



TO : Members of the Charter Review Commission

FROM : James M. Messer, City Attorney

RE : Charter Review Commission Proposed Issues

DATE : November 3, 2017

The purpose of this memorandum is to focus and memorialize the issues raised at previous meetings so that they may be discussed, supplemented and/or modified for presentation as recommendations to the City Commission.

To facilitate discussion, my office has compiled information on the practices of other municipalities relating to distribution and management which is attached as Exhibit A.

Also attached as Exhibit B, are the portions of the Charter governing the Fort Pierce Utilities Authority ("FPUA") with relevant provisions highlighted.

I. DISTRIBUTION OF GROSS REVENUE

1. What if any changes should be made to the 6% distribution outlined in the Charter § 178(c)?
 - a. Definition of "gross revenue" Charter § 178(d).
 - b. Should the Price Cost Adjustment and/or any other revenue sources be explicitly identified and included in the definition of gross revenue?
 - c. Should the distribution be linked in any way to external factors, such as the Consumer Price Index, Cost of inflation and or placed on a sliding scale that would establish a base percentage and increase or decrease based on FPUA gross revenues?
 - d. Should the distribution be more frequent than annually?
 - e. Should the distribution percentage simply be increased?
2. What if any measures should be undertaken to account for and manage the amount of money in the FPUA's reserves?
 - a. Independent audit.
 - b. Audit by the City CFO.

- c. Should a ceiling on reserves be established that could only be raised with approval of City Commission?

II. FPUA MEMBERSHIP AND MANAGEMENT

1. Should the FPUA be brought back into the City under management of the City Manager?
2. What measures if any should be used to upgrade qualifications of the FPUA board members?
 - a. Enhanced application form that sets forth specific education/management/business experience.
3. Should the FPUA director be appointed by the City Commission?
4. Should the FPUA director be subject to removal only with approval of the City Commission?
5. Should any of the operations of the FPUA be combined with City operations as permitted in Charter § 175, such as marketing, planning and finance?
6. Should the appointment procedures for membership on the FPUA be changed to mandate individual appointment by each Commissioner, with the exception of the Mayor?
7. Should the membership of the FPUA be increased or decreased?

III. STRATEGIC PLAN AND BUSINESS PURPOSE

1. Should a long term strategic plan and a plan to increase the FPUA service area be mandated?
 - a. Supervision by the City Manager.
 - b. Presentation annually to the City Commission for approval.
 - c. Combine strategic plan function with City strategic plan and mandate implementations by the FPUA.

Attachments

cc: Honorable Mayor and City Commission
Koby Koblegard, FPUA General Counsel

EXHIBIT A

EXAMPLES OF OTHER FLORIDA MUNICIPAL ELECTRIC UTILITIES

CITY	DISTRIBUTION
Fort Pierce	<p>6% of "gross revenues" defined as: "all the income derived from retail sales of electricity, gas, and wastewater disposal; wholesale and retail sales of water; gains on sales of assets, interest, rents, royalties, dividends, and management fees"</p> <p>Where a power cost adjustment or purchase gas adjustment is utilized, "gross income" shall mean the amount billed based upon the applicable rate without a debit or credit for the cost adjustment.</p>
Jacksonville	<p>Charter §21.07:</p> <p>Assessment against Utility, calculated as follows:</p> <p>(c): "The combined assessment for the electric system and the water and sewer system shall equal, but not exceed the greater of (A) the sum of (i) the amount calculated by multiplying 7.468 mills by the gross kilowatt-hours delivered by JEA to retail users of electricity in JEA's service area and to wholesale customers under from contracts having an original term of more than one year (other than sales of energy to Florida Power and Light Company from JEA's St. Johns River Power Park System) during the twelve-month period ending on April 30 of the fiscal year immediately preceding the fiscal year for which such assessment is applicable plus (ii) the amount calculated by multiplying 389.20 mills by the number of K-Gals (1=1000 gallons) potable water and sewer service, excluding reclaimed water service, provided to consumers during the twelve-month period ending on April 30 of the fiscal year immediately preceding the fiscal year for which such assessment is applicable or (B) a minimum calculated amount which increases by 1% per year from fiscal year 2016-2017 through fiscal year 2020-2021 using the fiscal year 2015-16 combined assessment of \$114,187,538 as the base year. The amounts applicable to clause (B) above are: for fiscal year 2016-2017 - \$115,329,413; for fiscal year 2017-2018 - \$116,482,708; for fiscal year 2018-2019 - \$117,647,535; for fiscal year 2019-2020 - \$118,824,010; and for fiscal year 2020-2021 - \$120,012,250."</p> <p>(d): Commission may change assessment calculation by ordinance</p> <p>(e): Commission also has power to appropriate annually a portion of available revenues based on a formula agreed upon by JEA and commission</p> <p>(l): Franchise fee of 3% of revenues electric and sewer; can be increased to 6% by ordinance</p>
Kissimmee	<p>Charter §§10-11: The annual budget shall contain an amount anticipated to be transferred to the general fund of the city, but not less than, as a minimum, 6.24 mills per kilowatt hour (kWh) of the retail sales (sales not for resales) of electricity. This anticipated transfer figure shall be furnished to the city within one hundred twenty (120) days prior to the beginning of the fiscal year, and the monetary "transfer" may be made monthly at the option of the commission.</p>
Newberry	<p>Code §98-68: All revenues received, collected and derived from the electric charges imposed by ordinance shall be placed as received from the customer by the city into a special fund to be known and designated as the "electric revenue fund", which fund shall be kept separate and apart from all other funds of the city. The monies in such fund shall be used for the following purposes:</p>

