

# 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

Derek Triplett

Mark Watts

Lisa Ford Williams

### CHARTER REVIEW COMMISSION DAYTONA BEACH INTERNATIONAL AIRPORT DENNIS R. MCGEE ROOM

Monday, April 11, 2016  
5:30 p.m.

### A G E N D A

- I. Call to Order
- II. Roll Call
- III. Public Participation (Limit 3 minutes)
- IV. Approval of minutes of March 14, 2016 [Pages 2- 12] and approval of Charter Review Commission Subcommittee minutes of March 7, 2016 [Pages 13-18]
- V. Volusia Growth Management Commission report of POP Committee [Pages 19- 62]
- VI. Council Member At-Large to be Vice Chair of County Council Amendment [Pages 63-64]
- VII. Review Charter revisions to be considered for final approval in May meeting
  - A. Clean-up of Charter language [Pages 65-79]
  - B. Expense reimbursement [Pages 80-82]
  - C. VGMC – decision delayed until May 9 meeting
- VIII. Discussion of matters not on the agenda
- IX. Adjourn – next meeting, May 9, 2016 at 5:30 in the DBIA – Dennis R. McGee Room

**CHARTER REVIEW COMMISSION  
VOLUSIA COUNTY, FLORIDA**

**MINUTES OF THE MEETING OF  
March 14, 2016**

**CALL TO ORDER**

Chair Brown called the meeting to order at 5:30 p.m. in the Dennis R. McGee Room at the Daytona Beach International Airport, 700 Catalina Drive, Daytona Beach, Florida.

**ROLL CALL**

Members present included Chair Hyatt Brown, Frank Bruno Jr., Patricia Drago, Ambassador Stanley Escudero, Dr. Phillip Fleuchaus, David Haas, James Morris, Patricia Northey, Mark Watts, and Lisa Ford Williams. Also present were County Attorney Dan Eckert, County Manager, Jim Dinneen, county support staff and members of the public. Chair Brown informed the Commission that Dr. Bailey, Glenn Ritchey Sr., Frank Darden and Peter Heebner would not be attending. Derek Triplett was not present.

**APPROVAL OF MINUTES**

James Morris made a motion to approve the minutes of the February 1, 2016 meeting. The motion was seconded by Mark Watts. The motion was approved unanimously.

**CORRESPONDENCE RECEIVED**

Chair Brown mentioned that the correspondence received was included in the agenda packet and asked if anyone wished to comment on the correspondence. Patricia Northey indicated the correspondence was a report forwarded by the former County Manager and that there may be items within the report that should be discussed. Chair Brown stated that receipt of the correspondence will be acknowledged, and that anyone who wanted to read the report could do so, but there was no needed discussion. Chair Brown asked for additional comments and there were none.

**PUBLIC PARTICIPATION**

Chair Brown opened the floor to public participation and there was none.

**VOLUSIA GROWTH MANAGEMENT COMMISSION DISCUSSION**

Chair Brown indicated that during the last commission meeting Dan Eckert was asked to determine if (Volusia Growth Management Commission) changes that are being

discussed could be made without making changes to the Charter. Chair Brown asked Dan Eckert to comment on that prior to receiving the subcommittee report.

Dan Eckert indicated that upon review of the proposed draft from the Volusia Growth Management Commission (VGMC), a charter amendment would be necessary to accomplish the changes. Mr. Eckert provided a Charter draft amendment for the consideration of the commission.

Chair Brown stated that the information was a little different than expected. He also indicated that the VGMC did not want a charter change and although that had been discussed, it appears that an amendment is necessary. Chair Brown concluded that the suggested amendment includes some of the logic that has been followed by the VGMC POP committee and what the subcommittee discussed the previous Monday. He reviewed language that of power and duty objection of county or municipality the commission shall have the power. Parties to any commission proceedings limited to county and municipalities. The VGMC includes the School Board.

Mr Eckert stated that the inclusion of the School Board was different from the inclusion language. You can include the school board as a non-voting member even with that language. To include the school board as a party may be necessary if you adopt ROP which say that there will be consistency with the SB 20 year facilities plan. The facilities plan is not a local comprehensive plan, which would also be a review of the Council.

Chair Brown stated that he wanted everyone to be clear that when the commission decides to adopt the changes, it will have to be approved by the electorate.

Dan Eckert responded by stating that it is all dependent on the changes adopted and that it should be recommended to the voters. Mr. Eckert concluded with a conforming change that would be necessary if non-voting members are removed.

Chair Brown clarified that to implement changes to the VGMC rules, there would likely be a change to the charter. Chair Brown asked if there were any questions or comments.

James Morris asked if Mr. Eckert agreed with that statement.

Dan Eckert responded by stating that the rules that have been proposed cannot be implemented without a charter change.

James Morris followed by asking if any of the rules could be changed without a charter change. Would any change be authorized by the charter if the charter was not changed?

Dan Eckert stated you can't dispense with review under the existing text.

Chair Brown followed by stating the proposed changes of the VGMC Rules of Procedures, which have been discussed, cannot be effectuated without changes to the charter.

Dan Eckert agreed.

### **GUEST SPEAKER – VGMC PLANNING CONSULTANT**

Chair Brown invited Jim Sellen to speak to the commission about why the VGMC should have standing in addition to the County and cities.

Jim Sellen, 225 E. Robinson Ave., Orlando, thanked the commission for the opportunity to speak. Mr. Sellen stated that while reviewing the procedures there have been a number of questions including why their planners and input is needed. He cited the criteria for the VGMC indicate review of an area wide impact or solution. Mr. Sellen stated that the VGMC serves to fill a gap that exists when considering impacts outside of a community. Citing an example in Orange City, Mr. Sellen stated the impacts are rarely land use compatibility and more closely related to infrastructure impact. In his example, Orange City proposed a plan that had significant impact on the transportation system. VGMC recognized that the solution was going to require collaboration of Orange City, DeLand, Volusia County, and the state as opposed to a single condition imposed on Orange City. Mr. Sellen also addressed the question of why the VGMC asks for additional information by stating that they only ask for additional information when the necessary information to make a decision is not included. In regards to why the VGMC calls a hearing, Mr. Sellen indicated that there are typically two reason to call a hearing. First, there are occasions where they are addressing existing VGMC resolutions with conditions. Citing another example in Orange City where the VGMC was asked to waive a condition, Mr. Sellen indicated the VGMC called the hearing because they did not feel they had the ability to simply waive an existing condition. A second reason to call a hearing would be when the impact is not agreed upon. Addressing the question why call a hearing when one jurisdiction doesn't object, Mr. Sellen indicated that sometimes, the jurisdiction doesn't see the impact or may be reluctant to interfere. In conclusion, Mr. Sellen pointed out that VGMC would likely be okay if the ability to call a hearing was removed, but questioned if the municipality planners would be comfortable calling a hearing or would they pass it on and ultimately generate more work for the VGMC.

Chair Brown asked for clarification on why input from VGMC planners is necessary when there is no conflict.

Mr. Sellen responded by stating that a particular issue may not be recognized because the focus may be on the (municipality's) community and not impacts to the surrounding area. The VGMC brings a perspective that includes a long term focus with the comp plan that affects multiple jurisdictions. Mr. Sellen stated that his experience as a local government planner was that the focus of the planner does not necessarily include impact on the adjacent jurisdictions.

Chair Brown questioned if the adjacent jurisdictions planners would be unaware of the conflict upon reviewing the plans.

Mr. Sellen cited Farmton as an example of land use change. Initially there were no objections. Upon the VGMCs review based on six categories, they identified many impacts including improvements and environmental standards that had to be put in place.

Chair Brown stated that the initial purpose of the original amendment was put in place to resolve conflict. He cautioned that non-elected staff are assuming the responsibilities of elected officials and although it may happen for many reasons, it was necessary to thoroughly review the process. Chair Brown then asked the commission if there were any questions.

Mr. Morris stated that he understood Mr. Sellen's comments but it seemed as if staff performed more than the Charter charged the VGMC with doing. Based on comments Mr. Morris has heard from many sides of the issue, the suggested changes that have been proposed reflect that same perception from cities, staff and elected officials. Mr. Morris commented on Mr. Sellen's reference to a DRI in his example and offered that there may have been other opportunities to resolve the situation.

Mr. Sellen stated that there was not going to be a DRI. It was only a plan amendment and a condition that was worked out between the VGMC and County.

Mr. Morris acknowledged the statement and pointed out the (Farmton) case was a good outcome, but to his earlier concern, the widespread perception is the driving force behind those trying to advocate change.

Mr. Sellen agreed that he is not an advocate, but hired help and he will continue to perform as required. Mr. Sellen referenced Sec. 90-37.c.1-6 Criteria for issuance of certificate and stated upon review of the six criteria, there was no way they could say there would not be a problem in the Farmton example. If the VGMC did not have that criteria to follow, and the VGMC was only be responsible for resolving conflict, then it would be handled accordingly.

Mark Watts thanked Mr. Sullen for speaking to the commission and stated that he has worked with his staff in the past and has also found them to be very professional. Mr. Watts stated the VGMC was a unique situation for the county and asked Mr. Sullen to compare Volusia to other counties he works with.

Mr. Sellen stated that the VGMC is not only unique to Volusia, but unique to the state of Florida. He stated that Pinellas, Brevard and Volusia were the three original counties that had an entity like VGMC. Pinellas and Brevard counties changed to a (Comprehensive) Plan.

Mark Watts asked what other counties, without the entity that reviews inner jurisdiction consistencies, do to cooperate and plan, and how does it happen?

Mr. Sellen referenced a project in Orange County where two of the cities objected the project and appealed. If Volusia did not have the VGMC, cities or those with standing would appeal until a joint planning agreement could be reached or go to court. Court cases have occurred on annexations, infrastructure impacts and schools, etc. Mr. Sellen confirmed his example was of West Orange when asked by Mr. Watts and went on to say that the case lasted for three years in court. He stated that the same could happen in Volusia or any major urban county because the biggest issues will be infrastructure and the cost of government. The concerns are often who will pay and how will it affect existing rates. Mr. Sellen cited conflict has been in transportation, schools, and thinks water is next. He questioned how the conflicts are identified and resolved; would be at a comp plan level? He created an example of municipality 1 with a consumptive use permit adjacent to municipality 2. Municipality 2 does not want 1 to change their permit because it would prevent 2 from being able to do it. That situation could restrict growth for municipality 2. Mr. Sellen also stated that without the presence of VGMC, all local governments would need to adjust their inter-governmental elements.

Chair Brown interjected with a reminder that the conversation was not to eliminate the VGMC. Chair Brown cited an example of a city or county disagreeing and asked Mr. Sellen to confirm the VGMC would be involved the same as today: Mr. Sellen confirmed. However, if the VGMC was compelled to intercede (and no conflict was present between the involved municipalities), would the VGMC abstain if it were the pleasure of the Commission and the people of Volusia County: Mr. Sellen agreed.

Pat Drago asked if plans came through and there was no conflict between the local governments, would there be a review by the VGMC or professional staff.

Mr. Haas stated that there would be a review, and if a conflict or issues was determined, that information would be forwarded to the local jurisdiction. He also stated that when things work as described by Mr. Sellen, it works great, but that it does not always go that way. Mr. Haas was encouraged with the changes proposed in the amendment further stating that they solved a lot of problems.

Chair Brown provided his understanding as if a municipality objects, the VGMC will perform as designed and if there is no objection, no action will be taken by the VGMC.

Pat Drago said if the plans come in there is no review.

Mr. Haas stated that a review does occur, if a concern is identified, the VGMC would notify the jurisdiction. At that point, if the local jurisdiction wants to bring it forward, they can request a hearing, but VGMC will not call a hearing on an issue that local planners have already reviewed and approved.

Pat Drago pointed out that the VGMC was not created at the request of the local governments, but at the request of the public who recognized competing governments and unfunded infrastructure. The VGMC was to provide the overarching view. Ms. Drago indicated there have been situations in which the local governments have not called a review even though the scope, size, or impact of the project indicated a need. Ms. Drago also cited an example in which the school board used the VGMC to meet requirements for schools within a development because the schools had no land use authority. She just wanted to remind the commission that the VGMC is serving an overarching purpose in lieu of state agencies that no longer provide that type of oversight.

Mr. Morris stated that there is a concern for economic development as the VGMC can be used as a weapon by one person; adversely affecting those who invest and provide jobs in the county. He added that this is not caused by the VGMC, but that the VGMC is a component of the overall issue. Mr. Morris also added that the timeline is always an issue.

Ms. Drago stated that she was also agreeable to timeline and small scale review. She further stated that she was concerned that by some action they lose the overarching review as it was crucial to resolving conflicts and infrastructure deficits.

Pat Northey agreed strongly with Ms. Drago. She stated that she was unclear on the direction of the conversation and asked Mr. Sellen to walk the commission through the process based on the proposed changes.

Chair Brown clarified that Ms. Northey was asking what would happen if there was no conflict; no review.

Davis Haas stated that was not what was stated in the amendment changes. The review will still occur. What changes is VGMC staff's ability to call for a public hearing when there is no conflict. Currently, using an example of changing a road that is in a comp plan in a city, Mr. Haas stated that even after the city, council, county and other agencies approve the changes, the VGMC can still do a request for more information and call a public hearing.

Pat Northey clarified, based on the draft, the VGMC could not call a public hearing.

David Haas agreed based on the draft amendment, the VGMC would send a report to the local governments/jurisdictions who would then have the choice of calling a hearing.

Pat Northey stated you might as well eliminate the VGMC.

Chair Brown restated the process that Mr. Haas outlined and asked for confirmation from Mr. Sellen that if the VGMC reviewed a plan and found issue, based on the proposed draft, they would prepare a report and notify the local government, and the VGMC's actions would end there.

Mr. Sellen stated that the VGMC would review the plan based on the criteria and if they found issue it would be incumbent on the VGMC to make a compelling argument to the adjacent jurisdictions to encourage them to object. If that could not be achieved, then their process ends. If the adjacent jurisdiction agrees to object, it goes back to the VGMC for a public hearing.

Chair Brown stated that what it seems is that some feel that the public should have this thing (VGMC) and others feel the public is represented by elected officials.

Ms. Drago stated that she wanted to be clear that her comments were not related to public standing. Her comments were strictly based on local governments.

Chair Brown stated in the case being discussed, the VGMC can make a comment, but it is not binding. He asked Ms. Drago if she wanted it binding and the power to be with the non-elected group and she confirmed that she did.

Mr. Sellen spoke to Mr. Northey's earlier discussion and pointed out that there is an exception that should be considered. If an application is submitted and there is no objection, however there is an existing resolution with requirements, Mr. Sellen stated that the VGMC could not make an amendment to the plan affecting a condition placed by the VGMC without a public hearing.

James Morris agreed with Mr. Sellen and added that there is no effective way to make a transition on those conditions if the VGMC does not have the ability to call a hearing.

Ambassador Escudero stated he appreciated the depth of the discussion and agreed that the entity creating the regulation should be involved in the removal or change. He further added that the broader issue was this entity (VGMC) is superior to elements of the elected offices and not subject to appeal. Ambassador Escudero stated that the powers to recommend changes lie within the Charter Review Commission. When asked if he would be in favor of eliminating the VGMC, Ambassador Escudero stated that the draft amendment changes seemed sufficient and should be considered; adding there needed to be a provision for appeal. Ambassador Escudero concluded by stating the impact of the VGMC on municipalities has been the lack of development; either a change to the charter or procedural changes of the VGMC is necessary to mitigate the issues.

Chair Brown stated the changes proposed in the draft amendment will require a change to the charter. Chair Brown asked for any additional questions.

James Morris asked if Mr. Sullen would have any issue working the language of the draft. Mr. Sellen stated he had no issue, but added that FS Sec. 163.3177.h needed to be considered and although disbanding the VGMC was not currently on the table, if such action was taken, based on the statute requirements, each municipality would end up having their own growth commission.

Pat Drago asked how many hearings had been initiated by the public over the last 30 years.

Mary Chris stated that she only had statistics for the last ten years and of 28 hearings, six were initiated by the public.

## **SUBCOMMITTEE REPORT**

Chair Brown then opened the floor to the subcommittee report which was delivered by Frank Bruno in the absence of subcommittee Chair Glenn Ritchey.

Frank Bruno stated the subcommittee met on Monday, March 7<sup>th</sup> at noon at the Daytona Beach International Airport. Chair Glenn Ritchey, and subcommittee members Pat Drago, Ambassador Escudero and Frank Bruno Jr. were present. Mr. Bruno stated the February 4, 2016 meeting minutes were approved, the subcommittee received correspondence, and then reviewed the Volusia Growth Management Committee VGMC report provided by VGMC Vice Chair Gerald Brandon. Mr. Bruno stated that the subcommittee was excited about the recommendations provided by the VGMC Personnel, Operations, & Procedures (POP) committee, however there was some frustration expressed by Chair Ritchey on the amount of time it has taken. Mr. Bruno also stated that in the interest of time, a motion was made to forward the POP committee recommendations to the Charter Review Commission without recommendations from the subcommittee.

