



To: Mayor Jerry Demings
-AND-
County Commissioners

From: Commissioner Emily Bonilla, District 5

Date: May 21, 2024

Subject: Commissioner's Report Discussion Item – Direction to Staff for Drafting Ordinance and Ballot Language for Rural Boundary on June 4, 2024 BCC

The goal is to provide direction to our staff to draft an ordinance, charter amendment, and corresponding ballot language concerning the establishment of a rural boundary.

Recent developments necessitate our immediate attention and action. A memo from parties opposed to the amendment has highlighted significant challenges regarding the Charter Review Commission's authority to advance this matter to the ballot. To eliminate any potential legal obstacles and ensure the integrity of this process, it is imperative that the Board of County Commissioners take proactive steps to manage this issue directly.

The proposed rural boundary is crucial for preserving the character and environment of our county, and thus it is vital that we address this issue promptly to maintain control over its outcome. By directing our staff now to prepare the necessary documents, we can ensure that this item will be ready for a detailed discussion and vote at a future meeting with sufficient time to submit the finalized language to the Supervisor of Elections, adhering to all required timelines for including this measure in the upcoming ballot.

Your cooperation in this matter is essential for upholding our commitment to proactive governance and ensuring that significant county issues are addressed in a timely and legally sound manner. I appreciate your consideration of this urgent request and look forward to our collaborative effort to bring this important issue before the electorate.

Thank you for your attention to this critical matter.

COMMISSIONER EMILY BONILLA, DISTRICT 5

201 South Rosalind Avenue, 5th Floor · Reply To: Post Office Box 1393 · Orlando, Florida 32802
407-836-7304 · Fax 836-5976



Action Requested: Direction to Staff for Drafting Ordinance and Ballot Language for Rural Boundary

Included items in the email with this memo to also be included in the agenda book:

- Memo from The Willis Firm
- 3 documents from CRC Regarding Rural Boundary (including the final report, FIS and ballot summary)

/s/

Commissioner Emily Bonilla

Cc: Byron W. Brooks, County Administrator
Cheryl Gillespie, Supervisor, Agenda Development
County Attorney's Office

COMMISSIONER EMILY BONILLA, DISTRICT 5

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407-836-7304 · Fax 836-5976



To: Mayor Jerry Demings
-AND-
County Commissioners

From: Commissioner Emily Bonilla, District 5

Date: May 20, 2024

Subject: Urgent Request to Discuss Non-Agenda Item – Direction to Staff for Drafting Ordinance and Ballot Language for Rural Boundary on May 22, 2024 BCC

Dear Commissioners,

I am writing to urgently request the inclusion of a non-agenda item for discussion in our upcoming Board meeting. The goal is to provide direction to our staff to draft an ordinance, charter amendment, and corresponding ballot language concerning the establishment of a rural boundary.

Recent developments necessitate our immediate attention and action. A memo from parties opposed to the amendment has highlighted significant challenges regarding the Charter Review Commission's authority to advance this matter to the ballot. To eliminate any potential legal obstacles and ensure the integrity of this process, it is imperative that the Board of County Commissioners take proactive steps to manage this issue directly.

The proposed rural boundary is crucial for preserving the character and environment of our county, and thus it is vital that we address this issue promptly to maintain control over its outcome. By directing our staff now to prepare the necessary documents, we can ensure that this item will be ready for a detailed discussion and vote at our meeting scheduled for June 4, 2024.

Placing this item on the June 4th agenda will also allow us sufficient time to submit the finalized language to the Supervisor of Elections, adhering to all required timelines for including this measure in the upcoming ballot.

Your cooperation in this matter is essential for upholding our commitment to proactive governance and ensuring that significant county issues are addressed in a timely and legally sound manner. I

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COMMISSIONER EMILY BONILLA, DISTRICT 5

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appreciate your consideration of this urgent request and look forward to our collaborative effort to bring this important issue before the electorate.

Thank you for your attention to this critical matter.

Action Requested: Direction to Staff for Drafting Ordinance and Ballot Language for Rural Boundary

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/s/

Commissioner Emily Bonilla

Cc: Byron W. Brooks, County Administrator
Cheryl Gillespie, Supervisor, Agenda Development
County Attorney's Office

The Willis Firm

MEMORANDUM

TO: 2024 Orange County Charter Review Commission

FROM: Jared Willis, Attorney

DATE: 5/8/2024

SUBJECT: Orange County CRC Rural Boundary Amendment

Introduction/Summary

The Orange County Charter Review Commission is contemplating a “Rural Boundary” charter amendment that is preempted and prohibited by state law. While the Commission has attempted to amend the language to avoid several glaring legal issues, these changes have not ameliorated the amendment's most fatal flaws: This amendment violates current law by improperly amending Orange County’s land use outside of the comprehensive planning process outlined in Florida’s Community Planning Act, violating the intent and substance of the act and depriving Orange County landowners of their constitutional and statutory right to due process. This amendment violates future law by directly violating a bill passed by the Legislature during its most recent legislative session.

One Capital Place, 108 E Jefferson St., Suite A, Tallahassee, FL 32301
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1. Conflict With Community Planning Act

Florida's Community Planning Act is the state's comprehensive framework for local and regional growth management. It is a complex but orderly process that ensures property owners and affected local government receive notice, are given due process of law, and have the opportunity to have their concerns be addressed, a right that is guaranteed them both constitutionally and statutorily. The Legislature has a long history of protecting property rights by preempting local planning decisions to this framework. The rural boundary amendment violates this statutory framework and unconstitutionally deprives property owners of due process.

