

MAYOR  
Hal J. Rose

DEPUTY MAYOR  
John Dittmore

COUNCIL MEMBERS  
Daniel Batchelder  
Pat Bentley  
Adam Gaffney  
Barbara A. Smith  
Andrea Young



CITY HALL  
2240 Minton Road  
West Melbourne, FL 32904  
Phone: (321) 837-7774  
Fax: (321) 768-2390  
www.westmelbourne.org

## CHARTER REVIEW COMMITTEE

### AGENDA

February 13, 2020

6:30 p.m.

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **APPROVAL OF MINUTES**

The Committee is asked to approve the minutes of January 9, 2020.

5. **REVIEW OF CHARTER**

The Charter Review Committee reviewed Article XIV with Planning Director Christy Fischer at the last meeting. Following the meeting, staff met to discuss the changes with the City Attorney. A memo has been prepared with suggested modifications to Article XIV and is attached for the Committee's review.

6. **PROPOSED AMENDMENTS WITH BALLOT LANGUAGE**

Attached is a summary of the Committee's recommendations to date with suggested ballot language. This does not include any changes from Article XIV. The Committee should begin reviewing each amendment for recommendation to City Council. Each amendment must pass by a super-majority vote.

At the previous meeting it was suggested that the Committee may want to revisit the amendment to the Charter on compensation for elected officials. Additional information has been prepared and is attached that summarizes how the salary is formulated for other cities.

7. **PUBLIC COMMENTS**

8. **ADJOURNMENT**

All persons wishing to be heard should appear in person at these meetings or send written comments to the City Clerk. All persons and parties are hereby advised that if they should decide to appeal any decision made by the City with respect to any matter considered at the public meeting or hearing described in this notice, they will need a record of the proceedings, and for such purpose, said person or party may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (Chapter 286, Florida Statutes). In compliance with American with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the City's ADA coordinator at 837-7774 at least 48 hours in advance of this meeting.

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## CHARTER REVIEW COMMITTEE

### MINUTES

January 9, 2020

#### 1. CALL TO ORDER

Chair Stephen Phrampus called the meeting to order at 6:30 p.m. and led the pledge of allegiance.

#### 2. ROLL CALL

Present: Chair Stephen Phrampus, Vice-Chair Michele Rutledge, Committee Members Bill Mettrick, Sandra Carbon, Matthew Brothers, and Sandra Michelson.

Absent: Committee Member Chris Gibbs.

Also present: Planning Director Christy Fischer and City Clerk Cynthia Hanscom.

*Chair Phrampus moved to excuse Committee Member Chris Gibbs. Committee Member Carbon seconded the motion, which passed 6-0.*

#### 3. APPROVAL OF MINUTES

*Chair Phrampus moved to approve the minutes of December 12, 2019. Committee Member Brothers seconded the motion, which passed 6-0.*

#### 4. SUMMARY OF CHANGES

As the Committee continues their review, any changes will be compiled into a continuing document. Committee Member Michelson stated she would like to discuss the issue of Council salaries again but would defer discussion until the Committee reviews all of the changes proposed.

#### 5. REVIEW OF CHARTER

The Charter Review Committee reviewed Article XIV of the Charter. Planning Director Fischer provided a background on how the Charter had changed in 2007 to change the approval board for submissions for certain developments and the criteria established for service on the Board of Adjustment. The review process was bifurcated so that some approvals no longer went to Council, but rather were reviewed and approved by the Planning & Zoning Board.

Planning Director Fischer explained that Florida Statutes requires that all local governments have a local planning agency. The local agency planning duties were assigned to the Planning & Zoning Board by City Council, however, the Charter does not specifically state this. Therefore, she recommended that the language specifically state that the Planning & Zoning Board be designated as the local planning agency.

Planning Director Fischer also addressed the composition of the Board of Adjustment and the criteria requirements for serving on the Board. She suggested specific criteria for Board members be required for three members rather than four. She also suggested that the word "professional" be removed from the member of a planning organization, which would significantly limit the eligible candidates.

Chair Phrampus stated some organizations simply require that the individual sign up and pay the dues. This would not guarantee that the individual was knowledgeable.

The Committee discussed the membership to the different organizations and if there were applications on file for the Board of Adjustment. City Clerk Hanscom said that there were no applications on file and it was difficult to get applicants with the required qualifications. The Committee discussed removing the criteria requirements for the Board of Adjustment.

Mayor Rose spoke stating that he would not see an issue with removing the language for the fourth requirement but, given the importance of the Board of Adjustment and that it would take a majority of 4 votes to pass an issue, he would rather have a majority of the Board with the experience to make decision.

All agreed that a proposal to remove specifications for the Planning and Zoning Board and the Board of Adjustment could be made and proposed language could be brought back before the Committee for review. The language could still reference the boards but requirements for the Board could be made according to what was listed in the code. This would allow for changes to be made by Council in the future. Staff agreed to come back with suggested language at the next meeting.