Chair Brown stated that of the recommendations provided by the POP committee, one established a limitation of VGMC standing when a complaint was not present. Chair Brown stated that Jim Sellen was not favorable of that restriction.

## **GUEST SPEAKER**

Before further discussion, Chair Brown acknowledged Joyce Cusack, County Council At Large Member and invited her to speak to the commission.

Joyce Cusack greeted the members of the commission and spoke about the At Large position. She stated the benefit of establishing a Vice Chair for the County Council, pointing out that representation of the County as a whole is just as important as district representation. Ms. Cusack stated this change could encourage the recruitment of strong, capable candidates in future years and asked the commission to consider giving the citizens of Volusia County an opportunity to vote on it.

Dr. Fleuchaus stated that the At Large position has no benefit and suggested a change in term limit be evaluated by the commission.

Ambassador Escudero asked Ms. Cusack to state the current duties of the Vice Chair and the anticipated changes in responsibilities.

Ms. Cusack stated that the Vice Chair would continue to function in the absence of the Chair, the Vice Chair could serve as appointed by Council to committees including the canvassing board. She stated that there are numerous opportunities to represent the broader perspective and compliment the duties of the council.

## **PRESENTATION FROM COMMISSION MEMBER**

Chair Brown opened the floor to commission member Mark Watts who provided three examples that will be analyzed under the current proposed rules of the VGMC. Chair Brown summarized three changes that were discussed by the subcommittee: standing; large and small scale; and "power and duty"; and asked Mr. Watts to apply those changes to his examples.

Mr. Watts reviewed cases that had previously gone through the VGMC. The first case cited was Anthen's Commons 2, a small scale project in Deland with no objections or comments from local government. Although the justification was outside of the scope of the VGMC, based on the procedural rules, a neighborhood group was able to petition for a hearing. Mr. Watts stated that under the current proposed changes, this would be a small scale project and the neighborhood group would not have standing.

Chair Brown asked the commission if there were any questions. There were none.

Mr. Watts continued with the second case, Daytona Beach Shores, involving a proposed land use amendment. The project was submitted by a developer, approved by the city and objected by the County, based on citizen concerns. Even after the city and County reached an agreement, the VGMC conducted the hearing based on the request of neighboring residents. Mr. Watts stated that under the current proposed changes, the neighborhood group would not have standing. The amendment is unclear if a hearing would be required after an agreement is reached between municipalities; and revisions are recommended to clarify the process.

Pat Drago asked if there were any changes or conditions added after the hearing.

Mark Watts confirmed that there were no conditions resulting from the hearing. Discussion ensued over the amount of time that had transpired.

James Morris added that at this time, the property is being developed but not for the use it was petitioned for or agreed to.

Marks Watts stated that was correct and added it is eight years later.

Chair Brown invited Scott Simpson, Attorney, to speak to the commission. Mr. Simpson stated he was involved in the appeal of the VGMC. He stated the series of steps of the review, hearing, and appeal process as it occurred stressing the delay and negative impact on the project. Mr. Simpson discussed the administrative appeal process at the

level of the circuit court and stated that once a case has reached that level, there is no time limit.

Chair Brown asked what the impact of the proposed changes would have been on this case and discussion ensued.

Marks Watts referenced Oak Hill as the third example. Based on the proposed amendment, the two objections filed would not have been permitted. Mr. Watts went on to say that the charter is where the power and authority of the VGMC resides. Currently, the Charter language establishes obligation, power and authority, regardless of the VGMC Rules of Procedure, to certify comprehensive plan amendments. Mr. Watts stated that Mr. Eckert's draft addresses the concern and that in order to affectively adopt changes to the VGMC Rules of Procedure, the charter has to be amended.

Chair Brown reviewed the application of the proposed rules to Mark Watt's examples. Further discussion ensued to compare draft amendments proposed by the VGMC and Dan Eckert's draft Charter amendment and how each is applied. Chair Brown stated that he would like to schedule a meeting to discuss specific points within the VGMC recommendations and asked that staff generate a targeted list. Additional questions and conversation followed in regards to standing and time lines.

Chair Brown asked that Dan Eckert and staff review the proposed VGMC changes and identify how each revision would be effectuated. Chair Brown asked that Mark Watts work with Mr. Eckert on this project.

Dan Eckert asked for direction on preparing the draft to include small scale.

Chair Brown asked for clarification of the VGMC draft amendment language. Additional clarification was asked on why there are classifications for large scale and small scale, and whether there is a VGMC staff review on plans that are uncontested.

Heather Ramos, Attorney pointed out the streamlined review process to confirm that small scale plans without objection are not reviewed by VGMC staff - the process ends; large scale plans without objection are reviewed by VGMC staff, then reviewed by the commission to determine further action. Ms. Ramos stated that the only difference between large scale rules as they stand and those proposed is that under the proposed changes, the VGMC cannot call for a public hearing.

Chair Brown asked for any additional questions and there were none. He then asked to meet the following week to discuss Dan Eckert's proposed draft based on the VGMC draft amendments. A tentative date was set for 9:00 am Wednesday, March 23, 2016, pending availability.

## **WRITTEN CORRESPONDENCE FROM CHARTER COMMISSION**

Chair Brown acknowledged receipt of Pat Drago's comments on the VGMC draft amendments and asked for additional comment or feedback. There was none.

## **CHARTER DRAFT AMENDMENTS**

Chair Brown discussed the Charter amendments provided by Dan Eckert that provide repeal of obsolete provisions and the incorporation of suggested language.

Dan Eckert discussed the details of the revisions and noted that each change is accompanied by an endnote that provides additional information and references the associated Statute as it applies.

Chair Brown asked that the amendments be placed on the agenda for the March 23, 2016 meeting for a vote.

Dan Eckert offered additional review of the council confirmations draft. Conversation ensued on additional topics including the information provided by Ms. Cusack earlier in the meeting and Chair Brown agreed those issues would be discussed in a future meeting. Mr. Eckert addressed the changes proposed for the beginning date of the term of office outlining the timelines for elections and cited the effect that would be realized on the vesting period.

## **DISCUSSION BY COMMISSION OF MATTERS NOT ON THE AGENDA**

Chair Brown asked if there were any other matters not on the agenda to discuss and there were none.

## **ADJOURNMENT**

Chair Brown adjourned the meeting at 7:33 p.m. The next meeting will take place on March 23, 2016 at 9:00 a.m. in the Dennis R. McGee Room at the Daytona Beach International Airport, 700 Catalina Drive, Daytona Beach, Florida.

**CHARTER REVIEW COMMISSION SUBCOMMITTEE  
[VOLUSIA GROWTH MANAGEMENT COMMISSION]  
VOLUSIA COUNTY, FLORIDA**

**MINUTES OF THE MEETING OF  
March 7, 2016**

**CALL TO ORDER**

Subcommittee Chair Glenn Ritchey called the meeting to order at 12:10 p.m. in the Dennis R. McGee Room at the Daytona Beach International Airport, 700 Catalina Drive, Daytona Beach, Florida.

**ROLL CALL**

Members present included Chair Glenn Ritchey Sr., Frank Bruno Jr., Patricia Drago, and Ambassador Stanley Escudero. Charter Review Commission member Mark Watts was also invited and in attendance. Volusia County Attorney Dan Eckert, Tammy Bong, Dona DeMarsh Butler, county support staff and members of the public were also present.

**APPROVAL OF MINUTES**

Frank Bruno made a motion to approve the minutes of the January 25, 2016 meeting. The motion was seconded by Patricia Drago. The motion was approved unanimously.

**VOLUSIA GROWTH MANAGEMENT COMMISSION REPORT**

Gerald Brandon, Volusia Growth Management Commission Vice-Chairman and Chair of the Personnel, Operations, & Procedures (POP) Committee spoke to the subcommittee regarding VGMC actions that have taken place since the last subcommittee meeting on January 25, 2016. The proposed revisions to the VGMC consistency certification rules had been provided to the subcommittee as part of the agenda package.

Mr. Brandon advised that there have been three meetings of the VGMC POP Committee since the subcommittee has met last. These meetings took place on February 4, 2016, February 24, 2016, and March 3, 2016. Several members of the business community as well as local governments were in attendance at these meetings. Deanie Lowe met with business development leaders in order to gain agreement and understanding with the proposed changes. On February 24, 2016 the POP Committee presented the proposed revisions to the VGMC as a whole in order to gather feedback and comments from the commission. Based on that discussion, the amendments were re-drafted into the February 26, 2016 version which was provided to the subcommittee. During the February 24, 2016 meeting, there was more than fifty percent support of both the straight vote and weighted vote for the proposed changes.

Mr. Brandon continued by reiterating that the VGMC does not recommend changes to the charter. They have focused on rules changes to address the issues within the framework of the existing charter. To address threshold concerns, the VGMC proposes limiting standing only to the County of Volusia, local municipalities, and the school board. Notice requirements and review timeframes have been modified and streamlined. Burden of proof guidelines have been revised to be more neutral in nature. Provisions have been added to define the "other related duties" and to clarify that a jurisdiction may remove its appointed member consistent with the local government's ordinances relating to member appointments. During the March 3, 2016 POP Committee meeting, it was proposed that the VGMC staff will continue to review the large scale applications, however, any requests for public hearings must come from a unit of local government, the VGMC could not independently request a public hearing. Staff concerns would need to be routed through a hearing request from a unit of local government. The VGMC planning staff, however, was not in attendance during these meetings and may have additional comment on this process.

Mr. Brandon stated that he had hoped to have a complete draft for the March VGMC meeting, but in order to have the planning staff review it at a POP Committee meeting, it may push the VGMC draft to the April 27, 2016 meeting. Mr. Brandon asked if this would be an issue with any of the involved parties. Chair Ritchey advised that does impact the Charter Review Commission's time schedule. He was also disappointed in the time it has taken to reach consensus as well as he had heard that there may be additional issues. Mr. Brandon stated that there must be time allowed for staff to voice their concerns, although he does not feel that it necessarily means there will be changes to the proposed revisions. Chair Ritchey asked if these changes must go before the full VGMC. Mr. Brandon affirmed that they would need to be, and if any changes were made, there would need to be time to re-draft the amendments to the rules. Mr. Brandon advised that they are very close to having a full package, and asked the subcommittee to bear with them just a bit longer to get everything worked out.

Ms. Drago asked if the outstanding issue is whether or not the VGMC staff would be able to call for a public hearing. Mr. Brandon stated that was correct. Chair Ritchey stated that this is a standing issue as it would take the VGMC out of having standing. Mr. Brandon stated that in the last ten years, staff has only called for a hearing three times.

Mr. Ritchey asked why this provision would be needed. Mr. Brandon advised that he may not have all of the details since he is not a planner, but staff needs the flexibility to be able to call a hearing if needed under specific circumstances. Mr. Watts asked what the three instances of staff calling a hearing were. Mr. Brandon asked Merry Smith, staff operations manager to provide the details. Merry Smith stated that she did not have details, but the one was relating to EAR based amendments submitted by the City of Orange City in 2010, the second was EAR based amendments by the City of Deltona in 2010, and the third was related to the Riverbend Church by the City of Daytona Beach in 2007. Mr. Watts stated that it seemed to him in these instances it should have been the County requesting a hearing as the issues were most likely relating to County

infrastructure impacts. Mr. Brandon stated that he will to clarify with the planners why they are requesting this change regarding VGMC standing.

Ambassador Escudero stated that he was frustrated by the amount of time that had been spent on this endeavor. One of the complaints that the commission had heard was regarding the amount of time it had taken to review and approve applications. Mr. Escudero felt that the VGMC should be acting quickly to provide the requested information. He did not understand why it has taken so long for the VGMC to justify their own existence. Mr. Brandon responded that he did not feel it was a matter of justifying their existence, as it is defined by charter. The VGMC is trying to take enough time to do the proper amount of due diligence to do the job they have been tasked effectively. It has been a challenge because at the beginning of this process, there had been a big difference of opinion between parties. All have put in many hours to reach this point and after one more discussion Mr. Brandon feels that they will be ready.

Deanie Lowe asked if an emergency meeting could be called. Mr. Brandon responded that they could as long as the proper notification timeframe could be observed.

Mr. Bruno asked if the only issue was that of VGMC standing, or if there were a number of additional issues that would need to be considered. Mr. Brandon stated that the only issue was that of VGMC standing.

Mr. Drago asked for clarification of the subcommittee process. As she understood the process, the subcommittee would take these recommendations to the full Charter Commission, if approved, the VGMC votes on the changes, which would then need to go before the County Council for approval. Mr. Eckert reminded that there may be additional changes that the Charter Review Commission makes including possible changes to the charter.

Chair Ritchey stated that even if the rules changes were approved as written currently, there could always be rule amendments in the future to correct any issues. This could cut out a lot of time since there is still much to be done. Mr. Watts concurred. Mr. Brandon stated that it becomes an issue as the council may not approve future changes. Mr. Watts stated that by and large these changes are what all parties have been looking for, and instead of delaying the process believes that they should move forward with what is currently written.

Chair Ritchey asked how long the planner has held the contract with the VGMC. Mr. Brandon advised that it has been almost thirty years, and he is considered one of the best in the business.

Ms. Drago stated that she feels that the standing issues in the past have not been detrimental. She feels that the rule changes have not made the process stronger, perhaps more efficient, but that she is not sure that we are keeping good, strong planning in Volusia County.

## **PUBLIC PARTICIPATION**

Chair Ritchey opened the floor to public participation.

Deanie Lowe, 1065 N. Halifax Drive, Ormond Beach, replied to Ambassador Escudero's concerns regarding the length of time it has taken to reach this point. She stated that it has taken a long time, but there are specific advertising requirements and the internal process requires that they go through the POP Committee in order to make a recommendation to the full VGMC. She stated that the subcommittee is seeing just how complex the process is to change the rules of procedure. She liked Mark's idea of just moving forward with what they currently have, but it would be like a slap in the face of Jim Sellen who has been their planner for 30 years. He has a legitimate concern, but she feels that it can be worked out. She would like to see if an emergency meeting could be called in order to stay within the needed timeframe. In the future the notifications should not be an issue.

Scott Simpson, 595 W. Granada Blvd., Suite A, Ormond Beach, thanked Deanie Lowe for helping to mediate the process. He stated that the POP Committee had addressed one of the fundamental issues that had been raised regarding the true role of the VGMC. Mr. Simpson stated that the role should be to help local governments achieve consistency with their growth plans. If local governments are in agreement that the plans are consistent, then there is no need for the VGMC to intervene. He feels that standing means the ability to call a hearing before the VGMC, and appealing the VGMC's ruling. He does not feel that the staff should be able to call for a hearing when local governments do not feel there is any issue. At that point you are no longer conflict resolution, but conflict creation. Large scale amendments could still be reviewed, but any issues would have to go through one of the affected local governments. Mr. Simpson considers the VGMC standing rule a deal killer. What we currently have addresses the problems, but adding back in VGMC standing does not. The sovereignty of the local governments must be preserved.

Mr. Watts agreed that the proposed standing change may be inconsistent with the VGMC purpose. The changes could be adopted and if there is an issue in the future a rule change could be requested. Mr. Simpson stated that moving forward the process would be, in his understanding, that the POP Committee would make recommendations to the full VGMC. If approved, he believes that the next step would be to present those rules to Mr. Eckert to compare to the charter to make sure the new rules are consistent with the language in the charter. If an amendment is needed, the Charter Commission would need to decide what charter change would be necessary in order to make the rule changes consistent with the charter. After that the rule changes would need to be voted on by County Council. There are deadlines for drafting charter amendments and ballot summaries. Working backward from the election requirements will give a date by which the Charter Review Commission must present the recommendations to the County. He indicated that there might be concerns with getting the information back in time. He encouraged Mr. Brandon to do the emergency meeting which was mentioned. If the rules are not adopted, Mr. Simpson indicated that business leaders would be

coming back to the Charter Review Commission to request a charter change. His concern is that there is not enough time to make last minute changes if the VGMC or the county council does not adopt the proposed changes. He asked for the deadline date. Chair Ritchey responded that the final meeting of the Charter Review Commission is set for May 9, 2016. Mr. Simpson asked about the process for preparing the ballot summary. Mr. Eckert stated that the Charter Review Commission will adopt the proposed charter amendment(s) and ballot summary at the May meeting. Mr. Simpson expressed concern that the county council would not have time to approve the rules before the final Charter Review Commission meeting. Mr. Brandon proposed that instead of calling for a POP Committee meeting, he will put what has been presented to the full VGMC on March 23, 2016. Mr. Simpson asked how long it would take for the rules to be adopted by the county council. Mr. Eckert responded that the ordinance would have to be drafted and that it would likely be the second meeting in April. Mr. Simpson reiterated that the only way it seems to meet existing deadlines is for the VGMC to vote on the amendments at the March 23, 2016 meeting and not delay any further.

