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## MEMORANDUM

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**TO:** Mayor Natasha Moore  
Vice Mayor David Stern  
Members of the Town Commission

**FROM:** Leonard G. Rubin, Town Attorney

**RE:** Transfer of Canvassing Duties to Palm Beach County

**DATE:** August 31, 2023

**CC:** Marshall Labadie, Town Manager  
Lanelda Gaskins, Town Clerk

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### **Background:**

At its August 15, 2023 meeting, the Town Commission discussed eliminating the Town's Canvassing Board and transferring such duties to the Palm Beach County Canvassing Board. Section 1.06(7) of the Town Charter currently requires that the Town Clerk (or designee), the Supervisor of Elections, and one Commissioner appointed by the Town Commission (whose seat is not scheduled to be voted upon) serve as the Town's Canvassing Board. As discussed by the Town Clerk, the Supervisor of Elections has expressed reluctance to serve as a member of a municipal canvassing board. Additionally, most municipalities have abandoned their individual canvassing boards and utilize the County Canvassing Board, which consists of the Supervisor of Elections, a member of the County Commission, and a County Court judge, who serves as chair. The Commission questioned the method by which the Town could eliminate its own Canvassing Board and assign such duties to the County Canvassing Board.

### **Discussion and Recommendation:**

Prior to 2014, Section 1.06(7) of the Town Charter provided that "[w]ithin seven (7) days after any election or referendum, the Commission shall meet publicly and canvass the returns and certify the results." In 2014, the Town Commission adopted an Ordinance revising Section 1.06(7) of the Town Charter to create the Town's Canvassing Board and submitted the proposed revision to referendum vote. Florida law is well settled that when a Charter provision is adopted by referendum vote, it may only be amended by referendum vote. See Attorney General Opinion 97-53 (city commission may not delegate its canvassing board duties, as prescribed by the city charter, to a consolidated countywide municipal canvassing board, absent an amendment to the city's existing charter by referendum approval of the city's electorate).

Section 163.031, Florida Statutes, requires referendum approval for revisions to municipal charters, subject to certain exceptions that do not apply here. While Section 101.75(3), Florida Statutes, allows a municipality to change the date of its municipal election to a date concurrent with any statewide or countywide election notwithstanding any charter provision to the contrary, there is no statutory provision that would allow the Town Commission to amend the Town Charter to eliminate the Town Canvassing Board in favor of the County Canvassing Board by ordinance. In order to effectuate this change, the Town Commission would be required to follow the procedures outlined in Section 163.031, Florida Statutes, namely the adoption of an ordinance effectuating the change, subject to referendum vote of the Town's electors. This is the same process the Town followed in 2014.

Should you have any questions relative to the foregoing, please do not hesitate to contact me.