	<p>(1) Operation, repair and maintenance of the electric system of the city;</p> <p>(2) Construction or acquisition of any electrical system and the construction or acquisition of extensions, additions, renewals or replacements to the existing electric system of the city; and</p> <p>(3) Paying all or any part of the debt service requirements of bonds issued to finance the cost of construction or acquisition of capital improvements described in subsection (2) of this section, in such amounts or proportions of such monies as may be pledged by ordinance. Remaining monies may be transferred to the city general fund for any authorized use.</p>
New Smyrna Beach	<p>Code §218: The commission shall have the exclusive power and authority to bill and collect the prescribed fees or charges for all services and utilities under its control and when collected, the flow of funds shall be: First, the payment of all operating and maintenance expenses of said utilities; second, the funding of all reserves required by revenue certificates issued by the city or said commission for projects under commission control including the debt service payments of all such revenue certificates as same become due; third, the payment to the general fund of the city a sum equal to six (6) percent of the gross revenues from utilities under commission control; such payments shall be made monthly. The surplus shall be paid annually to the general fund of the city after reserving an adequate fund for operation and maintenance expenses, capital improvements and line extensions as determined by the commission.</p>

CITY	STRUCTURE AND MANAGEMENT
Alachua Bartow Blountstown Bushnell Chattahoochee Clewiston Fort Meade Green Cove Springs Havana Homestead Jacksonville Beach Lakeland Leesburg Moore Haven Mount Dora Ocala Quincy Tallahassee Wauchula Williston Winter Park	Departments within City
Fort Pierce Jacksonville New Smyrna Beach Orlando	Separate utilities board with plenary authority
Gainesville	<p>Charter §3.06(1): General manager for utilities appointed by and responsible to commission;</p> <p>Code § 2-356-2-362: Utilities advisory board w/7 members with the following membership requirements:</p> <p>"All members shall reside within the utility service area and receive utility service. A minimum of one member shall reside outside the Gainesville city limits. The membership shall be comprised of the following:</p> <ul style="list-style-type: none"> A representative of a major business (defined as having 25 or more employees) that is a utility commercial customer; A person with utility management experience; A person with investment banking, financial or certified public accounting experience; A licensed attorney with business, contract or corporate law experience; A person with engineering experience; and Two persons with any qualifications the city commission deems relevant or beneficial to service on the board."
Kissimmee	<p>Charter Art. IX, §1: Kissimmee Utility Authority that is a separate unit of the city government and has exclusive jurisdiction, control and management of the utilities of the city and its operations and facilities free from the jurisdiction, direction, and control of other city officers and of the commission.</p> <p>§2: Board composed of 5 members appointed by a 4/5 of entire commission. Members must have demonstrated a successful business or professional management career, but 2 of the 5 may be members that reside outside the city limits of the City of</p>