Charter Review Commission Chair Brown stated that we need to move on. Initially it was decided that the Charter Review commission did not want individual subcommittees because he wanted everyone to hear what was being discussed. VGMC is such a complex issue that it was decided to have this one subcommittee and they have done an excellent job. He stated that this subject will be placed on the agenda of the full Charter Review Commission for the next meeting and suggested that the planner be invited to present his concerns. Were it not for the Charter Review Commission, nothing would be happening with this topic. Now there is an opportunity to bring about positive change. He stated that he has two problems. First, the VGMC has expanded its scope. Second, we have non-elected people have been given power without a lot of consideration with who they are. He does not want it to be said that the commission does not have the interest of the citizens at mind, because the commission does. This process has had a lot of input, but there will never be one hundred percent of the people who agree. A decision will be made with the full commission. Chair Brown complemented all of the people involved with working to reach an agreement. When it is all done he hopes to have a solution that all will like and feel good about.

Mr. Bruno asked if this would be on the agenda for the March 14, 2016 Charter Review Commission meeting. Chair Brown confirmed that was correct and the planner would be invited to attend.

Dona Butler asked that in order to facilitate discussion that the members put in writing comments or concerns so that others may review them prior to the meeting.

Mr. Brandon stated that he will ask Mr. Sellen to be present at the March 14, 2016 meeting and he will ask him to present a step-by-step process of what happens when an application is received. Chair Brown responded that he wants Mr. Sellen to present the reason why the planner is requesting that the VGMC have standing. He stated that we do not need the process.

Deanie Lowe wanted to confirm that if the rule changes were approved there would not need to be a charter amendment. Mr. Ritchey responded that would be up to the full Charter Review Commission and recommendation from the county attorney whether the changes are consistent with the charter language. Mr. Eckert stated that it will be up to the commission. Ms. Lowe stated that there is a question regarding the charter language that describes the power and duty to perform a review of all plans. Mr. Eckert stated that portions of the charter could be amended, it is up the commission to decide.

Joe Yarborough, City Manager of South Daytona, stated that this process was like trying to turn around an aircraft carrier. He stated that the groups have been wonderful to work with. Comments from municipalities regarding the original proposed changes have been positive. He stated that his group would like work out the issues without adjusting the charter. They have overlooked their issues with the School Board not being bound by VGMC decisions since such good progress has been made. He had told his colleagues that there will be a vote by the VGMC on March 23, 2016 in DeLand. His concern is twofold, first that the changes do not get adopted by the county council, and second, that county legal states that there must be a charter amendment.

Chair Brown asked Mr. Eckert to bring back whether the charter wording describing the power and duty of the commission to review all plans should be changed if the rules were adopted by the county council in order to effectuate the rules.

Chair Ritchey stated that there were several groups involved with making these changes. He asked for a vote to send it forward as a recommendation to the full commission consider these changes for approval. He asked if there were other opinions. Ambassador Escudero remains concerned about the appeal issue. He stated that there is no elected body for which decisions could be appealed. Ms. Drago wants to move it forward but she would like to place her concerns in writing. Mr. Watts reminded that written comments could be provided when the item is moved forward.

Chair Ritchey stated that he would entertain a motion that based on the recommendation of the POP Committee via the last document received dated February 26, 2016, to move the item forward to the full commission with individual comments attached. The motion was made by Mr. Bruno. A second was by Ms. Drago. A vote was taken and the motion passed unanimously.

Ms. Drago asked for the timeframe for written comments. Ms. Butler asked that the comment be sent to Tammy Bong and herself by Wednesday, March 9, 2016. She also asked the VGMC to provide the updated document.

## **ADJOURNMENT**

There being no further business for discussion, the meeting was adjourned at 1:23 p.m. The next meeting date is to be determined.

**Volusia Growth Management Commission  
Personnel, Operations & Procedures Committee Meeting  
Notice and Agenda**

10:30 a.m.

April 7, 2016

Daytona Beach City Hall  
Room #149A  
301 S. Ridgewood Avenue  
Daytona Beach, FL

- I. Roll Call
- II. New Business
  - 1) Consider the revision or repeal of VGMC Resolution #2016-02, and the possible adoption of VGMC Resolution #2016-03 relating to proposed substantive amendments to the VGMC Consistency Certification Rules
- III. Old Business
- IV. Other Business
- V. Adjournment

If a person decides to appeal any decision by the VGMC of any matter considered at such public meeting, (s)he will need to ensure that a verbatim record of such meeting is made, which record includes the testimony and evidence upon which the appeal is based.

In accordance with The Americans with Disabilities Act (ADA), if a person with a disability as defined by the ADA needs special accommodation to participate in this proceeding, (s)he should contact the VGMC office at least 48 hours prior to the proceeding at 140 S. Beach, Daytona Beach, FL, (386) 947-1875.



## Volusia Growth Management Commission

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TO: Personnel, Operations & Procedures (POP) Committee  
FROM: Gerald T. Brandon, Committee Chairman *GTB*  
DATE: April 5, 2016  
RE: POP Committee Meeting 4/7/16 – Draft Rules Revisions

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Attached please find amended rules revisions dated 3-31-16 which are scheduled for consideration by the POP Committee on Thursday, April 7, 2016, beginning at 10:30 a.m. in conference room #149A at the Daytona Beach City Hall.

Since the committee and commission last met on March 23, 2016, there has been further discussion to not only address the school board review, but also to incorporate additional changes to the rules revisions which would allow for implementation of the rules without the need for a charter amendment. These discussions included input from attorneys for the school board, the county, several of the cities, and of course VGMC Heather Ramos.

The primary changes to what was reviewed and approved by the VGMC on March 23, 2016 are:

- 1) A provision was added relating to the school board review which can be found in Section 90-37(d). (Sections formerly 90-37(d) and 90-37(e) are now 90-37(e) and 90-37(f) respectively.)
- 2) Section 90-341 has been revised to include VGMC planning review of small scale amendments and JPA/planning agreements. You'll recall that under the previous proposed rules, these categories of amendments would not be subject to VGMC planning review unless an objection was raised by another unit of local government. There was general agreement amongst the attorneys that the expansion of VGMC planning review for these amendments would meet the requirements of the charter in its present form.

The Charter Review Commission (CRC) met yesterday afternoon and expressed support for moving forward with this version of the rules revisions. Our understanding is that if they are recommended for approval by the VGMC, and ultimately adopted by the County Council, the CRC will not recommend a charter amendment relating to the VGMC (Section 202.3).

Finally, there are several additional modifications anticipated to this version based upon comment received at and following yesterday's CRC meeting, however, they are expected to be for purposes of clarity and not substantive in nature. We will have another draft at the POP meeting which will include any further changes, however, in the interest of time, we wanted to get this version out to you as early as possible.

I look forward to discussing this further on Thursday.

## ARTICLE II. VOLUSIA GROWTH MANAGEMENT COMMISSION CONSISTENCY CERTIFICATION RULES AND ORGANIZATION

### DIVISION 1 – DEFINITIONS AND INTERPRETATION OF ARTICLE

#### Sec. 90-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adjacent jurisdiction* means a unit of local government whose territorial boundaries are physically contiguous to the land to be affected by a comprehensive plan or amendment thereto for which an applicant jurisdiction has applied to the commission for a certification or certificate. ~~Notwithstanding any other provision of this article, which requires the commission to publish notice of receipt of an application pursuant to section 90-35(c),~~ For purposes of these consistency certification rules, the School Board of Volusia County is considered an adjacent jurisdiction, ~~as defined in this subsection, shall have 28 days after receipt of an application by the commission to file any objections or comments on or request that a public hearing be held to consider an application.~~

*Applicant jurisdiction* means a unit of local government which has applied to the commission for a certification or certificate regarding a comprehensive plan or amendment thereto.

*Area* and *area of jurisdiction* mean the total area qualifying under the provisions of F.S. § 163.3171, as amended from time to time, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to an incorporated municipality, unincorporated lands within the county, or areas comprising combinations of lands in incorporated municipalities and unincorporated areas of the county.

*Certification* and *certificate* mean a letter, resolution or other written document from the commission determining consistency or inconsistency of a comprehensive plan, element, plan amendment or portion thereof with other applicable plans.

*Charter* means the county Home Rule Charter, as amended.

*Commission* means the Volusia Growth Management Commission, a governmental entity created by the Charter.

*Comprehensive plan* means a plan that meets or is intended to meet the requirements of F.S. §§ 163.3177 and 163.3178.

*Large scale comprehensive plan amendment* means any plan amendment that requires a transmittal and adoption hearing and does not qualify for adoption pursuant to F.S. §

163.3187 (small-scale comprehensive plan amendments) as amended from time to time.

Unit of local government means Volusia County, each municipality within Volusia County and the School Board of Volusia County.

*Small scale comprehensive plan amendment* means any plan amendment that only requires an adoption hearing and qualifies for adoption pursuant to F.S. § 163.3187(1)(c) as amended from time to time.

*Written or in writing* means a piece of correspondence or document, as context dictates, that must be provided on paper and delivered by either hand delivery, U.S. Mail or courier service. Electronic transmissions ~~by themselves~~ are ~~not~~ sufficient to be deemed "written" or "in writing" ~~and must be~~ followed up as soon as possible with a hard copy transmittal delivered by ~~either~~ hand delivery, U.S. Mail or courier service.

(Ord. No. 87-24, § 2, 7-23-87; Ord. No. 92-87, § 1, 10-8-92; Ord. No. 93-13, § 1, 5-20-93; Ord. No. 2007-05, § 1, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

#### **Sec. 90-32. Interpretation of article.**

In the interpretation and application of this article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the commission;
- (3) Deemed not to limit or repeal any other powers granted by other state statutes, the Charter, county ordinances or commission resolutions; and
- (4) Interpreted in a manner consistent with Section 202.3 of the Volusia County Charter and the Community Planning Act (F.S. § 163.3161 et seq.).

(Ord. No. 87-24, § 14, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

### **DIVISION 2 – Volusia Growth Management Commission Consistency Certification Rules**

#### **Sec. 90-33. Findings, purpose and intent.**

In adopting this article, the county council makes and expresses the following findings, purpose and intent:

- (1) In accordance with section 1303 of the county Charter, the 1985-1986 county Charter review commission was formed to prepare necessary amendments to the Charter.
- (2) In consideration of the rapid growth of the county in recent years and the adoption of landmark comprehensive planning legislation in the state, the Charter review commission determined that growth management was a top priority among its objectives.
- (3) As a result of information, evidence and testimony received at numerous public meetings and hearings, the Charter review commission proposed the creation of the Volusia Growth Management Commission to determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other.
- (4) The citizens of the county voted at a referendum held on November 4, 1986, to adopt Charter amendments creating the commission and granting certain powers to the commission.
- (5) The ~~main~~ purpose of the commission is to provide an effective means for coordinating the plans of municipalities and the county, in order to provide a forum for the ~~several units of local governments~~ government in the county to cooperate with each other in coordinating the provision of public services to and improvements for the citizens of the county, and create incentives to foster intergovernmental cooperation and coordination.
- (6) The commission held an organizational meeting on February 25, 1987, and then, through its committee on growth management related issues, duly noticed and held further public hearings on May 18, 1987, and May 21, 1987, and held commission hearings on June 10, 1987, and June 24, 1987, to develop rules of procedure for and enforcement of the commission's consistency review within the time provided for under the Charter amendment.
- (7) On June 24, 1987, the commission adopted Resolution No. 87-5, which recommended that county council adopt this article, which contains the rules of procedure for consistency review and enforcement as required by the Charter amendment.
- (8) Since the Volusia County Council adoption of Ordinance No. 87-24, the Commission has undertaken a diligent process with numerous public hearings to consider amendments to the Commission's certification rules as codified in Volusia County Code Chapter 90, Article II. The ~~Commission~~ commission has addressed revisions to the procedures for submitting and processing applications and has ~~acknowledge~~ acknowledged advances in technology recognizing the use of electronic communications in defined circumstances.

(9) For clarification of the statement in the Volusia County Charter Section 202.3 which, in part, reads "The commission may perform such other directly related duties as the commission from time to time deems necessary", the commission has recommended to the council and the council hereby agrees that "other directly related duties" is limited to the following:

- (a) Analysis and studies needed for the commission or commission staff to determine consistency or inconsistency of a comprehensive plan, element of a comprehensive plan, or amendment.
- (b) Administrative duties for the operation of the commission.
- (c) The commission acting as a mediator when requested by two or more units of local government to address an issue between such units of local government.
- (d) Those duties necessary to meet the requirements of F.S. § 163.3177(6)(h).

(Ord. No. 87-24, § 1, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-34. Certificate of plan consistency required.**

A certificate of consistency is hereby established. No comprehensive plan, element of a comprehensive plan or amendment of a comprehensive plan adopted after November 4, 1986, shall be valid or effective unless and until such comprehensive plan, element of a comprehensive plan or amendment has been reviewed by the commission and has been certified consistent in accordance with this article. This certificate of consistency will be required in addition to any other necessary licenses, permits and/or approvals applicable to land development.

(Ord. No. 87-24, § 3, 7-23-87)

**Sec. 90-341. Application for certificate under the "streamlined" review process; procedure for issuance; public hearing requirements.**

(a) For applications received after May 5, 2016, commission staff shall utilize a "streamlined" review process for the following types of comprehensive plan amendments:

- (1) a small scale comprehensive plan amendment (upon adoption), and
- (2) comprehensive plan amendments subject to one of the following types of agreements entered into among the applicant jurisdiction and adjacent jurisdiction(s):
  - i. a joint agreement pursuant to F.S. § 163.3171, or
  - ii. other similar type of interlocal agreement which addresses land use and/or the provision of public services.

(b) An application as prescribed by the commission shall be forwarded to the commission and units of local government by the applicant jurisdiction. When the commission receives the application its administrative staff shall date-stamp the application. Within two days after which the VGMC office is open for business, the administrative staff shall conduct a completeness review of the application to ensure that the application is completely filled out and all information required by the application is included. If any of the application information is incomplete, the administrative staff shall contact the applicant jurisdiction to obtain the necessary information. If the application is deemed incomplete, the applicant jurisdiction shall provide any missing information to the administrative staff and adjacent jurisdictions. An application shall be deemed complete once all information is provided in electronic format, either at the initial submission of the application or after receipt of all of the minimum requirements described in the application based upon the determination of the administrative staff (the "complete application"). The administrative staff shall thereafter send an electronic version of the complete application to the commission's professional planning staff.

(c) Within fourteen (14) days of receipt of the complete application, planning staff shall prepare a written report which shall be transmitted in electronic format to the VGMC administrative staff concerning whether, based on the information provided in the application, the proposed amendment adversely affects intergovernmental cooperation and coordination based on the factors in Section 90-37(c) and 90-37(d), below. In the event the information provided in the application is not sufficient for the planner to make a determination on some or all of the factors, the written report shall provide a statement to this effect.

(d) The administrative staff shall thereafter send an electronic version of the written report prepared by the planner to the applicant jurisdiction and units of local government. Such comprehensive plan amendment shall be deemed to be consistent twenty-one (21) days after receipt of the complete application by the commission, unless a written objection is filed by a unit of local government. Notice of the comprehensive plan application shall be provided in accordance with Section 90-35(c), below, with the dates modified in accordance with this Section 90-341.

(e) If an objection is filed by a unit of local government within twenty-one (21) days of the date of the complete application, a hearing shall be held in accordance with Sections 90-35 and 90-37. The hearing shall be limited to the subject matter of the objection that was filed. If an objection is filed but withdrawn prior to the hearing, the application shall be deemed consistent as of the date the objection is withdrawn, or twenty-one (21) days after receipt of the complete application, whichever comes later. If no objection is filed, the commission shall issue a certificate of consistency, effective twenty-one (21) days after receipt of the complete application by the commission.

**Sec. 90-35. Application for certificate for large-scale comprehensive plan amendments; procedure for issuance; public hearing requirements.**

~~(a)~~ ~~(a)~~—After November 4, 1986, all units of local governments~~government~~ who desire to adopt or amend a comprehensive plan or element or amendment thereof, in accordance with this article, shall submit an application on forms as the commission may prescribe, and shall submit such information as the commission may require.—~~The commission may require such local government to submit any additional information reasonably necessary for~~ for the proper evaluation of the application.

~~(b)~~ ~~(b)~~—~~An~~Unless an applicant jurisdiction is eligible to utilize the process outlined in Sec. 90-341, above, an applicant jurisdiction shall, at a minimum, submit the following information and documents with any application filed under this section with the commission:

~~(1)~~ ~~(1)~~ Information required by rule or order of the commission, which shall include, at a minimum, a detailed inquiry into:

~~a.~~ ~~a.~~—The extent to which any plan, element, or plan amendment submitted proposes to create adjacent, incompatible land uses and the manner in which the adverse impact of these incompatible uses may be eliminated or mitigated; and

~~b.~~ ~~b.~~—The extent to which any plan, element, or plan amendment proposes policies and/or physical improvements which may adversely impact the objective of promoting the coordination of infrastructure affecting more than one area of jurisdiction.

