county/mortician-disputes-medical-examiners-report-on-death-of-marlon-brown/22101342>

<http://www.wesh.com/news/new-medical-reports-released-in-death-of-man-deputy-hit-killed-with-cruiser/31835832>

2. Repeal the Division of Corrections within the VCDPP - and turn the jail over to the supervision of the Director of the Department of Public Safety (AKA - Volusia County Sheriff)

It only makes sense to combine the jail staff with road and court deputies - like most Florida jails and sheriff departments do. Overtime and costs could be more effectively managed - and there would be a better line of communication between the jail and road/court deputies - this would help streamline getting inmates to and from court, etc., among other advantages.

The current jail administration has very little oversight - due to the fact that it is not answerable to the citizens every four years (elections). The corrupt practices of the jail are allowed to go

unchecked, AND higher administrative staff, such as the County Spokesman or County Manager have little knowledge or experience in dealing with corrections / law enforcement matters - to be able to see the forest from the trees when it comes to corrupt practices within the jail.

A recent example of senior county adm's failure to recognize a violation of a standard law enforcement and correction practice, can be seen in the recent in-custody jail death of April Brogan - a 28 yr old mother. <http://volusiaexposed.com/highprofile/aprilbrogan2.html>

While county senior administrators advised the public that no procedures were violated in the drug withdrawal death of Ms. Brogan - I am left wondering how Ms. Brogan's drug withdrawal symptoms were NOT noticed by jail staff, IF they were actually following proper 2300 hrs (11PM) lock down and wristband check head counts. (see the above VolusiaExposed article for particulars)

Ms. Brogan's death is unfortunately NOT unique within the Volusia County Jail. It's time for someone to flush the corruption toilet at the jail - and allow the number one law enforcement official in the county to supervise the jail !

3. Give the Sheriff back his / her Constitutional (Florida Constitution) authority.

Most Florida sheriffs are "Constitutional Sheriffs" - they gain their authority via the State Constitution. However, per Section 601.01 of the County Charter - Volusia County DOES NOT have a "Sheriff Department" but rather a "Department of Public Safety". The Sheriff's official title is the "Director of Department of Public Safety"(Per the County Charter).

I submit that it is a falsehood - that's been played on the citizens of Volusia County for far too long. Most citizens believe that they have a "Sheriff" and a "Sheriff Department". I submit to you, my opinion, that the County Charter says differently.

Imagine if the "Sheriff" is not accountable to the County Council - and yet another "Waverly" scandal rocks the council. Our Constitutional sheriff department would be far more able to investigate any hanky panky attached to the County Council.

However, if you do not want to have a "sheriff department" - then at the very least be honest with the public - and repaint all patrol cars to reflect that they are the Volusia County Department of Public Safety.

I think if you do (repaint the patrol car) - far more citizens than merely I would be demanding that Volusia County return to a Constitutional Sheriff Department.

Thank You for this opportunity to submit my recommendations.

John Bandorf  
18 Village Drive  
Ormond Beach, FL

386-238-5935  
jbandorf@cfl.rr.com

**From:** Trevor Brant <trevorforocmayor@gmail.com>  
**To:** <VCCharterReview@volusia.org>  
**Date:** 9/24/2015 1:02 AM  
**Subject:** Charter Review Public comments

Charter government is a detriment to society. Local government should never be allowed to grow to a point where professional management is necessary. Large governments need large amounts of money. Our rights are turned into priviledges and we are forced to buy them back at a premium. Our sweat equity is drained against our will by charter government.

Government is put in place to protect the rights of the individual. Charter government does the opposite. It's time to put a stop too the theft our sweat equity and our rights.

Please think about doing away with charter government.

Regards  
Trevor Brant  
Future candidate for Orange City mayor

**From:** David Church <humintdlc@gmail.com>  
**To:** <vccharterreview@volusia.org>  
**CC:** David Church <humintdlc@gmail.com>  
**Date:** 9/25/2015 12:38 PM  
**Subject:** Citizen recommendation for consideration by the Charter Review Commission

Members of the Volusia County Charter Review Commission,

Good afternoon to each of you, and I "thank you" for the important job you are undertaking as it pertains to your participation in studying the Volusia County's Home Rule Charter for any changes you deem applicable, to include input from the public. Whereas the Volusia County Charter Review Commission requests public comments for change to the current Volusia County Charter, the following recommendation with four possible solutions is submitted. It is my hope that one of the solutions is placed on the general election ballot in November 2016 for public hearing as an amendment to our current charter:

**\*RECOMMENDATION:\***

That a *\*background/physical investigation\** be conducted on each candidate who is *\*elected\** to hold one of the political offices in Volusia County and that the candidate successfully pass the background/physical investigation prior to taking their oath for office.

**\*PROBLEM/BACKGROUND:\*** During the 2012 election of officials for the Volusia County, it was brought to voters attention by an article in Daytona Beach News Journal that the newspaper failed to do a full background investigation on a candidate. After reading the article, I asked myself why would it be the responsibility of the newspaper to conduct a background investigation; surely there had to be a procedure in place whereas the county would be required to conduct a background investigation. As a result of my inquisitiveness, I e-mailed Ms. Ann McFall, Supervisor of Elections, Volusia County for some answers. Per Ms. McFall, the county *\*does not\** conduct a "background investigation" on a candidate. However, more important, she pointed out that it is **\*THE RESPONSIBILITY OF THE VOTER\*** to *"familiarize*

himself or herself with the candidates and issues\*." (see link <http://volusiaelections.org/VoterEducation/rights.htm>). I, like others, have read the "responsibilities of the voter", but did not think it actually involved my time, effort and resources to fully investigate any individual who can basically seek a political office. As it stands now, a candidate files a ton of financial papers, states that he/she has not committed a felony, pays a filing fee and becomes a candidate. This just does not seem right. Background/physical investigations are required on almost all jobs today; why not on an individual who has the ability to effect how each citizen lives. What about the candidate who may have committed a felony, but plea bargained it to a misdemeanor? What about the candidate who has been convicted of a misdemeanor of disorderly intoxication, battery, theft of property, or trespassing which are all classified as misdemeanors and can carry up to one year in prison? What about the candidate who has been involved in taking drugs, DUI, or has been fired from one of his/her previous jobs for dishonesty, etc.? I, as a voter, would want to know all of the answers to the questions above about the candidate just as I want to know where he/she stands on an issue.

