

**Section 6.05. - Mayor's veto power.**

The mayor may veto any ordinance or resolution adopted by the council except ordinances and resolutions relating to:

- (a) Consolidation of the urban services districts.
- (b) Appointments to the zoning board and the building codes adjustment board.
- (c) Zoning exceptions and variances.
- (d) The auditor, the secretary of the council, or other employees of the council.
- (e) Internal affairs of the council.
- (f) Investigations by the council or any duly appointed committee thereof.
- (g) Quasi-judicial decisions made by the council.

Any ordinance or resolution adopted by the council over which the mayor has a veto power shall be presented to the mayor for his consideration and recommendations. If he approves the ordinance or resolution he shall sign it and it shall become effective according to the terms thereof. If he disapproves he shall return the ordinance or resolution to the council without his signature, accompanied by a message indicating the reasons for his disapproval and recommendations. Any resolution or ordinance so disapproved by the mayor shall become effective only if, subsequent to its return, it shall be adopted by two-thirds of all the members of the council present at any meeting; except that if the mayor vetoes any item in the consolidated budget appropriation, only a majority vote of the members of the council shall be required to adopt the same as law over the mayor's veto. Any resolution or ordinance shall become effective on the date provided therein unless it be disapproved by the mayor and returned to the council at or prior to the next regular meeting of the council occurring 10 days or more after the date when the ordinance or resolution was delivered to the mayor's office for consideration. The mayor may disapprove the sum of money appropriated by any one or more items, or parts of items, in any ordinance appropriating money for the use of the consolidated government or any independent agency, in any manner provided herein. The one or more items or parts of items disapproved or reduced shall be void to the extent that they have been disapproved or reduced, unless they shall be restored to the ordinance and become effective by the vote of a majority of the members of the council.

(Laws of Fla., Ch. 72-572; Ord. 84-1307-754, § 4; Laws of Fla., Ch. 92-341, § 1; Laws of Fla., Ch. 98-467, § 1)

#### **RULE 4.904 EFFECT OF INSUFFICIENT VOTE**

If a bill fails to pass as an emergency measure, it shall not be defeated, but it shall remain on the master agenda with the same status it had immediately before the motion to declare the bill an emergency measure carried.

#### **RULE 4.905 CERTAIN ORDINANCES NOT TO BE ENACTED AS EMERGENCY MEASURES**

No ordinance that rezones or modifies the permitted use of real property shall be enacted as an emergency measure unless it meets the reading and public hearing requirements of Section 166, Florida Statutes.

#### **RULE 4.906 EMERGENCY DEFINED**

For the purpose of these rules, an emergency measure is an ordinance or resolution needing prompt passage because time is of the essence and a delay in passage will thwart the purposes of the measure and the public interest; or is needed to secure funding for any appropriation; or is needed to secure any agreement which is in the public interest; or is needed to protect the property, health, safety, or welfare of the City or its citizens.

### **PART 10. VETOED LEGISLATION**

#### **RULE 4.1001 WHEN CONSIDERED**

An ordinance or resolution, budget appropriation item or sum of money disapproved by the Mayor and returned to the Council shall be considered by the Council at the regular meeting at which it is returned by the Mayor, unless otherwise directed by the President or the Rules Committee. In no event shall consideration of the returned ordinance or resolution, budget appropriation item or sum of money be delayed beyond the meeting of the Council next following its return. An ordinance or resolution, budget appropriation item or sum of money returned as disapproved by the Mayor shall not be subject to the provisions of these Rules with respect to readings, publication, reference (except as provided in Rule 4.1002), amendments and substitutes.

#### **RULE 4.1002 REFERENCE TO COMMITTEE**

The President may refer a disapproved ordinance or resolution, budget appropriation item or sum of money to the appropriate committee for reconsideration; this reference may be made as soon as the disapproved measure is received from the Mayor, with instructions that the committee report at the Council meeting at which the disapproved measure will be considered by the Council. The committee of reference, and each of them if more than one, shall file its report without regard to the time limit prescribed by Rule 2.204, but the committee may recommend only that the Council (a) pass the disapproved measure notwithstanding the veto by the Mayor or (b) not pass the disapproved measure.

#### **RULE 4.1003 MOTION TO PASS NOTWITHSTANDING VETO**

When the motion is made that the ordinance or resolution, budget appropriation item or sum of money be passed notwithstanding the veto of the Mayor, the President shall put the appropriate question to the Council for consideration and decision, as follows:

(a) Shall (the ordinance or resolution) be adopted and become effective notwithstanding the veto of the Mayor?

(b) Shall (the item in the budget appropriation) be adopted as law notwithstanding the veto of the Mayor?

