

A Regular Meeting of the Apalachicola City Commission was held on Tuesday, December 6, 2022, at 4:00 PM at the Apalachicola Community Center, 1 Bay Avenue.

Present: Mayor Brenda Ash, Commissioner Anita Grove, Commissioner Despina George, Commissioner Donna Duncan, Commissioner Adrian Elliott, City Manager Travis Wade, City Attorney Dan Hartman, Finance Director Mark Gerspacher, Lee Mathes

Regular Meeting opened by Mayor Ash followed by invocation and Pledge of Allegiance.

AGENDA ADOPTION

Motion to adopt agenda made by Commissioner Elliott, seconded by Commissioner Grove. Motion carried 5 to 0.

PRESENTATION: LISA KELLEY – DEWBERRY ENGINEERING CONSENT ORDER UPDATES

Lisa Kelley updated Commission on consent orders regarding drinking water violations and explained how TTHMs are created within the water system.

Mayor Ash commended City Manager Wade and Rhett Butler for meeting all DEP requirements and deadlines and the Water and Sewer Department for making sure everything is working properly.

Ms. Kelley explained TTHM testing process and stated that results are public record and are posted online at DEP website.

Mayor Ash thanked Ms. Kelley for her assistance in this matter.

PUBLIC COMMENT

Public comments consisted of the following: 1) TTHM water violations; 2) Disapproval of changing election cycle; 3) Water & Sewer Tap Installations; 4) Recreation Committee presentation for January Commission meeting.

NEW BUSINESS – APALACHICOLA RIVERKEEPER – GEORGIA ACKERMAN

Update provided to Commission regarding legal case against the USACE Water Control Manual.

Motion to include City of Apalachicola in the Vermont Law School amicus brief made by Commissioner Grove, seconded by Commissioner George. Motion carried 5 to 0.

NEW BUSINESS – NFAACP – LETTER RE: HIRING CURATOR AT HCA

Motion to approve letter of support stating NFAAC has permission to undertake the African American Cultural Heritage Action Fund grant-funded project in the Center for History, Culture, and Arts made by Commissioner Grove, seconded by Commissioner George. Motion carried 5 to 0.

NEW BUSINESS – LIBRARY BOARD MEMBER APPROVAL

Motion to appoint Dolores Croom as the alternate to the Apalachicola Margaret Key Library Advisory Board made by Commissioner George, seconded by Commissioner Elliott. Motion carried 5 to 0.

NEW BUSINESS – TREE COMMITTEE MEMBERS APPROVAL

City Manager Wade stated John Fitzhugh and Samuel Berkhelser have submitted applications to serve on Tree Committee.

Motion to appoint John Fitzhugh and Samuel Berkhelser to the Tree Committee made by Commissioner Grove, seconded by Commissioner George.

Commissioner Elliott stated that John Fitzhugh is only in Apalachicola November – May and should not be considered for appointment.

Motion amended to appoint Samuel Berkhelser to Tree Committee made by Commissioner Grove, seconded by Commissioner George. Motion carried 5 to 0.

UNFINISHED BUSINESS – ENGINEERING PROJECT AWARDS – FELICITY EDWARDS

Motion to authorize City Staff to execute contracts upon successful negotiation by City Staff and funding agency review/acceptance (if required) made by Commissioner Grove, seconded by Commissioner Elliott. Motion carried 5 to 0.

Motion to authorize City Staff to award task orders for professional services solicited under RFQ 2022-02 made by Commissioner Elliott, seconded by Commissioner Grove. Motion carried 5 to 0.

MAYOR & COMMISSIONER COMMENTS

Commission comments consisted of the following: 1) Wishing everyone a happy holiday season; 2) State of Florida Earmarked projects; 3) Cleanliness of downtown public restrooms; 4) City Lobbyist attending January commission meeting; 4) Update on County local internet team.

CITY MANAGER COMMUNICATIONS

City Manager Wade commended Water & Sewer Department, City was awarded a hazard mitigation grant for a portable generator, Duke Energy will be starting the annual tree trimming on December 7th, and updated Commission on 6th Street Library renovations.