The Comprehensive Planning Process

In response to Florida's rapid growth, the Florida Legislature, in 1985 passed the Growth Management Act, which sought to ensure that local development and growth fit within state and regional infrastructure, and created the concept of the local comprehensive plan and its amendatory process. This act was revised in 2011 and renamed the Community Planning Act, reducing state oversight for the sake of greater local flexibility.

While this act has seen significant evolution since its inception, its core principles have remained the same: ensuring that local growth is consistent with current—and planned—infrastructure; providing a balance between the necessarily complex task of urban planning and citizen engagement; and providing protections for the rights of private property owners.

In the context of a previously litigated rural boundary amendment, the courts have described the comprehensive planning statute and its oversight:

*“The Act sets forth a comprehensive and complex process for the adoption and amendment of comprehensive plans, which includes public hearings, specific notice requirements, and a process of review by multiple government agencies. At various stages of the process, votes are required by the local government's "governing body," including the final vote either approving or rejecting any proposed amendment.”*¹

In the same opinion, the court discusses its complexity in the context of whether a citizen’s initiative would be permitted to adopt or repeal a land use ordinance:

*... this statute expressly designates the Board as the body responsible for land use planning ... it would appear unworkable for citizens (by initiative) to successfully navigate the complex enactment process required by the Act”*²

The court in *Seminole v. City of Winter Springs* alludes to the complexity of the enactment process, but does not go into significant detail. A later court, in *River Cross Land Co. v. Seminole Cnty.* provides a more comprehensive overview of the various considerations that a comprehensive plan, and any subsequent amendments, have to balance:

“In a local government’s plan, it must also address the affordability and the availability of housing for all segments of the county’s population, considering the housing stock and provision of adequate sites for future housing with supporting infrastructure and public facilities. The plan must consider infrastructure elements such as the sanitary sewer, solid waste, drainage, potable water, and

¹ *Seminole v. City of Winter Springs*, 935 So. 2d 521, 527 (Fla. Dist. Ct. App. 2006)

² *Id.*

natural groundwater aquifer recharge availability, establishing priorities for future infrastructure facilities to serve the existing and projected populations in future developments. Local comprehensive plans must also address the conservation, use, and protection of natural resources, including water, water recharge areas, wetlands, waterwells, soils, flood plains, rivers, lakes, fisheries, wildlife, and other natural resources.”³

The Legislature, for its part has a well-developed history, through a series of amendments to the Community Planning Act and additional legislation, of making clear that changes to land use through a ballot initiative are not appropriate or permissible. In fact, Fl. Stat. § 163.3167, which outlines the scope of the Community Planning Act, includes a series of prohibitions on initiatives and referendum processes in the context of land use regulation⁴:

- (8)(a) An initiative or referendum process in regard to any development order is prohibited.*
- (b) An initiative or referendum process in regard to any land development regulation is prohibited.*
- (c) An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited unless it is expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011. A general local government charter provision for an initiative or referendum process is not sufficient.*
- (d) It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order or land development regulation. It is the intent*

³ *River Cross Land Co. v. Seminole Cnty.*, Case No: 6:18-cv-1646-ACC-LRH, at *1 (M.D. Fla. June 4, 2021)

⁴ Fl. Stat. § 163.3167(8)

of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan amendment or map amendment, except as specifically and narrowly allowed by paragraph (c). Therefore, the prohibition on initiative and referendum stated in paragraphs (a) and (c) is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process commenced or completed thereafter is deemed null and void and of no legal force and effect.

In the 2024 Legislative Session, the Florida Legislature passed SB 1420 (discussed later), which, among other provisions related to Florida’s Department of Commerce, adds a provision to that same section of statute that prohibits “citizen-led” county charter amendments that preempt land use regulations as follows:

A citizen-led county charter amendment that is not required to be approved by the board of county commissioners preempting any development order, land development regulation, comprehensive plan, or voluntary annexation is prohibited unless expressly authorized in a county charter that was lawful and in effect on January 1, 2024.

This addition further clarifies the legislative intent that local land use regulations be conducted through the statutory framework in the Community Planning Act and not through initiatives or referendums.

Property Rights

Part of the Legislature’s purpose in preempting land use regulation to the Community Planning Act is due to the complexity of the process, as outlined

above, but a more important consideration is the long-held constitutional right to due process that is owed to affected property owners.

In Florida, the right to due process is enshrined in both the United States Constitution and the Florida Constitution. The 14th Amendment to the U.S. Constitution prohibits states from depriving any person of life, liberty, or property without due process of law. Similarly, Article 1, Section 9 of the Florida Constitution guarantees the same protections.

In 1993, the Legislature clarified its intent for the Community Planning Act (then the Growth Management Act) as it relates to property rights, inserting the following into the “intent and purpose” section of the statute:

*(9) It is the intent of the Legislature that all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations, and programs adopted under the authority of this act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property. Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law. Any such relief must be determined in a judicial action.*⁵

In 1995, the Legislature, recognizing that a limitation on property rights might not meet the high burden of a taking under the U.S or Florida Constitutions,

⁵ S. 1, Ch. 93-206, Laws of Florida

passed the “Bert Harris Jr., Private Property Rights Protection Act” (Harris Act). This act expanded property rights for Floridians even further, creating a “Property Owner Bill of Rights”.⁶

Functionally, the Harris Act entitles private property owners to relief when a new law, rule, regulation, or ordinance unfairly affects or “inordinately burdens” their property. An “inordinate burden” is defined as follows:

“(e) The terms “inordinate burden” and “inordinately burdened”:

- 1. Mean that an action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.*
- 2. Do not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section. However, a temporary impact on development, as defined in s. 380.04, that is in effect for longer than 1 year may, depending upon the circumstances, constitute an “inordinate burden” as provided in this paragraph.”⁷*