(c) Shall (the sum of money in the item disapproved or reduced) be restored to the ordinance and become effective notwithstanding the veto of the Mayor?

#### **RULE 4.1004 VOTE REQUIRED TO OVERRIDE VETO**

If two-thirds of all Council Members present shall vote "yea" on the question when it is stated as to a vetoed ordinance or resolution, the presiding officer shall declare that the ordinance or resolution has been adopted and become effective notwithstanding the veto of the Mayor; otherwise, that the Mayor's veto has been sustained. If a majority of the entire Council shall vote "yea" on the question when it is stated as to a vetoed item in the budget appropriation or as to a sum of money in an item disapproved or reduced in any ordinance appropriating money, the presiding officer shall declare that such item in the budget appropriation has been adopted as law, or that such sum of money in the item of the ordinance appropriating money has been restored and become effective, as the case may be, notwithstanding the veto or disapproval of the Mayor; otherwise that the Mayor's veto or disapproval or reduction, has been sustained.

### **PART 11. APPOINTMENTS AND CONFIRMATIONS**

#### **RULE 4.1101 APPEARANCE BEFORE COMMITTEE**

(a) Each appointee, prior to confirmation, shall be required to appear before the committee to which consideration of the appointment has been referred, and there may be interviewed by any member of the committee or any Council Member.

(b) Each appointee for consideration for reappointment who has an attendance record of less than 75% shall be required to appear before the committee to which consideration of the reappointment has been referred, and there may be interviewed by any member of the committee or any Council Member. The attendance record shall be calculated for the immediately preceding term of the board or commission for which the appointee has been approved by legislation. The attendance calculation shall be calculated on the attendance of the board or commission member for meetings of the full board or commission.

#### **RULE 4.1102 VOTE REQUIRED TO APPOINT OR CONFIRM**

The appointment of all officers, employees or appointees of the Council and the confirmation or approval of all appointments of officers, employees and appointees required to be confirmed or approved by the Council shall be by a majority vote of the whole number of the Council Members.

#### **RULE 4.1103 CONFIRMATION OF THE GENERAL COUNSEL**

Upon the introduction of any resolution confirming the appointment or reappointment of the General Counsel, Legislative Services shall notify the Clerk of Court, Property Appraiser, Sheriff, Supervisor of Elections, Tax Collector and Chairperson of the Duval County School Board and encourage them to provide oral or written input and guidance to the Rules Committee and any other committee considering said appointment or reappointment, as to the fitness of the appointee to be General Counsel.

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October 14, 2013

Council Member Lori Boyer  
City Hall at St. James Building  
117 W. Duval Street, Suite 425  
Jacksonville, Florida 32202

**Re: Legal Opinion – Amending the Charter**

Dear Council Member Boyer:

**I. Background.**

The Consolidation Task Force has met for a number of weeks to review the Consolidated Government and consider a variety of reforms or modifications, some of which may require amendments to the Charter. I am not aware of any specific proposals that the Task Force has officially proposed, however, in its deliberations the Task Force has recognized the need for some guidance as to who can amend the Charter.

**II. Question Asked.**

The Consolidation Task Force has requested an opinion as to the methodologies available for amending the Charter of the City of Jacksonville.

**III. Short Answer.**

Three such methodologies exist: (1) enactment of a statute by the Florida Legislature, (2) enactment of an ordinance by the City Council, and (3) referendum vote of the people of Jacksonville. The third methodology may begin with an ordinance or referendum of the City Council placing a question on the ballot or may begin with a petition gathering sufficient signatures to place a question on the ballot.

#### **IV. Discussion.**

The Florida Legislature has the most power to amend the Charter. The Florida and United States Constitutions provide the only significant restrictions on the power of the Legislature to amend the Charter. The most common method of amending the Charter has been through special act adopted by the Legislature, with the Legislature amending the Charter more than 100 times.

The City Council also has the power to amend the Charter directly, via ordinance, or indirectly via ordinance ratified by referendum. Section 3.01 of the Charter expressly grants power to the City Council to amend the Charter via ordinance (subject, of course, to veto power of the Mayor), providing as follows:

The consolidated government...May repeal or amend any provision of this charter, and adopt other provisions of this charter, by ordinance, to the same extent as could be done by the Legislature of the State of Florida, except that:

- (1) The following subjects may not be so acted upon:
  - (i) Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extraterritorial powers by municipalities.
  - (ii) Any subject expressly prohibited by the Constitution of the State of Florida.
  - (iii) Any subject expressly preempted to state government by the Constitution or general laws of Florida.
  - (iv) Any subject affecting the powers, rights, duties, and abilities of the Cities of Jacksonville Beach, Atlantic Beach, and Neptune Beach and the Town of Baldwin.