~~(2)~~ ~~(2)~~—An application shall, at a minimum, contain the following information in addition to that required in subsection (b)(1) of this section:

~~a.~~ ~~a.~~ The application shall contain a list of all adjacent ~~governments~~jurisdictions and units of local government.

~~b.~~ ~~b.~~ For each entity listed in subsection (b)(2)a of this section, the application shall indicate the following:

~~1.~~ ~~4.~~ Existing coordination mechanisms used in preparation of the plan, element, or plan amendment being submitted.

~~2.~~ ~~2.~~ Any recommendations contained in the proposed plan, element, or plan amendment which affect the plans for land use or infrastructure contained in the plans of ~~adjacenta~~ unit of local governments within the county~~government~~.

~~3.~~ ~~3.~~ The facts supporting the recommendations contained in subsection (b)(2)b.2 of this section and the identification of recommended measures which may be used to mitigate or eliminate any adverse impacts resulting from these recommendations.

~~4.~~ ~~4.~~ Identification of specific problems and needs within the comprehensive plans of said adjacent ~~governments~~ jurisdictions which would benefit from improved or additional intergovernmental coordination, and recommended solutions for resolving these potential problems and needs.

(c) The applicant jurisdiction shall submit one original and five copies of each application. The original application and two copies of each application and all supporting documents filed with the commission's administrative staff must be a hard copy in writing; the remaining copies may be in either hard copy or electronic format. The commission shall process all applications and shall cause public notice of receipt of all applications to be given as provided in this article. When the commission receives an application for approval of a comprehensive plan or amendment thereto, its administrative staff shall date-stamp the application. Within two days on which the VGMC office is open for business, the administrative staff shall conduct a completeness review of the application to ensure: the application is completely filled out; required signatures are present and notarized; required number of copies are included; notification to required jurisdictions and agencies as indicated on application has been accomplished; summary of amendment(s) is provided; verification of the acreage and location for map amendments; verification that staff reports, and current and proposed land use maps, where applicable, are included. If any of the foregoing information is incomplete, the administrative staff shall contact the applicant jurisdiction to obtain the necessary information. An application shall be deemed complete once all information is provided, either at the initial submission of the application or after receipt of all of the minimum requirements described in this subsection (c) based upon the determination of the administrative staff and such application shall have placed upon the written application an additional date designating such application as a complete application (the "complete application"). The administrative staff shall thereafter send a dated cover letter and a notice of the complete application to the applicant jurisdiction and direct that electronic versions of the complete application be sent by the applicant jurisdiction to all ~~adjacent jurisdictions, and to such other persons and in such other manner as may be prescribed by the commission~~ units of local government. The administrative staff shall also send a copy of the complete application to the commission's professional staff, ~~and, within 10 days of the date,~~ Notice of the complete application, ~~shall cause notice of receipt of the complete application to be published one time only in a newspaper of general circulation in Volusia County~~ shall be provided by commission administrative staff by US Mail to each unit of local government and posted on the commission's website. Such notice shall be in substantially the form provided below:

VOLUSIA COUNTY  
VOLUSIA GROWTH MANAGEMENT  
COMMISSION  
Notice of Application

(1) The type of application (e.g., adoption of or amendment to a comprehensive plan);

(2) A description and location of the subject matter or activity covered by the action, and the commission's case number, and the name and address of any person at the applicant jurisdiction to whom comments should be directed;

(3) A copy of the complete application and accompanying material are available for public inspection at the commission's offices at (commission's address);

(4) The notice shall contain paragraphs which read substantially as follows:

a. Any ~~substantially-affected-or-aggrieved-party~~unit of local government shall have a right pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules to petition for a public hearing on the application. The petition must contain the information set forth below and must be received by the commission at the address set forth above within ~~2128~~ days of ~~publication-of-this-notice~~the receipt of the application with such date being [insert date]. A copy of the petition must also be mailed at the time of filing with the commission to (the named contact person at the address indicated to whom comments should be directed at the applicant jurisdiction).

b. Failure to file a petition within ~~2128~~ days of ~~publication-of-this-notice~~the receipt of the application, that date being [insert date], constitutes a waiver of any right any ~~person~~unit of local government may have to a public hearing pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules ~~and to participate as a substantially-affected-or-aggrieved-party. Any subsequent intervention will only be as allowed pursuant to section 90-38 of the Volusia County Code which codifies the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules.~~

c. The petition shall contain the following information:

i. The name, address and telephone number of ~~each petitioner~~the petitioning unit of local government; the commission's case number and the location of the proposed activity;

ii. A statement of how and when each ~~petitioner~~petitioning unit of local government received notice of the application;

iii. A statement of how ~~each petitioner's~~the petitioning unit of local government's substantial interests are affected by the proposed application;

iv. A statement of the material facts disputed by ~~each petitioner~~the petitioning unit of local government, if any;

v. A detailed statement outlining the reasons why the proposed amendment violates the criteria for evaluating compatibility in Sec. 90-37; and

vi. A statement of relief sought by the ~~petitioner~~petitioning unit of local government, stating precisely the action the ~~petitioner~~petitioning unit of local government wants the commission to take with respect to the pending application.

d. Any person who believes the unit of local government in which they reside could be substantially affected or aggrieved by the application is directed to address that concern with the elected governing body of the unit of local government in which they reside. Nothing in this section shall be deemed to prohibit or prevent members of the public from being heard at the public hearing required by section 90-35 pursuant to § 286.011 of the Florida Statutes.

(d) ~~All applications~~Applications received by the commission under this section shall be processed and all determinations of consistency shall be made as provided in this subsection unless a public hearing is held on an application. If the commission holds a public hearing on an application as allowed pursuant to this subsection, the commission shall determine consistency pursuant to the criteria provided in section 90-37.

(1) Review by commission.

a. Within 30 days after the date of the complete application, the commission's professional staff shall examine the complete application; determine whether any adjacent jurisdiction or any other ~~person, including a substantially affected or aggrieved party as defined in this article,~~unit of local government has commented or requested a public hearing; notify the applicant jurisdiction of any apparent errors or omissions; request any additional information pertinent to the application; and determine whether the applicant jurisdiction has addressed the conditions of approval of past commission resolutions and whether the application meets the consistency test as set forth in this article.

b. If the commission's professional staff needs additional information to review the application, a request for additional information (RAI) shall be forwarded in writing to the applicant jurisdiction. ASuch RAI shall be forwarded within 14 days after the date of the complete application. The written request for additional information shall toll the running of the time provided by this article for the commission to act on the application until either: (i) the RAI response is deemed complete by the commission's professional staff; or (ii) the applicant jurisdiction provides written notice that no further information in response to the RAI will be provided ~~and that the applicant jurisdiction desires to proceed to public hearing on the~~

~~application. An applicant jurisdiction's failure to supply additional information shall not be grounds for denial of certification unless the.~~

~~c. The commission's professional staff timely requests the additional shall prepare a written report regarding the application, which may include information from regarding whether the applicant jurisdiction in writing within 30 days after the has (i) provided a complete application date on the application.~~

~~(ii) complied with one or more RAIs, if applicable, and (iii) addressed the commission's professional staff's conditions of approval, if any. Further, the written report shall set forth b. If the commission's professional staff determines that the applicant jurisdiction has not addressed the conditions of approval of outstanding commission resolutions, the commission shall hold a public hearing.~~

~~c. If the commission's professional staff determines that staff's determination regarding whether an application may be inconsistent under the test set forth in section 90-37, the commission shall hold a public hearing. Such written report shall be sent electronically to all units of local government.~~

~~d. [Reserved]~~

(2) Units of local government.

~~a. (2) Adjacent jurisdictions. Within 28 days after the date of the complete application, any adjacent jurisdiction unit of local government may:~~

~~a.(i) Submit written comments regarding the merits or the sufficiency to the commission regarding the complete application; or~~

~~b.(ii) Request a public hearing; or in accordance with Section 90-35(c).~~

~~c. Request, for good cause shown in writing and submitted to the chairman of the commission with a copy to the applicant jurisdiction, one 21-day extension of time to comment on the complete application.~~

~~b. If the unit of local government requesting the hearing is an adjacent jurisdiction then the unit of local government shall participate as a party and is deemed to be substantially affected and aggrieved upon requesting a public hearing.~~

~~The chairman of the commission shall acknowledge in writing such 21-day extension requested by an adjacent jurisdiction. Once one adjacent jurisdiction has requested a 21-day extension, that extension shall apply to all adjacent jurisdictions and no additional extensions of time by any other adjacent jurisdiction to comment on~~

~~the pending application shall be honored. However, once one request for an extension of time has been made that request shall toll all time periods provided in this subsection.~~

(3) When a public hearing is requested by ~~either the commission's professional staff or by~~ the applicant jurisdiction pursuant to subsection (d)(1)a. of this section or by ~~an adjacent jurisdiction or a substantially affected or aggrieved party~~ a unit of local government, the commission shall hold a public hearing on the complete application within 60 days after the public hearing is requested but in no event more than 90 days from the date of the complete application (less any tolled time), unless the commission shall not have a regular meeting scheduled or a quorum of the members of the commission shall not be obtained for the regular meeting, which shall by necessity extend the date of the public hearing beyond 90 days. At any public hearing held by the commission to determine whether the adoption of a comprehensive plan or amendment thereto is or can be made to be consistent through conditions, the commission shall comply with the criteria of section 90-37.

(4) Unless a public hearing is otherwise required pursuant to this article, no public hearing shall be held on any complete application received by the commission unless timely requested by ~~the staff, by an adjacent jurisdiction or by a substantially affected or aggrieved party~~ a unit of local government. If no public hearing is requested ~~by any adjacent jurisdiction~~, it shall be presumed that all ~~adjacent jurisdictions~~ units of local government approved the adoption of or amendment to the comprehensive plan of the applicant jurisdiction.

(5) Nothing in this section shall be construed to prohibit the submission of relevant evidence to the commission at any time up to and including a public hearing called by the commission pursuant to this article.

(e) Nothing contained in this article shall preclude the concurrent processing of applications for certification and the state's related review pursuant to the Community Planning Act (F.S. § 163.3161 et seq.), as amended from time to time. For large scale comprehensive plan amendments the application for certification by the commission shall be submitted to the commission simultaneously with, or prior to, transmittal of a proposed plan amendment to the Florida Department of Economic Opportunity ("DEO"). ~~For small scale comprehensive plan amendments the application shall be submitted by the local government concurrent with the forwarding of the recommendations of the Local Planning Agency to the local governing body pursuant to F.S. § 163.3174(4)(a) as amended from time to time.~~ The commission shall have 30 days from receipt of any large scale comprehensive plan application to make comments to the DEO. The commission shall have 30 days from the date of the complete application to make comments to the applicant ~~local government. The jurisdiction.~~ For all comprehensive plan amendments other than those listed in Sec. 90-341, the commission certification shall be a prerequisite to any final public hearing on a comprehensive plan amendment by the applicant ~~local government jurisdiction.~~ The applicant local government's jurisdiction's response shall be to both the commission and DEO and shall

occur simultaneous with or prior to the applicant local government's response to the objections, recommendations and comments report by the DEO for the comprehensive plan amendment, if applicable.

(f) Every application under this section shall be approved, conditionally approved, or denied within 90 days after the date of the complete application by the commission unless either: (i) the 90-day time period on a complete application has been tolled pursuant to subsection (d)(1) of this section ~~or extended pursuant to subsection (d)(3),~~ in which case the 90-day time period does not include that period from the date of commencement of the tolling until the tolling is stopped; or (ii) ~~an extension is requested and granted as provided in subsection (d)(2) of this section;~~ or (iii) if anytime on or after 60 days from the date of the complete application there occurs a force majeure event/emergency/natural disaster which disrupts normal governmental functions within any part of the county then there shall be an automatic extension of the 90-day time period for an additional 30 days. The chairman of the commission shall provide written notice to the applicant of implementation of an automatic extension under subsection (iii) above. Within 15 days after the conclusion of a public hearing held on the complete application, the applicant jurisdiction shall be notified if the complete application is approved, conditionally approved or denied. Failure of the commission to approve, conditionally approve or deny an application within the time period set forth in this subsection shall be deemed an approval of the application. For every conditional approval, the applicant ~~local government~~jurisdiction shall comply with the requirements set forth in the conditional approval including, but not limited to, incorporating into the proposed comprehensive plan amendment referenced in the application those changes recommended by the commission. Failure to incorporate the commission's recommended changes shall result in automatic revocation of the certificate thereby rendering both the complete application and the proposed comprehensive plan amendment of the applicant ~~local government~~jurisdiction invalid and ineffective. For those conditional approvals granted prior to the effective date of this ordinance, revocation where provided shall occur in accordance with the terms of the resolution of certification. Continuances of hearings may be granted upon a request for a waiver by the applicant jurisdiction of the 90-day period referred to in this subsection, for up to an additional 90-day period as determined by the chairman of the commission. Any requests for continuances totaling longer than 90 days may only be granted by the commission at a noticed hearing.

(g) Within 30 days after final adoption pursuant to state law of any plan, element, or plan amendment previously certified by the commission, the local government adopting said plan, element, or plan amendment shall transmit a true and correct copy of said plan, element, or plan amendment to the commission.

(h) For any unit of local government, other than an adjacent jurisdiction, asserting that it is a substantially affected or aggrieved party pursuant to section 90-35(c) as the first item of business at the public hearing pertaining to the certificate of consistency of a comprehensive plan or element or amendment thereof, the commission shall render a determination of such unit of local government's status as a party to the public hearing

based upon the contents of the required petition under section 90-35(c) as applicable and testimony and evidence presented at the hearing. In the event party status is denied by the commission, the unit of local government denied party status shall be entitled to be heard at the public hearing as a member of the public. As used in this section, the term "substantially affected or aggrieved party" means any unit of local government that will suffer an adverse effect to an interest protected or furthered by its comprehensive plan when compared to the applicant jurisdiction's local government comprehensive plan, element or amendment thereof based on the review criteria set forth in Section 90-37(c).

(Ord. No. 87-24, §4,7-23-87; Ord. No. 89-39, § 1,9-7-89; Ord. No. 91-39, § 1,11-21-91; Ord. No. 92-87, § 2, 10-8-92; Ord. No. 93-13, § 2, 5-20-93; Ord. No. 98-17, § I, 9-3-98; Ord. No. 99-16, §§ 1--3, 5-13-99; Ord. No. 2007-05, § 2, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

#### **Sec. 90-36. Consultation with commission regarding application for certificate.**

The applicant or his representative may consult with the staff of the commission concerning the application for certificate under this article. However, any representation by the staff of the commission shall not relieve any person of any requirement of applicable special acts, general laws, articles, the Charter, this article or any other commission rules, regulations or standards, or constitute approval, express or implied.

(Ord. No. 87-24, § 5, 7-23-87)

#### **Sec. 90-37. Criteria for issuance of certificate.**

(a) Consistency shall be determined and a certificate shall be issued to the applicant, upon such conditions as the commission may direct, if the applicant jurisdiction affirmatively provides the commission with reasonable assurance based upon competent, substantial evidence that the proposed plan, element, or plan amendment is consistent with the comprehensive plans of ~~(a) all other units of local governments which are adjacent to the land to be affected by the applicant's proposed plan, element, or plan amendment, and (b) all other substantially affected and aggrieved local governments whose substantial interests are or will be affected by issuance of the certificate.~~

(b) For the purpose of subsection (a) of this section, a plan, element, or plan amendment shall be consistent if it is compatible with and in furtherance of such adjacent and substantially affected comprehensive plans when all such plans are construed as a whole. For purposes of this section, the phrase "compatible with" means that the plan, element, or plan amendment is not in conflict with such adjacent and substantially affected comprehensive plans. The phrase "in furtherance of" means to take action in the direction of realizing the goals or policies of such adjacent and substantially affected comprehensive plans. In addition to such requirements, consistency shall not be deemed to exist if the commission affirmatively determines that

the plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination.

(c) In determining whether a plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination, the commission may, in its sole discretion, consider one or more of the following factors:

- (1) The extent to which the plan, element, or plan amendment provides for areawide or central utility service solutions;
- (2) The extent to which the plan, element, or plan amendment provides for areawide or regional transportation solutions;
- (3) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on infrastructure beyond the boundaries of one jurisdiction;
- (4) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on natural resources which extend beyond the boundaries of one jurisdiction;
- (5) The extent to which the plan, element, or plan amendment provides for the coordination of the timing and location of capital improvements in a manner to reduce duplication and competition; and
- (6) The existence of an agreement among all substantially affected units of local governments, ~~substantially affected parties (if any)~~ and the applicant ~~local government~~ jurisdiction which provides for all said governments' consent to the application. If the commission determines that such an agreement exists for any given application, then it shall be rebuttably presumed that said application does not adversely affect intergovernmental cooperation and coordination.

(d) In determining whether a plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination, the School Board of Volusia County shall consider if adequate public schools can be timely planned and constructed to serve the proposed increase in student population, as set forth in Sec. 206 of the Charter.