⁶ Fl. Stat. § 70.002

⁷ Fl. Stat. § 70.001(3)



In 2011, the Legislature incorporated the Harris Act into the Community Planning Act, modifying the intent clause as follows:

“(10) It is the intent of the Legislature that all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations, comprehensive plans and amendments thereto, and programs adopted under the authority of this act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property or which would constitute an inordinate burden on property rights as those terms are defined in s. 70.001(3)(e) and (f). Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law. Any such relief must ultimately be determined in a judicial action.” (Underlined language added in 2011).⁸

Due Process in the Community Planning Act

Beyond memorializing its intent to preserve property rights through the comprehensive plan framework, the Legislature has also prescribed how to do so functionally. Amending a local comprehensive plan, unless the amendment is a “small scale amendment” (50 acres or less) requires two public hearings and is accomplished through enacting an ordinance. The first hearing is at the transmittal stage and requires public notice.⁹ For county governments, public notice for a hearing on a land use ordinance requires either a prominent

⁸ S. 4, Ch. 2011-139

⁹ Fl. Stat. § 163.3184(11)

advertisement in a newspaper published 7 days before the first meeting and 5 days before the second meeting, or a mailed notice to each individual property owner within the affected area, on the same timeline. The notice also has to contain a geographical map that indicates the areas covered by the ordinance in question.¹⁰

During this process, affected property owners, business owners, and local governments have the opportunity to provide formal comment on adverse effects of the proposed amendment.¹¹

After the first hearing, the proposed amendment has to be transmitted to the “reviewing agencies”, which at a minimum include the state land planning agency, the regional planning council, the water management district, the Florida Department of Environmental Protection, Department of State, Department of Transportation, Department of Agriculture and Consumer Services, and the Fish and Wildlife Conservation Commission. These agencies also have the opportunity to provide comments on any adverse effects of the amendment.¹²

Affected property owners, business owners, local governments, or the state planning agency also have the ability to challenge the amendment with the Division of Administrative Hearing for non-compliance, where an administrative law judge will hold a hearing and make a recommendation, which is then acted upon by state planning agency, or if necessary goes to the Administration Commission for a final order.¹³

¹⁰ Fl. Stat. § 125.66

¹¹ Fl. Stat. § 163.3184(1)(a) and (3)

¹² Fl. Stat. § 163.3184(3)(b)

¹³ Fl. Stat. § 163.3184(5)



The ordinance can be adopted in a second public hearing, but doesn't go into effect until timely challenges are resolved and the state planning agency receives a complete package detailing the amendment, as adopted.¹⁴

Beyond the process described above (which is not exhaustive by any means), Orange County, in its Comprehensive Plan document commits to even greater notice and community engagement, including outreach to diverse communities, multilingual statements, community meetings, open discussion and broad opportunity for public comment.¹⁵

Orange County Charter Review Commission Public Notice Requirements

In contrast to the process required by the Community Planning Act, the Orange County Charter Review Commission requires very little notice and provides fewer opportunities for meaningful engagement from affected property owners and local governments. The Charter Review Commission's bylaws outline a much more abbreviated and less formal notice process:

"Notice of the date, time and place of said meetings shall be made available to the public in advance of the meetings by written notice through whatever methods are required by law and by posting the date, time and place upon the OCCRC's website and by publishing a notice at least two (2) business days before the meeting. Such notice shall also be posted on all available social media and digital channels and provided by email to all members of the public requesting email notification."¹⁶

¹⁴ Fl. Stat. § 163.3184(3)(c)

¹⁵ Orange County Planning Division, Board of County Commissioners, *2023-1-C-CP-1 Vision 2050: Orange County Comprehensive Plan*, at OBJ IMP 3.7

¹⁶ Bylaws of the 2023-2024 Orange County Charter Review Commission, Art. III, Sec. 3.1

Notably the subcommittee of the Charter Review Commission that originated the Rural Boundary amendment, the Sustainable Growth & Charter Clean Up Committee, has operated with even less notice than is prescribed in the bylaws, having recently had to cancel a meeting and reschedule for lack of notice. Additionally, there have been no social media posts to date regarding this committee, and the meetings of this committee do not appear on the public meeting calendar maintained by the Orange County Comptroller.¹⁷

Rural Boundary Amendment

The rural boundary amendment significantly changes Orange County's land use regulation by creating a new area within Orange County's land use map that modifies the governance structure and the process for making land use decisions, and effectively locks existing densities and intensities in place within the new area. The amendment does this by requiring that any modifications to density or intensity within the area can only be approved by a "majority plus one" of the entire membership of the Orange County Board of County Commissioners.

The creation of a new regulation over such a broad area within the county, and the accompanying governance structure, is exactly the kind of land use change that the Legislature created the Community Planning Act to accomplish. This policy decision has broad implications across not just Orange County, but surrounding counties that have interconnectivity with Orange. Within Orange County it affects the ability of the County and its municipalities to engage in joint planning for infrastructure, to adapt to future growth, and to solve issues like the affordable housing crisis that is currently plaguing Orange County. Beyond the broader implications, it has impacts on individual property owners, who have a

¹⁷ <https://occompt.legistar.com/Calendar.aspx>

guaranteed right to due process that is not met by a two-day notice on a county web page and an occasional social media post, and whose ability to make changes to their property is now more limited.

If the amendment were to pass and go into effect, it would likely necessitate significant changes to the existing comprehensive plan and future land use map, as its policies are in conflict with many of the existing provisions in the comprehensive plan, and the future land use map would need to reflect the new area and its boundaries. These inevitable amendments will have to go through the amendatory process described above, however, the consideration, comment and review that comes with this process will be tainted by the fact that they will be executing what is already law under the Orange County Charter, preventing a good faith review of the policy.