The Charter then provides that certain Charter amendments made by ordinance do not become effective unless ratified by referendum as provided in Section 166.031, Florida Statutes. The following categories of amendments require approval by referendum:

- (1) the creation or existence of a municipality;
- (2) the terms of elected officers;
- (3) the manner of election of officers;
- (4) the distribution of powers among elected officers;
- (5) matters relating to appointive boards;
- (6) matters relating to the office of general counsel;
- (7) matters relating to the council auditor's office;
- (8) the form of government; or
- (9) any rights of municipal employees.

Oversimplified, the City Council may not amend the Charter (without a referendum) if the amendment seeks to rearrange the form of government or to modify the powers or terms of elected officials. Additionally, the City Council may not amend the Charter (without a referendum) as it relates to the general counsel, the council auditor, or appointive boards. Finally, the Charter does not include the special acts of the Florida Legislature creating and regulating, among other Authorities, the Duval County Hospital Authority, the Jacksonville Aviation Authority, the Jacksonville Port Authority or the

Jacksonville Sports Development Authority, and, as a general rule, the City Council has no authority to amend special acts of the Florida Legislature, with or without a referendum.

Some proposed amendments will fall easily within the power of the City Council to amend by ordinance. Other proposed amendments will fall easily within the power of the City Council to propose by ordinance subject to approval by the electorate by referendum. Some proposed amendments may even fall easily outside the power of the City Council to amend. In answering the question as to a particular proposal, some guidance will be found in both court cases and Florida Attorney General Opinions construing the meaning of Sections 166.021 and 166.031 of the Florida Statutes, two laws, taken together have wording similar to the Jacksonville Charter as to amendability of municipal charters.

Examples of charter changes sought in other cities and counties found by the Attorney General's Office to be permissible by ordinance without referendum include:

- (1) changing the dates of municipal elections; AGO 2013-05;
- (2) changing the date of the organizational meeting of a city commission; AGO 2007-40; and
- (3) providing for a special candidate qualification date; AGO 2007-34.

Examples of charter changes sought in other cities and counties found by the Attorney General's Office to require a referendum include:

- (1) amending a charter to transfer canvassing board duties from a city council to a consolidated municipal canvassing board; AGO 97-53;
- (2) amending a charter to require a city manager to reside within the city; AGO 2001-15;
- (3) amending a charter to change the salary or compensation paid to a mayor and city council members; AGO 2006-10; and
- (4) amending a charter to require that at-large city council member candidates run for a specific seat rather than having a collective ballot for all the seats; AOG 2010-54.

Examples of charter changes sought in other cities and counties found by the Attorney General's Office to be prohibited include:

- (1) amending a charter to permit a city council to meet in another city; AGO 2008-01;
- (2) amending a county charter to waive that county's ad valorem property tax immunity; AGO 2006-05;
- (3) amending a city charter to permit pension fund investments prohibited by state law; AGO 2008-54; and
- (4) amending a city charter to permit any amendment of said charter to be made by ordinance without referendum; AGO 2003-36.

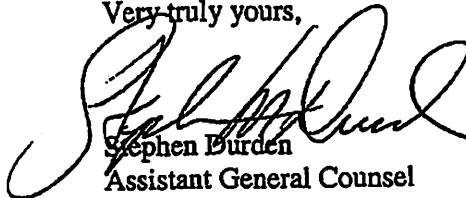
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These examples demonstrate the breadth of variety of possible charter amendments. These examples also provide insight into the difficulty of stating simple rules to categorize proposed amendments as those that may be adopted (1) by ordinance or (2) by referendum or (3) may not be adopted at all.

**V. Conclusion.**

At this point, the Consolidation Task Force should be guided by a common sense understanding of the categories of amendments (listed above) that (1) may be adopted by ordinance or (2) may be adopted by referendum and (3) the categories of amendments that may not be made at all. With regard to any specific proposed amendment, this office will be able to render an opinion as to the possible methods for adoption (if any) once the office has the proposed language or the proposed idea. I trust that this opinion provides the guidance you seek. I am available at your convenience to discuss this with you.

Very truly yours,



Stephen Burden  
Assistant General Counsel

cc: Legal Opinion File


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**MEMORANDUM**

**TO:** Honorable Council Member Greg Anderson

**CC:** Stephen Durden, Chief Assistant, Office of General Counsel

**FROM:** Paige Johnston, Chief of Legislative Affairs, Office of General Counsel 

**RE:** Task Force on Consolidated Government Recommendations re Veto and Waivers from Ordinance Code

**DATE:** January 19, 2018

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**I. Question Asked.**

You have asked whether certain recommendations made by the Task Force for Consolidated Government (herein "Task Force") can be accomplished simply by ordinance or if those recommendations require approval by referendum of the voters.

