



2024 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Sustainable Growth & Charter Cleanup Committee

Affordable Housing Trust Fund Amendment Final Report and Recommendation to the Charter Review Commission

April 5, 2024

Committee Members:

Eric R. Grimmer, Chair
Rishi Bagga
Dick Batchelor
Tom Callan
Chuck O'Neal
Eugene Stoccardo

At its June 15, 2023 meeting, the 2024 Orange County Charter Review Commission ("CRC") referred to the Sustainable Growth & Charter Cleanup Committee (then titled the Charter Cleanup Committee) a proposal for incorporating the County's Affordable Housing Trust Fund into the Orange County Charter. The evaluation topic proposal was submitted by CRC Member Grimmer, who argued that incorporating a requirement for the continued existence of the Affordable Housing Trust Fund into the Charter would offer some protection against future County Commissions deciding to completely get rid of this important program.

Based on its study, the Sustainable Growth & Charter Cleanup Committee recommends that the CRC place the Committee's recommended Affordable Housing Trust Fund Amendment (attached as Exhibit "A") on the 2024 General Election ballot for consideration by the voters of Orange County.

Overview of the Committee Process

At its August 9, 2023 meeting, the Committee received a presentation from Mitchell Glasser, Manager of the Orange County Housing and Community Development Division, concerning the County's Affordable Housing Trust Fund Plan FY2023-2025. In addition, Mr. Glasser provided handouts concerning 50-year annual trends and Orange County's Housing For All 10-Year Action Plan. Further discussion was also had with General Counsel Wade Vose concerning recent affordable housing trust fund charter amendments in Broward, Brevard, and Alachua Counties. Mr. Vose also provided an overview of state legislative limitations on affordable housing funding, including the requirement of Sec. 125.01055, Fla. Stat., that a county must provide incentives to fully offset all costs to a developer of a required affordable housing contribution or linkage fee.

At its November 29, 2023 meeting, the Committee requested that Mr. Vose prepare a draft of an Affordable Housing Trust Fund Amendment. At its December 18, 2023 meeting, the Committee reviewed the draft, and asked Mr. Vose to research whether the charter amendment could limit the ability of the Board of County Commissioners to divert Affordable Housing Trust Fund funds to other uses by requiring a unanimous vote to do so. At the Committee's February 16, 2024 meeting, Mr. Vose advised that the case of *Ellis v. Burk*, 866 So.2d 1236 (Fla. 5th DCA 2004) and an Attorney General's Opinion cited therein indicated that such a limitation would be contrary to Florida law relating to the Board of County Commissioner's statutory budgeting authority. Thereafter, the Committee approved this final report, recommending the placement of the Affordable Housing Trust Fund Amendment attached as Exhibit "A" on the November 2024 ballot.

Overview of Charter Amendment

The proposed charter amendment requires the continued existence of the Affordable Housing Trust Fund initially established in Chapter 2, Article VIII, Division 2 of the Orange County Code. Notably, the charter amendment does not attempt to lock specific details of the ordinance or program in place, expressly acknowledging that the ordinance may be "modified from time to time by ordinance in a manner not inconsistent with the requirements of this section". This was seen as important, as the Committee did not want to tie the hands of the County and prevent it from implementing new and innovative affordable housing strategies and programs in the future.

The proposed charter amendment specifies purposes for the Trust Fund, drawn from the existing ordinance, but with the opportunity for the Board of County Commissioners to expand the purposes by ordinance.

The amendment specifies a number of potential revenue sources for the Trust Fund. Such funding decisions are ultimately left to the Board of County Commissioners, in accordance with case law such as *Ellis v. Burk, supra, Charlotte County Board of County Commissioners v. Taylor*, 650 So.2d 146 (Fla. 2d DCA 1995), and *Board of County Commissioners of Dade County v. Wilson*, 386 So.2d 556 (Fla. 1980).

Among the list of potential revenue sources are "[m]andatory or voluntary payments, including but not limited to fees from new commercial and residential development, made pursuant to development policies established by ordinance". Notably, the proposed amendment does not require the Board of County Commissioners to adopt such fees, in part to avoid potential conflict with the prohibitions of Sec. 163.3167(8), Fla. Stat. ("An initiative or referendum process in regard to any land development regulation is prohibited."; "An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited...")

The language of the charter amendment had its origin in a 2020 Alachua County charter amendment establishing an affordable housing trust fund in that county, which was in turn based on a 2018 Broward County charter amendment doing the same. The language of the Committee's proposed charter amendment was rewritten from these models primarily

to address the preexistence of Orange County's established affordable housing trust fund and program.

Exhibit "A"

Ballot Proposal: The ballot title and ballot summary for this question are as follows:

**ORANGE COUNTY CHARTER
AMENDMENT REQUIRING CONTINUED
EXISTENCE OF AFFORDABLE HOUSING
TRUST FUND**

Amending the County Charter to require the continued existence of an Affordable Housing Trust Fund used to create and preserve affordable housing, which may be funded by fees from new commercial and residential development and other sources, all as directed by the County Commission, and to provide for purposes, revenue sources, appropriation and expenditure of funds, annual audit, continuing nature, implementation by ordinance, administration, and oversight of the Trust Fund.

Yes
 No

Text Revisions: Upon approval of this question at referendum, the following portions of the Orange County Charter are amended to read as follows:

Sec. 713. –Affordable Housing Trust Fund.

- A. Affordable Housing Trust Fund to remain in continued existence. The Affordable Housing Trust Fund ("Trust Fund") initially established in Chapter 2, Article VIII, Division 2 of the Orange County Code shall remain in continued existence, as modified from time to time by ordinance in a manner not inconsistent with the requirements of this section.
- B. Purposes of Trust Fund. The purpose of the Trust Fund is to provide the financial resources and the leverage necessary to create and preserve affordable housing units in Orange County. The purposes of the Trust Fund may be further specified by ordinance.
- C. Revenue sources. The Trust Fund shall be funded as directed by the board of county commissioners, and may be comprised of the following sources:
- (1) General revenue fund monies appropriated to the Trust Fund by the board of county commissioners as part of the annual budget;
 - (2) Funds voluntarily contributed by municipalities that may elect to participate in the Trust Fund and programs funded by the Trust Fund;

- (3) Grants or donations of money, property, or any other thing of value made to the Trust Fund;
- (4) Mandatory or voluntary payments, including but not limited to fees from new commercial and residential development, made pursuant to development policies established by ordinance; and
- (5) Other sources as established by ordinance.

D. Continuing Nature of Trust Fund. Unless otherwise directed by the board of county commissioners or required by applicable law, unspent portions of the Trust Fund, repayments of principal and interest on loans provided from the Trust Fund, and interest earned from the deposit or investment of monies from the Trust Fund:

- (1) Shall remain in the Trust Fund, to be used exclusively for the purposes of the Trust Fund;
- (2) Do not revert to the general revenues of the County; and
- (3) Any appropriations do not lapse.

E. Administration and Oversight of Trust Fund. The Trust Fund shall be administered, appropriated, and expended in a manner consistent with the purposes of the Trust Fund. The Trust Fund shall be administered in a manner that allows the Trust Fund to leverage other sources of public funds and private investment. The Trust Fund shall be included in the annual audit.

F. Implementation by Ordinance. No later than July 1, 2025, the board of county commissioners shall amend Chapter 2, Article VIII, Division 2 of the Orange County Code to implement the minimum requirements of this section. The board of county commissioners may adopt additional implementing ordinances not inconsistent with the requirements of this section.