GRANTS COORDINATOR COMMUNICATIONS – BREE ROBINSON – SEE ATTACHMENT “A”

FINANCE DIRECTOR COMMUNICATIONS – MARK Gerspacher – SEE ATTACHMENT “B”

ATTORNEY COMMUNICATIONS – DAN HARTMAN – SEE ATTACHMENT “C”

Attorney Hartman stated a joint workshop with Planning & Zoning must be held to proceed with height ordinance.

Mayor Ash stated a workshop to discuss encroachments needs to also be scheduled.

Commission agreed to hold joint workshop with Planning & Zoning Commission on January 9, 2023, at 4:30 PM to discuss height ordinance and encroachments.

Commissioner George recommends holding a workshop to discuss the election cycle.

Commission agreed to set workshop on February 7, 2023, at 3:00 PM to discuss election cycle.

CONSENT AGENDA

1. Meeting Minutes Adoption – November 8, 2022, Regular Meeting Minutes
2. P&Z Minutes – November 14, 2022

Motion to approve consent agenda made by Commissioner Elliott, seconded by Commissioner Grove. Motion carried 5 to 0.

DEPARTMENT REPORT

Department reports are in agenda packets which are located on City’s website.

ADJOURNMENT

Motion to adjourn made by Commissioner George, seconded by Commissioner Elliott. Motion carried 5 to 0.

Brenda Ash, Mayor

Lee Mathes

Grant Updates – Bree Robinson

City Commission Meeting – Tuesday, December 6th, 2022

1. Firehouse Subs Public Safety Foundation – Hurst Rescue Tools “Jaws of Life”

An application requesting \$34,065.00 for Jaws of Life rescue tools for the Apalachicola Volunteer Fire Department was submitted online 4/7/22. These tools were a request from the VPD and will aid them in their efforts. If funded – the grant program will handle ordering, etc. No match required. **DENIED & REAPPLIED 7/7** in the amount of \$36,795.00, as cost of materials went up. - **Waiting for updates**, have been advised that most projects are funded by Firehouse Subs after 3 complete applications. We have filed 3 so far.

- **APPLIED again on 10/6! We will hear back on this late January.**

2. DEP Resilient Florida Grant application – Implementation

City submitted a grant request in the amount of \$2,039,500 to complete identified drainage projects in the city that have been documented, but have not been funded by other sources. If funded, the funds will repair known nuisance flooding drainage issues in more than 29 locations throughout the City. **Grant submitted 9-1-2022. Waiting for updates.**

3. DEP Resilient Florida Grant application – Planning

City submitted a grant request in the amount of \$300,000.00 to analyze existing vulnerable critical asset infrastructure in the City's commercial district and design a plan to mitigate street flooding through the retrofit of existing impervious parking and the design of pervious parking pockets on City-owned property, Avenue H specifically. **Grant submitted 8-31-2022. Waiting for updates.**

4. FWC Florida Boating Improvement Program – Battery Park Boarding Docks

In 2020, the City was awarded \$10,875.00 from the FWC Florida Boating Improvement Program for the Battery Park Boarding Docks replacement project. In 2021, the City spent \$23,066.85 on the new Battery Park Boarding Docks Project and the work was performed by Polaronis Construction. (The work has been inspected and approved by FWC.) The City was under the impression that we would not be reimbursed the \$10,875.00 due to improper procurement of services, but FWC has come back and offered reimbursement for the award due to the small amount! To be reimbursed we have to file a Site Dedication with Franklin County for the Battery Park Boat Ramp and FWC and put up a sign at the site. **The requirements have been met, sign has been**

installed, and the site dedication was filed with Franklin County. Reimbursement should be received any day now with this project closeout.

5. *Florida Department of Transportation – SCOP Grant Application – Leslie Street*

City Commission passed Resolution 2022-01 on 2/23/22 for the City of Apalachicola to apply for funding for Leslie Street. Application was submitted electronically on 3/4/22. The City requested \$610,169.30 to remedy the underground issues, resurfacing the entire street length, and for new road signs based off engineer's estimate and recommendations.

AWARDED! – City was awarded the full amount for Leslie Street! This funding window begins July 1, 2023, and ends June 30, 2024. We will take steps to make sure this work can be completed ASAP. Waiting for agreement from FDOT.