(de) For purposes of determining consistency under this section, the plan, element, or plan amendment and the comprehensive plans against which it is compared and analyzed shall be construed as a whole and no specific goal and policy shall be construed or applied in isolation from the other goals and polices in the plans. The commission and its professional staff shall not evaluate or make consistency determinations on whether a proposed comprehensive plan amendment is internally consistent with the comprehensive plan of the applicant jurisdiction.

(ef) The commission may deny certification where ~~any applicant has failed to establish, by a preponderance of the evidence, its entitlement under this article to the certificate as determined by the Commission, establishes that the proposed plan, element or plan amendment is not consistent with other comprehensive plans and adversely affects intergovernmental cooperation and coordination based on the criteria contained in Section 90-37(c) above.~~

~~(f) Notwithstanding the other provisions of this article, for any small scale comprehensive plan amendment which meets the review by commission requirements of section 90-35(d)(1)(a) shall be deemed consistent by the commission and a certification to this effect shall be issued within 40 days of the date of the complete application by the commission without the need to hold a public hearing, provided no written objections are timely issued or received by the commission. If a 21-day extension is requested pursuant to section 90-35(d)(2)c, then the small scale comprehensive plan amendment shall be deemed consistent by the commission if it meets the review by commission requirements of section 90-35(d)(1)(a), and a certificate issued within 60 days of the date of the complete application without any need to hold public hearing, provided no written objections are timely issued or received by the commission.~~

(g) Notwithstanding the other provisions of this article, for any small scale comprehensive plan amendment the failure to file a written objection to any such small scale comprehensive plan amendment shall be deemed a waiver of any right to ~~intervene pursuant to section 90-38~~ a review by the commission. If a written objection to any such small scale plan amendment is issued or received, then that plan amendment application shall be processed and reviewed in the same manner and subject to the same requirements as set forth in sections 90-35, 90-36 and 90-37.

(h) Notwithstanding anything to the contrary contained in this article, any modifications to the capital improvements element of a comprehensive plan done pursuant to F.S. § 163.3177(3)(b), which would otherwise be reviewable by the commission, and are not deemed to be amendments to the comprehensive plan pursuant to that statute, shall be exempt from further review by the commission.

(i) Each applicant has a continuing affirmative duty to submit the objections, recommendations and comments (ORC) report and any and all additional correspondence, notices, documentation, orders, proposed orders, agreements or other information except ~~adversarially~~ adversarial administrative pleadings in formal F.S. § 120.57(1) proceedings (collectively referred to in this section as "additional information") prepared by, transmitted by, received from or agreed to by either the State of Florida Department of Economic Opportunity or the applicant, related to any comprehensive plan, element, or amendment previously certified as consistent by the commission. The commission shall have the right, power and authority to reopen and reconsider its decision to certify consistency and change or modify its conditions of certification applicable to any such plan, element, or amendment should the commission determine in its sole discretion that the additional information changes the facts and circumstances related to its prior certification until a final determination as to the validity of the plan,

element of a plan, or plan amendment is made pursuant to the Community Planning Act (F.S. § 163.3161 et seq.), as amended from time to time. Should the applicant fail to submit to the commission a copy of any and all additional information within 30 days after receipt, transmittal, execution or creation (as applicable) by the applicant, the commission shall likewise have the right, power and authority to reopen and reconsider said certificate of consistency. The commission may initiate any such reconsideration proceeding by sending written notice to the applicant/certificate holder, ~~shall~~ and all units of local government. If an objection is filed by a unit of local government within 14 days, the commission shall schedule and advertise such reconsideration proceeding as a public hearing no less than 60 days after the date of said notice, and may consider any issue and receive such evidence in said public hearing and its subsequent decision that it deems relevant. The commission shall render a written decision by resolution within 30 days from the date of said public hearing. Appeal from said decision shall be in the manner provided in this article for appeal of certifications of consistency.

(j) Notwithstanding any provision of this section to the contrary, an application for a certificate of plan consistency shall not be reviewed at a public hearing except as provided in section 90-35(d). When no public hearing is held, the chairman of the commission, based upon the recommendation of the professional staff of the commission, shall issue by letter a certificate of plan consistency as provided in section 90-35(d). This issuance of the certificate of plan consistency by letter is the final administrative action by the commission on the application. However, if a public hearing is ~~called by the commission or is~~ held pursuant to the request of ~~an adjacent jurisdiction or a substantially affected or aggrieved party~~ a unit of local government, the commission shall determine consistency pursuant to the criteria contained in this section; ~~and the applicant jurisdiction shall be required to establish by~~ based upon a preponderance of competent, substantial evidence ~~that its~~ presented at the hearing to determine whether the application meets the criteria specified in this section.

(Ord. No. 87-24, § 6, 7-23-87; Ord. No. 90-46, § 1, 12-20-90; Ord. No. 91-39, § 2, 11-21-91; Ord. No. 92-87, § 3, 10-8-92; Ord. No. 93-13, § 3, 5-20-93; Ord. No. 2007-05, § 3, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-38. ~~Intervention~~ Application for certificate subject to a resolution of the commission.**

~~Persons other than the original parties to a pending complete application under this article who are or may be substantially affected and aggrieved by the outcome of the proceeding may petition the commission for leave to intervene. Petitions for leave to intervene must be filed in writing at least five days before the date of the public hearing, and should, at a minimum, contain the following:~~

The commission's staff may request a public hearing in the event an application is received by the commission and the comprehensive plan element, amendment, or portion thereof (i) is subject to a resolution adopted by the commission, and (ii) the proposed plan element, amendment, or portion thereof is inconsistent with some or all of the conditions in the resolution adopted by the commission.

- ~~(1) The name and address of the intervenor, and an explanation of how its substantial interests may be substantially affected by the commission's determination;~~
- ~~(2) If the intervenor intends to object to certification of consistency, a statement of all disputed issues of material fact, including specific objections to the pending application;~~
- ~~(3) A demand for relief to which the intervenor deems itself entitled; and~~
- ~~(4) Other information which the intervenor contends is material and relevant.~~

~~Furthermore, the petition shall include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right, or that the substantial interests of the intervenor are subject to determination or may be affected by the outcome of the proceeding. Nothing in this section shall be deemed to prohibit or prevent members of the public from being heard at the public hearing required by section 90-35.~~

~~(Ord. No. 87-24, § 7, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)~~

#### **Sec. 90-39. Revocation of certificate.**

If the commission's professional staff advises the commission that the applicant jurisdiction or its agent submitted false or inaccurate material information in its complete application or at a public hearing, the commission shall hold a public hearing and if the Commission shall vote to revoke a certificate of plan consistency such action shall invalidate the plan, element, or plan amendment certified thereby.

(Ord. No. 87-24, § 8, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

#### **Sec. 90-40. Appeals.**

(a) Any ~~substantially affected and aggrieved~~unit of local government ~~or other substantially affected and aggrieved party which has previously timely intervened~~which is either the applicant jurisdiction or unit of local government which has requested a public hearing pursuant to section 90-~~38~~35(d)(2)(a)(ii), may contest the issuance, denial or revocation of a certificate of consistency by filing a petition for writ of certiorari along with a complete record of the proceeding(s) from which said certificate emanated so certified by the commission's records custodians, in the manner prescribed by the state appellate rules to the circuit court of the county, within 30 days after the date the commission's decision is filed with its secretary. The court shall not conduct a trial de novo. The proceedings before the commission, including the testimony of witnesses, and any exhibits, photographs, maps or other documents filed before them, shall be subject to review by the circuit court. The petition for writ of certiorari shall state how the commission erred and shall include all of the documents, papers, photographs, exhibits and transcripts constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals. The petition, along with the record, shall be filed in the circuit court within 30 days after the filing of the decision by the commission to which such petition is addressed. The court may extend the time for filing the record, including the transcript and exhibits, for good cause shown.

The ~~person~~unit of local government filing the petition for certiorari shall be responsible for filing a true and correct transcript of the complete testimony of the witnesses.

(b) The petition for writ of certiorari shall be furnished to the original applicant, the owner of record of the subject property, to each attorney at law appearing for any person at the hearing before the Volusia Growth Management Commission, and to the Volusia Growth Management Commission. The commission shall suspend the issuance of its permit until the court has ruled upon the petition.

(c) The Volusia Growth Management Commission shall be a necessary and indispensable party to any appeal of its decisions. Any ~~other person including but not limited to an adjacent~~unit of local government may intervene, pursuant to Florida Rule of Civil Procedure 1.230, as a respondent in the certiorari proceeding authorized by this section.

(Ord. No. 87-24, § 9, 7-23-87; Ord. No. 99-16, § 4, 5-13-99)

#### **Sec. 90-41. Enforcement.**

The commission may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this article or any certificate issued pursuant to this article.

(Ord. No. 87-24, § 10, 7-23-87)

#### **Sec. 90-42. Waiting period for reapplication for certificate.**

No unit of local government shall have the right to file an application for certification pursuant to section 90-35 if the same plan, element, or plan amendment for which certification is applied has been the subject of an application before the commission within a period of six (6) months prior to the filing of the application. However, the applicant jurisdiction has the right to withdraw, without the penalty of the six (6) month waiting period, an application at any time up to fifteen (15) days before either (i) the issuance of a letter of certificate of plan consistency pursuant to section 90-37(j) or (ii) the date of the scheduled public hearing on the application pursuant to section 90-35(e). Such withdrawal of the application shall be made either electronically or in writing and delivered by ~~either~~ hand delivery, U.S. Mail or courier service to the commission. Electronic transmissions must be followed up by the applicant jurisdiction with a hard copy transmittal delivered to the commission as soon as possible.

(Ord. No. 87-24, § 11, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

#### **Sec. 90-43. Article not to affect preexisting rights.**

Nothing in this article shall alter or affect rights previously vested or plans, elements, or plan amendments previously, finally and completely adopted in accordance with applicable state law prior to November 4, 1986.

(Ord. No. 87-24, § 12, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-44. Ratification of past agreements.**

Notwithstanding anything to the contrary contained in this article, the following agreements are hereby ratified and confirmed and the plans, elements, and plan amendments involved therein are certified consistent for purposes of this article:

- (1) Agreement between the City of Daytona Beach, Florida, and Gerald Berson dated March 1987.
- (2) Agreement between the City of Port Orange, Florida, DSC of Newark Enterprises, Inc., and the County dated January 8, 1987.
- (3) Agreement between the City of Port Orange, Florida, S.C.B. Development Inc., and the County dated January 8, 1987.
- (4) Agreement between the City of Edgewater, Florida, Radnor/Edgewater, Inc., and the County dated January 12, 1987.
- (5) Agreement between the City of Port Orange, Sandalwood Inc., and the County dated January 5, 1987.
- (6) Agreement between the City of Port Orange, Jennie M. Krol and the County dated January 5, 1987.
- (7) County Council Ordinance No. 87-19, approving, among other things, amending the County comprehensive plan amendments related to Mosquito Lagoon, Hontoon Island and the North Peninsula.

(Ord. No. 87-24, § 13, 7-23-87)

Secs. 90-45 thru 90-50 – Reserved

**DIVISION 3 – VOLUSIA GROWTH MANAGEMENT COMMISSION  
ORGANIZATION**

**Sec. 90-51. Member Appointments**

There shall be one voting member from each municipality within the county and five voting members from the unincorporated area of the county. The appointment of each voting representative shall be made by the governing body of each respective jurisdiction. A voting member of the [Commission](#) may be appointed to the [Commission](#) so long as the voting member at such time of the appointment: (i) is not a candidate for elective office and does not hold elective office with respect to any municipality in Volusia County or Volusia County; (ii) would not violate the dual-office holding provision of the Florida Constitution, and (iii) maintains a residence within the boundary of the appointing jurisdiction or the unincorporated area of Volusia County. In the event clause (i) or (ii) shall apply to a voting member during the term of appointment, there shall be declared an immediate vacancy on the date such voting member officially files the paperwork as a candidate for elective office or the date the voting member assumes the position creating the dual-office. The Volusia County School Board and the St. Johns River Water Management District shall each designate one nonvoting member to serve on the [Commission](#). All members will serve until successors are appointed and qualified. Nonvoting members shall serve at the pleasure of their appointing authorities. Any voting or nonvoting member may be reappointed.

#### **Sec. 90-52. Membership Term**

All terms of the current members appointed by a municipality and Volusia County shall expire based upon the original three year term of appointment previously designated by the [Commission](#). For the period July 1, 2013, to and including July 1, 2015, the term for members of the [Commission](#) appointed by a municipality and Volusia County shall be transitioned so that the terms shall expire on a bi-annual basis and the approximately one-half of the current weighted vote shall be subject to appointment on a bi-annual basis. Members appointed by a municipality to a term beginning on July 1, 2012, shall be appointed to a three year term expiring on June 30, 2015. Members that are appointed by a municipality, other than the City of Deltona, for a term beginning July 1, 2013, shall be appointed for a four year term, expiring on June 30, 2017. The member appointed by the City of Deltona for a term beginning July 1, 2013, shall be appointed for a two year term expiring on June 30, 2015. Members that are appointed by a municipality for a term beginning July 1, 2014, shall be appointed for a three year term expiring on June 30, 2017. All members that are appointed by a municipality for a term beginning on and after July 1, 2015 shall be appointed to a four year term. The current terms for the two Volusia County members expiring on June 30, 2013, shall initially be for two years expiring on June 30, 2015, and thereafter shall for a four year term. The current terms for the three Volusia County members expiring on June 30, 2014, shall initially be for three years expiring on June 30, 2017, and thereafter shall be for a four year term.

#### **Sec. 90-53. Member Removal, Attendance and Vacancies**

##### (1) Action by the Commission.

- a. A member or officer may be removed by a weighted vote of two-thirds of the ~~Commission~~commission for the intentional failure to disclose a voting conflict of interest as required by ~~Section 112.3143 of the~~ Florida Statutes or ~~other applicable law,~~ for misfeasance or malfeasance. Misfeasance shall be any lawful action which is performed on behalf of or in connection with the ~~Commission~~commission which is found to have been done in an illegal or improper manner. Malfeasance shall be any action which is performed on behalf of or in connection with the ~~Commission~~commission which is found to be an act of wrongdoing or intentional misconduct.
- b. ~~In order for the Commission to carry out its duties and responsibilities to the best of its abilities, attendance~~Attendance at all regular meetings of the ~~Commission~~commission is mandatory. If any member fails to attend three regularly scheduled ~~Commission~~commission meetings during any calendar year ending December 31, the member's seat shall be deemed vacant. The ~~Commission Chairman~~chairman of the commission shall notify the member and appointing jurisdiction after two missed regular meetings. A vacancy on the ~~Commission~~commission shall also occur upon the death of the ~~Commission~~commission member, upon the member's resignation, upon the refusal of an appointee to accept a position as a member of the ~~Commission~~commission, upon conviction of a felony, or upon adjudication of the member by a court to be mentally incompetent.
- c. Upon such removal or vacancy, the member's seat shall be deemed vacant and the ~~Chairman~~chairman of the ~~Commission~~commission shall send written notification of the vacancy to the member and their appointing jurisdiction. A member may be reappointed by their respective jurisdiction if the seat is deemed vacant due to the failure to attend meetings of the ~~Commission~~commission. Appointments to fill any vacancy shall be for the remainder of the unexpired term. The weighted vote apportioned to a vacant seat shall not be counted in determining whether or not a majority of the weighted vote is present and voting at a meeting of the ~~Commission~~commission.

(2) Action by the Appointing Unit of local government.

The appointing governing body of each jurisdiction of a voting representative shall retain those rights, if any, to remove the appointed voting representative as contained in the appointing governing body's code of ordinances. If the appointing governing body's code of ordinances does not provide for removal of an appointed voting representative from office then such appointee shall have the right to carry out his or her full term. In the event an appointed voting representative is removed from office, then the replacement appointed voting representative shall serve for the remainder of the prior appointed

voting representative's term.

(Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-54. Staff.**

The commission may retain attorneys, planners and other experts only as independent contractors. The commission with the approval of the county manager may employ administrative staff who shall be employees of the county; otherwise any administrative staff of the commission shall be leased employees. Any such county employee shall serve at the direction and pleasure of the commission; shall be unclassified under the provisions of the merit system; shall be paid according to the county compensation and classification plan in a range designated by the county personnel director; shall receive only those pay increases to which other county employees would be entitled or eligible; shall ~~acrrue~~accrue leave and benefits otherwise applicable to a county employee; and shall comply with all rules and policies applicable to county employees not inconsistent with the direction of the commission. The commission shall select any such county employee under a competitive application process administered by the county personnel director who shall approve the starting salary of the employee. The commission shall adhere to the advice of the personnel director regarding the law governing the county as an employer and rules and policies applicable to county employees.

(Ord. No. 2014-02, § 1, 2-20-14)

**Secs. 90-55 – 90-70. – Reserved.**

## ARTICLE II. VOLUSIA GROWTH MANAGEMENT COMMISSION CONSISTENCY CERTIFICATION RULES AND ORGANIZATION

### DIVISION 1 – DEFINITIONS AND INTERPRETATION OF ARTICLE

#### Sec. 90-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adjacent jurisdiction* means a unit of local government whose territorial boundaries are physically contiguous to the land to be affected by a comprehensive plan or amendment thereto for which an applicant jurisdiction has applied to the commission for a certification or certificate. For purposes of these consistency certification rules, the School Board of Volusia County is considered an adjacent jurisdiction.