Conclusion

As outlined above, this amendment is in direct conflict with Florida's Community Planning Act, in its intent, its mandates, and its constitutional protections for property owners. Due to its numerous failures on these items, the amendment should be rejected and not allowed to move forward to the ballot.

2. Violation of Senate Bill 1420

Senate Bill 1420, sponsored by Senator Danny Burgess, passed the Legislature in the 2024 Legislative Session. The Rural Boundary Amendment, in its current form, would violate this legislation.

Senate Bill 1420

The bill, among other provisions related to Florida’s Department of Commerce, adds a provision to the Community Planning Act’s scope statute that prohibits “citizen-led” county charter amendments that preempt land use regulations as follows:

*A citizen-led county charter amendment that is not required to be approved by the board of county commissioners preempting any development order, land development regulation, comprehensive plan, or voluntary annexation is prohibited unless expressly authorized in a county charter that was lawful and in effect on January 1, 2024.*¹⁸

This language, if it becomes law, not only supports the Legislature’s long history of preempting land use decisions to the process outlined in the Community Planning Act, but also prescribes the process by which a charter amendment that has any preemption effect on land use (development orders, land development regulations, comprehensive plans, or voluntary annexation) must move forward.

The Orange County Charter Review Commission is empowered to place proposed amendments and revisions to the county charter on the general election ballot.¹⁹ They can do this without approval of the Orange County Board of County Commissioners, and the only additional requirement is that their report of proposed changes be delivered to the Clerk of the Board by the last day for qualifying for election to county office.²⁰

¹⁸ Florida Legislative Session 2024, Senate Bill 1420

¹⁹ Bylaws of the 2023-2024 Orange County Charter Review Commission, Art. III, Sec. 3.1

²⁰ *Id.*

Because the content of this amendment would preempt Orange County's current comprehensive plan, it would fall under the requirements of the provision, requiring approval by the Orange County Board of County Commissioners. However, the amendment's current language does not reflect this. Restated in a more formulaic manner, the legislation prohibits 1) a citizen-led charter amendment, that 2) preempts land use regulation, and 3) is not required to be approved by the board of county commissioners. It is clear from the plain language of the provision that the intent is that a county charter not be amended to modify a county's land use regulation without approval by the county commission.

The Rural Boundary Amendment previously sought to get around this language by the recent addition of the following clause:

*D. Notwithstanding the last sentence of Section 702.A. of this Charter, this charter amendment is subject to the requirement that it be approved by the board of county commissioners before it shall become effective. This charter amendment shall become effective only upon the date the board of county commissioners approves this charter amendment by resolution.*²¹

Seemingly, the intent of the Charter Review Commission was to place the Rural Boundary Amendment on the ballot with this provision, and in the event of its passage, allow it to lie dormant in the Orange County Charter until a future county commission approved it. While this previous iteration violated the plain language of the legislation by allowing the charter to be amended pending

²¹ Vose, Wade C., Orange County Charter Review General Counsel, *Memorandum to Sustainable Growth & Charter Clean Up Committee*, April 16, 2024

approval rather than requiring approval prior to an amendment; it at least recognized that the county commission is required to provide approval.

The current language²² being contemplated by the Charter Review Commission does not include any approval mechanism, despite the fact that it directly preempts Orange County land development regulations. Specifically, in Orange County's Code of Ordinances, Chapter 30, Article II, Section 30-37, the Orange County Commission has delineated the procedure for amending the county's comprehensive plan:

“(b) Any change, amendment, repeal or alteration of the comprehensive general plan shall be by ordinance proposed by the planning and zoning commission, subject to the approval of a majority of the members of the board of county commissioners. The ordinance shall refer expressly to the maps, descriptive materials, and other matters intended by the planning and zoning commission to form the whole or part of the plan. The action shall be recorded on the adopted plan or parts thereof by the identifying signature of the chairman of the planning and zoning commission, together with the date of such action, and a copy of the plan or part thereof shall be certified by the planning and zoning commission to the board of county commissioners for its approval.”²³

Orange County, by ordinance, allows the county commission to adopt amendments based on a majority vote, which is in direct conflict with the provisions of the rural boundary amendment: that a comprehensive plan

²² Sustainable Growth and Charter Cleanup Committee, Revised Rural Boundary Amendment, “Exhibit A” *Final Report and Recommendation to the Charter Review Commission*, May 1, 2024

²³ Ch. 30, Article II, Sec. 30-36(b), Orange County, Florida - Code of Ordinances

amendment increasing allowable density within the newly-designated “Rural Area”, or removing land from the area, would require a “majority plus one”.²⁴

Beyond preempting Orange County land development ordinance, the rural boundary amendment would also create a conflict between the county charter and its comprehensive plan. The amendment establishes a new area with a new designation that does not currently exist in the comprehensive plan or the future land use map. In fact, the new “Rural Area” would include parts of the County designated “Urban Core” and all the transitional “transects” zones that transition from truly rural parts of the county to its denser urban communities. These transitional transects require a level of flexibility that this new designation does not account for, and the comprehensive plan and future land use map will need to be updated to reflect this.

Conclusion

The Charter Review Commission recently noted that the removal of previous preemptions in the charter amendment for municipal annexations removed the requirement for county commission approval created in SB 1420. However, if the Rural Boundary Amendment moves forward in its current form, it is still prohibited under this legislation, because it preempts both land development regulations and the comprehensive plan and will not be approved first by the county commission. To prevent any conflicts with this legislation when it is signed by Governor Ron DeSantis and becomes effective, this amendment should be rejected and not allowed to move forward to the ballot.

