



**OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY**

**CONTRACT OVERSIGHT NOTIFICATION
(2014-N-0124)**

John A. Carey
Inspector General

ISSUE DATE: AUGUST 5, 2014

"Enhancing Public Trust in Government"

Town of Highland Beach

**Town Charter Amendment and
Police Department and Town Commission Chamber Renovation Project**

SUMMARY

What We Did

Pursuant to a citizen complaint, we reviewed an October 2012 Town of Highland Beach (Town) Charter amendment that increased the Town's "Funding Limitation" provision.

We also considered whether the Town's "Police Department and Town Commission Chamber Renovation" project contract complied with the Town's Charter.

What We Found

We found that the Town Commission's October 2012 Charter amendment increasing the dollar threshold for commencing municipal projects without voter approval was not valid because it was never approved by a public referendum, as required by State law. As a result, the requirement for voter approval in advance of any project exceeding \$350,000 remains the governing Charter provision.

We found that in February 2014, the Town Commission approved the "Police Department and Town Chamber Renovation" project contract estimated to cost \$850,000. However, because the increased "Funding Limitation" provision was never approved by a public referendum, initiating this project

violated the Town's Charter. This results in **Questioned Costs¹ totaling \$917,477.08.**

What We Recommend

We issued two recommendations. First, the Town should review all previous Charter amendments enacted without a public referendum to ensure that each such amendment complies with State law. Second, until the "Funding Limitation" provision is properly amended, future projects should adhere to the existing limitation which requires that any project or extension of services costing more than \$350,000 first be approved by majority of the electorate.

¹ Questioned costs can include costs incurred pursuant to a potential violation of a provision of law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds, and/or a finding that such costs are not supported by adequate documentation, and/or a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable in amount. As such, not all questioned costs, as in this case, are indicative of potential fraud or waste.

BACKGROUND

On March 12, 1991, 84.36% of the Town's electorate voted to amend the Town Charter to include a "Funding Limitation," requiring that a majority of the electorate approve any single project, accumulation of projects or an extension of Town services in excess of \$350,000.

Because this amendment was the result of a public referendum conducted after the 1973 adoption of the Municipal Home Rule Powers Act, section 163.01, Florida Statutes, requires a public referendum to change this Charter provision.

On October 2, 2012, the Town Commission voted to amend the Charter by replacing the "Funding Limitation" of "\$350,000.00" with "ten percent (10%) of the Town's General Fund budget." This would have increased the size of projects which could be initiated without voter approval to \$1.17 million for fiscal year ending September 30, 2014.

On February 4, 2014, the Town Commission authorized a Construction Manager at Risk contract to proceed with the Town's "Police Department and Town Commission Chamber Renovation" project. The project was expected to cost approximately \$850,000. No public referendum was conducted to approve this project.

On May 27, 2014, the Office of Inspector General (OIG) received a citizen complaint concerning the Town of Highland Beach (Town) Commission. The complainant alleged that:

1. The Town Commission amended the Town Charter without proper authority. The Commission amended the Charter's "Funding Limitation" provision which essentially required that any project or extension of services costing more than \$350,000 first be approved by a majority of the Town's voters. The amended Charter provision increased the \$350,000 threshold for requiring voter approval; and,
2. The Town Commission approved a project it estimated would cost \$850,000 without voter approval.

FINDINGS

FINDING (1):

The Commission of the Town of Highland Beach did not to comply with the legal requirements to amend its Charter.

Municipal Home Rule Powers Act, Chapter 166, Florida Statutes

Section 166.031(1), Florida Statutes, requires, with few exceptions, that a public referendum is required to change a municipal charter. In AGO 2005-57, Florida's Attorney General commented on this, stating:

“This office has consistently concluded that charters or charter provisions adopted or readopted subsequent to the adoption of the Municipal Home Rule Powers Act in 1973 may only be amended as provided in Section 166.031, Florida Statutes....Thus, the procedure for amending municipal charters in section 166.031 prevails and would require referendum approval for any changes to the cities’ charters, except those specifically enumerated in section 166.031 Florida Statutes.”