*Applicant jurisdiction* means a unit of local government which has applied to the commission for a certification or certificate regarding a comprehensive plan or amendment thereto.

*Area* and *area of jurisdiction* mean the total area qualifying under the provisions of F.S. § 163.3171, as amended from time to time, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to an incorporated municipality, unincorporated lands within the county, or areas comprising combinations of lands in incorporated municipalities and unincorporated areas of the county.

*Certification* and *certificate* mean a letter, resolution or other written document from the commission determining consistency or inconsistency of a comprehensive plan, element, plan amendment or portion thereof with other applicable plans.

*Charter* means the county Home Rule Charter, as amended.

*Commission* means the Volusia Growth Management Commission, a governmental entity created by the Charter. As used in these rules, the term Commission is interpreted to include its staff.

*Comprehensive plan* means a plan that meets or is intended to meet the requirements of F.S. §§ 163.3177 and 163.3178.

*Large scale comprehensive plan amendment* means any plan amendment that requires a transmittal and adoption hearing and does not qualify for adoption pursuant to F.S. § 163.3187 (small-scale comprehensive plan amendments) as amended from time to time.

*Unit of local government* means Volusia County, each municipality within Volusia County and the School Board of Volusia County.

*Small scale comprehensive plan amendment* means any plan amendment that only requires an adoption hearing and qualifies for adoption pursuant to F.S. § 163.3187(1)(c) as amended from time to time.

*Written or in writing* means a piece of correspondence or document, as context dictates, that must be provided on paper and delivered by either hand delivery, U.S. Mail or courier service. Electronic transmissions are sufficient to be deemed "written" or "in writing" if followed up as soon as possible with a hard copy transmittal delivered by hand delivery, U.S. Mail or courier service.

(Ord. No. 87-24, § 2, 7-23-87; Ord. No. 92-87, § 1, 10-8-92; Ord. No. 93-13, § 1, 5-20-93; Ord. No. 2007-05, § 1, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-32. Interpretation of article.**

In the interpretation and application of this article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the commission;
- (3) Deemed not to limit or repeal any other powers granted by other state statutes, the Charter, county ordinances or commission resolutions; and
- (4) Interpreted in a manner consistent with Section 202.3 of the Volusia County Charter and the Community Planning Act (F.S. § 163.3161 et seq.).

(Ord. No. 87-24, § 14, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**DIVISION 2 – Volusia Growth Management Commission  
Consistency Certification Rules**

**Sec. 90-33. Findings, purpose and intent.**

In adopting this article, the county council makes and expresses the following findings, purpose and intent:

- (1) In accordance with section 1303 of the county Charter, the 1985-1986 county Charter review commission was formed to prepare necessary amendments to the Charter.

(2) In consideration of the rapid growth of the county in recent years and the adoption of landmark comprehensive planning legislation in the state, the Charter review commission determined that growth management was a top priority among its objectives.

(3) As a result of information, evidence and testimony received at numerous public meetings and hearings, the Charter review commission proposed the creation of the Volusia Growth Management Commission to determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other.

(4) The citizens of the county voted at a referendum held on November 4, 1986, to adopt Charter amendments creating the commission and granting certain powers to the commission.

(5) The purpose of the commission is to provide an effective means for coordinating the plans of municipalities and the county, in order to provide a forum for the units of local government in the county to cooperate with each other in coordinating the provision of public services to and improvements for the citizens of the county, and create incentives to foster intergovernmental cooperation and coordination.

(6) The commission held an organizational meeting on February 25, 1987, and then, through its committee on growth management related issues, duly noticed and held further public hearings on May 18, 1987, and May 21, 1987, and held commission hearings on June 10, 1987, and June 24, 1987, to develop rules of procedure for and enforcement of the commission's consistency review within the time provided for under the Charter amendment.

(7) On June 24, 1987, the commission adopted Resolution No. 87-5, which recommended that county council adopt this article, which contains the rules of procedure for consistency review and enforcement as required by the Charter amendment.

(8) Since the Volusia County Council adoption of Ordinance No. 87-24, the Commission has undertaken a diligent process with numerous public hearings to consider amendments to the Commission's certification rules as codified in Volusia County Code Chapter 90, Article II. The commission has addressed revisions to the procedures for submitting and processing applications and has acknowledged advances in technology recognizing the use of electronic communications in defined circumstances.

(9) For clarification of the statement in the Volusia County Charter Section 202.3 which, in part, reads "The commission may perform such other directly related duties as the commission from time to time deems necessary", the

commission has recommended to the council and the council hereby agrees that "other directly related duties" is limited to the following:

- (a) Analysis and studies needed for the commission or commission staff to determine consistency or inconsistency of a comprehensive plan, element of a comprehensive plan, or amendment.
- (b) Administrative duties for the operation of the commission.
- (c) The commission acting as a mediator when requested by two or more units of local government to address an issue between such units of local government.
- (d) Those duties necessary to meet the requirements of F.S. § 163.3177(6)(h).

(Ord. No. 87-24, § 1, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-34. Certificate of plan consistency required.** A certificate of consistency is hereby established. No comprehensive plan, element of a comprehensive plan or amendment of a comprehensive plan adopted after November 4, 1986, shall be valid or effective unless and until such comprehensive plan, element of a comprehensive plan or amendment has been reviewed by the commission and has been certified consistent in accordance with this article. This certificate of consistency will be required in addition to any other necessary licenses, permits and/or approvals applicable to land development.

(Ord. No. 87-24, § 3, 7-23-87)

**Sec. 90-341. Application for certificate under the "streamlined" review process; procedure for issuance; public hearing requirements.**

(a) For applications received after May 5, 2016, commission staff shall utilize a "streamlined" review process for the following types of comprehensive plan amendments:

- (1) a small scale comprehensive plan amendment (upon adoption), and
- (2) comprehensive plan amendments subject to one of the following types of agreements entered into among the applicant jurisdiction and adjacent jurisdiction(s):
  - i. a joint agreement pursuant to F.S. § 163.3171, or
  - ii. other similar type of interlocal agreement which addresses land use and/or the provision of public services.

(b) An application as prescribed by the commission shall be forwarded to the commission and units of local government by the applicant jurisdiction. When the

commission receives the application its administrative staff shall date-stamp the application. Within two days after which the VGMC office is open for business, the administrative staff shall conduct a completeness review of the application to ensure that the application is completely filled out and all information required by the application is included. If any of the application information is incomplete, the administrative staff shall contact the applicant jurisdiction to obtain the necessary information. If the application is deemed incomplete, the applicant jurisdiction shall provide any missing information to the administrative staff and adjacent jurisdictions. An application shall be deemed complete once all information is provided in electronic format, either at the initial submission of the application or after receipt of all of the minimum requirements described in the application based upon the determination of the administrative staff (the "complete application"). The administrative staff shall thereafter send an electronic version of the complete application to the commission's professional planning staff.

(c) Within fourteen (14) days of receipt of the complete application, planning staff shall prepare a written report which shall be transmitted in electronic format to the VGMC administrative staff concerning whether, based on the information provided in the application, the proposed amendment adversely affects intergovernmental cooperation and coordination based on the factors in Section 90-37(c) and 90-37(d), below. In the event the information provided in the application is not sufficient for the planner to make a determination on some or all of the factors, the written report shall provide a statement to this effect.

(d) The administrative staff shall thereafter send an electronic version of the written report prepared by the planner to the applicant jurisdiction and units of local government. Such comprehensive plan amendment shall be deemed to be consistent twenty-one (21) days after receipt of the complete application by the commission, unless a written objection is filed by a unit of local government. Notice of the comprehensive plan application shall be provided in accordance with Section 90-35(c), below, with the dates modified in accordance with this Section 90-341.

(e) If an objection is filed by a unit of local government within twenty-one (21) days of the date of the complete application, a hearing shall be held in accordance with Sections 90-35 and 90-37. The hearing shall be limited to the subject matter of the objection that was filed. If an objection is filed but withdrawn prior to the hearing, the application shall be deemed consistent as of the date the objection is withdrawn, or twenty-one (21) days after receipt of the complete application, whichever comes later. If no objection is filed, the commission shall issue a certificate of consistency, effective twenty-one (21) days after receipt of the complete application by the commission.

**Sec. 90-35. Application for certificate for large-scale comprehensive plan amendments; procedure for issuance; public hearing requirements.**

(a) After November 4, 1986, all units of local government who desire to adopt or amend a comprehensive plan or element or amendment thereof, in accordance with this article, shall submit an application on forms as the commission may prescribe, and shall

submit such information as the commission may require for the proper evaluation of the application.

(b) ~~Unless an applicant jurisdiction is eligible to utilize the process outlined in Sec. 90-341, above, an~~ An applicant jurisdiction shall, at a minimum, submit the following information and documents with any application filed under this section with the commission:

(1) Information required by rule or order of the commission, which shall include, at a minimum, a detailed inquiry into:

a. The extent to which any plan, element, or plan amendment submitted proposes to create adjacent, incompatible land uses and the manner in which the adverse impact of these incompatible uses may be eliminated or mitigated; and

b. The extent to which any plan, element, or plan amendment proposes policies and/or physical improvements which may adversely impact the objective of promoting the coordination of infrastructure affecting more than one ~~area of jurisdiction~~ unit of local government.

(2) An application shall, at a minimum, contain the following information in addition to that required in subsection (b)(1) of this section:

a. The application shall contain a list of all adjacent jurisdictions and units of local government.

b. For each entity listed in subsection (b)(2)a of this section, the application shall indicate the following:

1. Existing coordination mechanisms used in preparation of the plan, element, or plan amendment being submitted.

2. Any recommendations contained in the proposed plan, element, or plan amendment which affect the plans for land use or infrastructure contained in the plans of a unit of local government.

3. The facts supporting the recommendations contained in subsection (b)(2)b.2 of this section and the identification of recommended measures which may be used to mitigate or eliminate any adverse impacts resulting from these recommendations.

4. Identification of specific problems and needs within the comprehensive plans of said adjacent jurisdictions which would benefit from improved or additional intergovernmental coordination, and

recommended solutions for resolving these potential problems and needs.

(c) The applicant jurisdiction shall submit one original and five copies of each application. The original application and two copies of each application and all supporting documents filed with the commission's administrative staff must be a hard copy in writing; the remaining copies may be in either hard copy or electronic format. The commission shall process all applications and shall cause public notice of receipt of all applications to be given as provided in this article. When the commission receives an application for approval of a comprehensive plan or amendment thereto, its administrative staff shall date-stamp the application. Within two days on which the VGMC office is open for business, the administrative staff shall conduct a completeness review of the application to ensure: the application is completely filled out; required signatures are present and notarized; required number of copies are included; notification to required jurisdictions and agencies as indicated on application has been accomplished; summary of amendment(s) is provided; verification of the acreage and location for map amendments; verification that staff reports, and current and proposed land use maps, where applicable, are included. If any of the foregoing information is incomplete, the administrative staff shall contact the applicant jurisdiction to obtain the necessary information. An application shall be deemed complete once all information is provided, either at the initial submission of the application or after receipt of all of the minimum requirements described in this subsection (c) based upon the determination of the administrative staff and such application shall have placed upon the written application an additional date designating such application as a complete application (the "complete application"). The administrative staff shall thereafter send a dated cover letter and a notice of the complete application to the applicant jurisdiction and direct that electronic versions of the complete application be sent by the applicant jurisdiction to all units of local government. The administrative staff shall also send a copy of the complete application to the commission's professional staff. Notice of the complete application shall be provided by commission administrative staff by US Mail to each unit of local government and posted on the commission's website. Such notice shall be in substantially the form provided below:

VOLUSIA COUNTY  
VOLUSIA GROWTH MANAGEMENT  
COMMISSION  
Notice of Application

- (1) The type of application (e.g., adoption of or amendment to a comprehensive plan);
- (2) A description and location of the subject matter or activity covered by the action, and the commission's case number, and the name and address of any person at the applicant jurisdiction to whom comments should be directed;
- (3) A copy of the complete application and accompanying material are available for public inspection at the commission's offices at (commission's address);

(4) The notice shall contain paragraphs which read substantially as follows:

a. Any unit of local government shall have a right pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules to petition for a public hearing on the application. The petition must contain the information set forth below and must be received by the commission at the address set forth above within 28 days of the receipt of the complete application with such date being [insert date]. A copy of the petition must also be mailed at the time of filing with the commission to (the named contact person at the address indicated to whom comments should be directed at the applicant jurisdiction).

b. Failure to file a petition within 28 days of the receipt of the complete application, that date being [insert date], constitutes a waiver of any right any unit of local government may have to a public hearing pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules.

c. The petition shall contain the following information:

i. The name, address and telephone number of the petitioning unit of local government; the commission's case number and the location of the proposed activity;

ii. A statement of how and when each petitioning unit of local government received notice of the application;

iii. A statement of how the petitioning unit of local government's substantial interests are affected by the proposed application;

iv. A statement of the material facts disputed by the petitioning unit of local government, if any;

v. A detailed statement outlining the reasons why the proposed amendment violates the criteria for evaluating compatibility in Sec. 90-37; and

vi. A statement of relief sought by the petitioning unit of local government, stating precisely the action the petitioning unit of local government wants the commission to take with respect to the pending application.

d. Any person who believes the unit of local government in which they reside could be substantially affected or aggrieved by the application is directed to address that concern with the elected governing body of the unit of local

government in which they reside. Nothing in this section shall be deemed to prohibit or prevent members of the public from being heard at the public hearing required by section 90-35 pursuant to § 286.011 of the Florida Statutes.

(d) Applications received by the commission under this section shall be processed and all determinations of consistency shall be made as provided in this subsection unless a public hearing is held on an application. If the commission holds a public hearing on an application as allowed pursuant to this subsection, the commission shall determine consistency pursuant to the criteria provided in section 90-37.

(1) Review by commission.

a. Within 30 days after the date of the complete application, the commission's professional staff shall examine the complete application; determine whether any adjacent jurisdiction or any other unit of local government has commented or requested a public hearing; notify the applicant jurisdiction of any apparent errors or omissions; request any additional information pertinent to the application; and determine whether the applicant jurisdiction has addressed the conditions of approval of past commission resolutions and whether the application meets the consistency test as set forth in this article.

b. If the commission's professional staff needs additional information to review the application, a request for additional information (RAI) shall be forwarded in writing to the applicant jurisdiction. Such RAI shall be forwarded within 14 days after the date of the complete application. The written request for additional information shall toll the running of the time provided by this article for the commission to act on the application until either: (i) the RAI response is deemed complete by the commission's professional staff; or (ii) the applicant jurisdiction provides written notice that no further information in response to the RAI will be provided.

c. The commission's professional staff shall prepare a written report regarding the application, which may include information regarding whether the applicant jurisdiction has (i) provided a complete application, (ii) complied with one or more RAIs, if applicable, and (iii) addressed the commission's professional staff's conditions of approval, if any. Further, the written report shall set forth the commission's professional staff's determination regarding whether an application may be inconsistent under the test set forth in section 90-37. Such written report shall be sent electronically to all units of local government.

(2) Units of local government.

a. Within 28 days after the date of the complete application any unit of local government may:

- (i) Submit written comments regarding the merits or the sufficiency to the commission regarding the complete application; or
  - (ii) Request a public hearing in accordance with Section 90-35(c).
- b. If the unit of local government requesting the hearing is an adjacent jurisdiction then the unit of local government shall participate as a party and is deemed to be substantially affected and aggrieved upon requesting a public hearing.

(3) When a public hearing is requested by the applicant jurisdiction pursuant to subsection (d)(1)a. of this section or by a unit of local government, the commission shall hold a public hearing on the complete application within 60 days after the public hearing is requested but in no event more than 90 days from the date of the complete application (less any tolled time), unless the commission shall not have a regular meeting scheduled or a quorum of the members of the commission shall not be obtained for the regular meeting, which shall by necessity extend the date of the public hearing beyond 90 days. At any public hearing held by the commission to determine whether the adoption of a comprehensive plan or amendment thereto is or can be made to be consistent through conditions, the commission shall comply with the criteria of section 90-37.

(4) Unless a public hearing is otherwise required pursuant to this article, no public hearing shall be held on any complete application received by the commission unless timely requested by a unit of local government. If no public hearing is requested, it shall be presumed that all units of local government approved the adoption of or amendment to the comprehensive plan of the applicant jurisdiction.

(5) Nothing in this section shall be construed to prohibit the submission of relevant evidence to the commission at any time up to and including a public hearing called by the commission pursuant to this article.