## **6. PUBLIC COMMENTS**

Chair Phrampus asked that the next agenda include the review of the items that have been voted by the Committee to include as ballot changes. He reminded members that these would need to be approved for recommendation to City Council by a super majority vote.

## **7. ADJOURNMENT**

There being no further business, Chair Phrampus adjourned the meeting at 7:17 p.m.

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Chair Stephen Phrampus

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Cynthia S. Hanscom, City Clerk

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TO: Charter Review Committee

FROM: Cynthia S. Hanscom, City Clerk

DATE: February 13, 2020

RE: Article XIV

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At a meeting held on Friday, January 24, 2020, City Attorney Richardson, City Clerk Hanscom, and Planning Director Fischer met to discuss a recommendation to the Charter Review Committee for Article XIV. At the last meeting of the Charter Review Committee, members of the Committee discussed the language and questioned the need to include this in the Charter.

The language as shown in the **Code of Ordinances** for the City of West Melbourne (Attachment 1) covers the Board of Adjustment (Division 3) and the Planning and Zoning Board (Division 4). Although the language is not exactly the same as that in the Charter, all of the requirements in the charter are covered. In many cases the Charter language indicates that the criteria for the boards will be set by ordinance.

Division 5 of the code addresses the designation of the local planning agency as required by the state. This was language that Planning Director Fischer had indicated should be in the Charter; however, it is already covered in the Code.

Reviewing the charters of other cities, most do not list specific boards (Palm Bay, Tallahassee, Vero Beach, Altamonte Springs, Palm Shores, Apopka, Cocoa, Daytona Beach). A few name the board in the charter and then refer to state statutes and/or their own City code (Melbourne Beach, Cocoa Beach). The Cocoa Beach Charter contains the following statement regarding the Board of Adjustment:

The city commission shall establish an independent, board of adjustment of not less than five (5) members to hear and decide appeals from any administrative decision in enforcement of the zoning ordinance and to grant special exceptions to and variances from the zoning ordinance when justified. Decisions of the board of adjustment shall not be subject to review or alteration by the city commission.

Sec. 8.04 of the City of Melbourne Charter (Attachment 2) identifies a "zoning commission" in cursory fashion that acts in the same capacity as West Melbourne's Planning and Zoning Board. It also provides for a Board of Adjustment, with detailed provisions regarding membership, powers, proceedings, and appeals. The Titusville Charter lists the Board of Adjustment in the Charter but not the Planning and Zoning Board. The Code language for the Planning and Zoning Board (called the Planning and Zoning Commission) lists specific requirements for serving on the Board.

Therefore, the City Charters are very different in regards to referencing duties and criteria for serving on the boards.

Based on this, it is Planning Director Fischer's recommendation that the charter language be modified as follows:

#### **ARTICLE XIV. - PLANNING AND ZONING**

Section 1. - Planning and zoning board. The city council shall appoint a planning and zoning board, which board shall have such powers, functions and duties as may be delegated to and required of it by ordinance adopted by the city council.

- ~~a) *Powers and duties.* The city council shall appoint a planning and zoning board, which board shall have such powers, functions and duties as may be delegated to it and required of it by ordinance adopted by the city council. The city council is hereby expressly authorized to delegate to the planning and zoning board such of its powers involving planning, zoning, platting and subdivision of lots as the council may deem advisable and proper.~~
- ~~b) *Composition of planning and zoning board.* The number of members of the planning and zoning board shall be provided by ordinance adopted by the city council. None of the appointed members of the planning and zoning board shall hold any other public office or position in the city and all members shall be residents of and registered voters within the city. The board shall select a chairman from its members. Further, the board shall elect a secretary and such other officers as it may deem necessary from among its own members. The said officers shall serve for a term of one year or until their successors have been elected and qualified.~~
- ~~c) *Terms of office; removal.* Each appointed member of the planning and zoning board shall serve such term of office as may be established by ordinance adopted by the city council. Any vacancy occurring on the board shall be filled for the remainder of the term of office of the member whose resignation, death or removal created a vacancy. Any member of the planning and zoning board may be removed from office by the affirmative vote of four (4) members of the city council.~~
- ~~d) *Appeal of Planning and Zoning Board decisions.* The procedures for an appeal of a decision of the Planning and Zoning Board to the Board of Adjustment, and reasonable limits on the time to appeal a decision of the Planning and Zoning Board, shall be established by ordinance.~~

Section 2. - Board of adjustment. There is hereby established a board of adjustment which shall hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the planning and zoning board, and to hear and decide conditional uses and variances. The composition and voting requirements of the board shall be set by ordinance adopted by city council.

