



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

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

**To:** Mayor Schneier and Town Commission  
**CC:** Tom Harmer, Town Manager  
**From:** Maggie D. Mooney, Esq., Town Attorney  
**Date:** September 16, 2022  
**Subject:** Charter Amendment(s) – Commission Compensation

At the July 1, 2022, Meeting the Town Commission requested that the Town Attorney provide the Town Commission with information on amending the Charter provision particularly on issue(s) relating to Commissioner compensation. The Commission also requested that the discussion include information on the timing and requirements associated with amending the Charter.

**A. Commissioner Compensation – Art. II, Sec. 3, Town Charter**

The Town of Longboat Key (“Town”) Charter contains a prohibition that restricts the Town Commissioners from receiving compensation while serving as an elected official for the Town. The specific text states:

Sec. 3. - Nominations; character of service.

The town commission shall provide by ordinance for procedures for nominations for the office of town commissioner, provided all nominations and elections shall be conducted on a nonpartisan basis without regard for a designation of the political party affiliation of any nominee on any nominating petition or ballot. **All members of the town commission shall serve without compensation but shall be reimbursed for expenses incurred in connection with official duties.** [Emphasis added].

See, Art. II, Sec. 3, Town Charter.

**B. Charter Amendments**

The Town Commission is permitted to initiate its own Charter amendment through the placement of a charter amendment question on a ballot for consideration by the Town’s qualified electors. See, Fla. Stat. 166.031. To pursue such an

amendment, an ordinance must be adopted by the Town Commission following the statutory rules and guidelines for the adoption of any ordinance. See, Fla. Stat. §166.041 (specifying that an ordinance must be read on two separate occasions, 10 days apart with notice). An amendment approved by the qualified voters is subsequently incorporated into the charter following an election when the revised charter is filed with the Department of State. *Id.* at 166.031(2). Any charter amendment provisions within the current Town Charter relating to amendment procedures are considered supplemental to the provisions contained in Florida Statutes. *Id.* The Town's Charter amendment processes generally parallels the statutory charter amendment process provided for in general law. See, Article VII of the Town's Charter.<sup>1</sup>

In order to place a referendum question on the March 2023 ballot, an ordinance meeting all statutory and Town Code requirement must be adopted at second reading and public hearing no later than the Town Commission's December 5, 2022, Regular Meeting. This deadline is necessary so that the referendum language can be forwarded to the Manatee and Sarasota Supervisors of Elections in sufficient time for their offices to print the ballots. If the majority of the voters at the March 2023 election approve of the charter amendment question, then the amendment will be adopted. If the majority of the voters reject the referendum question, then the current provisions within the Town Charter remain unchanged.

### **C. Prior Consideration on Compensation Amendment**

Historically, the Town Commission has discussed charter amendments relating to the Commissioner compensation provision in 1998, 2002, and 2008. However, a charter amendment referendum relating to the subject of Commissioner compensation has only occurred twice, in 1998 and 2002.

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<sup>1</sup> The Town's Charter states that any proposed charter amendment "may be presented by title, which may be different from its legal title, but which shall contain a clear and concise statement describing the substance of the proposed amendment." Art. III, Sec. 3 of the Town's Charter. The Charter also provides that there shall be a clear indication for a vote "For" or "Against" the proposed amendment. *Id.* The Town's Charter provisions mirror similar requirement in Florida Statutes that the ballot statement be followed by the words "yes" and "no" and be styled in such a manner that a "yes" vote indicates approval of the amendment and a "no" vote is a rejection. See, Fla. Stat. §161.161(3)(b).

In 1998, the Charter Amendment referendum question was the result of the Charter Review Committee's recommendation. In 1998, the Town's voters were asked to approve providing each Commissioner with \$2000 of annual compensation.<sup>2</sup> In 2002, the Charter Amendment referendum asked voters to approve an annual compensation of \$4800 for each Town Commissioner.<sup>3</sup> Both referendums failed. In 2008, following the Charter Review Committee's recommendation, the Town Commission considered charter amendment language that would have allowed the Commission to receive compensation that would be determined by ordinance. Ultimately, the Town Commission chose not to move forward with placing that particular question on the ballot.<sup>4</sup>

#### **D. Other Municipal Official Compensation**

A majority of municipalities in the state of Florida and in the southwest Florida region compensate their elected officials for their public services. County commissioners, school board members and special district elected officials are also permitted to receive compensation for their service, and most avail themselves of that compensation. Compensation provisions within other municipal Charters take a variety of forms. Some municipalities include a specific monetary monthly compensation payment (i.e., monthly or quarterly payments), others provide the elected board with discretion to annually set the board's compensation, the City of Sarasota's Charter

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<sup>2</sup> The 1998 Referendum language that proposed to modify Art. II., Sec. 3 contained the following modified text:

The town commission shall provide by ordinance or procedures for nominations for the office of town commissioner, provided all nominations and elections shall be conducted on a nonpartisan basis without regard for a designation of the political party affiliation of any nominee on any nominating petition or ballot. All members of the town commission shall serve without compensation but shall be reimbursed for expenses associated with their office in the amount of \$2,000.00 per year payable quarterly. Town Commissioners shall not be entitled to any other benefits of the Town of Longboat Key arising out of their office except that Commissioners shall be reimbursed their actual and necessary expenses incurred in performance of their duties of office for all matters outside the territorial limits of the counties of Sarasota and Manatee. See, Town Ordinance 98-32.