OIG Review

In January 1991, the Town of Highland Beach proposed amending its Charter to include a funding limitation. On March 12, 1991, the Town held municipal elections. The proposed Charter amendment was included on the Official Ballot² as “Referendum Question No. 1” and passed by a margin of 84.36% to 15.64%; resulting in the Charter being amended with the following language:

“Funding Limitation. Any single project or cumulation of projects, or extension of Town services requiring an allocation of more than \$350,000.00 in any given fiscal year shall not be funded until the purposes and amounts of such allocations shall first have been approved by the majority of votes cast in an election of qualified electors residing in the Town ...”

In March 2012, the Town Commission established a committee to review its Charter and propose Charter changes. In July 2012, the committee submitted its recommendations to the Commission. One recommendation was that the dollar limit (\$350,000.00) for a single project or accumulation of projects without a public referendum be replaced with a calculation based on a percentage (7%) of Town’s General Fund Budget. After a series of public meetings, on October 2, 2012, the Commission voted, 4 to 1, to amend Section 2.01 of the charter by replacing the “Funding Limitation” of “\$350,000.00” with “ten percent (10%) of the Town’s General Fund budget” (*Ten percent of the Town’s General Fund Budget for FY 2013/14 would be approximately \$1.17 million*). No public referendum was ever conducted on this proposed amendment.

The Town’s Attorney’s records reflect the following. He understood that if this specific Charter provision was the result of a public referendum conducted after 1973, a new public referendum would be required to amend it. His office had repeated communications with the Office of the Town Clerk to determine if such a referendum had occurred. After being advised by the Office of the Town Clerk that it could locate no record of such a referendum, the Town Attorney advised the Town Commission that no public referendum would be required for this proposed Charter amendment.

In fact, not only was this Charter provision the result of a public referendum conducted in March 1991, but in 2003 an attempt to make a similar amendment to it was put to a public referendum and defeated by the voters³.

In summary, the March, 2012 amendment to the “Funding Limitation” provision in the Town’s Charter was never legally adopted by the majority of the electorate. Therefore, the original Charter provision remains effective.

² Attachment A is the March 12, 1991, “Official Ballot”, and results thereof, for the Town of Highland Beach.

³ Attachment B is the March 11, 2003, “Official Ballot”, and results thereof, for the Town of Highland Beach.

FINDING (2):

The Town of Highland Beach entered into contracts related to the Police Department and Town Commission Chamber Renovation project in violation of the Town Charter.

OIG Review

On February 4, 2014, the Town Commission authorized a Construction Manager at Risk contract to proceed with the Town's "Police Department and Town Commission Chamber Renovation" project. According to Town records, the following expenditures are currently associated with the project:

Police Department and Town Commission Chamber Renovation Project Number 14-001	
Pre-Construction Phase	\$ 6,000.00
Base Guaranteed Maximum Price	850,286.00
Alternative 1 – Mobile Police Trailer	8,201.00
Audio Visual Services	52,990.08
TOTAL	\$917,477.08

Because the Town Commission never legally amended the Charter's "Funding Limitation" provision which requires a referendum and voter approval prior to "[a]ny single project or cumulation (sic) of projects, or extension of Town services requiring an allocation of more than \$350,000.00 in any given fiscal year", that provision remains in effect.

This project was anticipated to cost approximately \$850,000 over the course of calendar year 2014, but was never presented to the Town's voters for their approval. Therefore, contracts approved by the Town Commission related to the "Police Department and Town Commission Chamber Renovation" project violate the Town Charter.

As of the date of this Notification the questioned costs total \$917,477.08. It is noted that additional contracts entered into by the Town in excess of the Charter funding limitation provision of \$350,000 may result in additional questioned costs.

RECOMMENDATION

The Town of Highland Beach should:

1. Review all Charter amendments enacted without a public referendum to ensure that each such amendment complies with State law.
2. Until the "Funding Limitation" provision is properly amended, future projects should adhere to the existing limitation which requires that any single project, accumulation of projects or extension of services requiring an allocation of more than \$350,000 be approved by majority of the electorate.