6. *DEO Rural Infrastructure Fund – Drainage Basin Analysis Phase II + Camera Work of Stormwater Lines*

An application requesting \$300,000 with no local match from the DEO Rural Infrastructure Fund was submitted on 8/31/22. The application was for the Phase II of a Drainage Basin Analysis that began in 2018. This \$300,000 grant proposal would fund an analysis of the drainage basins that border Apalachicola River and Bay. The proposal also includes funding to begin camera-work of the stormwater lines in the phase I, as recommended in that report. (We have to survey the damage before we can move forward on repairs.) The grant asks for \$110,000 for the analysis and mapping (per engineer estimate), \$5,000 for public education (grantors like to see we are promoting our message/work), \$24,000 in admin, and \$161,000 in camera-work for the phase I drainage basin area. This is a total of \$300,000 and there is no required local match.

Basins 11 and 3 were covered by the 2018 grant. This grant application would address the following basins: 1, 2, 4, 5, 6, 7, 8, 9, 10, 12-19. – **APPLIED, WAITING FOR UPDATES.**

7. *Water Treatment Plant Improvements - Rural Infrastructure Fund – DEO FY 21/22*

FUNDED! Application submitted electronically on 5/26/22 to the RIF program through DEO for fiscal year 21/22. City applied for \$150,000 for engineering services that are going to be needed as we navigate the Potable Water Consent Order and will set us up to apply for more funding down the line. City was FUNDED for \$147k.

Funded:

- Evaluation of Existing Conditions
- Enhanced Sampling Plan, Hydraulic Modeling, and Treatability Studies
- Alternatives Analysis
- Facilities Plan Report

Still pending staff scoring of firms and award recommendation. Coming soon!

8. *City of Apalachicola Old City Hall Structural Repair – Special Categories DOS*

Application submitted electronically 5/31/22 for structural repairs for the Old City Hall building. (Middlebrook Building) Amount requested was \$395,000 with an in-kind match of \$98,750 for a total project budget of \$493,750. The goal of this application is to secure funding to complete the Old City Hall Renovation and support the ongoing repairs funded through the NPS grant. The purpose is to stabilize the building, by proposing to install an interior rigid steel frame to provide the structural integrity of the building exterior masonry and support the historic second floor wood frame. – **Applied - The Florida Historical Commission reviewed and scored eligible FY2024 Special Category grant applications on November 16, 2022. The Special Category Final Ranking Lists the City Hall project Year 2 (\$395,000) as recommended for funding. Official notification of grant award is pending Secretary of State approval and budget appropriation. We should receive official notification of funding on about July 1 of 2023. This is great news!**

9. *CPTA Community Planning Technical Assistance Grant Program – DEO*

Application submitted 4/1/22 for updates to our local comprehensive plan as well as complete Phase 2 of the Apalachicola Areas of Critical State Concern Work Plan. If granted, grantee shall analyze the City of Apalachicola's current local comprehensive plan and present required and recommended update to the City Commission considering resiliency. These ideas will be vetted through community engagement and based on feedback received from the community and City Commission, final amendments to the local comprehensive plan will be prepared for public hearing and subsequent transmission to DEO. The City will also undertake Phase 2 of the Areas of Critical State Concern Work Plan by updating the infrastructure project list and conducting project scoping and economic analysis for priority projects in preparation for the funding available through the Bipartisan Infrastructure Act as well as other state and federal grant opportunities. – **AWARDED!** Agreement received and signed in October.

- **RFP IS LIVE!**

10. *Department of Historical Resources African American Cultural and Historical Grants – Apalachicola African-American History Museum*

Awarded \$1million with a \$250k match from the City for a new construction museum next to Holy Family.

- Due to rising construction costs, the project scope has been changed from a 2-level, 2,500SQF footprint building to a 1-level 2,000SQF building with elevated ceilings. Priorities include:

- High Security
- Storage Room
- Office Space
- Breezeway to Holy Family
- Greeting Station/Small Gift Shop Area
- ADA Accessible Bathrooms
- Controlled Lighting for Exhibits
- Building with Room for Add-On at later date
- **FUNDED!** Have submitted the project work plan and budget for the agreement draft from DOS. 8/25
- **Question from DOS answered 9/26.** Should hear back soon and have agreement in hand.
- **11/3** – Still waiting for agreement.
- **12/1** – Have draft agreement in hand for staff review.