	<p>Kissimmee, and who purchase electricity from the city's utilities and who portray the above attributes. In addition to said 5 members, the mayor serves as ex officio member of the Kissimmee Utility Authority without a vote.</p> <p>§14: The Board appoints a utilities director to be responsible to the Board and who shall serve at its pleasure.</p>
Lake Worth	<p>Electric Utilities Department within the City that has a Utilities Director who reports to the City Manager.</p> <p>Code §2-237: The City also has a 7 member Electric Utility Advisory Board which advises the commission on electric utilities policies, plans and programs. 4 at large members appointed by each commissioner, 1 appointed by mayor, 1 appointed by commission business owner, whose business is located in the city, and 1 appointed by the commission representing the utility service areas of or in a portion of the Village of Palm Springs and unincorporated Palm Beach County. The 4 district members and the 1 at-large member appointed by the commissioners and the mayor, respectively, must be residents of the city, and all members of the electric utility advisory board must be customers of the city utilities. Preference for membership shall be accorded, but not limited to, those residents who are knowledgeable or possess expertise in the following areas: engineering, management, accounting and finance, traditional energy generation and distribution, renewable energy generation and/or energy conservation.</p>
Reedy Creek Improvement District (special taxing district)	<p>The District presently owns and operates all utility systems within the District. The systems include wastewater collection and treatment system, a reclaimed water distribution system, an electric generation and distribution system, a solid waste collection and transfer system, a solid waste recycling collections and disposal system, a potable water production and distribution system, a natural gas distribution system, a high temperature hot water system, and a chilled water system. By contract, Reedy Creek Energy Services operates these systems on behalf of the District. (https://www.rcid.org/doing-business/utilities/)</p>
St. Cloud	<p>Interlocal agreement with Orlando Utilities Commission</p>
Starke	<p>Code §102-1 - Utilities department with a utilities director and assistant utilities director appointed by the commission</p>

through 156, and such assessment shall create a lien against the property. Nothing herein contained shall prevent the city from constructing sidewalks and providing for the payment therefor as elsewhere in this charter provided.

- (31) *Plats and maps of city.* To prepare, approve and adopt a plat or map covering all lands within the city limits showing all lands and streets, avenues, parks, public buildings and public ways, to be known as the "Official Map of the City of Fort Pierce"; and to change the names of subdivisions, streets and avenues thereon from time to time when conflicts exist or changes are deemed necessary. Such plat or map, when adopted and approved by the city commission, shall be prepared in duplicate, one (1) copy to be filed with the city clerk, [and] one (1) copy to be filed with the clerk of the circuit court of St. Lucie County, Florida, for public use; and such plat or map, so adopted and filed, shall be the official map of the city.

State Law reference— Platting, F.S. § 177.011 et seq.

- (32) *Water supply.* To acquire by the exercise of the rights of eminent domain or in any lawful manner within or without the city in any county of the state, or without the state, such water, lands and lands under water as the city may deem necessary for the purposes of providing an adequate water supply for the city and piping or conducting the same; to lay all necessary mains; to erect and maintain all necessary dams, pumping stations and other works in connection therewith, to make reasonable rules and regulations for promoting the purity of its water supply and for protecting the same from pollution; and for this purpose to exercise full police powers and sanitary patrol over all lands comprised within the limits of the watershed tributary to any such supply wherever such lands may be located in this state; to impose and enforce adequate penalties for violation of any such rules and regulations; and to prevent by injunction any pollution or threatened pollution of such water supply and any and all acts likely to impair the purity thereof; and for the purpose of acquiring lands or materials for any such use to exercise within the state all powers of eminent domain. For any of the purposes aforesaid, the city may acquire by condemnation, purchase or otherwise, any estate or interest in such lands or any of them, or any right or easement therein, or may acquire such lands or any of them, or any right or easement therein, or may acquire such lands or any of them in fee, reserving to the owner or owners thereof such rights or easements therein as may be prescribed in the ordinance providing for such condemnation or purchase. The city may sell or supply to persons, firms, industries, or municipal corporations residing or located outside of the city limits, any surplus water it may have over and above the amount required to supply its own inhabitants.

State Law reference— Eminent domain, F.S. §§ 166.401, 166.411.

- (33) *Creation of utilities authority.* The city commission, by ordinance subject to referendum shall have the power to create and establish a utilities authority to be known and designated as the Fort Pierce Utilities Authority, which shall consist of five (5) members, and to prescribe the powers and duties of said utilities authority.

Amendment note— Ord. No. F-399, passed April 24, 1972, was approved by a majority of the electors voting on a referendum at a special election held on May 30, 1972, and becoming effective June 29, 1972, amended § 14(33) by deleting "Fort Pierce Utilities Commission" and substituting in lieu thereof "Fort Pierce Authority."

State Law reference— Municipal public works, F.S. Ch. 180.

- (34) *Police powers.*
- (a) To exercise all of the powers of local self-government and to do whatever may be deemed necessary or proper for the safety, health, convenience or general welfare of the inhabitants of the city; to exercise full police powers to do and perform all acts and things permitted by the laws of the State of Florida, and comprehended as duties in the performance of anything recognized as a "municipal purpose," whether now existing and recognized, or hereby [sic] recognized as a municipal purpose by statute, law or court decision.
 - (b) Police protection. To establish and maintain a police department for the benefit of the city and to furnish police protection within one-half mile of the corporate limits, provided that this extension of power shall not exceed into any other municipal corporation.
- (35) *General laws of state.* All general laws of the state, applicable to municipal corporations, heretofore or hereafter enacted and which are not in conflict with the provisions of this charter or with ordinances or resolutions hereafter

Sec. 143. - Service of utilities to consumers outside of city.

