

**Final City Charter White Paper
of the
League of Women Voters of the Pensacola Bay Area
presented to
the Charter Review Commission of the City of Pensacola
October 29, 2008**

Recommendation: That the Charter Review Commission offer the people of the City of Pensacola an opportunity to implement Home Rule by proposing a sound charter that addresses present needs and those of the foreseeable future. A sound proposal will provide for: adequate policymaking and action, checks and balances, broad-based participation by the citizens, clear enforceable provisions, and a prescribed review process.

Rationale: A sound comprehensive charter tailored to address present needs and the foreseeable future can help end the decline of the City of Pensacola and provide the possibility for the City to progress.

I. Fundamental Considerations in Drafting a Charter

It is self-evident in a democracy that it is necessary to ascertain what the people need and want.¹ For democracy to work, the fundamental question that should be addressed is: “What do the people, as a whole, need and seek to achieve?” In other words, are the people satisfied with their present government; or do they seek change and aspire to develop in new ways, or do they need to move in uncharted ways, including even dissolving their government?²

To answer this fundamental question, the facts and circumstances that define and describe a community and its government must be found and assessed. Any analysis that does not include consideration of the circumstances of a particular community is highly likely to be flawed, and any sound conclusions drawn from such an assessment merely accidental. An

¹ Article I, Section 1 of the Florida Constitution provides that “[a]ll political power is inherent in the people.” The Preamble to the Constitution of the State of Florida states: “We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution.” (emphasis added). The Mayor of Charleston, Joe Riley, explained to the Charter Review Commission [“CRC”] that in a democracy the more power that is given to the citizens the more successful the government will be. One of the fundamental “Principles” of The League of Women Voters of the United States is the protection and facilitation of citizen participation in government decision-making. Former CRA Director, David Bailey advised the CRC that public input causes cities to be more progressive, citing Austin, Texas as an example. William Grodnick, City Attorney for Hialeah, Florida, noted that input from citizens advisory committees, like Hialeah’s Citizen’s Advisory Budget Committee is vital to the success and progress of the city he serves.

² Dissolution of a municipality and consolidation a county also present fundamental questions. For example, it is crucial to address why a city was incorporated and the reasons for its continuing existence. It is also important to consider the implications of whether a proposed consolidation involves a city subsuming a county, as distinguished from a county subsuming a city, or whether consolidation involves two equal entities.

appropriate form of government for any democratic people is a structure that works for a particular people in a particular context. Abstract consideration alone of concepts like power, vision, or accountability, although crucial,³ will not inform a charter commission what the people need and seek, or will consent to adopt.

To find the material facts and circumstances that define and describe the City of Pensacola, the Commission should frame questions that will likely provide that information. The League of Women Voters of the Pensacola Bay Area [“League” or “LWVPBA”] submits that those questions should cover a range of topics, including: population size; population insularity; racial and ethnic diversity and insularity; income levels; educational levels; the degree to which decisions are merit-based; the incidence of misuse and abuse of power; the degree of public and self-interest; and the range, magnitude, and complexity of municipal functions.

After answering the key factual questions that will enable a commission to make the threshold determination of what the people need and want, a charter review commission then should consider changes that will result in a governmental structure that is workable, as a whole. Whether well or poorly conceived, charter provisions comprise a unity that defines government as a whole. Charter provisions define and determine each other; the provisions modify, check and balance each other. A charter is not merely a collection of discrete provisions that exist in isolation from each other; rather, it is a constitutional framework comprised of inter-related provisions.

For example, it is not possible to conclude that a Mayor/Council provision concentrates too much power without considering the relevant context—the remainder of the charter. Similarly, it is not possible to conclude that a Mayor/Council provision will result in greater accountability without relating that provision to the rest of a charter. Whether or not there are other charter provisions providing for a strong council, recall, or a veto would, for example, bear materially on the degree of mayoral power and accountability.

To assess how charter provisions define and delimit each other, the Commission may wish to consider the following:

1. as the number of decision-makers⁴ decreases, the concentration of power increases;
2. as the number of decision-makers decreases, the degree of accountability increases;
3. as the number of decision-makers decreases, the likelihood of action increases, but the likelihood of misuse and abuse of power and short-term error increase;
4. as the number of decision-makers increases, the likelihood of misuse and abuse of power decrease, but the likelihood of stagnation and long-term error increase;
5. as the degree of accountability increases the degree of policy-making increases;

³ For example, implicit in the understanding of the Mayor/Council form of government is the recognition that this type of government typically facilitates greater gains with higher risks entailed. Similarly, implicit in the understanding of the Council/Manager form of government is the recognition that this type of government typically maintains the status quo with limited short-term risk, but higher risk of long-term stagnation.

⁴ “Decision-makers” refers to elected officials who make policy.

6. as the length of time in office increases, the power of staff decreases;
7. a limit on the length of time in office decreases emphasis on re-election and increases emphasis on policy;
8. as the power of staff increases, the generation of policy decreases;
9. as the power of staff increases, the degree of bureaucratic protection is more likely to increase;
- 10.at-large representation reduces parochialism for the benefit of majority interests;
- 11.single district representation increases individual citizen input;
- 12.elected officials authorized to exercise discretion hold political offices focused on policy-making;
- 13.employed officials perform work requiring particular professional or technical experience or expertise and are not authorized to make primary policy decisions;
- 14.referendum is a power of the people that is a check on legislative power;
- 15.initiative is a power of the people that increases policy-making and decreases stagnation;
- 16.checks and balances limit power and results;
- 17.Florida's Sunshine Law limits policy-making, but protects against misuse and abuse of power .