11. HMGP – Backup Generator for Vacuum Station (108 Avenue F)

Grant application was submitted for \$170,000 for a new backup generator. (Current in use is too small for need.) Had to apply for a portable generator instead of stationary, as they will not fund for a stationary one in a flood zone. Multiple RFIs (requests for information) were received and answered. **Waiting on delivery dates and costs for generators. The delays are at least 55 weeks with a cost increase of 4 times the original figures. Once we determine those issues, we will let an RFQ. In addition, an amendment will need to be done with the state to address the time and cost.**

12. National Park Service Hurricane Michael Repair/Mitigation - Grants for Repair and Restoration of the Montgomery Cotton Warehouse (Old City Hall) and the Harrison-Raney Cotton Warehouse (HCA)

Old City Hall & HCA

RFPs to select a contractor to complete the repair/restoration on both projects has been advertised and the scope of work for each is on the City website. The period to respond to the RFP for both City Hall and the HCA building was October 20. The City has submitted requests for payment for the first set of deliverables for each project. **The request for payment on HCA has been received; the payment for the City Hall is pending NPS approval of the contract modification. We have resubmitted the payment request for City**

Hall (payment request #1 \$99,979) because the grant portal shows the grant amendment has been approved.

UPDATE 12/1 – As per DHR, the City has re-advertised both the HCA and City Hall construction projects in accordance with State procurement requirements. New bids are due by January 10, 2023.

13. Grants Update -

- a. **FDOT City Landscaping** – City was reimbursed for \$193k landscaping costs after FDOT inspection and reimbursement package sent in. Landscaping and maintenance have been "completed."
 - i. There were issues with the grass drying out during the maintenance period, Gaskin to extend maintenance and re-plant as necessary per our contract and their warranty. **Re-plant pushed to March to avoid frost during establishment – Dan is in contact.**
 - ii. Filed for last bit of reimbursement in November. (6k)
- b. **CDBG-DR Infrastructure** – Avenues Stormwater Repair Project is moving forward. Engineer Procurement and design will need to be secured and created along with environmental review and clearance. ALL policies needed have been completed!
 - i. **ENGINEERING PROCUREMENT IN PROGRESS!** The contracted engineer, once selected, will put together a project schedule based on design time needed and anticipated construction duration. Environmental review will run concurrently with design and permitting.
 - ii. **Engineering Scoring of Bids has been completed. - City authorized to enter into contract negotiations with Halff, CDG, and Dewberry on 11.8.2022. Draft contracts have been submitted and are currently under review with counsel. Recommendation to execute contracts and award task orders is on the agenda for 12.6.2022, subject to DEO review/approval.**
- c. **CDBG-DR Hometown Revitalization** –Riverfront Revitalization and Hill Community Revitalization projects: City has received environmental exemption for administrative and engineering services. ALL policies needed have been completed! **ENGINEERING PROCUREMENT IN PROGRESS!** The contracted engineer, once selected, will put together a project schedule based on design time needed and anticipated construction duration. Environmental review will run concurrently with design and permitting. **City authorized to enter into contract negotiations with Halff, CDG, and Dewberry on 11.8.2022. Draft contracts**

have been submitted and are currently under review with counsel. Recommendation to execute contracts and award task orders is on the agenda for 12.6.2022, subject to DEO review/approval.