~~a) *Powers and duties.* There is hereby established a board of adjustment which shall have the following powers:~~

- ~~1. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the planning and zoning board.~~
- ~~2. To hear and decide applications for special exemptions to the terms and provisions of any planning and zoning ordinance adopted by the city council.~~
- ~~3. To authorize upon appeal any specific cases such variance from the terms of any planning and zoning ordinance as will not be contrary to the public interest, where as a result of special conditions a literal enforcement of the provisions of the said ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.~~

~~In exercising the above powers the board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision, or determination as may be required in order to do justice.~~

~~b) *Composition of board of adjustment.* The city council shall appoint a board of seven (7) persons. None of the appointed members of the board of adjustment shall hold any other public office or position in the government of the city and all members shall be residents of and registered voters within the city. At least four (4) of the members of the board of adjustment shall have previously served:~~

- ~~1) On a planning/zoning board; or~~
- ~~2) On a code enforcement board; or~~
- ~~3) As an elected municipal officer; or~~
- ~~4) As a professional member of a planning organization.~~

~~The board shall select a chairman from among its members. The ordinance establishing the appointed board of adjustment shall specify the terms of office of the members, officers of the board and other matters affecting the board not otherwise provided in the Charter.~~

~~c) *Voting requirements for board of adjustment.* The concurring vote of five (5) members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of the planning and zoning board or to grant any variance. The concurring vote of four (4) members of the board of adjustment shall be necessary in order for the board to decide any other matter.~~

~~d) *Appeals from decisions from the board of adjustment.* Any officer of the city, or any other party aggrieved by any decision of the board of adjustment may appeal to the city council for a hearing within thirty (30) days of the board of adjustment decision.~~

~~Section 3. - Planning for Growth Management and Economic Development.~~

~~In order to achieve the desires of the citizens of West Melbourne as expressed in the Preamble to this Charter, the city council shall cause to be created and maintained the functions of growth management and economic development within the city government.~~

ATTACHMENT 1

Chapter 66 – ADMINISTRATION

ARTICLE III. – BOARDS, COMMITTEES, COMMISSIONS

DIVISION 3. - BOARD OF ADJUSTMENT

Sec. 66-116. - Composition and appointment.

- (a) At least four of the members of the board of adjustment shall have previously served:
  - (1) On a planning/zoning board; or
  - (2) On a code enforcement board; or
  - (3) As an elected municipal officer; or
  - (4) As a member of a planning organization.
- (b) None of the seven appointed members of the board of adjustment shall hold any other public office or position in the city government, and all members shall be residents of and registered voters within the city.
- (c) The terms of the appointed board of adjustment shall be that each appointed member of the board of adjustment shall serve a two-year term with the following staggered terms:
  - (1) The two-year term of appointment for appointees occupying odd numbered seats on the board of adjustment expire by the end of November in odd numbered years; and
  - (2) The two-year term of appointment for appointees occupying even numbered seats on the board of adjustment expire by the end of November in even numbered years.
- (d) Any vacancy occurring on the board shall be filled for the remainder of the term of office of the member whose resignation, death or removal created a vacancy. Any member of the board of adjustment may be removed from office by the affirmative vote of four members of the city council.

Sec. 66-117. - Powers and duties.

The board of adjustment shall have the powers listed in this section. In exercising the powers, the board of adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as may be required in order to do justice, and to that end, shall have all of the powers of the administrative official from whom the appeal was taken. The board of adjustment shall have the power to:

- (1) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the planning and zoning board.
- (2) Hear and decide applications for conditional uses to the terms and provisions of any planning and zoning ordinance adopted by the city council, including application for site plans requiring conditional use approval.
- (3) Authorize any variance from the terms of any planning and zoning ordinance that will not be contrary to the public interest, where as a result of special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

Sec. 66-118. - Voting requirements.

The concurring vote of four members of the board of adjustment shall be necessary in order for the board to decide in favor of an applicant on any matter upon which the board is required to pass pursuant to the provisions of any ordinance or to effect any variation in such ordinance. The concurring vote of five members of the board of adjustment shall also be necessary to reverse

any order, requirement, decision or determination of the planning and zoning board or any administrative city official.

Sec. 66-119. - Officers.

The board of adjustment shall elect officers as it may deem necessary for a term of one year or until their successors have been elected and qualified. Per the Charter, article XIV, section 2, the board of adjustment shall select a chair from its members.

Sec. 66-120. - Hearings; appeals; notice.

Any person of the city or landowner within the city affected by any decision of the planning and zoning board in the interpretation of any portion of this subpart B may file an appeal notice to the board of adjustment. Notice of appeal shall be filed with the city clerk within 30 days of such decision and the notice shall specify the law and facts on which the appeal is based. The city clerk shall forthwith transmit to the board of adjustment all papers constituting the record upon which the action appealed was taken. A hearing of the appeal shall take place within a reasonable time period. A public notice shall be given at least seven days in advance of the public hearing as well as due notice to any party of interest. At the hearing any party may appear in person or by agent or attorney. The board of adjustment shall render its decision within a reasonable time period.

Sec. 66-121. - Stay of proceedings.

An appeal to the board of adjustment stays all proceedings in furtherance of the action appealed from unless the administrative official from whom the appeal is taken certifies to the board of adjustment after the notice of appeal is filed that, because of facts stated in the certificate, a stay would, in the opinion of the administrative official, cause imminent peril to life and property. In such case proceedings shall not be stayed other than by a restraining order which may be granted by the board of adjustment or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

Sec. 66-122. - Appeals of decisions.