Application of these principles, several of which may interplay simultaneously, can, however, be complex. For example, imposition of term limits could unacceptably increase the power of staff and drastically limit policymaking. Establishment of an executive mayor, however, could concentrate power and accountability to a degree that would negate the staff empowering effects of term limits. Similarly, the expertise legislators could accumulate in the absence of term limits would be irrelevant if legislative power is not sufficiently concentrated to make action likely.

In addition to understanding and assessing the complex inter-relation of fundamental principles, it is crucial to use language and terms accurately and precisely. Precise use of terms will facilitate preparation of a sound proposal, but loose use of language may compromise work product. For example, saying a city manager does not hold a political position does not facilitate drafting a sound proposal because a city manager, in fact, holds a non-elected position, which may, or may not, be a political or highly politicized position.

Similarly, to draft a sound proposal, it is important to be clear that a city manager is an employee who works for elected officials, while a mayor works for the people. These points have both practical and legal consequences. For example, the Mayor of Charleston noted for the CRC that an elected official has empathy for the voter that an appointed professional never will. An elected official makes policy, while an employee, like a city manager, executes the policy that is created.

Finally, a charter commission should be mindful of the importance of structure. Structure matters greatly because it is the structure and form of a government that makes particular results more or less likely, often highly more or less likely.⁵ Indeed, the constitutions of

⁵ Even speakers, like former Pensacola Mayor Jerry Maygarden, who seemed to contend that structure does not matter, as shown in his statement that leadership is not a function of a process

the United States and the State of Florida are premised on the notion that structure matters greatly and is fundamental to our democratic form of government.

II. Understanding the Fundamentals

To assist in understanding the fundamentals of municipal government structure, the CRC heard from an outside academician, Dr. James H. Svara, Professor at the School of Public Affairs of the Arizona State University. Dr. Svara appeared in May 2008 and explained the characteristics of various forms of municipal government.⁶

Dr. Svara explained that the Mayor/Council form is a “separation of powers” form, while the Council/Manager form is an “integrated authority” form. The Mayor/ Council form, which is leader-centered, is based on a conflict model, while the Council/Manager form is based on a collaborative model of leadership.

Dr. Svara noted that the Council/Manager form often is used in smaller cities, especially those located in affluent suburban areas. The form is also used by other entities, such as non-profit corporations and school districts. He noted that more cities use the Council/Manager form, but recently a number of municipalities have changed to the Mayor/Council form, probably because of population increases.

Dr. Svara took questions from both the commissioners and the public. In response to a question from the League representative, Dr. Svara explained that he could not give an expert opinion concerning what form of government the City of Pensacola should adopt. He stated that it was impossible for him to give an opinion because he did not have sufficient facts on which to base such an opinion. In response to questions from the CRC Chairwoman, Dr. Svara confirmed that the statistical data he provided to the CRC was obtained from surveys of officials operating under the Council/Manager form.

III. Facts and Circumstances Concerning Pensacola City Government

The local background Dr. Svara lacked was provided to the CRC in a series of public meetings.⁷ A number of individuals, including government officials, elected and appointed, past and present; business and professional persons; local academicians; candidates; and citizens spoke to the CRC at length concerning facts, circumstances and perceptions that define and describe the City of Pensacola.⁸ The CRC also obtained

or delegation, urged the CRC to include multiple structural safeguards if it proposes to change the form of City government, e.g., a clear separation of powers, an override veto, and separate counsel for the City Council. Mr. Maygarden also tacitly admitted how much structure matters in his statement that the Mayor/Council form leads to too much patronage.

⁶ The CRC received similar information from its consultants, who discussed the spectrum of municipal forms of government. The consultants discussed aspects of five forms of municipal government, ranging from the Town Meeting form to the Mayor/Council form.

⁷ The commissioners, who, as a result of League and Movement for Change lobby efforts, are required to be City residents, also have factual information by virtue of their residency, information not available to Dr. Svara, who lives in Arizona. The residency requirement for Commissioners stemmed from Councilman Sam Hall’s successful initiative to include city residents on the Charter Nominating Committee, which initially was comprised of four non-city residents, two of whom lived in another county.

⁸ The individuals who made presentations to the CRC are primarily business or professional persons, or persons who have run for elected office. Individuals representing other important

material input from various written sources, including and studies and statistical analyses.⁹

Although those who appeared had disparate views about particular points, several clear themes emerged. Also, a good deal of context arguably was established by repeated corroboration. Lack of leadership; insufficient accountability; undue influence of, or domination by, staff; stagnation; low quality of life; and resistance to change,¹⁰ and suspicion of those outside of government emerged as clear themes.

Concerns regarding a perceived lack of leadership and insufficient accountability were discussed by multiple presenters who asserted that the City of Pensacola makes little, or no, policy.¹¹

Stagnation was noted by a number of presenters who cited as evidence unusually long office-holding.¹² Many presenters also expressed concern about the undue influence of,

groups, or interests, did not make presentations and were notably absent. These include: persons from the military, which has been the base of the local economy for many years; persons from Pensacola's large medical community; clerical persons; blue-collar workers; students; and persons from the arts community.