Representation

of the citizens is a sacred trust and it has been proven that trust has

been violated over and over again; we deserve better. Below are four solutions to the problem:

**\*SOLUTIONS:\***

1. Once a candidate has been elected, the candidate is to successfully pass a background/physical investigation which is to be paid for and conducted by the county. The background/physical is to be as a minimum what is currently required of employees in Volusia County. Refusal to have a background/physical investigation conducted is to negate the individual's candidacy.
2. If Solution 1, above, is not implemented and it remains the responsibility of the voter to check a candidate's background (other than where the candidate stands on an issue), request that a form be originated for the candidate with which the voter can use to submit to an investigative authority of their own choosing for a background/physical investigation. The cost of the investigation would be at the expense of the voter. The form needs to contain, as a minimum, the candidate's social security number and any other data that would be required to run a background investigation (similar to what is used by the County to conduct a background/physical investigation on their employees). Failure by the candidate to provide sufficient data for the voter to conduct a background investigation would negate the individual's candidacy.
3. In lieu of Solution 1, or 2 above, request a questionnaire be devised which would accompany the candidate's application. When completed, it would be made available to the public either electronically, via regular mail (if requested), or published in the local newspaper. This solution would be more cost effective as no background investigation by the voter, or office to which the candidate is seeking would be required. Failure by the candidate to complete the questionnaire would negate the individual's candidacy.

As a minimum, the following additional questions need to be included on the form/questionnaire:

- a. Have you ever been convicted of a felony? If yes, explain.
- b. Have you ever committed a felony, but plea bargained it to a misdemeanor? If yes, explain.
- c. Have you ever been convicted of a misdemeanor of disorderly intoxication, battery, theft of property, or trespassing? If yes, explain.
- d. Have you ever been convicted, entered a plea of no contest, had prosecution deferred, or adjudication withheld for any crime except for minor traffic violations? If yes, explain.
- e. Have you ever been involved in the illegal purchase, manufacture, trafficking, production or sale of any illegal drug/narcotic? If yes, explain.
- f. Have you even been discharged from the Armed Forces of the United States by means other than a honorable discharge?
- g. Have you ever been fired, or discharged from employment? What were the circumstances?
- h. Has your use of alcoholic beverages ever resulted in the loss of a job, disciplinary action, arrest by police, or any alcohol related treatment, or counseling (such as alcohol abuse, or alcoholism)? If yes, explain.
- i. Have you ever had your wages garnished, or anything repossessed? If

yes, explain.

j. Have you ever had a lien placed on your property for failing to pay taxes? If yes, explain.

k. Do you have any judgments against you which you have not paid? If yes, explain.

NOTE: In lieu of questions a- e, the following single question could replace them. However, questions f - k need to remain.

Have you ever been arrested, charged, cited, held, or detained by Federal, State, or other law enforcement authorities regardless of whether the charge was dropped or dismissed, or you were found not guilty? If the answer is yes to any portion of this question, provide details (date, type of offense, location, court location/name, and penalty imposed).

4. If none of the above solutions cannot be initiated, request that a day be set aside by each candidate where the voter can ask questions similar to what is contained in Solution 3, above, or other questions as may be deemed necessary by the voter. Failure by the candidate to participate in this procedure would negate the candidate's candidacy.

It is my wish that in addition to the current county and state requirements for a candidate to an elected office, the Volusia County Charter Review Commission will recommend one of the solutions mentioned above to be placed on the November 2016 ballot. To do so, Volusia County would be one of the first, \*if not the first,\* county in Florida (maybe the United States) to require an elected official to undergo and successfully pass a background/physical investigation prior to taking their oath for office.

By way of introduction, my name is David L. Church. I am a retiree living in the City of DeLand, Florida, since July 2009 after having served 44 plus years with the Federal government. I am not a political activist, but care about our voting and political process. Too often taxpayers/voters sit back and gripe about an issue when all they have to do is make their voices known. Hopefully, my voice will be heard on this very important issue. I am available to discuss this issue in person if needed.

David L. Church  
102 Suffolk Court  
DeLand, FL 32724  
E-mail: humintdlc@gmail.com  
Phone: (H) 386 775-4339

**From:** "Mikedenis@cfl.rr.com" <mikedenis@cfl.rr.com>  
**To:** <vccharterreview@volusia.org>  
**Date:** 10/1/2015 4:27 PM  
**Subject:** Compromise Proposal for Beach Driving.

The Ruling by Circuit Judge Upchurch keeps the final decision about changes to beach driving in the County Council and requires a 3/5 majority. But what happens before that is undefined.

Have a two step process for changes to beach access and driving. A proposal is made by any source, Staff, Developer, or . The Council votes, up or down, that this proposal is worthy of the process. This becomes a simple majority item, pass or fail. If the simple majority of the Council agrees it should be moved to the next stage, the item is put on the ballot on the next general election (November in even years). If the requestor does not wish to wait until the next general election, they pay the cost to the county for a special election. If the Council votes against the proposal, it is considered as not a valid proposal.

The Ballot item is voted on by the citizens of the county, and if it passes a simple majority, then it goes for final 3/5 majority approval by the County Commission, as it is today. If the electorate votes it down, then it is considered as not a valid proposal, and is withdrawn.

To me this makes sense, as the council has the final say, in line with the court ruling, and the people have a say.

Mike Denis

625 Lenox Ave #2

Daytona Beach, FL 32118

**From:** "Digital" <digitaleffects@msn.com>  
**To:** <vccharterreview@volusia.org>  
**Date:** 10/7/2015 6:15 PM  
**Subject:** Cap fees, penalties, interest rates Port Orange Government can place on citizens.

Port Orange government places exhorbitant fees on code violations and then compounds these fees, adds penalties, applies interest, adds all this to the principal balance and adds additional fees, penalties and interest times two each calendar month until all is paid, with no upper limit on the amount that can be charged. This grows to tens of thousands of dollars in little time which makes it impossible to pay by the poorer citizens of the area. And, some of these code violations are unfounded.

Sylvia Finkell  
717 Palm Circle Drive  
Port Orange  
FL 32127-6129

**From:** Greg Gimbert <greggimbert@hotmail.com>  
**To:** Charter Review <vccharterreview@volusia.org>  
**Date:** 11/8/2015 3:03 PM  
**Subject:** Monday nights meeting agenda.  
**Attachments:** The Florida Constitution Article 7 Section 12.pdf; The Florida Constitution Article 7 summary.pdf; Referenda Prohibited 163.3167.pdf; Beach Statute 161.58.pdf

TO ALL CHARTER REVIEW  
COMMITTEE MEMBERS

Monday night's Charter Review Committee agenda still shows a refusal to allow presentation of facts supporting the placement of the Let Volusia Vote Amendment on the 2016 ballot which it is in your power to do.

Goal:

To see a majority of you,  
our County Charter Review Committee, use your Statutory and Charter Power to place the Let Volusia Vote Amendment on the ballot even though it is elsewhere tied up in a court fight.

Facts in favor:

It is within your power to do so. Your once every ten year committee is so powerful that by charter even the politicians cannot prevent you from putting the Let Volusia Vote Amendment on the ballot. The mechanism residents used to achieve ballot placement relies on a different legal standing than your Committee. The resident's case in court is in no way a constraint upon you. Your committee is the very mechanism that can save us all the fight over that case.