- Hill Community (M0033): CENST approval memo was issued by DEO on July 14, 2022. The city is currently working on the RFQ for engineering procurement. Once an engineer is on board, we'll be able to confirm scope of work and begin environmental review.
 - Riverfront (M0034): CENST approval memo was issued by DEO on July 14, 2022. The city is currently working on the RFQ for engineering procurement. Once an engineer is on board, we'll be able to confirm scope of work and begin environmental review.
- d. **HMGP Emergency Generators** – Received and signed Release of Funds forms for CDBG-DR DEO match – HMGP has funded the generators and agreement signed. HMGP admin bidding was advertised and has closed. Advertised in The Democrat per MSA paper standards from DEO and awarded to TME 9/27. TME is working on RFP for a contractor for the generators and installation. **Waiting on delivery dates and costs for generators. The delays are at least 55 weeks with a cost increase of 4 times the original figures. Once we determine those issues, we will let an RFQ. In addition, an amendment will need to be done with the state to address the time and cost.**
- e. **HMGP Market Street Vacuum Station** - Received and signed Release of Funds forms for CDBG-DR match – HMGP has funded the generators and agreement signed. HMGP admin was advertised and has closed. Advertised in The Democrat per MSA paper standards from DEO and awarded to TME 9/27. **RFQ is advertised with a due date of 12/22 and an award date of 1/3/23.**
- f. **Michael FEMA Projects Updates**
- i. **Bodiford** - BODIFORD PLANS COMPLETE! Waiting for exemption for permits from FEMA to be reviewed. - Received exemption ... waiting on FEMA to re-establish the costs in the project. Still waiting on FEMA 12/1.
 - ii. **Scipio** – Designs from Dewberry draft complete – waiting for full. Waiting for scope verification from FEMA to bid out. Still waiting on FEMA 12/1.
 - iii. **Alleyway Repairs** – Alleyway: 3, 7, 9, 8, 10, 11, 6, 2, 5, 12, 4 Crushed Shells to be replaced. Extensions requested for all FEMA projects – extension granted.
 - iv. **Old City Hall and HCA Contents loss** – Ordering replacement items from loss. (Funding already received – just needs to be ordered and receipts turned in.) Partially ordered – postponing ordering of remaining items until back room flooring of City Hall complete to place items in.

- v. **Lafayette Park** – Boardwalk work and lighting donation have been COMPLETED! It appears that we were supposed to be exempt from permits for this work per engineer opinion, since there was no in-water repairs, but we are waiting for USACE and DEP to confirm this with FEMA before this project can close out and Bodiford and Scipio can begin. - Received the USACE and FDEP permits! Still waiting on FEMA 12/1.
- vi. **Hurricane Sally** – Almost all Sally projects are completed and finalized. TME is uploading receipts to finish. This will be completed by first part of January once all docs are received to upload.
- g. **Department of Historical Resources 2023 Small Matching Grant – Black History Trail. FUNDED!** Docs for agreement in progress, scope slightly changing as some work has been completed. (signage) Question has come up as to who will manage the historian work for signage. HCOLA possibility? Will explore options.
 - i. **Will detail scope in New Year.**

14. DEP Applications – Resilient Florida + Water Restoration Assistance - WWTP & Vulnerability Study

WWTP-

Grant #2 is an application for the WWTP totaling \$14 million - the City of Apalachicola was approved for the full \$14 million for new equipment and relocation. DEP contacted us and let us know we had 2 duplicated grant efforts both submitted to them. Both are for the WWTP – and combined could cover the entire WWTP Project costs, headworks and all. DEP has agreed, with some preliminary efforts to ensure the scope and pricing are as they should be. **Total project costs are approximately \$19M, which will be fully funded through two separate DEP awards (Award #1 = \$13.4M, Award #2 = \$5.6M). See cost breakdown below.**

- Scope of works for both efforts are in progress! Cost breakdown below:
- DEP requested several documents to send out agreements – documents supplied. Still ongoing. **DEP Award #1 & #2 have both been executed!**
- **A Kickoff Webinar for Award #1 was held with DEP and the City on 11/1/2022.**
- **While continuing services agreements can be generally be used for DEP funding, the expected cost of the construction contract exceeds thresholds for use of continuing services agreements. As previously reported, Engineering services for this project will utilize a firm selected from the Engineering RFQ that is being used for CDBG-DR efforts. City authorized to enter into contract negotiations with Halff, CDG, and Dewberry on 11.8.2022. Draft contracts have been submitted and are**

currently under review with counsel. Recommendation to execute contracts and award task orders is on the agenda for 12.6.2022.

COST: The Total Estimated Cost of this Project is \$18,927,391. The anticipated funding breakdown is for FDEP to fund approximately \$5,551,875, and FDEP-SRF to fund \$13,375,516.

Vulnerability Study-

Grant #1 Vulnerability Study – **FUNDED!** Contract signed with Bay Media and research, data collection has begun. **Public Workshop Scheduled for December 6.**

15. USDA Water Street Sidewalk and Lighting –

Construction by CWR Contracting, Inc. is in progress! Have made first payment and are filing for reimbursement.

16. Coronavirus State and Local Fiscal Recovery Funds (SLFRF) – American Rescue Plan

The City formerly made application to the SLFRF program and received an award of \$1,179,010.00. The City has received half of this allocated amount and will receive the second half after spending the first deposit. City has elected to receive "standard allowance" for government services.