⁹ The information is contained in U.S. Bureau of the Census data and various comparative studies produced by the State of Florida and private entities. The information shows that the City of Pensacola has experienced stagnation or long-term decline. In a related study, The Better Pensacola Forum, a private group, on September 2, 2008, issued the results of a Mason-Dixon Polling & Research survey of Escambia County voters. The results were negative in most areas, but evenly split on the overall quality of life.

¹⁰ The City Council's reluctance to authorize even a small budget for the CRC and questions about CRC budget authority and reporting requirements suggest institutional resistance to change and suspicion of those outside government. Also, soon after the CRC was empaneled the Chair and one of the consultants expressed concerns about, and frustration with, apparent "meddling" by City staff.

¹¹ Dr. Richard Hawkins, UWF Associate Professor of Marketing and Economics, stated that no policy initiative has originated from City Hall the entire time he has lived in Pensacola. On September 17, 2008, businessman Ray Russenberger noted there is no evidence of any leadership or vision coming from the government in the City of Pensacola. Mr. Russenberger noted that the City is still discussing the same policy issues it was discussing 10 years ago. He produced 10-year old newspaper articles to support his point. Bank president Blaise Adams also noted at the July 28, 2008, CRC meeting that even simple policy issues remain unresolved. Former Finance Professor, Dr. C.C. Elebash stated at the June 18, 2008, CRC meeting that the City lacks visible leadership, leadership which is accountable, and leadership with vision. Scientist and entrepreneur, Dr. Ken Ford, who heads an internationally acclaimed research institute in Pensacola, explained that, in his view, the City's only problem is authority and responsibility, which he termed "leadership." In Dr. Ford's view, all of Pensacola's problems are merely symptoms of the fundamental problem—a lack of leadership stemming from the City's system of government. He went so far as to say that the lack of leadership is causing more damage than corruption could cause. Former Mayor Jerry Maygarden, who opposes change to the Mayor/Council form of government because of Pensacola's relatively small population and land area, said at the October 8, 2008, meeting of the CRC that the community is "crying for leadership." At the July 28, 2008, CRC meeting, Attorney Dan Lozier, who has handled legal matters involving the City for local businessmen, stated that no one is in charge. He described City government as government by committee, a phrase Councilman Marty Donovan also used. Former CRA Director, David Bailey noted at the October 8, 2008, CRC meeting that no more than 10 significant items of any kind were brought forward by any council member in the five years Mr. Bailey worked for the City. At the June 18, 2008, CRC meeting Mayor John Fogg stated that the current Charter institutionalizes a lack of leadership, and he noted that he has changed his position over time to support a full-time "leadership mayor."

¹² At the July 28, 2008, CRC meeting, former City Councilman Rhetta Anderson explained that he had observed that too many terms lead to tuning out the public. At the March 5, 2008, public hearing, a number of citizens strongly urged the CRC to consider appropriate length term limits to

or domination by, staff also leading to stagnation.¹³ Several presenters expressed serious concern about adverse economic effects stemming from Pensacola's form of government.¹⁴

It was clear in the presentations that the City delivers basic services well,¹⁵ but it was equally clear there were significant concerns about the quality of life.¹⁶ There was

deal with what they view as severe stagnation, but also to ameliorate leadership and accountability problems. Byron Keesler, a citizen activist who attends many Council proceedings, explained that, in his view, term limits for City elected officials become more necessary with the passage of time. At the July 16, 2008, meeting of the CRC, Councilman Mike Wiggins described the Council as "plodding and slow to act," but noted it is representative because of the large number of members.

¹³ At the June 18, 2008, CRC meeting Councilwoman Jewell Cannada-Wynn stated that the City Manager, who she noted is unelected, has too much power. Former CRA Director, David Bailey, explained at the October 8, 2008, meeting that, in his view, the present structure allows staff to block items from consideration by elected officials. He noted that even senior staff has no contact with elected officials; everything is required to go through the City Manager, who is not authorized by either the Charter, or the nature of the position, to provide leadership. At the July 16, 2008, CRC meeting, Councilmen Marty Donovan and Sam Hall both asserted that staff has undue power. Attorney Dan Lozier stated, at the July 28, 2008, meeting that simple decisions are unduly protracted because of staff intervention. At the July 28, 2008, CRC meeting, Councilman Sam Hall stated that the government is totally unresponsive to the people.

¹⁴ At the July 28, 2008, CRC meeting, Banker Blaise Adams noted that the City is not leveraging its assets and resources, which can substitute for financial incentives. He also explained that, in his view, the policies of the City are deflecting business from the area. James Hosman, President of the Pensacola Young Professionals, stated at the same meeting that 77% of his organization's membership had voted in favor of changing to a strong mayor form of government, largely to jumpstart a languishing economy. In August 2008, Former Professor of Finance at the University of West Florida, Dr. C. C. Elebash noted for the CRC's consideration that poverty rates in Escambia County are high, and personal income growth is slow. Dr. Elebash stated that Escambia County is generally considered to be one of the poorest among the 18 urban counties in the State of Florida. In his view, the area resembles the Mid-West "rust belt" cities that have lost their factories. Dr. Ken Ford explained at the September 17, 2008, CRC meeting that government provides the base and groundwork for the private sector to flourish.

¹⁵ Banker Blaise Adams, in particular, commented on the City's commendable provision of basic services.