²⁴ Sustainable Growth and Charter Cleanup Committee, Revised Rural Boundary Amendment, “Exhibit A” *Final Report and Recommendation to the Charter Review Commission*, May 1, 2024

Final Conclusion

As outlined in this memorandum, the Rural Boundary Amendment is prohibited both in content and process by Florida's Constitution, its statutes, and its well-established case law. However, perhaps the most problematic aspect of this amendment is that it is unnecessary. The stated intent, rural preservation, can be accomplished through any number of established processes: Orange County's comprehensive plan allows the designation of Rural Settlements and other rural place types. The Community Planning Act allows the creation of a number of agricultural or rural designations to preserve low-density and rural areas such as Rural Service Areas or Rural Land Stewardship Areas. Beyond land use regulation, the Orange County government has acquired over 530 acres of environmentally sensitive land for preservation.

The preservation of Orange County's rural and natural resources does not require an unconstitutional, illegal, charter amendment, it simply requires public engagement, transparency, and due process. For this reason, and for all the reasons outlined in this memorandum, the Orange County Charter Review Commission should reject this ill-advised initiative.



Sustainable Growth & Charter Cleanup Committee

Revised Rural Boundary Amendment Final Report and Recommendation to the Charter Review Commission

May 1, 2024

Committee Members:

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

Summary of Revised Recommendation

The Sustainable Growth & Charter Cleanup Committee recommends that the CRC place the Committee's recommended revised Rural Boundary Amendment (attached as Exhibit "A") on the 2024 General Election ballot for consideration by the voters of Orange County.

Overview of Revised Charter Amendment

The proposed revised Rural Boundary Amendment at Exhibit "A" establishes a Rural Area, which consists of unincorporated lands located outside the Urban Service Area, municipal joint planning areas, Growth Centers, Innovation Way Overlay, and Horizon West Villages on the effective date. Within the Rural Area, County comprehensive plan amendments increasing density or intensity, and ordinances removing lands from the Area, must be approved by majority-plus-one County Commission vote.

In contrast to the original Rural Boundary Amendment proposal, the revised proposed charter amendment does not preempt municipal authority to regulate land use if a municipality annexes property within the Rural Area, in contrast to provisions in the Seminole County and Alachua County Charters upon which the Committee's original proposal was based. The revised proposal maintains similarity with provisions of the Sarasota County Charter, which impose supermajority voting requirements to increase density or intensity in specified geographic areas.

In further contrast to the original Rural Boundary Amendment proposal, the revised amendment's definition of the Rural Area excludes all municipal joint planning areas, and the "Growth Centers," "Innovation Way Overlay," and "Horizon West Villages" specified

in the County's comprehensive plan. All of the areas excluded from the proposed Rural Area are depicted on a GIS exported map provided by County planning staff, attached as Exhibit "C".

Finally, the revised proposed charter amendment lowers the County Commission vote threshold from 80% (6 out of 7 Commissioners) to majority-plus-one (5 out of 7 Commissioners).

Overview of Further Committee Process

At the February 19, 2024 meeting of the 2024 Orange County Charter Review Commission ("CRC"), the Sustainable Growth & Charter Cleanup Committee presented its final report and recommendation relating to the Committee's Rural Boundary Amendment, recommending the placement of the proposed amendment on the 2024 General Election ballot. After public comment and discussion, the CRC returned the Rural Boundary topic to the Committee for further review, including review related to municipal joint planning areas, other issues related to municipalities, and consideration of an east and/or west rural boundary.

At the February 19, 2024 CRC meeting, representatives from a number of west Orange County municipalities expressed concerns that they would be negatively affected by the initially recommended version of the Rural Boundary Amendment, because portions of the proposed Rural Area encompassed lands lying within joint planning areas established in Joint Planning Agreements between the County and the municipalities. Among the concerns, some representatives noted that some of the municipalities had made water and wastewater infrastructure investments in the joint planning areas in contemplation of the areas' eventual annexation, and that their inclusion could pose concerns relating to issued bonds.

In addition, prior to the February 19, 2024 CRC meeting, County planning staff issued a memorandum to the CRC in which it suggested that certain areas of the County, although they lie within the "Rural Service Area" as defined in the Orange County comprehensive plan, may nevertheless be inappropriate to include in a charter-designated "Rural Area". These areas were the "Growth Centers", "Innovation Way Overlay", and "Horizon West Villages", each as specified in the Orange County comprehensive plan.

In light of these expressed concerns, at the Committee's March 1, 2024 meeting, the Committee spoke at length with Olan Hill, Assistant Manager, Orange County Planning Division, and Misty Mills, Senior Planner, concerning the boundaries, history, and characteristics of the County's municipal joint planning agreements/areas, Growth Centers, Innovation Way, and Horizon West. With respect to the County's municipal joint planning agreements, the Committee generally learned that within the contemplated joint planning areas, municipal annexation also contemplated municipal future land use changes consistent with a negotiated conversion table, facilitating orderly growth. As to Growth Centers, Innovation Way, and Horizon West, County staff discussed the unique urban characteristics of these areas under the County's comprehensive plan. At that

meeting, the Committee requested that General Counsel Vose review the information provided and prepare a revised draft of the Rural Boundary Amendment excluding the areas discussed from the Rural Area.

After that meeting, the Committee and the full CRC became aware of a Florida Senate floor amendment to SB 1420 (2024)¹ introduced on February 28, 2024 (the date of the bill's final passage by the Senate) which added a new Section 1 to the bill, to read as follows:

163.3167 Scope of act.—

(8)

(d) A citizen-led county charter amendment that is not required to be approved by the board of county commissioners preempting any development order, land development regulation, comprehensive plan, or voluntary annexation is prohibited unless expressly authorized in a county charter that was lawful and in effect on January 1, 2024.