The city commission shall have power to supply water, electricity, gas and sewer service for domestic and other purposes to individuals or corporations outside of the city and to charge and collect reasonable rates, prices and compensation therefor, including the costs or any part thereof for extension of said services, as determined by the city and upon such terms as may be imposed by the city, and the city commission may charge a different rate but not a lesser rate for such consumers than is charged for a like class of customers within the corporate limits of the city.

(Laws of Fla., Ch. 65-1557, § 2; Laws of Fla., Ch. 67-1391, § 21)

Amendment note— Ch. 65-1557, § 2, amended § 143 by permitting a different rate for consumers outside the city. Previously, said section required that a higher rate be charged. Ch. 67-1391, § 21, amended § 143 by adding sewer service, and by inserting the phrase "including the costs or any part thereof for extension of said services, as determined by the city and upon such terms as may be imposed by the city."

State Law reference— Rates charged consumers outside city limits, F.S. § 180.191.

ARTICLE XII. - FORT PIERCE UTILITIES AUTHORITY^[12]

Sec. 169. - Created; powers, duties, responsibilities generally; definitions.

- (a) There is hereby created and made a part of the government of the City of Fort Pierce a utilities authority to be known and designated as Fort Pierce Utilities Authority, City of Fort Pierce, Florida, which shall be responsible for the development, production, purchase and distribution of all electricity, gas, water, sanitary sewer collection and disposal, and such other utility services as may be designated by resolution by the city commission. The authority shall have exclusive jurisdiction, control and management of the utilities of the city and all of its operations and facilities. The authority shall have all the powers and duties possessed by the city to construct, acquire, expand and operate utility systems, and to do any and all acts or things that are necessary, convenient or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, economic and businesslike administration of the utility systems. The authority shall operate as a separate unit of the city government; and except as otherwise provided in this article, the authority shall be free from the jurisdiction, direction, and control of other city officers and of the city commission. The authority may sue or be sued in its own name. All damage claims arising from the operations of the authority and the utilities shall be the responsibility of and be liquidated by the authority from the appropriate funds of the utility systems.
- (b) For the purposes of this article, unless otherwise designated or the context requires, the word "authority" shall mean the Fort Pierce Utilities Authority, the word "member" shall mean a member of the Fort Pierce Utilities Authority, and the word "city" shall mean the City of Fort Pierce.

(Ord. No. F-399, § 1, 4-24-72)

Sec. 170. - Composition; qualifications, selection, terms of office, removal and compensation of members; vacancies; election and duties of officers; authority to adopt rules; required vote to act; quorum; meetings; execution of contracts, written instruments.

- (a) The authority shall consist of five (5) members, one (1) of whom shall be the mayor. In the discretion of the city commission, the city manager may serve as an ex officio member without vote, and whose term shall be set by the city commission.
- (b) The city commission shall, within fifteen (15) days upon this article becoming law, elect by a majority vote, four (4) citizens with such qualifications as are provided for herein, one of whom shall serve for one year, one of whom shall serve for two (2) years, one of whom shall serve for three (3) years, and one of whom shall serve for four (4) years, each of such terms to commence the first day of each new fiscal year. Thereafter, the term of office of each member shall be for

four (4) years, but each elected member shall hold such office until his successor has qualified and been elected and furthermore, the city commission shall by a majority vote nominate and elect any successor to the present membership of the utilities authority and shall by a majority vote elect all new members of the authority. No member of the utilities authority shall serve more than two (2) consecutive terms.

- (c) Any vacancy in the authority shall be filled for the unexpired term in the same manner as provided for appointment after the initial appointments. No vacancy in the authority shall impair the right of the remaining members to exercise all the powers of the authority.
- (d) Any member may be removed from office by the city commission for malfeasance, misfeasance or nonfeasance in office, or upon conviction of a felony.
- (e) No person shall be a member unless he shall be a qualified elector of the city. No person who holds any other public office or who is an employee of the city government or who has any business relationship with the authority other than as a consumer shall be a member, except the mayor and the ex officio member. A member ceasing to possess any of these qualifications shall be removed from his office forthwith by the city commission.

State Law reference— Code of ethics for public officers and employees, F.S. § 112.311 et seq.