Dates:

- » Funds must be obligated by December 31, 2024
- » All expenditures must be complete by December 31, 2026

American Rescue Plan Info:

- Electing the "standard allowance" to spend on government services
 - Government Services generally include any service traditionally provided by government unless Treasury has stated otherwise. Here are some examples:
 - Construction of schools and hospitals
 - Road building and maintenance and other infrastructure
 - Health Services
 - General Government administration, staff, and admin facilities
 - Environmental remediation
 - Provision of police, fire, and other public safety services, including purchase of vehicles

- **However, these funds may not be used for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute (uses of funds that undermine COVID-19 mitigation practices in line with CDC guidance and recommendations)**
- All projects MUST follow 2CFR procurement.
- No construction of the following:
 - New correctional facilities as a response to an increase in rate of crime. New congregate facilities to decrease the spread of COVID 19 in the facility. Convention centers, stadiums or other large capital projects intended for general economic development or to aid impacted industries.
- Funds cannot be used for payments for debt services or replenishing rainy day funds.

All information included in this report is accurate as of December 1st, 2022 at 12:00pm. After that time, information is subject to change. If you have any questions, please send them to brobinson@cityofapalachicola.com!

Finance Director – Mark Gerspacher

City Commission Meeting –December 6, 2022 – 4:00pm

1. 2020 – 2021 Audit

We ran into a couple more delays with the audit due to some things that were posted incorrectly in the 2020-2021 fiscal year. We should have a draft report this week and have a special meeting to approve the audit.

2. Banyan

We ran into more technical issues with our computers that have again delayed the implementation of Banyan. The latest one is resolved so we are moving forward

3. RFP for Elevated Tank Coating

This RFP went out and we will receive responses by December 15.

4. FY2021 - 2022 Budget Amendment

We are past due to complete a budget amendment for the 2021 – 2022 fiscal year because we are waiting on our latest audit report. In order for the amendment to be accurate, we need good numbers going into the fiscal year. I anticipate having a budget amendment ready for the January Commission meeting. Because the amendment will need to be done by ordinance we will either need a special meeting in January or will need to approve at the February meeting. In speaking with attorney Hartman, the only consequence of being late with this is that we will have a finding on our audit.

5. Current Year Budget reports

I anticipate being able to present year to date budget reports at the January commission meeting that will summarize the first quarter of the fiscal year.

ATTORNEY REPORT

TO: City Commission, City of Apalachicola
FROM: Daniel W. Hartman, Esq.
DATE: December 2022
SUBJ: City Attorney Report for Commission Meeting

1. Height Ordinance

The Height ordinance has been placed in form for first reading in accordance with the direction of the Commission at the November 2022 City Commission meeting. However, certain additional steps must be taken before first reading in order to ensure compliance with State requirements applicable to amendment of the City Land Use Code.

2. Change in Date of Elections

At the November 2022 Commission meeting I was asked to provide information as to the authority and process by which the City could change its date of election to coincide with the County, State and National election cycles. i.e. November of even numbered years. I have included with this report a Memorandum for review and consideration on the subject.

MEMORANDUM

To: City Commission, Manager and Clerk

From: Daniel W. Hartman, City Attorney

Date: December 1, 2022

Re: Moving Date of City Elections; Effect on Commissioner Terms in Office

At the City Commission meeting on November 8, 2022 the Apalachicola City Commission requested information regarding moving the date of City elections to coincide with the County, State and National election cycles. The purpose of such a change in the election cycle would be to increase voter participation and achieve financial savings to the City. The City will realize a significant cost saving by moving the dates of City elections to correspond with County, State and National elections if County elections officials would agree to handle the many functions associated with municipal elections which are currently handled and paid for by the City. Typically these can be performed by the County Supervisor at a reduced cost to that currently imposed on the City. This would need to be discussed with the County Supervisor to determine her willingness to assist the City with elections. The Supervisor has taken on this role in the County's other municipality.

The date of elections is established in Code of Ordinances, Part II, Section 16-1. Currently the City has a biannual regular election of Commissioners for the City held on the third Tuesday after the third Monday in September of each odd-numbered year. See Section 16-1 Further the City is responsible to provide notice of general elections, for poll administration, vote counting and certification. See Code of Ordinances, Part II, Chapter 16.