Any resident of the city, landowner within the city, or officer of the city may appeal to the city council for a hearing within 30 days of the board of adjustment decision. Notice of appeal shall be filed with the city clerk within 30 days of such decision and the notice shall specify the law and facts on which the appeal is based. The city clerk shall forthwith transmit to the city council all papers constituting the record upon which action appealed was taken. A hearing of the appeal shall take place within a reasonable time period. A public notice shall be given at least seven days in advance of the public hearing as well as due notice to any party in interest. At the hearing any party may appear in person or by agent or attorney. The city council shall render its decision within a reasonable time period. The decision of the city council shall be considered the final determination of the city.

Sec. 66-123. - Meetings.

The board of adjustment shall hold regular meetings once a month on the fourth Thursday of the month, and special meetings may be held as the chairperson of the board deems necessary. All regular and special meetings shall be open to the public. A written record of the proceedings of the board shall be kept and shall be open to the public for inspection.

Secs. 66-124—66-150. - Reserved.

**DIVISION 4. - PLANNING AND ZONING BOARD**

Sec. 66-151. - Composition, appointment and terms of office.

- (a) The planning and zoning board shall consist of eight members including the chairperson. There shall be seven voting members to be appointed by the city council within 30 days of seating of elected officials. The eighth member shall be a nonvoting member which member

shall be appointed by the School Board of Brevard County. Each of the voting members shall be appointed for a term of two years, with the appointments to be four members on even years and three members on odd years.

- (b) The eighth nonvoting member appointed by the School Board of Brevard County shall be for one year. The School Board of Brevard County shall either reappoint the existing member or appoint a new member upon the expiration of the term of the current nonvoting member. The eighth nonvoting member of the planning and zoning board shall only attend meetings at which the planning and zoning board considers comprehensive plan amendments and/or rezonings that would, if approved, increase residential density on the property that is a subject of the application. A vacancy, for any reason, on the planning and zoning board of the nonvoting member appointed by the School Board of Brevard County shall be filled at the discretion of the school board.

Sec. 66-152. - Holding other office; qualifications.

None of the appointed members of the planning and zoning board shall hold any other public office or position in the city, and all members shall be residents of and registered voters within the city.

Sec. 66-153. - Officers.

The planning and zoning board shall elect officers as it may deem necessary for a term of one year or until their successors have been elected and qualified. Per the Charter, article XIV, subsection 1(b), the planning and zoning board shall select a chair from its members.

Sec. 66-154. - Removal from office.

Members of the planning and zoning board may be removed by the city council for cause and after a public hearing held on written charges. An affirmative vote of four members of the city council is required for such removal. Additionally, any member who fails to attend three consecutive meetings of the planning and zoning board without cause and without prior or contemporaneous approval of the board shall automatically forfeit membership and appointment to the board. Vacancies caused by removal of a member, forfeiture of membership, or any other reason shall be filled by the city council for the unexpired term of the member affected.

Sec. 66-155. - Meetings.

The planning and zoning board shall hold regular meetings once a month, and special meetings may be held as the chairperson of the board deems necessary. All regular and special meetings shall be open to the public. A written record of the proceedings of the board shall be kept and shall be open to the public for inspection.

Sec. 66-156. - Quorum; voting.

Four voting members of the planning and zoning board shall constitute a quorum, and the affirmative vote of the majority of the voting members of the board shall be necessary for any action of the board.

Sec. 66-157. - Powers and duties.

The planning and zoning board shall act in an advisory capacity to the city council in all matters relating to the comprehensive plan and this subpart B and shall serve as the local planning agency pursuant to F.S. § 163.31.74. Duties assigned to the planning and zoning board include, but are not limited to the following:

- (1) Undertake such planning and zoning studies or other matters as may be referred to the board by city council.
- (2) Review applications and submit recommendations to the city council for proposed change of the permitted use of any specifically designated property, proposed

amendments to the zoning chapter, and proposed amendments to other sections of the land development regulations.

- (3) Consider and act on applications for site plan approval that are referred to the board by the community development department for institutional and multifamily uses based on the size of the property. The board's actions on site plans may include approval, denial, approval with conditions and/or modifications.
- (4) Consider applications for subdivision plat approvals as follows:
  - a. Act on applications for subdivision plat approval that are referred to the board by city staff for projects generating less than 500 average daily trips. The board's actions on site plans may include approval, denial, approval with conditions and/or modifications. Plats that can be referred to the planning and zoning board will be either:
    1. Residential plats with less than 55 lots, or the amount of lots according to the Institute of Transportation Engineers Manual to equate to 500 average daily trips for residential development.
    2. Nonresidential plats containing lots able to accommodate buildings with less than 25,000 square feet of gross floor area (combined or under one roof), or the amount of maximum building space according to the latest version of the Institute of Transportation Engineers Manual to equate to 500 average daily trips for nonresidential development.
  - b. Review applications and submit recommendations to the city council for subdivision plats that are projected to generate 500 average daily trips or more.
- (5) Update the land use and zoning designations in the city and interpreting boundary lines with the assistance of staff.
- (6) Issue findings of fact and conclusion of law for every determination of the planning and zoning board in enforcement of the land development regulations known as subpart B.