- (f) Each member shall be paid as set out in the budget and approved by the city commission in accordance with section 176, subsection (12).
- (g) The authority by majority vote shall elect from among its members a chairman, who shall preside over the meetings of the authority, a vice-chairman who shall act for the chairman during his absence, and a secretary. An election of officers of the authority shall be held at the first regular meeting at which all members are present following the appointment of a new member for a full term, but not later than the fourth meeting following the appointment.
- (h) The authority shall adopt rules for the conduct of its meetings.
- (i) No action shall be taken by the authority except by the affirmative vote of at least three (3) members.
- (j) Three (3) members shall constitute a quorum.
- (k) The authority shall meet at least once each month. All meetings shall be open to the public and minutes shall be kept of all meetings; copies of such minutes shall be furnished members of the city commission within seven (7) days of such meeting. Special meetings may be called upon six (6) hours['] written notice thereof by the chairman or any three (3) members.
- (l) All contracts shall be executed by the chairman or vice-chairman and secretary. All other instruments in writing necessary to be signed by the authority shall be executed by the chairman or vice-chairman and secretary, or by such officer, agent or employee of the authority as it may designate.

(Ord. No. F-399, § 2, 4-24-72; Ord. No. G-297, §§ 2, 4, 9-20-76)

Sec. 171. - Separate divisions for electric, water and other utility operations.

- (a) The authority may establish separate divisions for the electric, water, and other utility operations, respectively.
- (b) Separate accounts shall be kept for each division and as may be found practical by the authority in accordance with the uniform systems of accounts for sanitary sewer, gas, electricity, water and other utilities, as promulgated by the Public Utilities Commission of the State of Florida or the Federal Power Commission and according to generally accepted public utility accounting principles.
- (c) Each division may be operated independently of the others, except insofar as the authority determines joint operations to be advisable and economical.
- (d) Expenses incurred in joint operations shall be equitably prorated among the divisions by the authority.

(Ord. No. F-399, § 3, 4-24-72)

Sec. 172. - Utilities director; officers, employees, department heads.

The authority shall have the power to appoint a utilities director to be responsible to the authority and who shall serve at its pleasure. There shall be such other officers and employees as may be provided by the authority. The officers shall be appointed or removed by the utilities director subject to confirmation by the authority. The employees shall be appointed and removed by the utilities director. The authority shall fix the salary of the utilities director and shall have, but may delegate to the utilities director, the power to fix the salaries of all other officers and employees of the authority. The authority shall also have the power to employ or appoint engineers, accountants, lawyers, and such other personnel as may be required for the operation and management of the utilities and to fix their compensation. Department heads shall be appointed by the director subject to the approval of the authority.

(Ord. No. F-399, § 4, 4-24-72)

Sec. 173. - Surety bonds for officers, employees.

The authority may require surety bonds for any of the officers and employees in such amounts as the authority deems necessary. The premiums for the bonds shall be paid in the same manner as any other operating expense.

(Ord. No. F-399, § 5, 4-24-72)

Sec. 174. - Pension and retirement system.

The authority shall not have power to create or regulate a pension or retirement system, but shall utilize the existing city pension and retirement plans for its employees and shall make contributions to the cost of pension and retirement plans as may be, from time to time, required which cost shall be paid in the same manner as any other operating expense.

(Ord. No. F-399, § 6, 4-24-72)

Sec. 175. - Authorization to combine operations of utilities with other city operations.

The authority may, in order to promote the efficient and economical operation of the utilities, with the approval of the city commission, combine the operations of the utilities with other city operations, including, but not limited to, the following:

- (1) Any officer or employee of the city at the time this [article] becomes effective, or who is appointed or employed thereafter, may serve as an officer or employee of the authority, or in a dual or joint capacity, but in no event shall [he] receive more than one (1) salary as may be fixed by the authority or by the city commission, except the mayor-commissioner.
- (2) Life, accident and health insurance plans for city employees may be utilized by the authority for its officers and employees.
- (3) Accounting, billing or any other operations or functions may be combined or operated jointly.

(Ord. No. F-399, § 7, 4-24-72)

Sec. 176. - Enumeration of specific powers and duties.

The authority in the efficient and economical operation of the city utilities, both inside and outside the city limits, shall have the following powers and duties.