¹⁶ At the July 28, 2008, CRC meeting, Banker Blaise Adams explained that a community will thrive if it is attractive and has a high quality of life, not if it is the cheapest place to do business. In answer to a Commissioner's question, Mr. Adams contended that the role of government is to facilitate and enhance business and, thereby, the quality of life. At the same meeting, Architect Bryan Spencer agreed with Mr. Adams, emphasizing that the proactive decisions that can make a community attractive, not only increases population influx, but decreases population flight—a phenomenon that Councilman Donovan, at another CRC meeting, termed voting with the feet. At the October 8, 2008, CRC meeting, a successful local small businessman, Paul Epstein, explained to the CRC that population growth is crucial to the survival of small businesses in the City. At the August 6, 2008, CRC meeting, Dr. Rick Harper, Director of the Haas Center for Business Research & Development at the University of West Florida, stated that, in his view, government has only an incidental effect on the quality of life. He also explained to the contrary, however, that services and amenities (which are provided and facilitated by city governments) are what attracts and keeps population. Dr. Harper noted that the City has multi-generational poverty, a gray labor market, and a high dependency rate. City residents have a low educational level, with only approximately 10% of the young people receiving a quality education. According to Dr. Harper, the educational level of the workforce attracts business and jobs, but not the converse. Dr. Harper also stated that the city's housing is magnet for the poor and accelerates suburbanization. Dr. Harper explained that without adequate population a city cannot be a city, and without adequate population diversity a city will not be a successful city. Dr. Elebash advised the CRC in June 2008 that Pensacola was one of only four Florida cities with a population greater than 25,000 that lost

recognition by multiple presenters about the value of using resources outside the City to improve government and the quality of life.¹⁷

Presenters from other cities confirmed that use of resources outside an area, together with merit based hiring, can contribute to the success of a city. Mike Dowd, the former mayor of the City of Mobile who appeared before the CRC in August 2008, explained that outside support, including outside financial investment, was vital in transforming Mobile from a declining, corrupt city to a successful, progressive city.

Mayor Dowd noted that he introduced merit hiring in the City of Mobile, which led to the firing of long-time and patronage employees who were replaced, in many instances, by qualified outsiders.¹⁸ Mayor Dowd also noted that he retained a highly competent outside strategist to advise him concerning marketing strategies, and he traveled extensively to seek new ideas and identify opportunities.¹⁹

population between 2000 and 2006, and Pensacola had the largest loss percentage.

¹⁷ In his statement to the CRC, Banker Blaise Adams noted that the City issues requests for proposals locally, but not nationally, which, in his view, prevents the City from obtaining new and better ideas. Architect Bryan Spencer explained that, in his view, the City needs to find leaders who will travel to obtain ideas and learn new methods that can be used to make the City more attractive and enhance the quality of life. Juxtaposed with these speakers' views about the value of using outside resources is the City's apparent resistance to change and suspicion of outside influence. The City's perceived aversion to outsiders surfaced during the hiring of a new City Attorney in 2008. Initially, a majority of the City Council refused to conduct any job search for a new City Attorney. When challenged by the newest council member, Sam Hall, a search in the two-county area was conducted. Councilman Hall, however, independently informed The Florida Bar of the opening, and several highly qualified attorneys both in and out-of-state reportedly applied. The Council agreed to rank the applicants and interview the top choices, but late one night, that process was abandoned. None of the applicants was interviewed, and an in-house assistant City attorney, who is in deferred retirement status, was hired, apparently without review, even though opponents contended he had credentials inferior to several of the outside applicants. The City Attorney for the City of Hialeah, William Grodnick, who serves a much larger population and rarely uses outside counsel, unlike the City Attorney for Pensacola, has no contract. Mr. Grodnick advised the CRC at its meeting on September 17, 2008, that as a matter of good policy, the City Attorney, a senior level professional, should serve at the pleasure of the elected officials. One of the current candidates for Mayor, who is outside government, has publicly stated that the lack of a reasonable process for hiring the City Attorney caused him to file to run for Mayor the morning after the Council's "in-house" determination. Even with respect to the Charter Commission there is an appearance of insularity and bureaucratic protection. Two of those selected as Commissioners sit on City boards governed by the Charter, arguably in violation of Article II, Section 5 of the Florida Constitution, and the parts of the Charter governing their boards were not provided to Commissioners. It is also of concern that only one person was recommended to City Council to serve as the CRC's counsel and that person was recommended by the City Attorney who opponents argue stymied efforts to remedy any Charter problems. Adverse consequences can stem from such insulation and bureaucratic protection. For example, in response to a recent public records request, the City Clerk explained that Subpart B of the Charter, which covers City pension boards, was not provided because it is not of interest. Subpart B is, however, of particular interest because it has recently come to light that city pension funds have increased dramatically in a short period of time and that pension obligations now equal 98% of the amount of City ad valorem property taxes. One councilman predicts that the City's current unfunded pension obligation even will likely cause a financial crisis if not addressed soon.

¹⁸ Former Mayor Dowd advised the CRC that 38 of 40 top directors in one department were "let go." He explained to the commission that it was also necessary to litigate and win employment suits to bring merit-based hiring to the City of Mobile.

¹⁹ At the August 8, 2008, CRC meeting, former Mayor Dowd noted that he determined, with outside assistance, that the local Chamber of Commerce was dysfunctional. The outside strategist, who he retained, identified successful market niches for the City of Mobile, which the

William Grodnick, City Attorney of Hialeah, Florida, made similar observations about the value of merit-based hiring and the efficacy of using outside resources at the September 17, 2008, meeting of the CRC. He emphasized the importance of outside financial investment, in particular, in spurring economic development in the City of Hialeah. According to Mr. Grodnick, outside investment likely would not have been obtained without a Mayor/Council form, in which the mayor has decision-making authority, travels extensively and is full-time.²⁰ Mr. Grodnick also noted that the Mayor's status in the governmental structure as separate from the council obviates the policy-limiting effect of Florida's Sunshine Law.