Clarifying Issue:

Honest consideration

requires acknowledgement of the "Range of Legality" for a ratifying vote of the people in regards to decisions by local politicians. Then see how the Let Volusia Vote Amendment fits into that. At one end of this range of legality lies Legal & Mandatory. At the other end you will find Illegal & Prohibited.

Deciding points:

Examples prove such a range of legality exists on residents having a ratifying vote on local decisions. The most prominent example of Legal & Mandatory is found in Article 7 section 12 of our State Constitution which requires a ratifying vote on local bonds. An example of the other extreme, Illegal & Prohibited, can be found in our State Statutes. Chapter 163 contains a prohibition on a vote of the people to ratify a development order or changes to a land use map. There are a few other examples of each extreme, Mandatory or Illegal, but they are the exceptions not the rule.

Relevance to the Let  
Volusia Vote Amendment:

Any vote of the people, excluding those few that already have a Mandatory or Illegal designation, is thus legal and possible. There is a petition mechanism to use if the people are willing to get off their rear end to claim it. The politicians can vote to do so too. Or in this question before us now, a public that has a Charter Review Committee with the will to do so too. All three are distinctly different paths to placing our amendment on the ballot.

Regardless of how it

gets there the Let Volusia Vote Amendment plainly exists in this legal and possible range because: the Constitution does not mandate or prohibit it. State Statutes do not mandate or prohibit it. Local Charter does not mandate or prohibit it.

In order for a ratifying vote of the people on beach driving to be illegal such a prohibition on it would have to exist in one of those three levels of law. No such prohibition exists. Let Volusia Vote is legal because there is no law against it yet.

That knife cuts both ways though. It is also within your power to put on the ballot a prohibition on a ratifying vote of the people regarding beach driving removal and if it passed it would make the Let Volusia Vote Amendment illegal.

There is no law or constraint one way or the other at this time. It is completely in your hands right now.

Conclusions:

Legally sound - Let Volusia Vote's Charter Amendment is legal simply because there is no law on the books at any level prohibiting it.

Within your power - Our county charter gives special power to your once every ten year committee to place on the ballot that which our politicians themselves stand in the way of. You can do it because your committee is one of a built in release valve. The fact is that your primary reason for existing is ability to be responsive to the public

and put things on the ballot without anyone being able to stop you.

Where do we go from here?:

With power comes obligation. To serve on our Charter Review Committee is to hold a position of esteem and responsibility. It is not for defense of the personal, financial, or political goals of a few. Your Charter Review Committee, our Charter Review Committee, is the last opportunity to show the residents of Volusia that actions in government can exist to serve more than oceanfront developers on this issue.

The job you each signed up for is to enable voters to correct the gaps when politicians stray too far. It is your inescapable community obligation to place the LVV Amendment on the ballot.

Very truly yours,

Greg Gimbert

Chairman

Let Volusia Vote

Issues of Consideration	Date	Charter Section
<ul style="list-style-type: none"> <li>• Beach <ul style="list-style-type: none"> <li>○ Beach Driving</li> <li>○ Beach Tolls</li> </ul> </li> <li>• Volusia Growth Management Commission</li> <li>• Economic Development</li> <li>• Human Services</li> <li>• Environment <ul style="list-style-type: none"> <li>○ Minimum standards</li> <li>○ Protection of waterways</li> </ul> </li> <li>• Personnel Board</li> <li>• Legal review <ul style="list-style-type: none"> <li>○ Deletion of transition provision – 2004 election</li> </ul> </li> <li>• Ethics</li> <li>• Governance <ul style="list-style-type: none"> <li>○ Compensation</li> <li>○ Confirmation of legal assistants by Council</li> <li>○ Division of powers</li> <li>○ Improved communication with Cities</li> <li>○ Location of County court facilities</li> <li>○ Medical Examiner – Florida Statue 406</li> <li>○ Non interference by County Council</li> <li>○ Term limits of Council</li> <li>○ Votes that required 2/3 of Council</li> <li>○ Setting of Council agenda</li> <li>○ Review of budgetary process</li> <li>○ Government consolidation</li> <li>○ Reimbursement of Council expenses</li> <li>○ Resign to run for elected office</li> <li>○ Recall of elected official – Florida Statue 100.361</li> <li>○ Sheriff – constitutional officer</li> <li>○ Sheriff – jail</li> <li>○ Staff support for Council members (new)</li> </ul> </li> </ul>	<p>December 14, 2015</p> <p>December 14, 2015</p> <p>December 14, 2015</p> <p>November 9, 2015</p> <p>March 14, 2016</p> <p>October 12, 2015</p> <p>March 14, 2016</p> <p>January 11, 2016</p> <p>February 8, 2016</p> <p>November 9, 2015</p> <p>February 8, 2016</p> <p>November 9, 2015</p> <p>January 11, 2016</p> <p>January 11, 2016</p> <p>January 11, 2016</p> <p>March 14, 2016</p> <p>November 9, 2015</p> <p>October 12, 2015</p> <p>March 14, 2016</p> <p>February 8, 2016</p> <p>January 11, 2016</p>	<p>Section 202.3</p> <p>Section 202.4</p> <p>Section 1003</p> <p>Section 307</p> <p>Article XII</p> <p>Section 304</p> <p>Section 601.2</p> <p>Section 203</p> <p>Section 501</p> <p>Section 404</p> <p>Section 303.1</p> <p>Section 307</p> <p>Section 306</p> <p>Section 1103</p> <p>Section 202.1</p> <p>Section 304</p> <p>Section 1307</p> <p>Section 601.1</p> <p>Article III</p>
<p>Issues for consideration from Council Chair</p> <ul style="list-style-type: none"> <li>• PLDRC replace VGMC</li> <li>• Creation of Ethics Board</li> <li>• Council Chair outside employment</li> <li>• Chair &amp; Council members compensation</li> <li>• Compensation for travel for Council members</li> <li>• 8 year lifetime term limit for County Council</li> <li>• Agenda modifications by Chair</li> <li>• Voting of agenda items by Chair</li> </ul>	<p>December 14, 2015</p> <p>March 14, 2016</p> <p>January 11, 2016</p> <p>January 11, 2016</p> <p>October 12, 2015</p> <p>January 11, 2016</p> <p>January 11, 2016</p> <p>January 11, 2016</p>	<p>Section 202.3</p> <p>Section 701</p> <p>Section 307.1</p> <p>Section 304</p> <p>Section 304</p> <p>Section 303.5</p> <p>Section 306</p> <p>Section 308</p>
<p>Issues for consideration from County Manager via Council Members</p> <ul style="list-style-type: none"> <li>• Eliminate the VGMC</li> <li>• Elect at large Council Member to serve as vice chair of County Council (new)</li> </ul>	<p>December 14, 2015</p> <p>January 11, 2016</p>	<p>Section 202.3</p> <p>Article III</p>
<p>Issues for consideration from County Manager</p> <ul style="list-style-type: none"> <li>• Reimburse County Council Members</li> </ul>	<p>October 12, 2015</p>	<p>Section 304</p>
<p>Review of Amendment Listing</p>	<p>April 11, 2016</p>	
<p>Final Report</p>	<p>May 9, 2016</p>	

## Volusia County's Home Rule Charter Outline & Meeting Dates

### Meeting Date: November 9, 2015

#### ARTICLE I. - CREATION OF GOVERNMENT

- Sec. 101. – Purpose.
- Sec. 102. - Body corporate and politic.
- Sec. 103. - Name and boundaries.