- (1) To sell its products and services to public and private corporations and to other consumers; construct plants, transmission lines and other facilities and purchase real estate in the name of the city and to enter into all contracts, leases, and agreements in furtherance hereof. Franchises may be purchased with the approval of the city commission.
- (2) The utilities authority shall have power to supply water, electricity, gas, and sewer service for domestic and other purposes to individuals or corporations outside of the city, and to charge and collect reasonable rates, prices and compensation therefor, including the costs or any part thereof for extension of said services as determined by the utilities authority, and upon such terms as may be imposed by

the utilities authority, and the utilities authority may charge a different rate but not a lesser rate for such consumers than is charged for a like class of customers within the corporate limits of the city. No extension of facilities or services outside the city limits for any of the utilities, including those utilities now under the contract of the utilities authority, shall be valid unless approved by the city commission. Any extension of facilities or services shall be based on a finding of the city commission that the extension of the facilities or services is in the best interests of the city, and a surplus of the capacity of the facilities or system to be extended exists and present facilities and services and future expansions within the city limits of the City of Fort Pierce will not be impaired.

- (3) The authority may contract with any public or private corporation or any individual, both inside and outside the city limits, for the joint use of poles and other property belonging either to the city or to the other contracting party or jointly to both parties; and with the approval of the city commission for the joint acquisition of real property and franchises and the joint financing, construction, and operation of plants, transmission lines, and other facilities, whereby any property acquired may become the property of either or both the city and the other contracting party.
- (4) The authority may enter upon any land or water for the purpose of making surveys and may exercise the right of eminent domain on behalf of the city whenever public necessity or convenience requires inside and outside the city limits in the manner provided by law.
- (5) The authority may use the ground over, under or along any road, railroad, highway, street, sidewalk, thoroughfare, alley, waterway, or other public way, in the operations of the utilities but shall, in all cases and subject to the applicable general regulations of the city, cause the surface of the public way to be restored to its usual condition.
- (6) The authority shall fix rates to be charged for gas, electricity, water, sanitary sewer, and other utilities services sold and services rendered. Provided, however, said utilities authority shall submit any rate changes or any changes in the formula by which rates are determined to the city commission. If a four-fifths (4/5) majority vote of the city commission does not disapprove of the proposed rate changes within thirty (30) days of the date of submission of said change or changes in the formula to the city commission, the rates or the formulas by which the rates are determined shall be deemed approved and shall become effective.
If a four-fifths (4/5) majority vote of the city commission disapproves any rate change or any change in the formulas by which the rates are determined within thirty (30) days, said rates shall not become effective and the previous rates or the formulas by which the rates were determined which were previously established

shall remain in effect. If any rate changes or any changes in the formulas by which the rates are determined are not approved by the city commission, the city commission shall state the reasons for said disapproval. The city commission may by majority vote waive the thirty-day period for disapproval and approve same by a majority vote. Any rate adjustment resulting from fuel adjustment changes made in accordance with a previously approved formula will not have to be submitted to the city commission.

Rates shall be uniform for all consumers within the same class, but different rate schedules may be applied to different classes of consumers as determined by the authority. Rates shall be sufficient to pay all operating and maintenance expenses of each respective utility operation, capital outlay, all bond interest and redemption costs, and payments authorized by this article. The authority may require deposits as security for the payment of charges for utility services and may provide for the return of deposits when satisfactory consumer credit has been established.

- (7) No money shall be drawn from the funds of the utilities nor shall any obligation for the expenditure of money be incurred except as authorized by the authority. No claim against the authority shall be paid unless evidenced by a voucher approved by the utilities director or by some other employee to be designated by him.
- (8) The authority shall have the right, power and authority by resolution to issue and sell revenue bonds or certificates in such amounts as shall be deemed necessary to finance all or part of the costs of acquisition, construction, repairs, replacements, improvements, additions and extensions of the city's utilities and equipment required therefor. All of such revenue bonds or certificates issued by the authority shall be obligations of the City of Fort Pierce; provided, however, the authority shall have no power to pledge the full faith and credit of the city and nothing set forth herein shall be so construed. No referendum or freeholders' election shall be required as a condition precedent to the issuance of such revenue bonds or certificates. The bonds, or revenue certificates, shall be dated, shall bear interest, at such rate or rates not exceeding that established by state law, shall mature at such time or times not exceeding forty (40) years from their date or dates, as may be determined by the authority, and may be redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds or certificates. The authority shall determine the form of bonds, or certificates, including any interest coupons to be attached thereto, and the manner of execution, and shall fix the denomination or denominations, and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. The resolution authorizing the issuance of the bond, or certificates, shall contain such