RESPONSE FROM MANAGEMENT

On August 4, 2014, Kathleen Daily Weiser, Town Manager, provided the following response to this Notification:

“We appreciate your review and concur with your conclusions. Furthermore, we have taken steps to implement your recommendations.”

QUESTIONED COSTS

Questioned Costs Total = \$917,477.08

ACKNOWLEDGEMENT

The Inspector General’s Contract Oversight staff would like to extend our appreciation to the Town of Highland Beach’s management for the cooperation and courtesies extended to us during the contract oversight process.

This report is available on the OIG website at: <http://www.pbcgov.com/OIG>. Please address inquiries regarding this report to Hank K. Nagel, Contract Oversight Manager, by email at inspector@pbcgov.org or by telephone at (561) 233-2350.

ATTACHMENT A – PAGE 1

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**OFFICIAL BALLOT
TOWN OF HIGHLAND BEACH, FLORIDA
MUNICIPAL ELECTION — MARCH 12, 1991**

**REFERENDUM QUESTION NO. 1
TOWN CHARTER AMENDMENT**

**LIMITATION ON PROJECT FUNDING OF \$350,000.00
IN ANY FISCAL YEAR WITH CERTAIN EXCEPTIONS.**

Shall Ordinance No. 605 of the Town of Highland Beach proposing to amend Section 2.01 of Article II of the Town Charter to limit project funding in excess of \$350,000.00 in any fiscal year by requiring the approval of the electorate, except when necessitated by an act of God/disaster or litigation settlement, with election to be held only between November 1st and April 1st of the following year be adopted?

YES	179	→
NO	180	→

**REFERENDUM QUESTION NO. 2
TOWN CHARTER AMENDMENT**

**ELECTOR BOND ISSUE APPROVAL LIMITED TO NOVEMBER 1ST
THROUGH APRIL 1ST WITH CERTAIN EXCEPTIONS.**

Shall Ordinance No. 606 of the Town of Highland Beach proposing to amend Section 6.01 of Article VI of the Town Charter to provide that elections to approve bond issues be held only between November 1st and April 1st of the following year, except when necessitated by an act of God/disaster or litigation settlement be adopted?

YES	187	→
NO	188	→

ATTACHMENT A – PAGE 2

COUNTY BOND & MUNICIPAL ELECTIONS - PALM BEACH COUNTY, FLORIDA - MARCH 12, 1991			
		PAGE 3	
		COUNTY	
Summary Report: Final Report	PRECINCT	TOTAL	PERCENT
***** HIGHLAND BEACH *****			
PRECINCTS TO BE COUNTED		2	
PRECINCTS COUNTED		2	
TOTAL REGISTERED VOTERS		2837	
TOTAL BALLOTS CAST		1415	49.88
HIGHLAND BEACH - MAYOR ** VF1			
JOE BOULAY		1209	91.59
HAL CHAMBERS		111	8.41
HIGHLAND BEACH - STRAW BALLOT ** VF1			
YES		467	38.47
NO		747	61.53
HIGHLAND BEACH - QUESTION NO. 1 ** VF1			
YES		1095	84.36
NO		203	15.64
HIGHLAND BEACH - QUESTION NO. 2 ** VF1			
YES		1065	82.49
NO		226	17.51
***** HYPOLUXO *****			
PRECINCTS TO BE COUNTED		2	
PRECINCTS COUNTED		2	
TOTAL REGISTERED VOTERS		547	
TOTAL BALLOTS CAST		243	44.42
HYPOLUXO - TOWN COUNCIL ** VF3			
EILEEN L. QUINTILL		77	12.24
PATRICIA B. WEEKS		196	31.16
FRANCIS J. NACCARATO		86	13.67
KENNETH M. SCHULTZ		199	31.64
JOHN E. CLAUDE		71	11.29
***** JUNO BEACH *****			
PRECINCTS TO BE COUNTED		2	
PRECINCTS COUNTED		2	
TOTAL REGISTERED VOTERS		1730	
TOTAL BALLOTS CAST		604	34.91
JUNO BEACH - GROUP ONE ** VF1			
CHARLES H. BURNS		343	58.14
ROY H. WUBKER, JR.		247	41.86