#### ARTICLE II. - POWERS AND DUTIES OF THE COUNTY

- Sec. 201. - General.
- Sec. 202. - Special.
- Sec. 202.1. - Transfer of powers.
- Sec. 202.2. - Security of citizens' property rights.
- Sec. 202.4. - Minimum standards for environmental protection.
- Sec. 203. - Division of powers.
- Sec. 204. - Construction.
- Sec. 205. - Unified countywide beach regulations.
- Sec. 205.1. - The beach: Public right of access and use.
- Sec. 205.2. - Unified Beach Code.
- Sec. 205.3. - Vehicular access fees.
- Sec. 205.4. - Delivery of services on the beach.
- Sec. 205.5. - Effect of Unified Beach Code.
- Sec. 205.6. - Definitions of beach and approach.
- Sec. 206. - School planning.

### Meeting Date: December 14, 2015

- Sec. 202.3. - Volusia Growth Management Commission.

### Meeting Date: January 11, 2016

#### ARTICLE III. - LEGISLATIVE BRANCH—COUNTY COUNCIL

- Sec. 301. - Composition.
- Sec. 301.1. - Council districts.
- Sec. 302. - Qualifications.
- Sec. 303. - Terms of office.
- Sec. 303.1. - District council members.
- Sec. 303.2. - At large member.
- Sec. 303.3. - County chair.
- Sec. 303.4. - Terms.
- Sec. 303.5. - Limitation of tenure.
- Sec. 304. - Compensation.
- Sec. 305. - Vacancies and suspensions.

- Sec. 306. - Meetings and organization.
- Sec. 306.1. - Special meetings.
- Sec. 306.2. - Location of meetings.
- Sec. 307. - Powers.
- Sec. 307.1. - The county chair.
- Sec. 307.2. - Annual report.
- Sec. 308. - Legislative procedures.
- Sec. 308.1. - Code of ordinances.
- Sec. 309. - Investigations.

### ARTICLE IIIA. - COUNTY ATTORNEY

- Sec. IIIA.1. - County attorney.
- Sec. IIIA.2. - Compensation.
- Sec. IIIA.3. - Temporary absence.

### Meeting Date: February 8, 2016

### ARTICLE IV. - ADMINISTRATIVE BRANCH—COUNTY MANAGEMENT

- Sec. 401. - County manager.
- Sec. 402. - Compensation.
- Sec. 403. - Powers.
- Sec. 404. - Noninterference by county council.
- Sec. 405. - Temporary absence.

### ARTICLE V. - JUDICIAL SYSTEM

- Sec. 501. - Duties of the county council in respect to courts.
- Sec. 502. - Judicial offices.

### ARTICLE VI. - ADMINISTRATIVE DEPARTMENTS OF THE GOVERNMENT

- Sec. 601. - Initial departments.
- Sec. 601.1. - Functions and duties of departments receiving powers of former constitutional officers.
- Sec. 601.2. - Department of legal services.
- Sec. 602. - Department directors.
- Sec. 602.1. - Election of directors.
- Sec. 603. - Changes in departments.
- Sec. 604. - Administrative code.

### ARTICLE VII. - ADJUSTMENT, REGULATORY AND ADVISORY BOARDS

- Sec. 701. - Initial boards.

### ARTICLE VIII. - SCHOOL SYSTEM

- Sec. 801. - Relation to the charter government.

### ARTICLE IX. - ELECTIONS

- Sec. 901. - Commencement of terms.

## Agenda Item VI

- Sec. 901.1. - Election procedures.
- Sec. 902. - Canvassing board.
- Sec. 903. - Conduct of elections.
- Sec. 904. - Nonpartisan elections.

### Meeting Date: March 14, 2016

#### ARTICLE X. - PERSONNEL ADMINISTRATION

- Sec. 1001. - Merit system.
- Sec. 1002. - Employment policy.
- Sec. 1003. - Personnel board.
- Sec. 1003.1. - Appointment—Removal.
- Sec. 1003.2. - Qualifications.
- Sec. 1003.3. - Powers and duties.
- Sec. 1004. - Personnel director.
- Sec. 1004.1. - Qualifications.
- Sec. 1004.2. - Powers and duties.
- Sec. 1005. - Unclassified and classified service.
- Sec. 1006. - Personnel review.
- Sec. 1007. - Employee representatives.
- Sec. 1008. - Oaths.
- Sec. 1009. - Amendment to rules and regulations.
- Sec. 1010. - Retirement system.
- Sec. 1011. - Adoption of merit system.

#### ARTICLE XI. - FINANCE

- Sec. 1101. - Fiscal year.
- Sec. 1102. - General.
- Sec. 1103. - Budgets.
- Sec. 1103.1. - Detail.
- Sec. 1103.2. - Total.
- Sec. 1103.3. - Review.
- Sec. 1103.4. - Reduction of millage.
- Sec. 1104. - Bonds.
- Sec. 1104.1. - Outstanding bonds.
- Sec. 1104.2. - Authority to issue.
- Sec. 1104.3. - Bond administration.

#### ARTICLE XII. - CODE OF ETHICS

- Sec. 1201. - Generally.

#### ARTICLE XIII. - MISCELLANEOUS PROVISIONS

- Sec. 1301. - Effective date.

## Agenda Item VI

- Sec. 1302. - Amendment.
- Sec. 1302.1. - Amendment by council.
- Sec. 1302.2. - Amendment by petition.
- Sec. 1302.3. - Amendment referendum.
- Sec. 1303. - Charter review.
- Sec. 1304. - Effect on local laws.
- Sec. 1305. - Conflict of county ordinances with municipal ordinances.
- Sec. 1306. - Legal actions involving the county.
- Sec. 1307. - Political activities.
- Sec. 1308. - Construction of act.
- Sec. 1309. - Ineligibility for appointment.
- Sec. 1310. - Voting regulations.
- Sec. 1311. - Repeal.
- Sec. 1311.1. - Petition.
- Sec. 1311.2. - Volusia County Charter Repeal Commission.
- Sec. 1311.3. - Repeal referendum.
- Sec. 1313. - Reserved.