provisions relating to the use of the proceeds from their sale and for the protection and security of holders thereof, including their rights and remedies, and the rights, powers, privileges, duties and obligations of the authority with respect to the same, as shall be determined by the authority. In case any officer whose signature or facsimile of whose signature shall appear on any bonds, certificates or coupons shall cease to be such officer before the delivery of such bonds, or certificates, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds, or certificates, issued under the provisions of this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the law merchant and the Uniform Commercial Code-Investment Securities Law of the State of Florida. The bonds, or certificates, may be issued in coupon or in registered form, or both, as the authority may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law. All revenue bonds, or certificates, issued hereunder shall be advertised for sale on sealed bids, which advertisement shall be published once a week for two (2) weeks, the first publication to be made at least fifteen (15) days preceding the date advertised for the reception of bids, in a newspaper published in the City of Fort Pierce and also in a financial paper designated by resolution. The authority may reject any and all bids. If the revenue bonds, or certificates, are not sold pursuant to such advertisement and public bidding, they may be sold by the authority at a private sale by negotiation or may be readvertised in the same manner for public sale. In the event of a private sale by negotiation, the authority may sell said certificates or notes upon the best terms offered therefor. Revenue bonds, or certificates, issued under the provisions of this act shall be payable from the revenues derived from the operation of the city's utilities or services under the supervision, operation and control of the authority and from any other funds legally available therefor. The authority is authorized to provide by resolution for the issuance of refunding revenue bonds, or certificates for the purpose of refunding any revenue bonds, or certificates heretofore issued by the City of Fort Pierce then outstanding or issued under the provisions of this article; providing, however, that any such refunding obligation shall only refund outstanding bonds and interest and redemption premiums therein at a lower net average interest cost rate; and to issue notes in the anticipation of the receipt of the proceeds of the sale of any such bonds, or certificates. The authority, with the consent of the city commission, may pledge the proceeds of utilities service[s] taxes, cigarette taxes, or franchise taxes (as defined in Chapter [section] 159.02, Florida

Statutes 1969) or any other excise taxes or other funds which such authority is authorized to levy and collect or will have available, as additional security for the payment of the principal and interest on any revenue bonds or certificates issued hereunder, or for services for such debt services.

State Law reference— Neither credit nor taxing power pledged under Revenue Bond Act, F.S. § 159.04.

- (9) The authority may borrow money for periods not to exceed two (2) years and may issue negotiable notes, payable from the revenues of the utilities or a division thereof, as evidence of the loans, with the approval of the city commission. The action of the authority may be by resolutions which may be adopted at the same meetings at which introduced and shall take effect immediately upon adoption and public sale shall not be required.
- (10) The authority may authorize reasonable expenditures to advertise and otherwise promote the use of the utility services and to acquaint the public with the operations, programs, and planned expansion of the utilities.
- (11) The authority may invest idle funds in banks or savings institutions when qualified as city depositories, provided such investments are secured by direct obligations of the United States Treasury, or may invest idle funds in direct obligations of United States Treasury. The authority may also invest such idle funds in investments secured by indirect obligations of the United States of America.
- (12) The authority [shall], in addition to the reports and accounting it may otherwise be required by law to make, promptly after the close of the fiscal year, furnish the city commission its annual report which shall include the following statements as of the end of the preceding fiscal year: A balance sheet showing the financial condition of the utilities and each separate division, prepared as nearly as practical according to generally accepted public utility accounting principles; a statement of operations for each division of the utilities; and any additional supporting statements or schedules deemed necessary and desirable by the city commission to make a clear and informative presentation of the financial position of the utilities. The reports shall be kept on file in the city clerk's office and shall be open to public inspection. The funds and accounts of the utilities shall be audited annually by a certified public accountant appointed by the city commission. The authority shall also annually prepare and adopt a budget for the ensuing year and furnish a copy to the city commission at least forty-five (45) days prior to the beginning of the next fiscal year. If a four-fifths (4/5) vote of the city commission does not disapprove of any line item expenditures in said budget, or any amendments thereto within thirty (30) days of the date of submission to said city commission, said budget or any amendments thereto shall be deemed approved as submitted. The city commission may not increase any amounts in the proposed budget or amendments thereto, but may

reduce by a four-fifths (4/5) vote of the city commission any line item in said budget or amendments thereto. The city commission may by majority vote waive the thirty-day period for disapproval and approve said budget, or any amendment thereto, by majority vote. Any expenditures disapproved shall not be authorized. No amendments to the utilities authority budget shall be authorized unless submitted to the city commission as set out herein.

Nothing contained herein shall be construed to prevent adoption of necessary and reasonable procedures for providing for emergency repairs and/or restoration or maintenance of services.

The fiscal year of the authority shall be the same as the City of Fort Pierce. The annual budget shall contain an amount anticipated to be transferred to the general fund of the city.

(Ord. No. F-399, § 8, 4-24-72; Ord. No. G-297, §§ 6, 8, 10, 9-20-76)

State Law reference— Powers of city as to public works, F.S. § 180.02.

Sec. 177. - Pre-existing obligations deemed binding.