ATTACHMENT B – PAGE 1

SCREEN VOTING INSTRUCTIONS

Begin with you into the voting booth for reference

STEP 1. ACTIVATE THE MACHINE

Inserting the Voter Card into the yellow slot on the lower left side of the machine using the tip of your finger to insert the card until you feel it click. The Card will remain in place until you have completed voting. Select the Ballot Language by touching the language of your choice.

STEP 2. MAKE YOUR SELECTIONS

Touching the circle to the right of the candidate(s) or measure(s) of your choice. A green checkmark will appear in the circle . Repeat this process until you have selected all the candidate(s) or measure(s) of your choice. If you make a mistake or change your mind, simply touch the checkmark. The checkmark will disappear, the circles will reappear and you can make a new choice.

An Automatic Ballot Review Screen will appear when you reach the end of the ballot. This screen will allow you to review your selections. To make changes, touch the candidate or issue you want to change and you will be returned to that screen. If no change(s), touch "NEXT" to go to the last screen.

STEP 3. CAST YOUR BALLOT:

When you reach the last screen, you will see a yellow box labeled "TOUCH HERE TO CAST YOUR BALLOT". To cast your ballot, touch the yellow box in the middle of the screen. You cannot change your mind after the ballot is cast. After casting your ballot, the Voter Card will pop out. Please return it to the Poll Worker.

PICTURE ID IS REQUIRED when you go to your polling station. An elector is required to present a Florida Driver's License, a Voter ID Card issued under s. 322.051, F.S., or any other ID. If you do not have a picture ID, you will be required to provide a picture ID verifying your identity.

SAMPLE BALLOT

OFFICIAL BALLOT
TOWN OF HIGHLAND BEACH - MUNICIPAL ELECTION
MARCH 11, 2003

HIGHLAND BEACH
FOR COMMISSIONER
(TWO YEAR TERM)

(Vote for not more than Two)

Robert L. LOWE	<input type="radio"/>
Marianne SALIBELLO	<input type="radio"/>
Rachael SCALA-PISTONE	<input type="radio"/>

REFERENDUM

Should Section 2.01(41) of the Town Charter entitled "Funding Limitation" providing for limitations on project funding of \$150,000 in any fiscal year be changed to a project funding limitation of 10% of the regular Town operating budget in any fiscal year?

YES	<input type="radio"/>
NO	<input type="radio"/>

YOUR POLLING LOCATION is listed on your Voter ID Card. You must notify the Elections Office if you move from the address listed on your Voter ID Card. If you are unsure of the polling location of your new Precinct, call 561-656-6200.
The polls are open from 7:00 A.M. to 7:00 P. M. on Election Day

ATTACHMENT B – PAGE 2

OFFICIAL RESULTS
TOWN OF HIGHLAND BEACH
MARCH 11, 2003

REFERENDUM

	Registered	Turnout	Percent	1	2
04086	0	0	0.00%	0	0
Precincts		0	0.00%	0	0
04094	3,023	974	32.22%	302	640
Precincts		974	32.22%	302	640
Provisional	0	2	0.00%	1	0
Provisional		2	0.00%	1	0
Absentee	0	32	0.00%	14	16
Absentee		32	0.00%	14	16
Voting Machine	0	119	0.00%	0	1
Absentee Walk-in		119	0.00%	0	1
	3,023	1,127	37.28%	317	657

← NOTE: THE TURNOUT TOTAL REPRESENTS THE TOTAL NUMBER OF VOTERS WHO VOTED IN OFFICE ELECTRONICALLY IN ALL 16 MUNICIPALITIES

Candidates

1	YES
2	NO