### ARTICLE XIV. - SPECIAL TAX DISTRICTS AND AUTHORITIES

- Sec. 1401. - East Volusia Navigation District.
- Sec. 1402. - Halifax Area Research Commission.
- Sec. 1403. - Halifax Drainage District.
- Sec. 1404. - Halifax River Waterways Improvement District.
- Sec. 1405. - Lake Ashby Drainage District.
- Sec. 1406. - New Smyrna Inlet District.
- Sec. 1407. - North Ormond Drainage District.
- Sec. 1408. - Northeast Volusia Development Authority.
- Sec. 1409. - South County Drainage District.
- Sec. 1410. - Turnbull Hammock Drainage District.
- Sec. 1411. - Volusia County Sanitary District.
- Sec. 1412. - Volusia County Water and Sewer District.
- Sec. 1413. - Volusia County Water District.
- Sec. 1414. - Water Conservation and Control Authority.
- Sec. 1415. - Daytona Beach Special Road and Bridge District.
- Sec. 1416. - DeLand-Lake Helen Special Road and Bridge District.
- Sec. 1417. - DeLeon Springs-Glenwood Special Road and Bridge District.
- Sec. 1418. - DeLeon Springs-Seville Special Road and Bridge District.
- Sec. 1419. - Halifax-St. Johns River Road and Bridge District.
- Sec. 1420. - Halifax Special Road and Bridge District.

## Agenda Item VI

- Sec. 1421. - Lake Helen-Osteen Special Road and Bridge District.
- Sec. 1422. - New Smyrna-Coronado Beach Special Road and Bridge District.
- Sec. 1423. - New Smyrna Beach Special Road and Bridge District.
- Sec. 1424. - Orange City-Enterprise Special Road and Bridge District.
- Sec. 1425. - Orange City-Lake Helen Special Road and Bridge District.
- Sec. 1426. - Osteen-Enterprise Special Road and Bridge District.
- Sec. 1427. - Osteen-Maytown, Oak Hill Special Road and Bridge District.
- Sec. 1428. - Port Orange-Inlet Special Road and Bridge District.
- Sec. 1429. - Port Orange-South Peninsula Special Road and Bridge District.
- Sec. 1430. - Port Orange Special Road and Bridge District.
- Sec. 1431. - Special Road and Bridge District.
- Sec. 1432. - Turnbull Special Road and Bridge District.
- Sec. 1433. - Special road and bridge districts; transfer of assets, etc.
- Sec. 1434. - Other special districts and authorities.

### ARTICLE XV. - TRANSITION PROVISIONS

#### **Meeting Date: April 11, 2016**

- Review of prior meeting recommendations

#### **Meeting Date: May 9, 2016**

- Final Report

**Charter Article I & II (excluding 202.3)**

**November 9, 2015**

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**ITEMS OF CONSIDERATION:** Beach, Environment – minimum standards & protection of waterways, Governance – division of powers

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**ARTICLE I. - CREATION OF GOVERNMENT**

Sec. 101. - Purpose.

We the people of Volusia County, State of Florida, in order to create a more responsible and efficient local government, do in accordance with the Constitution and laws of the State of Florida, ordain and establish as our charter and form of government this charter of Volusia County, Florida.

(Ch. 70-966, Laws of Florida (Sp. Acts), Art. I, § 101)

**State Law reference**— Authority of county to adopt the Home Rule Charter, F.S. § 125.60.

Sec. 102. - Body corporate and politic.

Volusia County shall be a body corporate and politic and as such shall have all rights and powers of local self-government which are now, or hereafter may be, provided by the Constitution, laws of Florida and this charter.

(Ch. 70-966, Laws of Florida (Sp. Acts), Art. I, § 102)

Sec. 103. - Name and boundaries.

The corporate name shall be "the County of Volusia," hereafter referred to as the county, which shall be so designated in all actions and proceedings touching its rights, powers, properties and duties. Its seat and boundaries shall be those presently designated by law.

(Ch. 70-966, Laws of Florida (Sp. Acts), Art. I, § 103)

**State Law reference**— County boundaries of Volusia County, F.S. § 7.64.

**ARTICLE II. - POWERS AND DUTIES OF THE COUNTY**

Sec. 201. - General.

The county, under this charter, shall have all powers and duties prescribed by the Constitution, laws of Florida and this charter, and shall have all powers of local self-government.

(Ch. 70-966, Laws of Florida (Sp. Acts), Art. II, § 201)

Sec. 202. - Special.

The county, operating under this charter, shall have all special powers and duties which are not inconsistent with this charter, heretofore granted by law to the board of county commissioners, and shall have such additional county and municipal powers as may be required to fulfill the intent of this charter.

- (1) Tax Millage. The county shall have all necessary powers to accomplish municipal purposes within special districts. Property situated within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents not within municipal boundaries, nor shall property situated in the county be subject to taxation for services provided by the county exclusively for the benefit of the property or residents within municipal boundaries. To this end, the county council, hereafter referred to as the council, may by ordinance create districts for the purpose of levying ad valorem taxes and special assessments to pay for the furnishing of municipal services, and the tax imposed shall be within the limits of millage set for municipal purposes. Should such services be furnished within a municipality, the total millage levied by the municipality and the county district levy for this municipal purpose shall not exceed the maximum millage set by law for municipal purposes.
- (2) Salaries. The county shall have the power to fix the salaries of all officers and employees, except as otherwise provided by this charter.

(Ch. 70-966, Laws of Florida (Sp. Acts), Art. II, § 202)

Sec. 202.1. - Transfer of powers.

The council shall by ordinance have the authority to assume and perform all functions and obligations now or hereinafter performed by any municipality, special district or agency whenever such municipality, special district or agency shall request the performance or transfer of the functions to the county.

(Ch. 70-966, Laws of Florida (Sp. Acts), Art. II, § 202.1)

Sec. 202.2. - Security of citizens' property rights.

In order to secure to the citizens of the county protection against unlawful taxes, improper use of public property or taxing power, and abuse of the environment, the county shall have the duty to defend and enforce the following rights, and shall have the power to investigate violations of these rights within the county and by ordinance, or by civil or criminal legal action where appropriate, to prevent:

- (1) Imposition of unlawful taxes. 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 Florida.

## AGENDA ITEM VII & VIII

- (2) Improper use of public property or taxing power. The county shall prevent the use of public property or 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 Florida.
- (3) Abuse of the environment. The county shall prevent the development or use of land or the commission of other acts by persons, partnerships or corporations which will tend to destroy or have a substantially adverse effect on the environment of the county. Such destruction or adverse effects may include any or all of the following:
  - (a) Pollution of the air, land or water by foreign substances, including noxious liquids, gases or solid wastes.
  - (b) Pollution of the air, land or water by the creation of potentially harmful conditions therein, including the creation of unnecessarily injurious heat, noise or odor.