**II. Short Answer.**

The recommendations identified, and more fully discussed below, require approval by referendum before they can take effect due to the nature of the Charter amendments required including amendments that affect the Council's substantive rights and the distribution of power between Council and the Mayor.

**III. Discussion.**

The Task Force began meeting in late 2013 and over the next year reviewed Consolidated Government operations and discussed critical issues. In 2014, the Task Force presented the Blueprint for Improvement II, the Task Force's recommendations to the Council for possible improvements, including some recommendations as to potential *Charter* and *Ordinance Code* changes.

One such suggestion was amending the *Charter* to require that the same number of votes (13) be required to override the budgetary line item veto by the Mayor as is



required to override any other veto by the Mayor. See page 102 of Blueprint for Improvement II.

Section 6.05 of the *Charter* provides that the Mayor may veto most ordinances and resolutions<sup>1</sup>; should this occur, the Council may override the veto only by a vote of 2/3 of the Council Members present. However, in the case of money appropriated in an ordinance for use of the Consolidated Government or any independent agency, the Council may override the Mayor's line item veto by a vote of the *majority* of the Council Members.<sup>2</sup>

Another Task Force recommendation was to amend the *Charter* and *Council Rules* (as appropriate) to require a vote of 13 Council Members to waive the *Ordinance Code*. See page 105 of Blueprint for Improvement II. Currently, legislation which would waive the *Ordinance Code* may be approved by a majority vote of the Council Members present at a meeting.

Section 3.01 of the *Charter* grants authority to the Council to amend the *Charter* by ordinance alone except for a number of topics which would require ratification by referendum of the voters. The following categories of amendments require approval by referendum:

- (1) the creation or existence of a municipality;
- (2) the terms of elected officers;
- (3) the manner of election of officers;
- (4) the distribution of powers among elected officers;
- (5) matters related to appointive boards;
- (6) matters relating to the office of general counsel;
- (7) matters relating to the council auditor's office;
- (8) the form of government; or
- (9) any rights of municipal employees.

(emphasis added).

The two recommendations of the Task Force to increase the number of votes required (1) to override a mayoral veto and (2) for the Council to waive the *Ordinance Code* would affect the distribution of powers between the Council and the Mayor. The change in votes required from a simple majority to a 2/3 vote would diminish the authority the Council currently has and thus would be considered a change in the

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<sup>1</sup> There are seven types of legislation that the Mayor cannot veto; they pertain to 1) consolidation of the urban services districts; 2) appointments to the zoning board and the building codes adjustment board; 3) zoning exceptions and variances; 4) legislation approving the auditor, secretary and other employees of the Council; 5) internal affairs of Council; 6) investigations by the Council or by Council committee; and 7) quasi-judicial decisions made by the Council. Sec. 6.05, *Charter*.

<sup>2</sup> The procedure for overriding a mayoral veto is also set forth in Rule 4.1004, *Council Rules*, which affirms that only a majority vote of Council is needed when an item is vetoed by the Mayor in the budget appropriation or an ordinance appropriating money.

distribution of powers among the Council and the Mayor. As a result, Section 3.01(e)(2), *Charter*, would require such changes to be approved by referendum in order to take effect.

#### **IV. Conclusion.**

I trust this memorandum responds fully to your inquiry. If I can be of further assistance, please let me know.

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**City Charter**

*Charter Amendments:*

1. Amend the Charter to require all ordinances of the City Council concerning the consolidated government, or providing rules and regulations of general applicability, be published in the City's published Ordinance Code; except that such codification shall not be required for the annual budget, the annual capital improvement plan, appropriations, or land use and zoning approvals, exceptions, and variances. (PT)
2. Amend the Charter and the Council Rules as appropriate to require a vote of thirteen (13) Council members to waive the Ordinance Code. (PT)
3. Amend the Charter to include the Florida legislature as an option for amending sections of the Charter that cannot be amended through ordinance. This recommendation expresses how the law is currently. (PT)
4. Amend the Charter to remove the portions of Article 19 of the City Charter that conflict with Chapter 447 of the Florida Statutes, specifically Section 19.207 of the City Charter. (PT)