(e) Nothing contained in this article shall preclude the concurrent processing of applications for certification and the state's related review pursuant to the Community Planning Act (F.S. § 163.3161 et seq.), as amended from time to time. For large scale comprehensive plan amendments the application for certification by the commission shall be submitted to the commission simultaneously with, or prior to, transmittal of a proposed plan amendment to the Florida Department of Economic Opportunity ("DEO"). The commission shall have 30 days from receipt of any large scale comprehensive plan application to make comments to the DEO. The commission shall have 30 days from the date of the complete application to make comments to the applicant jurisdiction. For all comprehensive plan amendments other than those listed in Sec. 90-341, the commission certification shall be a prerequisite to any final public hearing on a

comprehensive plan amendment by the applicant jurisdiction. The applicant jurisdiction's response shall be to both the commission and DEO and shall occur simultaneous with or prior to the applicant local government's response to the objections, recommendations and comments report by the DEO for the comprehensive plan amendment, if applicable.

(f) Every application under this section shall be approved, conditionally approved, or denied within 90 days after the date of the complete application by the commission unless either: (i) the 90-day time period on a complete application has been tolled pursuant to subsection (d)(1) of this section in which case the 90-day time period does not include that period from the date of commencement of the tolling until the tolling is stopped; or (ii) if anytime on or after 60 days from the date of the complete application there occurs a force majeure event/emergency/natural disaster which disrupts normal governmental functions within any part of the county then there shall be an automatic extension of the 90-day time period for an additional 30 days. The chairman of the commission shall provide written notice to the applicant of implementation of an automatic extension under subsection (ii) above. Within 15 days after the conclusion of a public hearing held on the complete application, the applicant jurisdiction shall be notified if the complete application is approved, conditionally approved or denied. Failure of the commission to approve, conditionally approve or deny an application within the time period set forth in this subsection shall be deemed an approval of the application. For every conditional approval, the applicant jurisdiction shall comply with the requirements set forth in the conditional approval including, but not limited to, incorporating into the proposed comprehensive plan amendment referenced in the application those changes recommended by the commission. Failure to incorporate the commission's recommended changes shall result in automatic revocation of the certificate thereby rendering both the complete application and the proposed comprehensive plan amendment of the applicant jurisdiction invalid and ineffective. For those conditional approvals granted prior to the effective date of this ordinance, revocation where provided shall occur in accordance with the terms of the resolution of certification. Continuances of hearings may be granted upon a request for a waiver by the applicant jurisdiction of the 90-day period referred to in this subsection, for up to an additional 90-day period as determined by the chairman of the commission. Any requests for continuances totaling longer than 90 days may only be granted by the commission at a noticed hearing.

(g) Within 30 days after final adoption pursuant to state law of any plan, element, or plan amendment previously certified by the commission, the local government adopting said plan, element, or plan amendment shall transmit a true and correct copy of said plan, element, or plan amendment to the commission.

(h) For any unit of local government, other than an adjacent jurisdiction, asserting that it is a substantially affected or aggrieved party pursuant to section 90-35(c) as the first item of business at the public hearing pertaining to the certificate of consistency of a comprehensive plan or element or amendment thereof, the commission shall render a determination of such unit of local government's status as a party to the public hearing

based upon the contents of the required petition under section 90-35(c) as applicable and testimony and evidence presented at the hearing. In the event party status is denied by the commission, the unit of local government denied party status shall be entitled to be heard at the public hearing as a member of the public. In the event there are (1) no units of local government with party status, and (2) the commission does not have the ability to hold the public hearing as set forth in Sec. 90-38, the hearing will not proceed. As used in this section, the term "substantially affected or aggrieved party" means any unit of local government that will suffer an adverse effect to an interest protected or furthered by its comprehensive plan when compared to the applicant jurisdiction's local government comprehensive plan, element or amendment thereof based on the review criteria set forth in Section 90-37(c).

(Ord. No. 87-24, §4,7-23-87; Ord. No. 89-39, § 1,9-7-89; Ord. No. 91-39, § 1,11-21-91; Ord. No. 92-87, § 2, 10-8-92; Ord. No. 93-13, § 2, 5-20-93; Ord. No. 98-17, § 1, 9-3-98; Ord. No. 99-16, §§ 1--3, 5-13-99; Ord. No. 2007-05, § 2, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-36. Consultation with commission regarding application for certificate.**

The applicant or his representative may consult with the staff of the commission concerning the application for certificate under this article. However, any representation by the staff of the commission shall not relieve any person of any requirement of applicable special acts, general laws, articles, the Charter, this article or any other commission rules, regulations or standards, or constitute approval, express or implied.

(Ord. No. 87-24, § 5, 7-23-87)

**Sec. 90-37. Criteria for issuance of certificate.**

(a) Consistency shall be determined and a certificate shall be issued to the applicant, upon such conditions as the commission may direct, if the applicant jurisdiction affirmatively provides the commission with reasonable assurance based upon competent, substantial evidence that the proposed plan, element, or plan amendment is consistent with the comprehensive plans of all other units of local governments.

(b) For the purpose of subsection (a) of this section, a plan, element, or plan amendment shall be consistent if it is compatible with and in furtherance of such adjacent and substantially affected comprehensive plans when all such plans are construed as a whole. For purposes of this section, the phrase "compatible with" means that the plan, element, or plan amendment is not in conflict with such adjacent and substantially affected comprehensive plans. The phrase "in furtherance of" means to take action in the direction of realizing the goals or policies of such adjacent and substantially affected comprehensive plans. In addition to such requirements, consistency shall not be deemed to exist if the commission affirmatively determines that the plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination.

(c) In determining whether a plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination, the commission may, in its sole discretion, consider one or more of the following factors:

(1) The extent to which the plan, element, or plan amendment provides for areawide or central utility service solutions;

(2) The extent to which the plan, element, or plan amendment provides for areawide or regional transportation solutions;

(3) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on infrastructure beyond the boundaries of one jurisdiction;

(4) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on natural resources which extend beyond the boundaries of one jurisdiction;

(5) The extent to which the plan, element, or plan amendment provides for the coordination of the timing and location of capital improvements in a manner to reduce duplication and competition; and

(6) The existence of an agreement among all substantially affected units of local governments and the applicant jurisdiction which provides for all said governments' consent to the application. If the commission determines that such an agreement exists for any given application, then it shall be rebuttably presumed that said application does not adversely affect intergovernmental cooperation and coordination.

(d) In determining whether a plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination, the School Board of Volusia County shall consider if adequate public schools can be timely planned and constructed to serve the proposed increase in student population, as set forth in Sec. 206 of the Charter.

(e) For purposes of determining consistency under this section, the plan, element, or plan amendment and the comprehensive plans against which it is compared and analyzed shall be construed as a whole and no specific goal and policy shall be construed or applied in isolation from the other goals and policies in the plans. The commission and its professional staff shall not evaluate or make consistency determinations on whether a proposed comprehensive plan amendment is internally consistent with the comprehensive plan of the applicant jurisdiction.

(f) The commission may deny certification where a preponderance of the evidence, as determined by the Commission, establishes that the proposed plan, element or plan

amendment is not consistent with other comprehensive plans and adversely affects intergovernmental cooperation and coordination based on the criteria contained in Section 90-37(c) above.

(g) Notwithstanding the other provisions of this article, for any ~~small-scale~~ comprehensive plan amendment the failure to file a written objection to any such ~~small scale~~ comprehensive plan amendment shall be deemed a waiver of any right to ~~a review by the commission. If a written objection to any such small scale plan amendment is issued or received, then that plan amendment application shall be processed and reviewed in the same manner and subject to the same requirements as set forth in sections 90-35, 90-36 and 90-37.~~ object.

(h) Notwithstanding anything to the contrary contained in this article, any modifications to the capital improvements element of a comprehensive plan done pursuant to F.S. § 163.3177(3)(b), which would otherwise be reviewable by the commission, and are not deemed to be amendments to the comprehensive plan pursuant to that statute, shall be exempt from further review by the commission.

(i) Each applicant has a continuing affirmative duty to submit the objections, recommendations and comments (ORC) report and any and all additional correspondence, notices, documentation, orders, proposed orders, agreements or other information except adversarial administrative pleadings in formal F.S. § 120.57(1) proceedings (collectively referred to in this section as "additional information") prepared by, transmitted by, received from or agreed to by either the State of Florida Department of Economic Opportunity or the applicant, related to any comprehensive plan, element, or amendment previously certified as consistent by the commission. The commission shall have the right, power and authority to reopen and reconsider its decision to certify consistency and change or modify its conditions of certification applicable to any such plan, element, or amendment should the commission determine in its sole discretion that the additional information changes the facts and circumstances related to its prior certification until a final determination as to the validity of the plan, element of a plan, or plan amendment is made pursuant to the Community Planning Act (F.S. § 163.3161 et seq.), as amended from time to time. Should the applicant fail to submit to the commission a copy of any and all additional information within 30 days after receipt, transmittal, execution or creation (as applicable) by the applicant, the commission shall likewise have the right, power and authority to reopen and reconsider said certificate of consistency. The commission may initiate any such reconsideration proceeding by sending written notice to the applicant/certificate holder and all units of local government. If an objection is filed by a unit of local government within 14 days, the commission shall schedule and advertise such reconsideration proceeding as a public hearing no less than 60 days after the date of said notice, and may consider any issue and receive such evidence in said public hearing and its subsequent decision that it deems relevant. The commission shall render a written decision by resolution within 30 days from the date of said public hearing. Appeal from said decision shall be in the manner provided in this article for appeal of certifications of consistency.

(j) Notwithstanding any provision of this section to the contrary, an application for a certificate of plan consistency shall not be reviewed at a public hearing except as provided in section 90-35(d). When no public hearing is held, the chairman of the commission, based upon the recommendation of the professional staff of the commission, shall issue by letter a certificate of plan consistency as provided in section 90-35(d). This issuance of the certificate of plan consistency by letter is the final administrative action by the commission on the application. However, if a public hearing is held pursuant to the request of a unit of local government, the commission shall determine consistency pursuant to the criteria contained in this section and based upon a preponderance of competent, substantial evidence presented at the hearing to determine whether the application meets the criteria specified in this section.

(Ord. No. 87-24, § 6, 7-23-87; Ord. No. 90-46, § 1, 12-20-90; Ord. No. 91-39, § 2, 11-21-91; Ord. No. 92-87, § 3, 10-8-92; Ord. No. 93-13, § 3, 5-20-93; Ord. No. 2007-05, § 3, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-38. Application for certificate subject to a resolution of the commission.**

The commission's staff may request a public hearing in the event an application is received by the commission and the comprehensive plan element, amendment, or portion thereof (i) is subject to a resolution adopted by the commission, and (ii) the proposed plan element, amendment, or portion thereof is inconsistent with some or all of the conditions in the resolution adopted by the commission.

**Sec. 90-39. Revocation of certificate.**

If the commission's professional staff advises the commission that the applicant jurisdiction or its agent submitted false or inaccurate material information in its complete application or at a public hearing, the commission shall hold a public hearing and if the Commission shall vote to revoke a certificate of plan consistency such action shall invalidate the plan, element, or plan amendment certified thereby.

(Ord. No. 87-24, § 8, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-40. Appeals.**

(a) Any unit of local government which is either the applicant jurisdiction or unit of local government which has requested a public hearing pursuant to section 90-35(d)(2)(a)(ii), may contest the issuance, denial or revocation of a certificate of consistency by filing a petition for writ of certiorari along with a complete record of the proceeding(s) from which said certificate emanated so certified by the commission's records custodians, in the manner prescribed by the state appellate rules to the circuit court of the county, within 30 days after the date the commission's decision is filed with its secretary. The court shall not conduct a trial de novo. The proceedings before the commission, including the testimony of witnesses, and any exhibits, photographs, maps or other documents filed before them, shall be subject to review by the circuit court. The petition

for writ of certiorari shall state how the commission erred and shall include all of the documents, papers, photographs, exhibits and transcripts constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals. The petition, along with the record, shall be filed in the circuit court within 30 days after the filing of the decision by the commission to which such petition is addressed. The court may extend the time for filing the record, including the transcript and exhibits, for good cause shown. The unit of local government filing the petition for certiorari shall be responsible for filing a true and correct transcript of the complete testimony of the witnesses.

(b) The petition for writ of certiorari shall be furnished to the original applicant, the owner of record of the subject property, to each attorney at law appearing for any person at the hearing before the Volusia Growth Management Commission, and to the Volusia Growth Management Commission. The commission shall suspend the issuance of its permit until the court has ruled upon the petition.

(c) The Volusia Growth Management Commission shall be a necessary and indispensable party to any appeal of its decisions. Any unit of local government may intervene, pursuant to Florida Rule of Civil Procedure 1.230, as a respondent in the certiorari proceeding authorized by this section.

(Ord. No. 87-24, § 9, 7-23-87; Ord. No. 99-16, § 4, 5-13-99)

**Sec. 90-41. Enforcement.**

The commission may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this article or any certificate issued pursuant to this article.

(Ord. No. 87-24, § 10, 7-23-87)

**Sec. 90-42. Waiting period for reapplication for certificate.**

No unit of local government shall have the right to file an application for certification pursuant to section 90-35 if the same plan, element, or plan amendment for which certification is applied has been the subject of an application before the commission within a period of six (6) months prior to the filing of the application. However, the applicant jurisdiction has the right to withdraw, without the penalty of the six (6) month waiting period, an application at any time up to fifteen (15) days before either (i) the issuance of a letter of certificate of plan consistency pursuant to section 90-37(j) or (ii) the date of the scheduled public hearing on the application pursuant to section 90-35(e). Such withdrawal of the application shall be made either electronically or in writing and delivered by hand delivery, U.S. Mail or courier service to the commission. Electronic transmissions must be followed up by the applicant jurisdiction with a hard copy transmittal delivered to the commission as soon as possible.

(Ord. No. 87-24, § 11, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-43. Article not to affect preexisting rights.**

Nothing in this article shall alter or affect rights previously vested or plans, elements, or plan amendments previously, finally and completely adopted in accordance with applicable state law prior to November 4, 1986.

(Ord. No. 87-24, § 12, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-44. Ratification of past agreements.**

Notwithstanding anything to the contrary contained in this article, the following agreements are hereby ratified and confirmed and the plans, elements, and plan amendments involved therein are certified consistent for purposes of this article:

- (1) Agreement between the City of Daytona Beach, Florida, and Gerald Berson dated March 1987.
- (2) Agreement between the City of Port Orange, Florida, DSC of Newark Enterprises, Inc., and the County dated January 8, 1987.
- (3) Agreement between the City of Port Orange, Florida, S.C.B. Development Inc., and the County dated January 8, 1987.
- (4) Agreement between the City of Edgewater, Florida, Radnor/Edgewater, Inc., and the County dated January 12, 1987.
- (5) Agreement between the City of Port Orange, Sandalwood Inc., and the County dated January 5, 1987.
- (6) Agreement between the City of Port Orange, Jennie M. Krol and the County dated January 5, 1987.
- (7) County Council Ordinance No. 87-19, approving, among other things, amending the County comprehensive plan amendments related to Mosquito Lagoon, Hontoon Island and the North Peninsula.

(Ord. No. 87-24, § 13, 7-23-87)

Secs. 90-45 thru 90-50 – Reserved

**DIVISION 3 – VOLUSIA GROWTH MANAGEMENT COMMISSION  
ORGANIZATION**

**Sec. 90-51. Member Appointments**

There shall be one voting member from each municipality within the county and five voting members from the unincorporated area of the county. The appointment of each voting representative shall be made by the governing body of each respective jurisdiction. A voting member of the commission may be appointed to the commission so long as the voting member at such time of the appointment: (i) is not a candidate for elective office and does not hold elective office with respect to any municipality in Volusia County or Volusia County; (ii) would not violate the dual-office holding provision of the Florida Constitution, and (iii) maintains a residence within the boundary of the appointing jurisdiction or the unincorporated area of Volusia County. In the event clause (i) or (ii) shall apply to a voting member during the term of appointment, there shall be declared an immediate vacancy on the date such voting member officially files the paperwork as a candidate for elective office or the date the voting member assumes the position creating the dual-office. The Volusia County School Board and the St. Johns River Water Management District shall each designate one nonvoting member to serve on the commission. All members will serve until successors are appointed and qualified. Nonvoting members shall serve at the pleasure of their appointing authorities. Any voting or nonvoting member may be reappointed.

**Sec. 90-52. Membership Term**

All terms of the current members appointed by a municipality and Volusia County shall expire based upon the original three year term of appointment previously designated by the commission. For the period July 1, 2013, to and including July 1, 2015, the term for members of the commission appointed by a municipality and Volusia County shall be transitioned so that the terms shall expire on a bi-annual basis and the approximately one-half of the current weighted vote shall be subject to appointment on a bi-annual basis. Members appointed by a municipality to a term beginning on July 1, 2012, shall be appointed to a three year term expiring on June 30, 2015. Members that are appointed by a municipality, other than the City of Deltona, for a term beginning July 1, 2013, shall be appointed for a four year term, expiring on June 30, 2017. The member appointed by the City of Deltona for a term beginning July 1, 2013, shall be appointed for a two year term expiring on June 30, 2015. Members that are appointed by a municipality for a term beginning July 1, 2014, shall be appointed for a three year term expiring on June 30, 2017. All members that are appointed by a municipality for a term beginning on and after July 1, 2015 shall be appointed to a four year term. The current terms for the two Volusia County members expiring on June 30, 2013, shall initially be for two years expiring on June 30, 2015, and thereafter shall for a four year term. The current terms for the three Volusia County members expiring on June 30, 2014, shall initially be for three years expiring on June 30, 2017, and thereafter shall be for a four year term.