The CRC also heard from Tom Bonfield, former City Manager,²¹ concerning the nature of Pensacola government. Mr. Bonfield appeared twice to describe his role as chief administrative officer for the City. He characterized the City's decisional model as a "decision continuum." His verbal description, and visual depiction in a power point presentation, showed the City does not have one clear decisional process, but rather multiple decisional paths with multiple accountable parties.²² According to Mr. Bonfield, the City of Pensacola uses a decisional process in which "leadership is collaborative." Mr. Bonfield received and answered questions from the Commissioners, but he refused to take questions from the public.²³

IV. Facts and Circumstances Concerning Charter Review in Pensacola

Just as the presentations to the CRC provide a background for determining what charter changes could be proposed, the history of efforts to establish home rule in the City of Pensacola provides a view of City government and key insights into what the people of the City of Pensacola need and seek to achieve. As with the information provided by the live presenters and written studies, the CRC can draw significant inferences from the City's home rule history. The League submits that among those inferences are the following:

- a. the government of the City of Pensacola suffers from inertia—the tendency to remain unchanged;
- b. elected officials and staff of the City of Pensacola are sometimes intransigent--unwilling to change and adapt when clearly appropriate;

Chamber had failed to find. In Mayor Dowd's view, the City of Pensacola's market niche is not presently properly identified, and he felt that Pensacola's economic model is overly dependent on the existence of its air station. He also stated that the City is not using one of its significant population resources--well-educated, retired persons.

²⁰ The Mayor of Hialeah is also Hialeah's full-time lobbyist, which saves the city money and has enabled Hialeah to compete successfully for significant amounts of state money. Former Mayor Mike Dowd also explained that, in his view, a full-time mayor is important to the success of a city because such a mayor provides the initiative for action. Both Mr. Dowd and Mr. Grodnick advised the CRC that the strong mayor system works best when balanced by a strong council.

²¹ After the Charter Review Commission was empaneled, Tom Bonfield left the City Manager position he had held for approximately ten years in Pensacola to take a similar position in another state.

²² In Mr. Bonfield's power point depiction of the decision continuum, staff persons appeared most frequently.

²³ Mr. Bonfield's refusal to take questions from the public arguably shows staff's lack of openness and inaccessibility.

- c. elected officials and staff tend to resist to change, and are suspicious of, ideas and persons outside government;
- d. the staff of the City of Pensacola wields a high degree of power and control that it tends to insulate and protect;
- e. the development of active citizen groups is an indication government is not working to meet the needs of the citizenry;
- f. the people, and in particular citizens groups, have begun to effect change, permitting progress;

A. Florida's Home Rule History

Under the Florida Constitution of 1885, all municipal powers in Florida were dependent on a specific delegation of authority by the legislature in a general or special act. Powers not granted to a municipality by the state legislature were deemed to be reserved to the state.

When Florida's population grew greatly after World War II, the legislature was flooded with local bills and requests from municipalities seeking to address unique local problems. As a result, when the Florida Constitution was amended in 1968, municipalities were granted broad home rule powers.

Municipalities are now not dependent on the legislature to authorize their actions. Rather, state statutes are relevant only to determine limitations of municipal authority. The Reporter for the 1968 Constitutional Revision Commission, Talbot D'Alemberte, described the difference in the new constitutional language as providing that municipalities have governmental, corporate, and proprietary powers unless provided otherwise by law, whereas previously municipalities had only those powers expressly granted by law.²⁴

In 1973, the Florida legislature enacted the Municipal Home Rule Powers Act, now codified in Chapter 166, Florida Statutes, to permit full implementation of Home Rule in the state. Many Florida municipalities undertook comprehensive local charter review to take advantage of this broad grant of local autonomy. New charters tailored to local needs and designed to create local progress were adopted across the state following the implementation of Home Rule.

B. Pensacola's Home Rule History

1. Home Rule Not Implemented

Following the legislature's broad grant of municipal authority, the City of Pensacola took no action to write its own charter and implement Home Rule. The Pensacola City Council, apparently subject to strong inertia, failed to use the newly conferred power and

²⁴ There are "two separate and distinct ways" in which a local government enactment may be inconsistent with state law *Lowe v. Broward County*, 766 So. 2d 1199, 1206 (Fla. 4th DCA 2000) (quoting *Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996). A local government enactment may be inconsistent with state law if: (1) "the legislature has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. *Lowe*, 766 So. 2d at 1206-07 (quoting *Tallahassee Mem'l Reg'l Med. Ctr.*, 681 So. 2d at 831).

draft a charter for consideration by the citizens of the City of Pensacola. Subsequently, the City declined while operating under the patchwork of “charter” sections now given disparate effect by operation of state law, specifically Section 166.021, Florida Statutes.

The legal effect of Section 166.021, Florida Statutes, is described in its several subsections, which are set forth in the Appendix. Under Section 166.021, some of the provisions in Pensacola’s “Charter” were converted into ordinances, by operation of law, pursuant to subsection (5), while other provisions in Pensacola’s “Charter” were nullified and repealed, by operation of law, pursuant to subsection (4). In other words, fundamental changes were effected by state statute, not by virtue of due consideration by either the elected officials of the City of Pensacola or its citizens.