(Ch. 70-966, Laws of Florida (Sp. Acts), Art. II, § 202; Res. No. 86-136, Amend. No. 1, 9-18-86)

Sec. 202.4. - Minimum standards for environmental protection.

The council, after consideration of such advice and comment as may be submitted by the governing bodies of municipalities within the county, shall establish minimum standards, procedures, requirements and regulations for the protection of the environment. Such minimum standards, procedures, requirements and regulations may include, but shall not be limited to, tree protection, aquifer protection, stormwater management, wastewater management, river and waterway protection, hazardous waste disposal, wetlands protection, beach and dune protection, environmental protection including air pollution, and the protection from destruction of the resources of the county belonging to the general public, and such other environmental standards as the council determines to be necessary for the protection of the public health, safety, and welfare of the citizens throughout Volusia County. The council shall establish such minimum standards, procedures, requirements and regulations shall apply within all the incorporated and unincorporated areas of Volusia County. In the event of a conflict between any standard, procedure, requirement or regulation established by a county ordinance, the county ordinance shall prevail within the municipality to the extent of any conflict; provided, however, the governing body of each municipality may establish more restrictive standards, procedures, requirements or regulations within the municipality for the protection of the environment.

(Res. No. 86-136, Amend. No. 3, 9-18-86)

Sec. 203. - Division of powers.

This charter hereby establishes the separation between legislative and administrative functions of this government. The establishment and adoption of policy shall be the responsibility of the council and the execution of that policy shall be the responsibility of the county manager.

(Ch. 70-966, Laws of Florida (Sp. Acts), Art. II, § 203)

## AGENDA ITEM VII & VIII

### Sec. 204. - Construction.

The powers granted by this charter shall be construed liberally in favor of the charter government. The specified powers in this charter shall not be construed as limiting, in any way, the general or specific power of the government, as stated in this article. It is the intent of this article to grant to the charter government full power and authority to exercise all governmental powers necessary for the effective operation and conduct of the affairs of the charter government.

(Ch. 70-966, Laws of Florida (Sp. Acts), Art. II, § 204)

### Sec. 205. - Unified countywide beach regulations. **(Discussion only on items not currently under litigation)**

#### Sec. 205.1. - The beach: Public right of access and use.

The public has a right of access to the beaches and a right to use the beaches for recreation and other customary purposes. This right of access and use is a public trust, which the council shall by ordinance define, protect, and enforce. Because prohibiting motor vehicle access to the beaches would deny beach use to many, the council shall authorize, as permitted by law, vehicular access to any part of the beach not reasonably accessible from public parking facilities.

(Res. No. 86-136, Amend. No. 4, 9-18-86; Res. No. 96-121, Amend. No. 3, 6-20-96)

#### Sec. 205.2. - Unified Beach Code.

The council shall have the power and it shall be its duty to enact an ordinance, to be known as the Unified Beach Code ("code"), comprehensively regulating public health, safety, and welfare on and pertaining to the beach, including, but not limited to, regulation of: individual conduct; pedestrian safety; vehicular access and fees; operation and parking of vehicles on beaches and approaches; and vendors, concessionaires, and special events.

(Res. No. 86-136, Amend. No. 4, 9-18-86; Res. No. 96-121, Amend. Nos. 1, 2, 6-20-96)

#### Sec. 205.3. - Vehicular access fees.

The council shall have the exclusive power to impose a uniform, reasonable vehicular beach access fee, but no other fee shall be charged for individual beach access or use. Revenues derived from vehicular access fees and all other revenues derived from the beach shall be expended solely for direct beach purposes permitted by law. Directly and by grants to municipalities, the council shall expend such revenues to maintain a uniform level of services responsive to use and demand.

(Res. No. 86-136, Amend. No. 4, 9-18-86; renumbered Res. No. 96-121, Amend. No. 2, 6-20-96)

#### Sec. 205.4. - Delivery of services on the beach.

No function or power relating to services is transferred from any municipality to the county. The municipalities may continue to deliver any services on their beaches, which shall not be duplicated by the county. However, if authorized by a municipality, the county shall assume, at the county's expense, any municipal beach service.

## AGENDA ITEM VII & VIII

(Res. No. 86-136, Amend. No. 4, 9-18-86; renumbered Res. No. 96-121, Amend. No. 2, 6-20-96)

Sec. 205.5. - Effect of Unified Beach Code.

The county shall have jurisdiction over the coastal beaches and approaches as well as exclusive authority to regulate the beaches and public beach access and use. To the extent sovereign immunity has been waived, the county shall assume any governmental liability arising after the code takes effect for claims in areas controlled by the county under this article, including claims alleging failure to warn of dangers, but unless otherwise agreed, the county will not be liable for any act of a municipality. Any ordinance enacted pursuant to this article shall prevail in the event of conflict with a municipal ordinance.

(Res. No. 86-136, Amend. No. 4, 9-18-86; renumbered Res. No. 96-121, Amend. No. 2, 6-20-96)

Sec. 205.6. - Definitions of beach and approach.

"Beach" refers to lands and waters lying seaward of the seawall or line of permanent vegetation and within three miles seaward of the mean low water mark, and "approach" refers to property over which there exists a public right of way by title, dedication, prescription, custom, or otherwise for beach ingress and egress between the beach and the easternmost north-south roadway. All beaches and approaches within and without municipalities are included.

(Res. No. 86-136, Amend. No. 4, 9-18-86; renumbered Res. No. 96-121, Amend. No. 2, 6-20-96)

Sec. 206. - School planning.

The county council shall provide no later than September 30, 2007, by ordinance that any county or municipal comprehensive plan amendment or rezoning allowing increased residential density may be effective only if adequate public schools can be timely planned and constructed to serve the projected increase in student population. Any ordinance implementing this section shall respect the constitutional authority of the school district to operate, control, and supervise its public schools. Any ordinance implementing this section shall prevail over conflicting municipal comprehensive plan, ordinance or resolution provisions.

(Res. No. 2006-189, 9-21-06)

MEMORANDUM

To: Charter Review Commission

From: Daniel D. Eckert, County Attorney



Date: November 2, 2015

Re: Beach vehicular access fee

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The charter review commission in November will review articles I and II, except for section 202.3, Volusia Growth Management Commission, to be discussed in December. Among resident proposals is one to prohibit vehicular access fees, the subject of charter section 205.3.