**Sec. 90-53. Member Removal, Attendance and Vacancies**

(1) Action by the Commission.

- a. A member or officer may be removed by a weighted vote of two-thirds of the commission for the intentional failure to disclose a voting conflict of interest as required by the Florida Statutes or for misfeasance or malfeasance. Misfeasance shall be any lawful action which is performed on behalf of or in connection with the commission which is found to have been done in an illegal or improper manner. Malfeasance shall be any action which is performed on behalf of or in connection with the commission which is found to be an act of wrongdoing or intentional misconduct.
- b. Attendance at all regular meetings of the commission is mandatory. If any member fails to attend three regularly scheduled commission meetings during any calendar year ending December 31, the member's seat shall be deemed vacant. The chairman of the commission shall notify the member and appointing jurisdiction after two missed regular meetings. A vacancy on the commission shall also occur upon the death of the commission member, upon the member's resignation, upon the refusal of an appointee to accept a position as a member of the commission, upon conviction of a felony, or upon adjudication of the member by a court to be mentally incompetent.
- c. Upon such removal or vacancy, the member's seat shall be deemed vacant and the chairman of the commission shall send written notification of the vacancy to the member and their appointing jurisdiction. A member may be reappointed by their respective jurisdiction if the seat is deemed vacant due to the failure to attend meetings of the commission. Appointments to fill any vacancy shall be for the remainder of the unexpired term. The weighted vote apportioned to a vacant seat shall not be counted in determining whether or not a majority of the weighted vote is present and voting at a meeting of the commission.

(2) Action by the Appointing Unit of local government.

The appointing governing body of each jurisdiction of a voting representative shall retain those rights, if any, to remove the appointed voting representative as contained in the appointing governing body's code of ordinances. If the appointing governing body's code of ordinances does not provide for removal of an appointed voting representative from office then such appointee shall have the right to carry out his or her full term. In the event an appointed voting representative is removed from office, then the replacement appointed voting representative shall serve for the remainder of the prior appointed voting representative's term.

(Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-54. Staff.**

The commission may retain attorneys, planners and other experts only as independent contractors. The commission with the approval of the county manager may employ administrative staff who shall be employees of the county; otherwise any administrative staff of the commission shall be leased employees. Any such county employee shall serve at the direction and pleasure of the commission; shall be unclassified under the provisions of the merit system; shall be paid according to the county compensation and classification plan in a range designated by the county personnel director; shall receive only those pay increases to which other county employees would be entitled or eligible; shall accrue leave and benefits otherwise applicable to a county employee; and shall comply with all rules and policies applicable to county employees not inconsistent with the direction of the commission. The commission shall select any such county employee under a competitive application process administered by the county personnel director who shall approve the starting salary of the employee. The commission shall adhere to the advice of the personnel director regarding the law governing the county as an employer and rules and policies applicable to county employees.

(Ord. No. 2014-02, § 1, 2-20-14)

**Secs. 90-55 – 90-70. – Reserved.**

## **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 effective in 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. 307.1. - The county chair.

The office of the county chair shall have all jurisdiction and powers which are now and which hereafter may be granted to it by the Constitution and laws of Florida provided that such powers shall be exercised in a manner consistent with this charter. The county chair, in addition to the powers and duties provided by this charter, shall have the specific powers and duties to:

1. Serve as the official and ceremonial representative of the government.
2. Issue proclamations on behalf of the government, which shall be reported to the county council upon issuance.
3. Preside as chair of and in all other respects participate in the meetings of the county council and have an equal vote on all questions coming before it.
4. Execute ordinances, resolutions and other authorized documents of the government.

5. Serve ex-officio as the county government's representative, and appoint others to serve in the county chair's stead, on other bodies external to county government.
6. Serve as the county council representative, and appoint county council members to serve in the county chair's stead, on other bodies internal to county government.

~~The county council shall elect at its first meeting in January a council member to serve at its pleasure for a one-year term~~ at large member shall serve as vice chair of the county council ~~to~~ and shall preside in the temporary absence, disqualification or disability of the county chair at county council meetings and perform other duties assigned by the county chair.

...

#### **DESIGNATION OF AT LARGE MEMBER AS COUNTY COUNCIL VICE CHAIR**

Shall the Volusia County Home Rule Charter be amended to provide for continuing designation of the council member elected at large as the vice chair of the county council instead of annual election by the county council of one of its members?

YES - FOR APPROVAL  
NO - AGAINST APPROVAL

**AMENDMENT**

**[Endnotes are 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 otherwise provided by state law.<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. 1004. - ~~Personnel~~ Human resources director.**<sup>5</sup>

#### **Sec. 1004.1. - Qualifications.**

The ~~personnel~~ human resources director shall be chosen on the basis of professional training and experience in personnel administration.

#### **Sec. 1004.2. - Powers and duties.**

The ~~personnel~~ human resources director shall have all of the powers and duties as described in the merit system rules and regulations as adopted by the council.

...

### **~~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>6</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>7</sup>~~

**~~Sec. 10091. 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. <sup>8</sup>~~

**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>9</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>10</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.

**ARTICLE XIII. - MISCELLANEOUS PROVISIONS**

...

**Sec. 1312. No revival by implication.**

The repeal of any provision of this charter which repealed all or any portion of a former charter section or special act shall not be construed to revive those former charter sections or special acts; provided that the transfer of functions, responsibilities, duties, and obligations of former special districts and authorities which were repealed upon adoption of the charter are hereby ratified and confirmed. <sup>11</sup>

...

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

**~~Sec. 1401. -- East Volusia Navigation District.~~**

~~The functions, duties and obligations of the East Volusia Navigation District as provided in Chapter 37-18967, Laws of Florida as amended are hereby transferred and vested in the~~

~~charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1402. -- Halifax Area Research Commission.~~**

~~The functions, responsibilities, duties and obligations of the Halifax Area Research Commission as provided in Chapter 59-1950, Laws of Florida as amended are hereby repealed.~~

**~~Sec. 1403. -- Halifax Drainage District.~~**

~~The functions, responsibilities, duties and obligations of the Halifax Drainage District as provided in Chapter 19-7968, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1404. -- Halifax River Waterways Improvement District.~~**

~~The functions, responsibilities, duties and obligations of the Halifax River Waterways Improvement District as provided in Chapter 53-29596, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1405. -- Lake Ashby Drainage District.~~**

~~The functions, responsibilities, duties and obligations of the Lake Ashby Drainage District as provided in Chapter 18-7760, Laws of Florida are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1406. -- New Smyrna Inlet District.~~**

~~The functions, responsibilities, duties and obligations of the New Smyrna Inlet District as provided in Chapter 25-10448, Laws of Florida as amended are hereby transferred and vested~~

~~in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1407. -- North Ormond Drainage District.~~**

~~The functions, responsibilities, duties and obligations of the North Ormond Drainage District as provided in Chapter 27-12107, Laws of Florida are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1408. -- Northeast Volusia Development Authority.~~**

~~The functions, responsibilities, duties and obligations of the Northeast Volusia Development Authority as provided in Chapter 61-02977, Laws of Florida are hereby transferred and vested in the charter government and said authority shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1409. -- South County Drainage District.~~**

~~The functions, responsibilities, duties and obligations of the South County Drainage District as provided in Chapter 67-1022, Laws of Florida are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1410. -- Turnbull Hammock Drainage District.~~**

~~The functions, responsibilities, duties and obligations of the Turnbull Hammock Drainage District as provided in Chapter 17-7611, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1411. -- Volusia County Sanitary District.~~**

~~The functions, responsibilities, duties and obligations of the Volusia County Sanitary District as provided in Chapter 53-29587, Laws of Florida are hereby transferred and vested in~~

~~the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1412. -- Volusia County Water and Sewer District.~~**

~~The functions, responsibilities, duties and obligations of the Volusia County Water and Sewer District as provided in Chapter 59-1951, Laws of Florida are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1413. -- Volusia County Water District.~~**

~~The functions, responsibilities, duties and obligations of the Volusia County Water District as provided in Chapter 51-27960, Laws of Florida are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1414. -- Water Conservation and Control Authority.~~**

~~The functions, responsibilities, duties and obligations of the Water Conservation and Control Authority as provided in Chapter 63-1019, Laws of Florida are hereby transferred and vested in the charter government and said authority shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1415. -- Daytona Beach Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Daytona Beach Special Road and Bridge District as provided in Chapter 25-11783, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.~~

**~~Sec. 1416. -- DeLand-Lake Helen Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the DeLand-Lake Helen Special Road and Bridge District as provided in Chapter 25-11275, Laws of Florida as amended are~~

(Modification of legislative procedures;  
repeal of obsolete provisions)

hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.

**~~Sec. 1417. -- DeLeon Springs-Glenwood Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the DeLeon Springs-Glenwood Special Road and Bridge District as provided in Chapter 27-13493, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1418. -- DeLeon Springs-Seville Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the DeLeon Springs-Seville Special Road and Bridge District as provided in Chapter 21-8851, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.~~

**~~Sec. 1419. -- Halifax-St. Johns River Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Halifax-St. Johns River Road and Bridge District as provided in Chapter 27-498, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1420. -- Halifax Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Halifax Special Road and Bridge District as provided in Chapter 27-13514, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.~~

**~~Sec. 1421. -- Lake Helen-Osteen Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Lake Helen-Osteen Special Road and Bridge District as provided in Chapter 23-9654, Laws of Florida as amended are~~

~~hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1422. -- New Smyrna-Coronado Beach Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the New Smyrna-Coronado Beach Special Road and Bridge District as provided in Chapter 27-13497, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1423. -- New Smyrna Beach Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the New Smyrna Beach Special Road and Bridge District as provided in Chapter 19-8205, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1424. -- Orange City-Enterprise Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Orange City-Enterprise Special Road and Bridge District as provided in Chapter 23-9653, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.~~

**~~Sec. 1425. -- Orange City-Lake Helen Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Orange City-Lake Helen Special Road and Bridge District as provided in Chapter 27-13496 Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.~~

**~~Sec. 1426. -- Osteen-Enterprise Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Osteen-Enterprise Special Road and Bridge District as provided in Chapter 29-14447, Laws of Florida as amended are~~

(Modification of legislative procedures;  
repeal of obsolete provisions)

~~hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1427. -- Osteen-Maytown, Oak Hill Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Osteen-Maytown, Oak Hill Special Road and Bridge District as provided in Chapter 27-13491, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1428. -- Port Orange-Inlet Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Port Orange-Inlet Special Road and Bridge District as provided in Chapter 27-13492, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1429. -- Port Orange-South Peninsula Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Port Orange-South Peninsula Special Road and Bridge District as provided in Chapter 49-26288, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1430. -- Port Orange Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Port Orange Special Road and Bridge District as provided in Chapter 41-21057, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**~~Sec. 1431. -- Special Road and Bridge District.~~**

~~The functions, responsibilities, duties and obligations of the Special Road and Bridge District as provided in Chapter 61-2973, Laws of Florida as amended are hereby transferred~~

~~and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

**Sec. 1432. – Turnbull Special Road and Bridge District.**

~~The Turnbull Special Road and Bridge District, Chapter 23-9051, Laws of Florida as amended is hereby amended by adding a new section to read:~~

~~Section \_\_\_\_\_. The Turnbull Special Road and Bridge District shall continue in effect with all necessary powers, including the power to levy taxes and special assessments, solely for the purpose of fulfilling the contractual obligations of the district to the holders of bonds or certificates of indebtedness and to the former state road department of Florida (now the department of transportation), including lease purchase agreements which exist on the effective date of this act or thereafter arise from such existing contracts, bonds, certificates or agreements. All other powers or duties and all real or personal property not included in the performance of such contracts, bonds, certificates or agreements are hereby transferred and vested in the charter government on October 1, 1971. From and after October 1, 1971, said district shall not levy any tax, special assessment or millage for any purpose except as hereinabove expressly authorized.~~

**Sec. 1433. – Special road and bridge districts; transfer of assets, etc.**

~~Upon the abolishment of each and every special road and bridge district by this charter, all assets, rights-of-way of public roads and bridges and all agreements, including lease purchase agreements between such district and the former state road department, now the department of transportation of Florida, shall become vested in the county of Volusia and the county of Volusia shall automatically become a party to all such agreements in lieu of said districts and shall be entitled to all of the benefits thereof and the county of Volusia shall perform all obligations of said districts under said agreements. <sup>12</sup>~~

**Sec. 1434. 1401. - Other special districts and authorities.**

The special acts of the legislature related to Volusia County listed below are hereby amended to add the following section: [In furtherance of the orderly exercise of the power of

(Modification of legislative procedures;  
repeal of obsolete provisions)

local government for the benefit of the people in Volusia County, the act creating this district may be amended by the legislative procedures and powers vested in the charter government of Volusia County and by the Constitution and laws of Florida.]

- (1) East Volusia Mosquito Control District, Chapter 37-18963, Laws of Florida as amended.
- (2) Ponce DeLeon Inlet and Port Authority, Chapter 65-2363, Laws of Florida as amended.
- ~~(3) Halifax Advertising Tax District, Chapter 49-26294, Laws of Florida as amended.~~

In no event shall such special acts be amended to re-establish a governing body other than the county council.<sup>13</sup>

The title and ballot question shall be as follows:

**MODIFICATION OF LEGISLATIVE  
PROCEDURES TO CONFORM TO  
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; and of section 286.012, Florida Statutes. Like the charter section, section 286.012 requires voting, but permits abstention where there is, or appears to be a possible conflict of interest under sections 112.311, 112.313, or 112.3143, Florida Statutes, or under more stringent local standards adopted pursuant to section 112.326, Florida Statutes; or to assure a fair quasi-judicial proceeding free from prejudice or bias.

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<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> 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 1004 is amended to change the title of personnel director to human resources director to conform to modern usage.

<sup>6</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>7</sup> Section 1010 has been preempted by Chapter 121, Florida Statutes, the Florida Retirement System Act, participation in which is compulsory for counties.

<sup>8</sup> Section 1011 renumbered to section 1009, is amended to delete a sentence, which required an initial proposal for the merit system to be presented prior to adoption of the first budget of the charter government. The requirement having been fulfilled, the text no longer is needed.

<sup>9</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 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

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district millages, the authority provided by section 1103.4 to override the taxing authority of the formerly independent boards is no longer needed.

<sup>10</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.

<sup>11</sup> Section 1312 is added to provide that the common law rule of revival by implication does not apply where a repealer is removed from the charter.

<sup>12</sup> Sections 1401-1433 various special taxing districts and authorities are repealed. Former section 1434 is renumbered as 1401.

<sup>13</sup> Former section 1434 is renumbered as 1401. As renumbered, the section is amended to delete reference to the Halifax Advertising Tax District. Pursuant to section 212.0305(4)(c)3, Florida Statutes, the authority to level the tourist advertising ad valorem tax in the district expired January 1985, the year following the 1984 levy within the district of the convention development tax authorized by that statute.

The authority provided by this section to amend by ordinance the special acts creating the mosquito control and port authority districts has been exercised to provide that the county council is the governing body of both. This section is amended to preclude a different governing body.

**AMENDMENT**

**[Endnotes are 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. 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.~~

...

**Section 307. Powers.**

...

(4) Adopt by ordinance policies and procedures for payment or reimbursement of expenses by county council members determined by the ordinance to be incidental to official

business, including out-of-county travel; in-county mileage; parking; meals; event admissions; seminar, conference, or training fees; and sundries.<sup>1</sup>

(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:

**AUTHORIZATION FOR  
PAYMENT OF IN-COUNTY EXPENSES  
OF COUNTY COUNCIL MEMBERS**

Shall the Volusia County Home Rule Charter be amended to provide for payment or reimbursement by the county for in-county expenses of county council members incidental to official business according to policies and procedures to be established by ordinance?

YES - FOR APPROVAL  
NO - AGAINST APPROVAL

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<sup>1</sup> Section 307(4) is revised to provide authorization for adoption by ordinance of policies and procedures for payment or reimbursement of expenses of county council members determined by the ordinance to be incidental to county business, including out-of-county travel which has been allowed under section 304. Under current charter provisions, county council members have been provided office space, computers, and communication devices. Further, the county council has purchased tables at events where support of an organization was deemed to have a public purpose. The expenses which may be authorized that previously were not allowed include in-county mileage; parking; event admissions; seminar, conference, or training fees; and sundries. Such expenses for example might include events where county council members are individually invited to attend because of their official status, but expected to pay admission or meal charges. Nothing in this section would authorize provision of a vehicle for routine use; or the hiring by the county council member of personal assistants.