In July 2007, the status of the Charter as a creation of state law became clear to the general public when the Pensacola City Attorney recommended that the City Council amend the referendum election provision in the charter by ordinance, not by proposing an amended charter section for consideration by City voters.²⁵ The City Attorney contended that amendment of this “charter” provision by ordinance was legally valid because the provision had been converted into an ordinance by operation of law more than 30 years ago.²⁶

The League emphasized to the City Council that whatever the status of the provision, the Council should propose an amended charter section for consideration by the voters. The League contended the referendum provision should be a charter provision because it concerns voting rights and affects the balance of power, issues of constitutional magnitude that should be decided directly by the voters, not merely by any six members of a council.

2. Other Charter Problems Discovered

Another charter problem, stemming from, at best, decades of inattention, was discovered even before the status of the charter become clear: the conflict between provisions in the Charter and state law.²⁷ As a result of a series of newspaper articles that appeared in the spring and summer of 2006 describing election irregularities in the City of Pensacola, the LWVPBA Board appointed a committee to review the referendum election process in the City of Pensacola. The League discovered that the Charter provided for Council to verify referendum petitions, contrary to state election law and the legal opinion of Florida’s Secretary of State.²⁸

²⁵ The City Attorney previously indicated, inconsistently, in a memorandum to Council dated January 25, 2007, that amendment of the provision would require approval by the electorate.

²⁶ The LWVPBA disagreed with the City Attorney’s view that the provision had been converted into an ordinance, contending that the provision had been nullified and repealed pursuant to subsection (4). Whatever the status of the referendum provision, it was, however, clear that parts of the “Charter” are not what they purport to be.

²⁷ The problems with the status of the Charter and the conflict of Charter provisions with controlling state law raise issues of nonfeasance and competence, which call for consideration of merit-based hiring and charter qualifications for the City’s upper level professionals

²⁸ Pursuant to Florida law, referendum petitions are required to be verified by the county Supervisor of Elections, who maintains the official election records, and cannot be verified by a city council, as provided in Pensacola’s Charter. The unworkability of the Charter’s referendum provision was highlighted when the City Council, by ordinance, verified no referendum petitions, but rather a report of the Supervisor of Elections, contrary to the express terms of the City Charter. During the 2008 election campaign for City Council, a similar Charter issue arose. Contrary to the

In the course of trying to remedy this problem, the League then discovered more problems and deficiencies. For example, the unlawful scheduling of the referendum election allowed for early voting, which was not provided for, but could be authorized, in the Charter. Also, the City's separate and costly scheduling of Council run-off elections, which could be remedied in the Charter,²⁹ was highlighted.³⁰

3. Efforts to Amend a Charter Provision

The League's informal efforts to remedy the problems discovered in the Charter³¹ appeared to reveal the power of City staff and the intransigence of elected officials. In response to the League's good faith, non-partisan efforts, the City declined to address the few problems that, at that point, had been discovered in the Charter.³² After months of repeated efforts, involving many meetings and much correspondence, the parties reached an impasse.

The events leading to the impasse are detailed in multiple emails between the City Attorney and League representatives.³³ Significantly for charter review, in one of those

express terms of state election statutes, candidates for City Council were advised by the City Attorney that pursuant to the Article I, Section 5 of the Charter, appointive officers who become candidates for election to any public office must "immediately forfeit" their appointive positions.

²⁹ The City has remedied the run-off election problem by ordinance that will take effect in 2009.

³⁰ The City Attorney's and various council members' attempt to justify the unauthorized setting of the referendum election as necessary to save money raised the issue of the City's separate and costly run-off elections for Council.

³¹ Rather than suing to enjoin the improperly scheduled election, the League Board concluded it would be more constructive in the long-term, and inure more to the benefit of the public, to try to amend the referendum election provision. The principal reasons for not opposing the election included the League's concern that Charter issues would be confused with the subject of the controversial referendum, the League had no substantive position concerning the subject of the referendum, and litigation would have delayed further an election already improperly delayed.

³² As directed by Council, after the referendum election, League representatives requested to meet with the former City Attorney to resolve the problems that had been identified. In a letter dated October 9, 2006, the City Attorney, however, declined to meet with League representatives. He advised the League, in writing, that it could submit any "suggestions" in writing, and he would advise if "other face-to-face discussions would be helpful." The League subsequently requested by individual letter to each council member to meet to try to address the problems that had been discovered by review of the referendum election provision. No member of Council responded. On November 6, 2006, the City Attorney issued a memorandum to council stating that the League's request to meet with members of Council "regrettably repeats baseless charges." The memorandum did not discuss the Charter's relationship to state law, the matter at issue, but asserted that the conduct of City elections is purely a matter of City policy. One new council member was elected in the fall of 2006—Sam Hall. League representatives called Councilman Hall to request a meeting, hoping that as a new member he would be open and receptive. Councilman Hall accepted the League invitation and met multiple times with League representatives. Those meetings came to public fruition on July 18, 2007, when Councilman Hall's Viewpoint urging Charter Review was published in *The Pensacola News Journal*. In his Viewpoint, Councilman Hall noted that "[t]he City of Pensacola's Charter is begging for comprehensive review and reform." At this time, no other member of Council supported charter review.