Charter section 205.5, transfers regulatory authority over the beach to the county from the cities. ("The county council county shall have jurisdiction over the coastal beaches and approaches as well as exclusive authority to regulate the beaches and public beach access and use."). It does so pursuant to article VIII, section 1 of the Florida Constitution. ("The charter shall provide which shall prevail in the event of a conflict between county and municipal ordinances.") City of New Smyrna Beach v. County of Volusia, 518 So. 2d 1379 (Fla. 5<sup>th</sup> DCA 1988)(finding charter amendment to be facially constitutional; holding that article VIII, section 1(g) permits regulatory preemption by counties), rev. denied 525 So. 2d 876 (Fla. 1988). Section 205.3 correspondingly transfers authority to impose a vehicular access fee from municipal governing bodies to the county. ("The council shall have the exclusive power to impose a uniform, reasonable vehicular beach access fee....")

The power to impose such a fee is delegated by state law, not derived from home rule. Section 161.58(3), Florida Statutes, declares that any local government having authorized vehicular traffic on all or a portion of the beaches under its jurisdiction "shall be authorized by a three-fifths vote of its governing body to charge a reasonable fee for vehicular traffic access." The statute, part of the Coastal Zone Protection Act of 1985, supplanted home rule authority to impose vehicular access fees. See City of New Smyrna Beach v. Board of Trustees of Internal Imp. Trust Fund, 543 So. 2d 824, 828-29 (Fla. 5<sup>th</sup> DCA 1989)( concluding that the city had home rule authority to impose reasonable access fees [only] prior to October 1, 1985, the date of the Coastal Zone Protection Act.). Section 205.3 does not authorize a vehicular access fee; it declares that among local governing bodies, only the county council may impose the fee authorized by statute.

The county cannot exercise home rule authority in a manner inconsistent with state law. Art. VIII, sec. 1(g), Fla. Const. ("Counties operating under county charters shall have all

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powers of local self-government not inconsistent with general law... The governing body of county may enact ordinances not inconsistent with general law.”) The charter thus cannot deny the power that general law gives to the county council to charge a reasonable traffic access fee. Cf. Ellis v. Burke, 866 So. 2d 1236 (Fla. 5th DCA 2004)(holding Brevard County charter cap on increase in ad valorem tax revenue to be inconsistent with statutory framework by which counties are to establish budgets and millage rates). Accordingly, I advise that the charter review commission may not refer to the voters an amendment which includes a prohibition of the county council to impose vehicular access fees.

MEMORANDUM

To: Charter Review Commission

From: Daniel D. Eckert, County Attorney 

Date: November 2, 2015

Re: Repeal of ineffectual charter provisions (revised)

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Attached is a revised discussion draft of an amendment which would repeal charter provisions no longer having utility. I have included an amendment to the title of section 701 to avoid a contrary inference, i.e., that its provisions no longer have application; and to the text of section 308 to reconcile its requirement for county council members to vote on all actions with the statutory mandate for members to abstain where there is a conflict. I also have revised the proposed ballot title and summary (question) to reflect the amendment to section 308. Section 101.161, Florida Statutes, provides that a ballot title may be no more than 15 words and that a ballot summary may be no more than 75 words.

**AMENDMENT**

**[Endnotes are included herein for the information of the charter review commission. They are not intended for inclusion in the text of any proposed amendment which the commission may recommend.]**

The proposed amendment, in full, shall read as follows:

The Volusia County Home Rule Charter, Chapter 70-966, Laws of Florida (Sp. Acts), as previously amended, shall be further amended in pertinent part as follows:

(Except as provided herein or as otherwise provided by separate amendment, charter provisions not shown are not amended.)

(Words ~~struck~~ are deletions; words underscored are additions.)

**ARTICLE III. - LEGISLATIVE BRANCH—COUNTY COUNCIL**

...

**Sec. 308. Legislative procedures.**

The council may take official action only by the adoption of ordinances, resolutions or motions. Except as otherwise provided by this charter, all ordinances, resolutions or motions shall be adopted by majority vote in accordance with the provisions of the Constitution and laws of Florida. A majority of the full council shall constitute a quorum and shall be required to adopt, amend or repeal any ordinance. A majority of those present shall be required to adopt, amend or repeal a resolution or motion under the terms of this provision. All members in attendance, including the chairman or presiding officer, shall vote on all council actions, except as precluded from doing so according to state law by reason of a voting conflict.<sup>1</sup>

...

## ARTICLE VI. ADMINISTRATIVE DEPARTMENTS OF THE GOVERNMENT

...

### ~~Section 604. Administrative Code.~~

~~The county manager shall prepare the initial administrative code which shall set forth the department organization of the government and the nature and scope of each department together with all required rules and procedures for the operation of said departments. The administrative code shall then be submitted to the council for review, amendment and adoption. The council shall adopt the code within three (3) months of the date submitted. If not adopted within three (3) months, the code as originally prepared by the county manager shall be considered approved and shall remain in force until such time as it may be formally amended by the council.<sup>2</sup>~~

## ARTICLE VII. ADJUSTMENT, REGULATORY AND ADVISORY BOARDS

### ~~Sec. 701. Initial bBoards.<sup>3</sup>~~

...

## ARTICLE IX. ELECTIONS

...

### ~~Sec. 904. Nonpartisan elections.~~

~~Elections for all offices shall be on a nonpartisan basis. No candidates shall be required to pay any party assessment or be required to state the party of which they are a member or the manner in which they voted or will vote in any election. All candidates names shall be placed on the ballot without reference to political party affiliation. School board members elected after January 1, 1995 shall be elected on a nonpartisan basis in the manner provided in section 901.1(3) of the charter.<sup>4</sup>~~

## ARTICLE X. PERSONNEL ADMINISTRATION

...

### ~~Sec. 1007. Employee representatives.~~

~~Classified service employees as provided in the administrative code may elect annually, representatives who may attend the personnel board meetings to bring to the attention of the personnel board complaints, requests and considerations of the employees.~~ <sup>5</sup>

### ~~Sec. 10078. Oaths.~~

For the purpose of the administration of the personnel provisions of this charter, any member of the personnel board shall have the power to administer oaths.

### ~~Sec. 10089. Amendment to rules and regulations.~~

A two-thirds (2/3) vote of the full council shall be required to amend the rules and regulations of the merit system.

### ~~Sec. 1010. Retirement system.~~

~~All officers and employees of the charter government shall be covered by the "state and county officers retirement system" as provided by law.~~ <sup>6</sup>

### ~~Sec. 10094. Adoption of merit system.~~

The county manager shall be responsible for the preparation and presentation to the council of the proposed merit system complete with classification, pay plan or amendments thereto. The initial proposal shall be presented prior to the adoption of the first budget by the charter government.

## ARTICLE XI. FINANCE

...