As was discussed at the March 18, 2024 full CRC meeting, and later at the Committee's March 25, 2024 meeting, General Counsel Vose advised that while the wording of the provision is not the clearest, floor debate on the amendment provided an indication that the legislative intent of the amendment was to preempt certain charter amendment inquiries of the Orange County Charter Review Commission.

At its March 25, 2024 meeting, the Committee requested that General Counsel Vose attempt the preparation of another revised draft of the Rural Boundary Amendment that subjected the charter amendment to a requirement that it be approved by the Board of County Commissioners, in an attempt to draft around the restriction of SB 1420. As a result of this request, a total of two revised drafts were prepared, one excluding the municipal joint planning areas and other areas discussed with County planning staff, and a second with otherwise the same substance, but containing the following modified effective date provision:

D. Notwithstanding the last sentence of Section 702.A. of this Charter, this charter amendment is subject to the requirement that it be approved by the board of county commissioners before it shall become effective. This charter amendment shall become effective upon the date the board of county commissioners approves this charter amendment by resolution.

¹ SB 1420 was passed by the Florida House on March 6, 2024. To date the bill has not yet been presented to the Governor. There appears to be no hard deadline by which a bill must be presented to the Governor, although the general practice appears to be to present it no later than would be necessary to be consistent with its effective date. The effective date for most of SB 1420 is July 1, 2024. The Governor will have 15 days after presentation of the bill to sign it, veto it, or allow it to become law without his signature. Because SB 1420 is the Department of Commerce "train bill," containing a variety of otherwise uncontroversial but necessary statutory changes important to that department and others, the Committee proceeded under the assumption that it will become law.

Section 702 of the Charter concerns the Charter Review Commission. Note that “the last sentence of Section 702.A. of this Charter” referenced above reads “Such amendments or revisions do not require the approval of the board.” This second revised draft also included a modified ballot summary to reflect that the amendment would be “Effective upon approval of the County Commission”.

General Counsel Vose cautioned the Committee that such a provision is without evident similar precedent anywhere in the state, drafted to address a unique circumstance, and thus may pose a potential line of attack that should be considered when evaluating charter amendment options.

At its April 5, 2024 meeting, the Committee discussed the 80% County Commission vote threshold in its original Rural Boundary Amendment proposal. Generally, concerns were expressed that such a high threshold may hamper support for the proposal. As a result, the Committee requested that General Counsel Vose prepare further revised drafts of both versions of the charter amendment to substitute a “majority-plus-one” County Commission vote threshold.

At its April 24, 2024 meeting, the Committee discussed various options, including recommending that to the CRC that the CRC place the “SB 1420 workaround” version of revised Rural Boundary Amendment directly on the ballot, and recommending that the CRC that the CRC recommend to the Board of County Commissioners that the BCC place on the ballot the revised Rural Boundary Amendment without the SB 1420 workaround language.

At its April 26, 2024 meeting, the Committee further discussed potential options, and ultimately modified the revised Rural Boundary Amendment to remove all language that SB 1420 preempts the CRC (but not the BCC) from placing on the ballot. After this language was prepared, the Committee, by a 4-0 vote, recommended the placement of the revised Rural Boundary Amendment attached as Exhibit “A” on the November 2024 ballot. At the Committee’s direction, the Committee’s version of the revised Rural Boundary Amendment prior to removal of the language preempted to the CRC by SB 1420 is also attached as Exhibit “B” for historical purposes.

Exhibit "A"

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

**ORANGE COUNTY CHARTER
AMENDMENT ESTABLISHING RURAL
BOUNDARY AND RURAL AREA ("AREA")**

Establishing a Rural Area (unincorporated lands located outside the County's Urban Service Area, municipal joint planning areas, Growth Centers, Innovation Way Overlay, and Horizon West Villages on the effective date) where County comprehensive plan amendments increasing density or intensity, and ordinances removing lands from the Area, must be approved by majority-plus-one County Commission vote.

____ 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. 506. – Rural Boundary and Rural Area.

A. Establishment of Rural Area and Rural Boundary. There is hereby established a Rural Area, initially consisting of all lands lying in the unincorporated County as of the effective date of this section that are located outside of the following areas as of the effective date of this section: (1) the Urban Service Area specified in the Orange County comprehensive plan; (2) municipal joint planning areas adopted by joint planning agreement or interlocal agreement; (3) Growth Centers specified in the Orange County comprehensive plan; (4) the Innovation Way Overlay specified in the Orange County comprehensive plan; and (5) the Horizon West Villages specified in the Orange County comprehensive plan. There is hereby established a Rural Boundary, consisting of the boundary lines of the Rural Area.

B. Legal Effect of Rural Area.

(1) After the effective date of this section, any ordinance amending the Orange County comprehensive plan that increases allowable density or intensity within the Rural Area or any portion thereof, may be approved only by an affirmative vote of not less than a majority plus one of the entire membership of the board.

(3) After the effective date of this section, the board of county commissioners may remove lands from the Rural Area only by ordinance approved by an affirmative vote of not less than a majority plus one of the entire membership of the board.

C. This charter amendment shall become effective upon the date of canvassing board certification of approval by a vote of the electors of Orange County.

Exhibit "B"

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

**ORANGE COUNTY CHARTER
AMENDMENT ESTABLISHING RURAL
BOUNDARY AND RURAL AREA ("AREA")**

Establishing a Rural Area (unincorporated lands located outside the County's Urban Service Area, municipal joint planning areas, Growth Centers, Innovation Way Overlay, and Horizon West Villages on the effective date) where the County's comprehensive plan and land development regulations will exclusively govern land development and prevail over municipal ordinances, and where comprehensive plan amendments increasing density or intensity, and ordinances removing lands from the Area, must be approved by majority-plus-one County Commission vote.