³³ In one of the emails, the City Attorney suggested the League "acquiesce," in a draft provision that would require city voters who timely petition for a referendum to wait an undetermined period of time for an outside, non-city officer to conduct their election. The League responded that voting rights are fundamental and, as such, should not be delayed to accommodate the feelings and schedules of non-city officers.

emails, the City Attorney describes the undue influence of staff. He explained in an email dated March 30, 2007:

It is very important that we meet well in advance of the Committee of the Whole meeting to see if we can reach agreement about ...a proposal... which this office can recommend serves the City's interests. The City Council is not accustomed to taking affirmative action upon any matter that has not been thoroughly staffed in advance. I can tell you from experience that brainstorming and negotiating ... in committee session without prior staff analysis is very uncommon. ...If we do not reach agreement before presenting something to committee, the likely result is that the City Council will decide to do nothing or will refer the matter back to staff with a clear indication that it wishes not to see the matter again unless there is an agreed upon solution or a clear recommendation from the City Attorney.³⁴

The City Attorney then functionally framed a classic Catch 22 by characterizing the charter issues as policy matters, which could only be determined by the City Council and on which he could not make recommendations: “I do not customary [*sic*] make recommendations concerning policy matters except when driven by legal necessity.... I will not press for any changes.”³⁵ In other words, by our interpretation, Council would not act without his recommendation, and he would not make a recommendation unless the League “acquiesced.”

The impasse between the LWVPBA and the City Attorney was presented, and vigorously debated, at a July 2007 Committee of the Whole meeting. The matter was referred back to the City Attorney and staff. At that meeting, Councilman Sam Hall urged the Council to consider, at a minimum, and for a small fee, (\$3,000), having the MuniCode Corporation review the City Charter for apparent legal problems. Councilman Hall’s request was not approved.³⁶

4. Efforts of Two Citizens Groups Bring Charter Review

Having failed to persuade the City Council to take any action to update, or otherwise improve, its Charter, the Chair of the League Charter Committee sought support from another citizens’ group. She contacted the spokesman of a group which had been actively advocating to change the form of City government to the Mayor/Council form of government [“Mayoral Group”].³⁷

³⁴ David Bailey, a former upper-level city staffer, informed the CRC that staff blocks items from coming to committee.

³⁵ William Grodnick, the City Attorney for the City of Hialeah, Florida, in contrast, stated that it is his view that a city attorney should be “the engine of ideas” and, as such, should work 60+ hours per week. Mr. Grodnick noted that he revised and rewrote Hialeah’s zoning code and de-criminalized its entire code of ordinances, as city attorney.

³⁶ Councilman Hall told the CRC on July 27, 2008, that his initial motion to undertake charter review died for lack of a second. Councilman Hall further explained that it is the people of the City of Pensacola who want charter review, not the City staff. He added that it is the staff, who, in his view, are in charge that initially prevented charter review.

³⁷ This group of private citizens met for a year before sending a letter to the Mayor and Council in

Representatives from both groups met and agreed to abandon their narrow focus and to move jointly for comprehensive charter review. Agreement by the two groups was easily and quickly reached for three principal reasons: the City had not adopted its own charter since Home Rule was implemented in 1973, the current Charter presented multiple legal problems and was deficient, and the City consistently had declined over time in multiple ways.

On August 8, 2007, the spokesman for the Mayoral Group, John Peacock, urged the Council to “move forward with a full and independent charter review....” In his speech, he noted that the population of the City of Pensacola had declined in every census since 1960, the percentage of 20-34 years olds had declined, the poverty rate exceeds that of neighboring jurisdictions, more than a third of City children live in single parent families and many in poverty, black/white disparity is at a crisis level on every parameter, and per capita income lags behind that of many Florida cities, including cities in the Panhandle.

Mr. Peacock, contended that Pensacola’s current system of government is the fundamental problem, all other problems being merely symptomatic. He asserted that the system itself is a barrier to progress, discouraging good leaders from moving the City forward and attracting the best professional staff. Describing the City’s system of government as antiquated, lethargic, and costly, he emphasized the efficacy that leadership, vision, and accountability would have in resolving the City’s seemingly intractable problems. He also emphasized the importance of clear checks and balances in achieving the benefits of a Mayor/Council form of government and noted that a strengthened council is one of those crucial balances.

Following the presentation, the Committee of the Whole unanimously approved comprehensive charter review. An effort that began with a newly elected council member supporting charter review eventually garnered the support of four members, and finally the unanimous approval of the City Council. The process was bolstered by concerted, joint efforts of two citizens’ groups.³⁸

V. Conclusion

The League of Women Voters promotes open governmental systems that are representative, accountable, and responsive to the people.³⁹ Implicit in this statement of fundamental policy is the recognition that good government will be characterized by reasonable transparency and accountability, appropriate checks and balances, and broad-based participation by diverse interests that will result in a higher quality of life.

July 2007. Their letter urged consideration of a “strong mayor” form of government. The letter was signed by 28 individuals, many of whom are prominent business and professional persons.³⁸ John Peacock and a number of members of his group now advocate consolidation of city and county government. He, and others, have expressed frustration about the length of charter review, concern about duplication of services, and concern about the population and boundaries of the City of Pensacola. Dr. Rick Harper, Director of the Haas Center for Business Research & Development, advised the CRC, however, that it does not appear that there is significant duplication by city and county governments, and “larger can be more expensive.”

³⁹ This League policy was reached as a result of extended non-partisan study, debate, analysis and reflection by thousands of members seeking to establish and protect good government.