### ~~Sec. 1103.4. Reduction of millage.~~

~~In the event that the council shall determine that the millage to be levied for county purposes in any year will be such that said millage together with all special district millages~~

~~subject to the millage limitation fixed by Article VII, Section 9 of the Florida Constitution for county purposes will exceed that limitation, then the council shall have the power to reduce the millage requested by any or all of such districts after a public hearing so that the total shall not exceed the maximum millage for county purposes. <sup>7</sup>~~

**Sec. 1104. Bonds.**

**~~Sec. 1104.1. Outstanding bonds.~~**

~~All outstanding bonds issued by former governments including the board of county commissioners of Volusia County and all special districts or authorities abolished or altered by this charter are obligations of the county government; however, payment of such obligations and the interest thereon shall be made solely from and charged solely against funds derived from the same sources from which such payment would have been made had this charter not become effective. <sup>8</sup>~~

**Sec. 1104.12. Authority to issue.**

The charter government shall have the authority to issue any bonds, certificate of indebtedness or any form of tax anticipation certificates authorized by the Constitution which cities, counties or districts are empowered by law to issue.

**Sec. 1104.23. Bond administration.**

The charter government shall have the necessary authority to administer the collection of funds and the payments of amounts due on any bonds.

The title and ballot question shall be as follows:

**MODIFICATION OF LEGISLATIVE  
PROCEDURES TO CONFORM TO  
STATE LAW; AND REPEAL OF  
SUPRESEDED OR OBSOLETE  
PROVISIONS.**

Shall the Volusia County Home Rule Charter be amended to repeal provisions which either have been superseded by state law or have become obsolete by

other conditions; and to conform county council voting procedures to state law regarding voting conflicts?

YES - FOR APPROVAL  
NO - AGAINST APPROVAL

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<sup>1</sup> Section 308 is amended to conform to the provisions of section 112.3143, Florida Statutes, which preclude a county council member from voting in circumstances where the member has conflict as defined by the statute.

<sup>2</sup> Section 604 pertains to the initial adoption of the administrative code, a duty fulfilled by the county council. Section 307 provides continuing authorization and procedures for amendment of an administrative code.

<sup>3</sup> Section 701 is amended to delete the word "Initial" from its title. The substantive provisions are not limited only to the boards first appointed by the county council.

<sup>4</sup> Charter section 904 was amended in 1994 by the addition of the last sentence to provide for non-partisan school board elections. It has been preempted. Article IX, section 4 of the Florida constitution was amended in 1998 to provide for statewide non-partisan election of school board members, according to general law. Chapter 105, Florida Statutes, provides for such elections at the time of the primary election; and for any runoff at the time of the general election, times which vary from those provided by charter section 901.1(3).

<sup>5</sup> Section 1007 establishes a procedure for election of employee representatives which has not been utilized for several years, if ever. The inclusion of this section in the 1970 charter special act preceded 1974 general law implementation, by part II, Chapter 447, Florida Statutes, of the right of public employees to collectively bargain included in article I, section 6 of the 1968 Florida constitution. The legal concern that brings into question the viability of section 1007 is whether its implementation would create what may be considered an employer dominated labor organization; and thus would constitute an unfair labor practice under state law. The Florida Public Employee Relations Commission, which administers the governing state law, has not addressed itself to a similar circumstance. However, the commission likely would follow a National Labor Relations Board 1992 order, applying federal law to a private employer, and so find. Because section 1007 has not served a continuing practical purpose, and there is uncertainty whether it legally could, its repeal is appropriate.

<sup>6</sup> Section 1010 has been preempted by Chapter 121, Florida Statutes, the Florida Retirement System Act, participation in which is compulsory for counties.

<sup>7</sup> Section 1103.4 provides authority for the county council to reduce special district millage to assure adherence to the limitation of 10 mills levy for county purposes provided by article VII, section 9 of the Florida constitution. The special districts subject to the county millage limitation which continue to exist are the East Volusia Mosquito District and the Ponce de Leon Port District, each of which formerly had independent governing boards. Section 1434 of the charter provides that the county council by ordinance may amend the special acts which created those

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districts. The county council exercised that authority and became the district governing board of both districts. Because the county council now is directly responsible for the levy of these district millages, the authority provided by section 1103.4 to override the taxing authority of the formerly independent boards is no longer needed.

<sup>8</sup> Section 1104.1 pertaining to bonds issued by former governments, including the board of county commissioners, has fulfilled its intended purpose. There no longer is any outstanding debt within its scope. The section may be repealed.

MEMORANDUM

To: Charter Review Commission

From: Daniel D. Eckert, County Attorney



Date: November 2, 2015

Re: In-county expenses of county council members.

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Attached is a discussion draft of an amendment which would allow the adoption by ordinance of policies and procedures for payment of in-county expenses of county council members. The charter currently precludes reimbursement of such expenses. The ordinance also would establish policies and procedures for out-of-county expenses, payment for which already is permissible. The ordinance would be subject to adoption by a majority of county council members.

**AMENDMENT**

The proposed amendment, in full, shall read as follows:

The Volusia County Home Rule Charter, Chapter 70-966, Laws of Florida (Sp. Acts), as previously amended, shall be further amended in pertinent part as follows:

(Except as provided herein or as otherwise provided by separate amendment, charter provisions not shown are not amended.)

(Words ~~struck~~ are deletions; words underscored are additions.)

**ARTICLE III. LEGISLATIVE BRANCH - COUNTY COUNCIL**

...

**Sec. 304. Compensation.**

The salary of a council member shall be 50 percent of that prescribed by law for the office of county commissioner. The salary for the county chair shall be 60 percent of that prescribed by law for the office of county commissioner. The salaries shall constitute full compensation for all services ~~and in-county expenses, except that out-of-county expenses, as permitted by law, shall be authorized~~ other than payment for expenses authorized by ordinance.

...

**Section 307. Powers.**

...

(4) Adopt by ordinance policies and procedures for payment of expenses by county council members determined by the ordinance to be incidental to performance of official business, including out-of-county travel; in-county mileage; parking; meals; event admissions; seminar, conference, or training fees; and sundries.

(4 5) Adopt, amend and repeal an administrative code by a two-thirds (2/3) vote of the full council.

(5 6) In addition to the state audit provided by law, shall cause an annual independent post-audit by a certified public accountant of any and all government operations of the charter government.

(6 7) Adopt and amend a merit system which shall include a salary schedule for all personnel in accordance with the provisions of this charter.

(7 8) Adopt by a two-thirds (2/3) vote of the full council such rules of parliamentary procedures as shall be necessary for the orderly transaction of the business of the council.

(8 9) The council shall designate which officers and employees shall be bonded and shall fix the amount and approve the form of the bond.

(9 10) Appoint by a two-thirds (2/3) vote of the full council and remove by a majority vote of the full council, the county attorney.

...

The title and ballot question shall be as follows:

**Question**

Shall the Volusia County Home Rule Charter be amended to provide for direct payment by the county for in-county expenses of county council members incidental to the performance of their official duties according to procedures to be established by ordinance?

YES - FOR APPROVAL  
NO - AGAINST APPROVAL