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. 506. – Rural Boundary and Rural Area.

A. Establishment of Rural Area and Rural Boundary. There is hereby established a Rural Area, initially consisting of all lands lying in the unincorporated County as of the effective date of this section that are located outside of the following areas as of the effective date of this section: (1) the Urban Service Area specified in the Orange County comprehensive plan; (2) municipal joint planning areas adopted by joint planning agreement or interlocal agreement; (3) Growth Centers specified in the Orange County comprehensive plan; (4) the Innovation Way Overlay specified in the Orange County comprehensive plan; and (5) the Horizon West Villages specified in the Orange County comprehensive plan. There is hereby established a Rural Boundary, consisting of the boundary lines of the Rural Area.

B. Legal Effect of Rural Area.

(1) After the effective date of this section, the comprehensive plan and land development regulations of Orange County shall exclusively govern the development of lands lying within the Rural Area, regardless of whether some or all of the lands lying within the Rural

Area are subsequently annexed or otherwise added into a municipality.

(2) After the effective date of this section, any ordinance amending the Orange County comprehensive plan that increases allowable density or intensity within the Rural Area or any portion thereof, may be approved only by an affirmative vote of not less than a majority plus one of the entire membership of the board.

(3) After the effective date of this section, the board of county commissioners may remove lands from the Rural Area only by ordinance approved by an affirmative vote of not less than a majority plus one of the entire membership of the board.

C. The board of county commissioners may enact ordinances to implement this section. This section and any implementing county ordinances shall prevail over conflicting municipal ordinances.

D. This charter amendment shall become effective upon the date of canvassing board certification of approval by a vote of the electors of Orange County.

...

Sec. 704. Conflict of county ordinances with municipal ordinances; preemption.

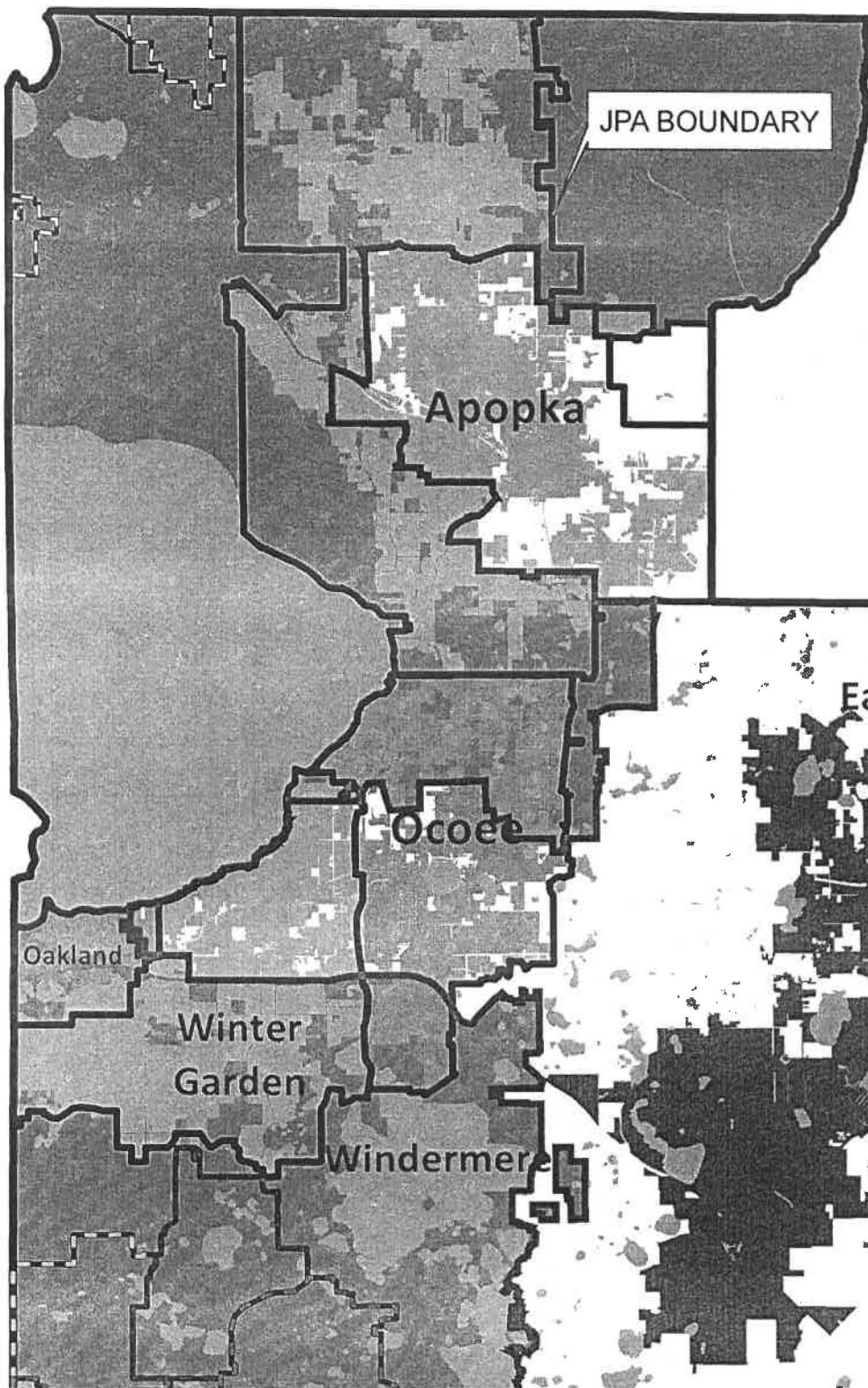
A. Except as provided in this section, no county ordinance shall be effective within a municipality if the municipality maintains an ordinance covering the same subject matter, activity or conduct as the county ordinance.

