

# **Agenda Item #18 for the meeting of October 14, 2025**

## **GENERAL BUSINESS**

18. Legal Analysis of Whether to Advance to the Citizen Charter Review Committee the Question of Which Entity Should Operate and Maintain the Fire Department, the City of Tallahassee or the County  
*(County Administrator/ County Attorney)*  
[Distributed under separate cover]

**Leon County  
Board of County Commissioners**


**Notes for Agenda Item #18**

# Leon County Board of County Commissioners

## Agenda Item #18

October 14, 2025

**To:** Honorable Chairman and Members of the Board

**From:** Chasity H. O'Steen, County Attorney 

**Title:** Legal Analysis of Whether to Advance to the Citizen Charter Review Committee the Question of Which Entity Should Operate and Maintain the Fire Department, the City of Tallahassee or the County

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<b>Review and Approval:</b>	Vincent S. Long, County Administrator Chasity H. O'Steen, County Attorney
<b>Department / Division Review:</b>	Ken Morris, Assistant County Administrator
<b>Lead Staff / Project Team:</b>	Chasity H. O'Steen, County Attorney

### **Statement of Issue:**

As requested at the September 23, 2025, Board meeting, this item provides a legal analysis regarding whether to advance to the Leon County Citizen Charter Review Committee the question of which entity should operate and maintain the fire department, the City of Tallahassee or the County.

### **Fiscal Impact:**

This item has no fiscal impact.

### **Staff Recommendation:**

Option #1: Accept the legal analysis and do not advance this issue to the Leon County Citizen Charter Review Committee.

## **Report and Discussion**

### **Background:**

At its September 23, 2025, meeting, the Board received legal analysis on seven issues proposed by the Board to determine whether to advance such issues to the Citizen Charter Review Committee (CCRC) for consideration. The Board approved advancing one issue (County ordinances superseding City ordinances) to the CCRC for consideration and directed staff to draft a charter amendment on another issue (clean up of outdated statutory references) to come back to the Board for consideration at a later date. Later that meeting, the Board requested a legal analysis on an additional topic to determine whether to advance the issue for consideration by the CCRC. Namely, the question of which entity should operate and maintain the fire department, the City of Tallahassee (City) or the County.

The Board appointed 21 members to the CCRC at its meeting on September 23, 2025, and the CCRC will convene on October 23, 2025, to review the Leon County Charter and propose recommended amendments or revisions to the Board for placement on the 2026 general election ballot. The CCRC is scheduled to meet biweekly on Thursdays in the Leon County Library until February 19, 2026 (120 days). If needed, the CCRC will hold three public hearings in June and July 2026 to adopt recommended charter amendments for the Board to consider placing on the 2026 general election ballot.

### **Analysis:**

This analysis provides information regarding the County's authority, and limits on such authority, and the summary legal analysis requested by the Board.

#### **Leon County, Florida – Authority and Limits on Such Authority**

As a charter county, the County's authority is derived from Article VIII, Section 1(g) of the Florida Constitution (Constitution). That provision, titled "CHARTER GOVERNMENT," states:

Counties operating under county charters shall have all powers of local self-government not inconsistent with general or special law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

This grant of authority is broad, but there are certain limitations. Fundamentally, the County must comply with all constitutional and statutory constraints. The County cannot adopt a charter amendment or ordinance that conflicts with federal or state law, or otherwise act in conflict with such laws. The federal government and state legislature have also preempted certain matters, whether expressly or impliedly, and the County cannot adopt ordinances to regulate those areas.

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Sec. 1.1 of the Charter, itself, recognizes the limits of the County's authority: "The County shall have all powers of self-government not inconsistent with general law, with special law approved by vote of the electors, or with this Charter. The County shall have all county and municipal powers of self-government granted now or in the future by the Constitution and laws of the State of Florida."

Whether the City or the County Should Operate and Maintain the Fire Department

The Board has asked whether the CCRC may consider an amendment of the Charter to pose the question of whether the City or the County should operate and maintain the fire department. In summary, the outcome of any such question posed to the electorate would constitute nothing more than an advisory opinion and would not be binding on the City or the County.

Referendums are not necessary or required for a county to enter into binding construction or service contracts for current governmental needs and requirements when done in the course of a county's authorized budgetary administration of public affairs, and a public referendum is not required to determine public need and interest. See Tele-Media Co. of Key West v. Monroe Cty., 391 So.2d 375, 377 (Fla. 3d DCA 1980) (affirming dismissal of action seeking to require county to hold public referendum to determine public need and interest in establishing television translator system in Monroe County using ad valorem tax funds).

Moreover, even if the CCRC were to recommend, and the Board approved, placement of the transfer of the fire department from the City to the County on the ballot, any such affirmative vote of the County electors would be insufficient to effect such a transfer. Instead, passage of a resolution by both the City and the County Commissions, followed by dual referenda approved by both City and the County electors, would be required for a complete transfer of the fire department from the City to the County pursuant to Article VIII, Section 4, Florida Constitution. That provision, titled "Transfer of Powers.", states:

By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

Thus, while the broad grant of authority in Article VIII, Section 1(g), of the Florida Constitution permits regulatory preemption by counties, Section 4 requires dual referenda to transfer functions or powers relating to services, absent a change in general or special law that otherwise permits or requires the transfer of services without dual referenda. See Broward Cty. v. City of Ft. Lauderdale, 480 So.2d 631, 635 (Fla. 1985). A charter amendment that would permit a county veto of municipally approved plats is one example of preemption that would not require dual referenda. Id. (citing City of Coconut Creek v. Broward Cty. Bd. of Cty. Comm'rs, 430 So.2d 959 (Fla. 4 DCA 1983)). In contrast, the wholesale assumption of the burden of providing what had been a municipal service goes far beyond regulatory preemption and requires dual referenda. Id. See also Sarasota Cty. v. Town of Longboat Key, 355 So.2d 1197 (Fla. 1978).

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In summary, consideration of an amendment of the Charter to pose the question of whether the City or the County should operate and maintain the fire department would constitute nothing more than an advisory opinion and would not be binding on the City or the County. Moreover, passage of a resolution by both the City and County Commissions and dual referenda of the City and the County electors would be required for a complete transfer of the fire department from the City to the County, absent a change in general or special law that otherwise permits or requires the transfer of services without dual referenda, pursuant to Article VIII, Section 4, of the Florida Constitution. Unilateral action by the Board and County electors to effect a transfer would be unconstitutional and unenforceable.

**Options:**

1. Accept the legal analysis and do not advance this issue to the Leon County Citizen Charter Review Committee.
2. Do not accept the legal analysis.
3. Board direction.

**Recommendation:**

Option #1