Sec. 66-158. - Appeals of decisions.

- (a) It is the intent of this subpart B that all questions of enforcement of planning and zoning board decisions shall first be presented to the city manager prior to appealing.
- (b) Any officer of the city, or any other party aggrieved by any decision of the planning and zoning board may appeal to the board of adjustment for a hearing within 30 days of the planning and zoning board decision.

Secs. 66-159—66-185. - Reserved.

#### **DIVISION 5. - LOCAL PLANNING AGENCY**

Sec. 66-186. - Authority.

The Local Government Comprehensive Planning Act of 1975 authorizes the establishment of the local planning agency.

Sec. 66-187. - Designated and established.

Pursuant to and in accordance with F.S. § 163.3174, the planning and zoning board is designated and established as the local planning agency for the incorporated territory of the city.

Sec. 66-188. - Organization, rules and procedures.

Members of the local planning agency shall continue to be appointed and shall follow such rules of procedure, methods of choosing officers, setting of public meetings, providing of financial support, and accomplishing its duties as provided in division 4 of this article.

Sec. 66-189. - Public meetings and records.

All meetings of the local planning agency shall be public meetings, and all agency records shall be public records. The local planning agency shall encourage public participation.

Sec. 66-190. - Financing.

The city council shall appropriate funds at its discretion to support the local planning agency in the conduct of its work. The city council may expend all sums so appropriated and other sums made available for use from fees, gifts, state or federal grants, state or federal loans, and other sources in order to assist the local planning agency in accomplishing the purpose and activities required by the Local Government Comprehensive Planning Act of 1975.

Sec. 66-191. - Duties and responsibilities.

The local planning agency shall have the duty to:

- (1) Conduct the comprehensive planning program and prepare the comprehensive plan or elements or portions thereof for the city;
- (2) Coordinate the comprehensive plan or elements or portions thereof with the comprehensive plans of other appropriate local governments and the state;
- (3) Recommend the comprehensive plan or elements or portions thereof to the city council for adoption;
- (4) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the city council such changes in the comprehensive plan as may be required from time to time; and
- (5) Provide recommendations to the city council in regard to the evaluation and appraisal report for the comprehensive plan.

Secs. 66-192—66-220. - Reserved.

## ATTACHMENT 2

### City of Melbourne Charter, Article VIII – Miscellaneous Provisions, Sec. 8.04

#### Sec. 8.04. - Validity of former zoning and zoning procedures.

All zoning ordinances and regulations heretofore made by the several government agencies abolished by this Charter shall remain in full force and effect and shall be adopted by the council of the City of Melbourne. This provision shall not set aside any legal challenges pending by contestors at the time of adoption of this Charter.

All subsequent zoning actions by the council shall be to substantially preserve the individual character of the several abolished and former county areas pending adoption of a master land use plan for the City of Melbourne.

- (1) *Division of municipality into districts for purposes of regulation.* The city council may divide the corporate area of the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.
- (2) *Purposes in view in making regulations.* Regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout said municipality.
- (3) *Municipality to provide procedure; regulations, restriction or boundary not effective until after public hearing thereon; publication of notice of hearing required.* The city council shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days' notice of the time and place of such hearing shall be published in a newspaper of general circulation.
- (4) *Regulations, restrictions and boundary subject to change or repeal; protest of change; vote required to effect change over protest; publication of notice of change required.* Regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, or repealed. In case, however, of a protest against such change signed by the owners of twenty (20) percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending five hundred (500) feet therefrom, or of those directly opposite thereto extending five hundred (500) feet from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of three-fourths of the governing body of said municipality. The provisions of [sub]section (3) [of this section] relative to public hearings and official notice shall apply equally to all changes or amendments.
- (5) *Zoning commission.* In order to avail itself of the powers conferred by this Charter, the city council shall appoint a commission to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the city council shall not

hold its public hearings or take action until it has received the final report of such commission.

- (6) *Board of adjustment.* The city council shall provide for the appointment of a board of adjustment, and in these regulations and restrictions adopted pursuant to the authority of this section may provide that the said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.
- (7) *Members of board of adjustment.* The board of adjustment shall consist of seven (7) members each to be appointed for a term of three (3) years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.
- (8) *Proceedings of board of adjustment.* The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this chapter [article]. Meetings of the board shall be held at the call of the chairman and at such times as the board may determine. Such chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
- (9) *Appeals.* Appeals to the board of adjustment may be taken by any person aggrieved or by any officer or bureau of the governing body of said municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

- (10) *Stay of proceedings.* An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate of stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- (11) *Hearing of appeal; notice required.* The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.
- (12) *Powers of board of adjustment.* The board of adjustment shall have the following powers:
  - (a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.
  - (b) To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.
  - (c) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so justice [will be] done.
- (13) *Decision of board.* In exercising the above-mentioned powers, such board may, in conformity with the provisions of this chapter [article], reverse or affirm, wholly or partly,

or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of five (5) members of the board shall be necessary to reverse any order, requirement, decision of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