<sup>3</sup> The 2002 Referendum language proposed to modify Art. II, Sec. 3 as follows:

The town commission shall provide by ordinance or procedures for nominations for the office of town commissioner, provided all nominations and elections shall be conducted on a nonpartisan basis without regard for a designation of the political party affiliation of any nominee on any nominating petition or ballot. All members of the town commission shall serve with an annual compensation of \$4800, paid in quarterly increments of \$1,200, and shall be reimbursed for expenses incurred in connection with official duties. See, Town Ordinance 01-17.

<sup>4</sup> The 2007 Referendum language that was considered (but not placed on the ballot) proposed to modify Art. II., Sec. 3 as follows:

The town commission shall provide by ordinance or procedures for nominations for the office of town commissioner, provided all nominations and elections shall be conducted on a nonpartisan basis without regard for a designation of the political party affiliation of any nominee on any nominating petition or ballot. All members of the town commission shall serve with compensation as determined from time to time by ordinance, and shall be reimbursed for reasonable and necessary expenses incurred in connection with official duties.

compensation incorporates aspects of a statutory population based formula for county commission compensation, and still other communities prohibit compensation or provide for a nominal annual compensation amount (i.e., \$1.00/yr) <sup>5</sup>.

An analysis of neighboring municipalities in Manatee and Sarasota counties was requested and prepared by the Florida League of Cities (“FLC”). According to FLC, the annual municipal elected official compensation in the Manatee and Sarasota Counties varies from \$4,800 - \$35,967.00, and annual Mayor compensation ranges from \$9,600 - \$71,394.00. See, Exhibit 1, prepared by the Florida League of Cities. Another analysis from FLC indicates there are approximately 15 cities (excluding the Town) with a population under 20,000, that prohibit elected official compensation<sup>6</sup> and six (6) cities that provide for \$1.00 of annual compensation for the elected officials.<sup>7</sup> See, Exhibit 2, prepared by the Florida League of Cities. In summary, there are many approaches to determining municipal elected official compensation. Accordingly, the elected body has to balance how much compensation flexibility the elected body desires and how much compensation the voters will ultimately approve. Any compensation approach has to be memorialized in an ordinance form that includes the charter amendment text changes and captures the referendum question that will be placed on the ballot for voter approval.

#### **E. Alternative Option – Amendments to the Travel and Reimbursement Ordinance**

An additional option available to the Town Commission to ensure that Town Commissioners are not unduly burdened financially by their elected office would be to consider re-evaluating the Town’s travel and expenses reimbursement policy set forth in Chapter 40 of the Town Code. Modifications to the reimbursement section of the Town Code would not require a Charter amendment and would follow the ordinance adoption process which requires consideration at two Town Commission voting meetings and a public hearing. A copy of Chapter 40 of the Town Code is included as Exhibit 3. For example, the Town’s reimbursement policy set forth in the Town Code could be modified to provide each Town Commissioner with a set travel budget (i.e., a not to exceed

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<sup>5</sup> City of Venice’s Charter provides for monthly compensation to City Council members (\$850/month) and the Mayor (\$1,000/month). The City of Naples’ Charter provides a monthly salary to the City Council members (\$40,000/year plus a \$300/month stipend) and to the Mayor (\$50,000/year plus a \$400/month stipend). The City of Jupiter’s Charter provides a monthly salary to the City Council Members (\$1,550.00 /month) and the Mayor (\$1,850.00/month). The Charters for the cities of Bradenton, Palmetto, Anna Maria, Bradenton Beach, and Holmes Beach authorize the respective legislative bodies (the City Commissioners) to adopt their annual compensation by ordinance.

<sup>6</sup> The municipalities that do not provide any compensation for elected officials include the cities of Sewell’s Point, Edgewood, Windermere, Malabar, Indian River Shores, Brant-Valkaria, Sanibel, Belle Isle, Palm Beach, Indian Harbour Beach, Satellite Beach, Key Biscayne, Destin, Niceville, and Pinecrest.

<sup>7</sup> The municipalities that provide a nominal (\$1.00) annual compensation to elected officials are the cities of Parker, Valparaiso, Gulf Breeze, Surfside, Bay Harbour Islands, and Sebring.

monetary amount) for travel expenses returning to Longboat Key meetings and/or workshops.

## **F. Conclusion**

In summary, the Town Commission has discretion to determine whether it wants to place a Charter referendum question before the Town's qualified voters at the March 2023 election. If the Commission does want to pursue a Charter amendment on the issue of Commissioner compensation, then the Town Commission needs to provide direction on the desired form of compensation so an ordinance can be adopted in time to meet election deadlines. Additionally, the Town Commission could also consider changing the Town Code to provide more flexibility to reimburse the Town Commissioners for their travel expenses associated with returning to the Town of Longboat Key for meetings and workshops. If this option is desired, the Town Commission needs to provide direction on this option as well.

If there are any questions or concerns about this Memorandum or the Charter Amendment process or Town Code, please do not hesitate to contact me directly.

Exhibits: (3) All exhibits are available and on file with the Town Clerk's Office.

**End of Agenda Item**