The City of Apalachicola is not the first city to contemplate moving it elections to coincide with County, State and National elections for the reasons set forth above. Prior to 1995 the process to accomplish this change was a bit more difficult and required a ballot referendum along with an Ordinance in cases such as the City of Apalachicola where the City Charter was adopted before July 1, 1973.

During the 1995 State legislative session, legislation was introduced to amend section 166.021(4), F. S. and to create section 100.3605, F. S. The legislative history associated with this legislation indicates an intent that municipalities are authorized to amend their charters, whether those charters were adopted before or after July 1, 1973, to change the election date and qualifying periods for candidates, including any changes in terms of office necessitated by such amendment, by Ordinance and without referendum. See, A.G.O. 2000-61 and 2003-52. The provisions of Florida Statutes governing such charter amendments are found at Section(s) 166.021, 166.031 and 100.3605, Florida statutes. The City recognized the changes to State law in applicable City Charter sections dealing with elections. The Charter states in pertinent part "The provisions of Code of Ordinances, part I, Art. XVII. section 140 have either assumed ordinance status by virtue of the Municipal Home Rule Powers Act (F.S. ch. 166) and their inclusion in the Apalachicola Code (see Code sections 9-4 et seq., or are superseded by F.S. §§ 97.041, 98.091(3), 100.011, 100.342, 101.031, 101.041, 101.21, 101.635, 101.75, and 166.032." In short, the City moved the applicable election Charter provisions out of the Charter (Part I) and into the Code of Ordinances Part II. This further solidifies that the election date can be changed by Ordinance.

Can the City Commission Move the Election Dates?

Specifically can the City move the City election scheduled for September 2023 or September 2025 to coincide with the regular November 2024 or 2026 election cycle?

Answer: Based on the plain language of Section 100.3605 and 166.021(4), F.S. the City Commission of Apalachicola may move the election dates set forth in the City Code to November of an even numbered year – November 2024 or 2026. This amendment to Code of Ordinances Part II, Section 16-1 can be accomplished by Ordinance and does not have to be accompanied by a ballot referendum.

Can the City Commission Extend or Reduce the Terms of Sitting Commissioner?

Another issue to be addressed during the decision is the impact on the terms of sitting Commissioners and of those qualifying for office in a future election. i.e. by moving the election date the City Commission must decide whether to lengthen or shorten a standard term of office for one cycle. This change in the term of office could be over one (1) year. In the prior AGOs cited

above the extension of terms was up to approximately 7 months or less. By contrast, in order to accomplish:

- i. the moving of the City elections to coincide with the dates of upcoming County, State and National elections in the 2024 or 2026 election cycles;
- ii. achieve the resulting cost savings; and
- ii. increased voter participation.

The Commission faces a decision as to which election cycle to make the transition and then identify the effect on then sitting and to be elected Commissioners. It should be noted that the extension of the terms of sitting commissioners would be for the singular purpose of making an orderly transition to coincide with the County, State and National elections in November of the chosen transition year and not as a permanent change to elected official's terms of office. ¹

In 2013 the city of Arcadia confronted almost exactly the issue we face. The charter amendments sought by Arcadia would have the effect of extending the terms of sitting municipal officers by more than one year. The city was aware of the prior Atty. Gen. opinions cited above but had a particular concern that the length of the extended terms necessitated by moving the election dates. i.e. in excess of one (1) year.

The Atty. Gen. determined that nothing in the applicable statutes or in the legislative history related to their enactment placed a restriction on the authority granted by the statute to increase the term of a sitting Commissioner required for the "orderly transition of office" affected by the ordinance. Accordingly, the Atty. Gen. determined that the length of the extension of the terms of the sitting commissioners which appears to be identical to the instant case can be accomplished through Ordinance and without voter approval by referendum. See, AGO 2013-05.

Answer: The City of Apalachicola can authorize by Ordinance and without referendum the extension of the terms of current sitting Commissioners by the over one (1) year necessary to make City elections coincide with County elections in 2020 and 2022.

¹ A permanent change to the terms of office would still require a ballot referendum. See, AGO 2001-81.

Similarly, an ordinance could shorten the terms in order to bring them into sync. However, this may best be accomplished by qualifying Commissioners during an upcoming regular election cycle for a clearly delineated shortened term of office.