- (14) *Review, circuit court.* Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the governing body of the municipality, may present to a circuit court a petition for issuance of a writ of certiorari, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality in the manner and within the time provided by the Florida appellate rules.
- (15) *Enforcement of ordinance or regulation under this chapter [article]; penalties for violation.* The city council of said municipality shall provide by ordinance for the enforcement of this section and of any ordinance or regulation made thereunder. A violation of this section or of such ordinance or regulation is declared to be a misdemeanor, and the city council may provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.
- (16) *Legal proceedings may be instituted in addition to other remedies provided for violation of chapter [article].* In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, land or water is used in violation of this section or any ordinance or other regulation made under authority conferred hereby, the city council, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure, land or water, or to prevent any illegal act, conduct, business, or use in or about such premises.
- (17) *Powers granted in this chapter [article] supplemental and cumulative.* This section shall not be construed to have the effect of repealing, impairing, or modifying any general or special law granted any like or similar powers to municipalities, but the powers herein granted shall be supplemental and cumulative.

**Summary of Changes Proposed  
by the Charter Review Committee**

**ARTICLE III. CITY COUNCIL AND MAYOR**

**Section 5. - Deputy mayor.**

The city council shall at its ~~first meeting following the general election meeting in the third week of November~~ each ~~and every~~ year, elect from among its members a deputy mayor who shall serve at the pleasure of the city council. The deputy mayor shall act as mayor with all of the powers and responsibilities provided herein during the absence or disability of the mayor.

**Ballot Question #1. Amendment to the Charter relating to selection of Deputy Mayor.**

Shall West Melbourne amend Article III, Section 5, of the City Charter to provide that the deputy mayor shall be selected from its members every year in the third week of November.

YES – for adoption of the amendment [ ]

NO – against adoption of the amendment [ ]

**Section 7. - Compensation for mayor and council members.**

The ~~remuneration, including~~ salary plus necessary and ordinary expenses shall be ~~four~~ ~~six~~ hundred dollars (\$~~46~~00.00) per month for Council Members and ~~four~~ ~~six~~ hundred fifty dollars (\$~~46~~50.00) per month for the Mayor. The ~~remuneration salary~~ of the City Council and Mayor shall increase or decrease annually based on the change in the consumer price index (all urban consumers CPI) from its value on January 1, 20~~21~~~~08~~. No increase in the ~~remuneration salary~~ of elected officials beyond that afforded by the CPI shall be effective unless such change is submitted and approved by a majority of the electors at a regular city election.

**Ballot Question #2. Amendment to the Charter relating to compensation for mayor and council members.**

Shall West Melbourne amend Article III, Section 7, of the City Charter to provide an increase to the monthly salary for council members to \$600 per month and the monthly salary for the mayor to \$650 per month.

YES – for adoption of the amendment [ ]

NO – against adoption of the amendment [ ]

## Section 10. - Vacancies.

(a) A vacancy of the mayor's office shall occur upon the death, resignation, removal from office as authorized by law, or forfeiture of office of the mayor. When such a vacancy occurs, the deputy mayor shall assume the office of the mayor, and shall serve as mayor until the vacancy is filled in the following manner: a mayor is appointed by the council from among its members. Appointment of a mayor in such circumstances shall be by the affirmative vote of four (4) council members, with each member having but one vote. A mayor so appointed shall serve for the remainder of the unexpired term for mayor. A mayor so appointed shall resign his or her council seat and shall serve the remainder of the unexpired term for mayor.

(1) Ninety (90) days or more prior to the next regularly scheduled city council election. When a vacancy in the office of mayor occurs ninety (90) days or more prior the next generally scheduled city council election, the council shall appoint a mayor from among its members to serve until the next regularly scheduled city council election, at which time a person shall be elected to office for a term of four (4) years. In the event the council is unable to fill such vacancy in this manner within sixty (60) days after it occurs, the city clerk shall immediately call a special election to fill the vacancy for the remainder of the unexpired term.

(2) Within ninety (90) days of the next regularly scheduled city council election. When a vacancy **of the office of mayor** occurs within ninety (90) days of the next generally scheduled city council election, the council shall appoint a mayor from among its members to serve the remainder of the unexpired term for the vacant seat.

(3) Appointment of a mayor in the circumstances described in Section 10(a)(1) or 10(a)(2) above shall be by the affirmative vote of four (4) council members, with each member having but one vote. A mayor so appointed shall resign his or her council seat.

(b) A vacancy in the office of any city council member other than the mayor shall occur upon death, resignation, removal from office as authorized by law, or forfeiture of office of **a** such a council member. A vacancy on the city council shall be filled as follows: When such a vacancy occurs, the remaining council members shall appoint a person to fill the vacancy, except that no such appointment shall be made during the period between any election and the time the newly-elected council members are seated. Appointment of such a person shall be by the affirmative vote of four (4) council members, with each member having but one vote. Such a person shall meet the qualifications for council members specified in this Charter and shall serve the remainder of the unexpired term for the vacant seat.