Contracts and obligations relating to the utility systems of the city incurred prior to the taking effect of this article shall be binding upon the authority insofar as they apply to the authority.

(Ord. No. F-399, § 9, 4-24-72)

Sec. 178. - Authorization to manage and operate financial affairs.

- (a) The utilities authority shall, except as specifically provided in Section 176 of this Chapter [Charter], have the exclusive power and authority to manage and conduct its financial affairs in accordance with generally accepted accounting principals applied to municipal utilities systems and the provisions of resolutions authorizing its revenue bonds and other obligations outstanding as of the effective date of the ordinance.
- (b) All revenues derived from the utilities after paying the necessary costs and expenses shall be applied to the payment of interest on and principal of bonds, revenue certificates, loans, and other obligations from monies borrowed, both senior and subordinate lien and to the sinking fund for the redemption thereof as required by law and ordinances under which said bonds were issued. The utilities authority shall set up reserve accounts and comply with all other provisions required by any revenue bonds and other obligations issued prior to [October 4, 1994,] the effective date of this ordinance [section].
- (c) The utilities authority shall pay to the City of Fort Pierce each year a sum equal to six (6) per cent of the gross revenues as hereinafter defined, derived from the operation of the utilities for the

preceding fiscal year, unless the city commission, by majority vote, agrees to accept a lesser percentage. This sum shall be paid on or before sixty (60) days after approval and acceptance of the audit for such fiscal year by the city commission.

- (d) (i) *Gross revenue* means all the income derived from retail sales of electricity, gas, and wastewater disposal; wholesale and retail sales of water; gains on sales of assets, interest, rents, royalties, dividends, and management fees.
- (ii) Where a power cost adjustment or purchase gas adjustment is utilized, "gross income" shall mean the amount billed based upon the applicable rate without a debit or credit for the cost adjustment.
- (e) All revenue bonds and other obligations or, other evidences of debt issued by the utilities authority subsequent to [October 4, 1994,] the effective date of this ordinance [section] shall comply with the provisions of Article XII. The utilities authority may issue revenue bonds, or other obligations or evidence of debt, varying from the requirements of this article, if said issue and terms are approved by majority vote of the city commission.
- (f) All other provisions not in conflict herewith of Article XII remain in full force and effect.

(Ord. No. F-399, § 10, 4-24-72; Ord. No. J-117, § 3, 8-15-94)

Sec. 179. - Competitive bidding.

Contracts for services, construction, materials, supplies, equipment, or machinery where the cost, value or amount exceeds ten thousand dollars (\$10,000.00), shall not be entered into or purchases made without competitive bidding and advertisement by a notice published at least once a week for two (2) consecutive weeks before the award of any contract in a newspaper having a general circulation in the city. Bids shall not be required to purchase patented and manufactured products offered for sale in a noncompetitive market or when the product can be obtained only from a sole source of supply, or where services cannot be contracted for upon the basis of competitive bidding. The provisions of this section shall not apply to any contract or agreement between the authority and any engineers, architects, accountants, attorneys, or for other professional services; or to agents, or investment bankers, relating to financing herein authorized; or to contracts of a continuing nature where an extension thereof without bids shall be in the best interest of the authority.

(Ord. No. F-399, § 11, 4-24-72; Ord. No. J-153, §§ 1, 2, 7-17-95)

Sec. 180. - City employees to continue under city's pension plans, civil service merit system.

All employees of the City of Fort Pierce on the effective date of this article who shall be under the supervision of the authority shall continue without any loss of right or benefits as employees under the pension plans and civil service merit system of the city existing on the effective date of this article or hereafter.

(Ord. No. F-399, § 12, 4-24-72)

Sec. 181. - Powers, authority granted not deemed exclusive.

The powers and authority granted in this article to issue and sell revenue bonds or certificates shall not be deemed exclusive, and the authority may issue revenue bonds and certificates and may exercise any of the powers granted to the city under general laws of the State of Florida for the development, production, purchase and distribution of electricity, gas, water, sanitary sewer [sic] collection and disposal, and other utility services with the approval of the city commission, when the same is not inconsistent with the provisions of this article.

(Ord. No. F-399, § 13, 4-24-72)

Sec. 182. - Issuance of bonds, certificates and other obligations to constitute legal investments for bonds, etc., and securities eligible for deposit as security for public funds.

Any revenue bonds, certificates or other obligations issued pursuant to this article shall be and constitute legal investments for bonds, savings banks, trustees, executors, administrators and all other fiduciaries for all state, municipal and public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal or other public funds notwithstanding the provisions of any other law or laws to the contrary.

(Ord. No. F-399, § 14, 4-24-72)