**Neighborhood Engagement & Participation**  
**Neighborhood Organizations**

*Charter Amendments:*

1. Amend the Charter to recognize that citizens are government's best resource for identifying issues, suggesting solutions, and developing programs needed to solve existing and future problems in the community; to recognize the importance of neighborhoods as assets of the City that provide the basic units for civic participation and the inspiration for civic engagement; and, further, to amend the Charter to require the City Council, the Mayor, the constitutional officers, and the agencies of the City establish procedures for receiving input from citizens and neighborhoods as a regular course of conducting their business. (NE)
2. Amend the Charter to incorporate the current Neighborhood Bill of Rights and to allow for violations of the Neighborhood Bill of Rights to be mediated by Citizens Planning Advisory Committees (CPACs). (NE)

The Neighborhood Bill of Rights states that every organized, officially recognized neighborhood in the City of Jacksonville has the right to expect and receive the following from the officials, employees, and agencies of the City of Jacksonville:

- a. Prompt, courteous, informed responses to all questions regarding City business.
- b. An opportunity to participate in the design of publicly funded projects within or adjacent to the neighborhood, including the opportunity early in the planning process to express neighborhood preferences regarding all aspects of the project. Projects include but are not limited to any City-related public works or utility projects.
- c. An opportunity to provide informal and formal input into any proposed land use or zoning change and new development. The input from a neighborhood organization shall be considered, and when possible, incorporated by the Planning Department and the City Council.
- d. Advance notification of any City-related public works or utility projects taking place within or adjacent to a neighborhood (e.g., road paving; water, sewer or drainage work; tree trimming; traffic signal installation or removal; park renovation or substantial maintenance; land purchases, etc.), including the day(s) and probable length of any street closures, utility interruptions, or other adverse impacts on the neighborhood, and the name and phone number of the City representative most knowledgeable and able to immediately answer questions during the course of the work.
- e. Notification of the submission of any application for rezoning, zoning or land use change, variance or exception, Development of Regional Impact (DRI) or Planned Unit Development (PUD) application, Comprehensive Plan change, or other significant land use action; a clear

*Charter Amendment:*

1. Adopt an ordinance amending the Charter of the City to require the same number of votes, thirteen (13), to override the budgetary line item veto of the Mayor, as is required to override any other veto of the Mayor. (PT)

*Ordinance Code Changes:*

1. Amend the Ordinance Code to require that annually, at least one departmental budget be subjected to a zero-based budgeting process, justifying every line item and expense from a zero base without any carry-over assumptions of service levels, personnel, programs, or resources from the prior year. A report should be written outlining the items in the department's budget and the justification for the expenditures. This report should be given to the City Council. This process should continue for at least one department each year until all departments have completed the process. Once all departments have completed the process, it should begin again and continue into perpetuity. (EE)
2. Amend the Ordinance Code to require that the Mayor certify, in each quarterly financial statement, that the employee caps are accurate and comply with the budgetary allowance for each department of the City. (EE)
3. The Police and Fire Pension Fund Board and the General Employees Pension Fund Board should each establish and report their expected investment rate of return and other actuarial assumptions by March 1 of each year. This should be accomplished through changes to State law, the Charter, and the Ordinance Code, or through rules adopted by each of the respective boards, each as necessary to meet the intent of ensuring effective and efficient creation of the City budget. (EE)

**Central Services**

*Ordinance Code Changes:*

1. Amend the Ordinance Code to eliminate the practice of internal budgeting and charging of central services to all City departments. Additionally, it should be the policy of the City of Jacksonville not to use the process of internal service billings and to remove such billings from the budget, and from practice, for all internal services, as defined in Chapter 108 and otherwise, with the exception of charges assessed to enterprise funds, the independent authorities, and the Police and Fire Pension Fund, which shall continue to be billed for services. (CS)
2. Amend the Ordinance Code to require the specific elimination of the practice of internal budgeting and charging of legal services to all departments, agencies, and offices of the City with exception of enterprise funds, the independent agencies, and the Police and Fire Pension Fund. The annual budget shall not allocate legal services to these departments, agencies, and offices of the City, with exception of enterprise funds. Annually, the office of General Counsel shall be separately but sufficiently funded to meet the legal needs of the City. (CS)
3. Amend the Ordinance Code to require as part of the annual budget process that each department of the City that bills another department, agency, or aspect of the City shall determine and report to the City Council the direct and indirect costs incurred by that department. Indirect costs shall include but not be limited to overhead costs such as management salaries and benefits. Direct cost information shall identify which agencies or departments are incurring the costs. (CS)
4. Amend the Ordinance Code to require, annually, prior to the start of the City's budget process, that the City enter into contracts with the independent authorities that outline the central services the City will provide, the level of service at which the City will provide these services, and the cost the independent authority shall pay for that fiscal year. If the City is unable to meet the service needs of the independent authority or constitutional officer at a mutually agreeable cost, the independent authority shall have the option to