(1) **Ninety (90) days or more prior to the next regularly scheduled city council election. When a vacancy on the city council occurs **ninety (90) days or more prior the next generally scheduled city council election, the council shall appoint a person to serve until the next regularly scheduled city council****

election, at which time a person shall be elected to serve the remainder of the unexpired term, if any. In the event the council is unable to fill such vacancy in this manner within sixty (60) days after it occurs, the city clerk shall immediately call a special election to fill the vacancy.

(2) *Within ninety (90) days of the next regularly scheduled city council election.* When a vacancy on the city council occurs within *ninety (90) days* of the next generally scheduled city council election, the council shall appoint a person to serve the remainder of the unexpired term for the vacant seat.

(3) Any appointment of a person to serve as a council member shall be by the affirmative vote of at least four (4) council members, with each member having but one vote. Such a person shall meet the qualifications for council members specified in this Charter.

~~(1)~~(4) In an election in which seats for full and unexpired terms are to be filled, the three (3) candidates receiving the greatest number of votes shall be elected to the council seats having full terms. The candidate receiving the fourth greatest number of votes shall be determined elected to the council seat having the longest unexpired term, and those candidates successively receiving the next greatest numbers of votes shall be determined elected to the respective vacant seats having the next longest unexpired terms until all of the unexpired terms are so filled.

~~(b)~~(c) If the council shall fail to fill any vacancy within sixty (60) days after it occurs, the city clerk shall immediately call a special election to fill the vacancy. If vacancies should occur that would result in more than three (3) appointed council members (including the mayor) serving on the council, there shall be a special election called by the city clerk, pursuant to the election laws of the State of Florida, at the earliest possible date to fill such vacancies. These elective seat(s) shall serve the balance of the unexpired terms of the vacancies in question.

~~(c)~~(d) If, and in the event that, four (4) or more vacancies on the city council exist simultaneously for any reason, all such vacancies shall be filled by appointments of the governor of the State of Florida in the same manner that vacancies in state, district, or county offices are filled by such appointments, pursuant to F.S. § 114.04 (1977). In such event, the city clerk shall call and schedule a special election, pursuant to the election laws of the State of Florida, at the earliest possible date. All council members appointed by the governor pursuant to this paragraph shall serve only until their successors are elected and take office as a result of such special election. Council members elected in such special election shall serve for the duration of the unexpired terms of the vacancies in question. In such a special election, the candidate receiving the greatest number of votes shall be determined elected to the council seat having the longest unexpired term; and those candidates successively receiving the next greatest numbers of votes shall be determined elected to the respective vacant seats having the next longest unexpired terms.

**Ballot Question #3. Amendment to the Charter relating to vacancies on city council or the mayor.**

Shall West Melbourne amend Article III, Section 10, of the City Charter to provide that a vacancy for the mayor or city council be filled by appointment by the city council and then by the electorate at the next City election, excepting if the vacancy occurs less than 90 days prior to the election.

**YES – for adoption of the amendment** [ ]

**NO – against adoption of the amendment** [ ]

**ARTICLE IV. - ELECTIONS AND RECALL**

**Section 1. - Qualifying of candidates for office of city council.**

Any elector of the City of West Melbourne, having the qualifications herein provided for city council members, and desiring to be a candidate for election as a city council member, shall file with the city clerk a qualifying statement in substantially the following form with the signatures of at least seventy-five (75) qualified voters, ~~as certified for the last general election.~~

"I am a candidate for a seat on the City Council in the election of \_\_\_\_\_ and I agree to serve if I am elected. I am a qualified voter in the State of Florida and I have resided in the City of West Melbourne, or in an area which has been annexed by the City of West Melbourne, for at least one (1) year immediately preceding my qualifications herein."

The city clerk shall have qualifying forms available for completion by any candidate who may request such a form. Such qualifying statements shall be filed during the qualifying period as established from time to time in the City Code of Ordinances.

**Ballot Question #4. Amendment to the Charter relating to qualifying of candidates.**

Shall West Melbourne amend Article IV, Section 1, of the City Charter to provide that petitions for qualification can be signed by any West Melbourne qualified voter.

**YES – for adoption of the amendment** [ ]

**NO – against adoption of the amendment** [ ]

## **ARTICLE V. - CITY MANAGER**

### **Section 4. - Powers and duties of the city manager.**

The city manager shall be the chief administrative officer of the city and shall be responsible to the council for all the administration of city affairs placed in his charge by this Charter. The city manager shall have the following powers and duties:

- a) To hire, and when he deems it necessary for the good of the city, suspend or remove any city employees or officers, except those appointed by the council. He may authorize the head of any department under his direction or supervision to exercise such powers within the department, office or agency.
- b) Fix the compensation of city officers and employees within the pay schedules established by the city council.
- c) Direct and supervise the administration of all city departments, offices, and agencies, except as otherwise provided by this Charter, or by law.
- d) Attend meetings of city council and participate in discussions, but with no right to vote.
- e) See that all laws, provisions of this Charter, and acts of the council subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed.
- f) Prepare and submit the annual budget, budget message, and capital program to the council, together with such other reports concerning city operations as the council may require; and administer the adopted budget, including certification of the budget, review of work programs and allotments, make requests for appropriation transfers. He shall also perform all functions as purchasing agent or appoint such agent.
- g) Submit complete reports on the finances and administrative activities of the city.
- h) Keep the council fully advised of the financial condition and future needs of the city and make such recommendations to the council concerning the affairs of the city as he deems desirable.
- i) Execute contracts on behalf of the city, unless the council or Charter provide otherwise.
- j) Sign city checks.
- k) Perform such other duties as are specified in the Charter or as may be required by the council.
- l) Lead the city staff in such a manner as to fulfill the mission statement, goals, and objectives as established by the council.

The city council shall have the power to review any action of the city manager, ~~and may direct the city manager in any of his actions.~~

**Ballot Question #5. Amendment to the Charter relating to Council providing direction to the city manager.**

Shall West Melbourne amend Article V, Section 4, removing language relating to the city council's direction of the city manager in any of his actions.

YES – for adoption of the amendment [ ]

NO – against adoption of the amendment [ ]

**ARTICLE XI. - POLICE DEPARTMENT**

Section 1. - Establishment.

There shall be a police department which shall consist of a chief of police and such personnel as may be determined by the city council. The chief of police shall be the head of the police department ~~and shall be appointed by the city council.~~ The Chief of Police shall be appointed solely on the basis of education and experience in the accepted competencies and practices of law enforcement agency management. The Police Chief must be certified by the Florida Department of Law Enforcement within twelve (12) months of appointment.

Section 2. - Appointment and removal.

The chief of police shall be appointed and removed by the City Manager with at least four (4) concurring votes of the City Council. Once appointed, the chief of police shall report to the City Manager.

Section ~~2~~<sup>3</sup>. - Chief of police; duties and authority.

The chief of police and his designees shall aid in the enforcement of order and enforce the city's ordinances; shall execute all papers and processes of the city or its authorities, and shall perform such other duties as may be lawfully required of him.

**Ballot Question #6. Amendment to the Charter relating to the reporting structure of the chief of police.**

Shall West Melbourne amend Article XI, Sections 1 and 2, to provide general criteria for the qualification for the chief of police, and for the chief of police to be appointed and removed by the city manager with four (4) concurring votes of city council.

YES – for adoption of the amendment [ ]

NO – against adoption of the amendment [ ]

SURVEY OF ELECTED OFFICIAL COMPENSATION									
City	No.	Compensation Received?	Mayor	Council	Health Benefits	Pension	Notes	Population	Form of Govt
Cocoa	5	Yes	6,600.00	6,000.00	Yes		Plus Monthly travel stipend: Mayor - \$450; Council - \$400	17,748	Council-Manager
Deland	5	Yes	16,300.00	11,600.00	Yes	No	Pay full cost of coverage	30,315	Commission-Manager
City of Fort Pierce	5	Yes	32,619.00	25,000.00	Yes	Yes	Plus annual car allowance of \$4,500	44,248	Commission-Manager
City of Kissimmee	5	Yes	28,000.00	28,000.00			Based on population; plus Mayor receives \$1200 annually and Vice-Mayor receives \$180 annually ( <i>see table</i> )	68,176	Council-Manager
City of Melbourne	7	Yes	10,350.00	7,474.00	Yes	Yes	Plus monthly expense allowance; Mayor - \$415; Council - \$255	79,640	Council-Manager
City of Orlando	7	Yes	195,739.13	60,937.28	Yes	Yes	Salary set by ordinance	269,414	Strong Mayor-Council
Palm Bay	5	Yes	22,800.00	11,400.00	Yes	Yes- FRS	Plus monthly allotment: Mayor -\$200; Deputy Mayor - \$150 ; Council - \$100; Council compensation based 20 cents per capita for Mayor and 10 cents per capital for Council	107,802	Council-Manager
City of Port St. Lucie	5	Yes	48,422.00	34,362.00	Yes	Yes - FRS	Salary set by ordinance	178,778	Council-Manager
Rockledge	7	Yes	6,600.00	6,000.00	Yes		Salary set by ordinance; eligible for health care but pay the full cost	26,497	Council-Manager
Satellite Beach	5	No					reimbursed for expenses	10,585	Council-Manager
Sebastian	5	Yes	5,400.00	3,600.00	No	No	2-yr terms	23,923	Council-Manager
St. Cloud	5	Yes	14,000.00	14,000.00	Yes	No	Salary set by ordinance.	46,624	Council-Manager
Titusville	5	Yes	10,005.00	7,301.00	No	No	Life insurance of \$10,000; salary adjusted by same percentage as employee increases	44,984	Council-Manager
Vero Beach	5	Yes	13,500.00	10,800.00	Yes	No		16,261	Council-Manager
West Melbourne	7	Yes	6460 7,800	5742 7,200	Yes	No	health insurance offered at that same level as employees; CPI increases	20,768	Council-Manager