Application of the League policy to the material facts and circumstances that define and describe the City of Pensacola shows that the City historically has not sought to achieve full self-government through a comprehensive charter. Furthermore, citizens across a spectrum, including Pensacola's business and professional sector contend that the City does not enjoy good government in a variety of key respects. Objective evidence and subjective testimony presented to the Commission, and objective evidence otherwise of record, suggests that the City has experienced long-term stagnation, if not decline, under its current form of government.⁴⁰ The League submits these circumstances justify action by the Charter Review Commission. Most significantly, there appears to be no question that portions of the current City charter do not conform with controlling state law.

Evaluation of the City of Pensacola and its government under the League's non-partisan policy and standards suggests that the current governmental system of the City of Pensacola is representative, but that concerns exist regarding its openness, accountability, and responsiveness to the people. Non-partisan evaluation of recent actions and responses of City government also indicates that progress and solutions are coming from the grass roots up, not from elected city officials or staff.

The League of Women Voters of the Pensacola Bay Area, therefore, recommends, based on non-partisan evaluation pursuant to established League policy, that the City of Pensacola Charter Review Commission propose a charter that is a simple, understandable, integrated statement of basic law that clearly defines lines of authority and responsibility, incorporates appropriate checks and balances, and provides for broad-based diverse representation.

The League recommends that the CRC evaluate alternative government forms to determine the best fit for Pensacola's current needs. Such forms may include but are not limited to a popularly elected, full time, executive mayor. The League also recommends the CRC consider a recall provision as a check on the power of any executive mayor. The League further recommends the Commission consider affording any popularly elected executive mayor authority to hire professional staff, with prescribed appropriate qualifications, or consider evaluating other appropriate measures to ensure professional expertise, competence, and facilitation of consideration of new ideas in any changed City government form.

The League recommends that the CRC consider evaluating current legislative body size in concert with any other consideration of structural changes. For example, a smaller city council would balance, and serve as a check on, the power of a popularly elected executive mayor. Although a smaller legislative body would be less representative, it would also be more accountable, which would foster policy-making and diminish systemic inertia and stagnation.

The League recommends that the CRC consider evaluating the need for term limits, coupled with provisions that concentrate the power of elected officials, both legislative and executive. Term limits could ameliorate the City's apparent problems of stagnation

⁴⁰ There were subjective statements that indicate government is functioning acceptably. For example, the former City Manager explained that he did not see the need for making any changes in the Charter, stating he did not feel any "heartburn" concerning the Charter.

and lack of responsiveness by shifting elected officials' focus from perpetual campaigning to policy-making. Further, sufficient concentration of authority could ameliorate any enhancement of the power of staff that term limits might effect. The length and number of terms could also diminish any such empowerment, and longer terms may encourage less affluent individuals to seek elected office.

The League recommends that the CRC consider evaluating need for a merit system for the selection, retention, and promotion of personnel and include charter qualifications for upper-level professionals and managers. The information received by the CRC, the history of home rule efforts, and anecdotal reports suggest systemic resistance to change, and fear of, outside ideas and persons. These conditions may be diminished significantly by implementing merit-based hiring and providing appropriate qualifications for upper-level personnel.

The League recommends that the CRC consider proposing a charter that provides for both citizen initiative and referendum because the history of home rule efforts in Pensacola shows the crucial role of citizen input in providing the opportunity for progress in the City of Pensacola. Without citizen input and efforts, even the current charter review would not be occurring. Indeed, it was citizen efforts that created the possibility of progress and change, as described herein, for the City of Pensacola.

The League recommends that the CRC evaluate the need for residency requirements for upper-level staff. The City's stagnate, or even declining, population, coupled with the struggle to include residents on the Charter Nominating Committee and require City residency for Commissioners appears to support a need for residency requirements. It may also be appropriate to require upper-level City staff who not only enjoy City amenities, but, more important, exercise City authority to be direct stakeholders of the City of Pensacola.

The League recommends that the CRC consider propose a charter that provides for regular charter review to provide for the future of the City of Pensacola. It is important for any city to re-evaluate its status regularly and adjust to changed circumstances or policy mistakes. It is particularly important for any proposed charter for the City of Pensacola to provide for such regular review because of the City's perceived history of inertia and the fact that any proposed charter will be the first attempt to implement Home Rule.

Finally, the League recommends that the CRC propose changes that will bring the Charter into conformity with controlling state law and propose provisions that experience shows are missing, but necessary. The City's Charter is not a sound constitutional document. It is not what it purports to be;⁴¹ it conflicts with state law in significant respects, and it lacks important provisions, which renders it deficient.

⁴¹ See Section IV B.I, *above*, concerning the conversion and repeal of the provisions.

The League thanks the Commissioners who have served diligently and with due consideration of the needs and aspirations of the people of the City of Pensacola. The League wishes the Commission success in framing a sound charter proposal for consideration by the citizens of the City of Pensacola, and the LWVPBA stands ready to assist in that effort.

Respectfully submitted,

Deborah Nelson, President, LWVPBA

Sharon Barnett,
Chair, LWVPBA Charter Review Committee

APPENDIX

Section 166.021 provides in pertinent part:
Powers.

(1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

(2) "Municipal purpose" means any activity or power which may be exercised by the state or its political subdivisions.

(3) The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:

(a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;

(b) Any subject expressly prohibited by the constitution;

(c) Any subject expressly preempted to state or county government by the constitution or by general law; and

(d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.

(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

(5) All existing special acts pertaining exclusively to the power or jurisdiction of a particular municipality except as otherwise provided in subsection (4) shall become an ordinance of that municipality on the effective date of this act, subject to modification or repeal as other ordinances.