B. County ordinances shall be effective within municipalities and shall prevail over municipal ordinances when:

...

3. Section 506 of this Charter so provides.

C. The intent of this section is that no person within a municipality shall be governed simultaneously by two sets of ordinances covering the same subject matter, activity or conduct, except in matters of minimum adult-entertainment standards, or pollution regulatory standards, or simulated gambling or gambling prohibitions or standards, or rezoning or comprehensive-plan amendments that affect public schools with attendance zones that straddle any municipal boundary, or as provided in Section 506 of this Charter. In absence of an ordinance within a municipality on a subject, the county ordinance on that subject shall govern.



General Depiction of Areas

This GIS exported map was provided depicting the areas excluded from the

- Blue lines depict the Urban S
- Greyed areas depict municipa
- Interior black lines depict mu
- Black-and-white dashed lines
- Black-and-color dashed lines
- Red dashed lines depict Inno

URBAN SERVICE AREA
BOUNDARY



OFFICE OF COMPTROLLER

**ORANGE
COUNTY
FLORIDA**

Phil Diamond, CPA
County Comptroller
201 S. Rosalind Avenue
P.O. Box 38
Orlando FL 32802
Telephone: (407) 836-5690
Fax: (407) 836-5599
Web page: www.occompt.com

DATE: May 13, 2024
TO: Orange County Charter Review Commission
FROM: Phil Diamond, CPA, Orange County Comptroller *PD*
SUBJECT: Financial Analysis of the Sustainable Growth & Charter Clean Up
Committee's Proposed Rural Boundary Charter Amendment

As requested, attached you will find our office's analysis and financial impact statement related to the Sustainable Growth & Charter Clean Up Committee's proposed Rural Boundary Charter Amendment. This analysis is based on the proposed language that was recommended out of the Sustainable Growth & Charter Clean Up Committee, and would potentially be subject to change if the full Charter Review Commission approved changes to the final language.

Should you have any questions or need additional information, please contact our office.

Rural Boundary Charter Revisions

Ballot Summary

Comptroller's Office Financial Impact: No financial impact

Financial Analysis and Impact

1. Estimated increase or decrease in any revenues to Orange County or local government agencies:

This proposed Charter amendment does not appear to have any impact on Orange County revenues or other local government revenues.

2. Expenditures:

This proposed Charter amendment does not appear to have any impact on Orange County expenditures or other local government expenditures.



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LOCAL GOVERNMENT LAW

[‡]RATED A V PREEMINENT BY MARTINDALE-HUBBELL

OFFICES
WINTER PARK
FORT MYERS
COCOA BEACH

M E M O R A N D U M

TO: 2024 Orange County Charter Review Commission
FROM: Wade C. Vose, General Counsel
DATE: May 13, 2024
SUBJECT: Revised Ballot Summary Adding Financial Impact Summary – Rural
Boundary Amendment

Pursuant to the requirements of Sec. 702.B. of the Charter, please find attached as Exhibit "A" a revised ballot summary adding a summary of the Comptroller's financial impact statement relating to the proposed Rural Boundary charter amendment. The language added to the ballot summary is as follows: "Comptroller estimated financial impact: No financial impact."

For ease of reference, the charter text revisions of the proposed charter amendment are also included at Exhibit "A". Such text remains unchanged from that reported out by the Sustainable Growth and Charter Cleanup Committee.

COUNSEL TO EXTRAORDINARY GOVERNMENTS & LEADERS THROUGHOUT FLORIDA SINCE 1973

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Exhibit “A”

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

**ORANGE COUNTY CHARTER
AMENDMENT ESTABLISHING RURAL
BOUNDARY AND RURAL AREA (“AREA”)**

Establishing a Rural Area (unincorporated lands located outside the County's Urban Service Area, municipal joint planning areas, Growth Centers, Innovation Way Overlay, and Horizon West Villages on the effective date) where County comprehensive plan amendments increasing density or intensity, and ordinances removing lands from the Area, must be approved by majority-plus-one County Commission vote. Comptroller estimated financial impact: No financial impact.

____ 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. 506. – Rural Boundary and Rural Area.

A. Establishment of Rural Area and Rural Boundary. There is hereby established a Rural Area, initially consisting of all lands lying in the unincorporated County as of the effective date of this section that are located outside of the following areas as of the effective date of this section: (1) the Urban Service Area specified in the Orange County comprehensive plan; (2) municipal joint planning areas adopted by joint planning agreement or interlocal agreement; (3) Growth Centers specified in the Orange County comprehensive plan; (4) the Innovation Way Overlay specified in the Orange County comprehensive plan; and (5) the Horizon West Villages specified in the Orange County comprehensive plan. There is hereby established a Rural Boundary, consisting of the boundary lines of the Rural Area.

B. Legal Effect of Rural Area.

(1) After the effective date of this section, any ordinance amending the Orange County comprehensive plan that increases allowable density or intensity within the Rural Area or any portion thereof, may be approved only by an affirmative vote of not less than a majority plus one of the entire membership of the board.

(3) After the effective date of this section, the board of county commissioners may remove lands from the Rural Area only by ordinance approved by an affirmative vote of not less than a majority plus one of the entire membership of the board.

C. This charter amendment shall become effective upon the date of canvassing board certification of approval by a vote of the electors of Orange County.