

MAYOR  
Hal J. Rose

DEPUTY MAYOR  
Pat Bentley

COUNCIL MEMBERS  
Daniel Batchelder  
John Dittmore  
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](http://www.westmelbourne.org)

## CHARTER REVIEW COMMITTEE

### AGENDA

June 13, 2019, AT 6:30 p.m.  
City Council Chambers

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE AND MOMENT OF SILENT MEDITATION**
3. **ROLL CALL**
4. **INTRODUCTION OF MEMBERS**

A complete list of Committee members is attached to the agenda. Each member is asked to self-introduce themselves to the Committee.

5. **SUNSHINE LAW REVIEW**

City Attorney Morris Richardson will provide a review on the Florida Sunshine laws, a copy of which is attached to the agenda.

6. **ORGANIZATION OF CHARTER REVIEW COMMITTEE**

The Committee is asked to select a Chair and Vice-Chair.

7. **MEETING SCHEDULE**

A copy of the meeting schedule is attached to the agenda.

8. **INITIAL REVIEW OF CURRENT CHARTER**

City Attorney Morris Richardson will provide a review of the current Charter, which is attached to the agenda.

9. **PUBLIC COMMENTS**

10. **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.

2019-2020  
**CHARTER REVIEW COMMITTEE**  
 Reinstated by City Council on May 21, 2019

7-member board

NAME	ADDRESS	PHONE NUMBERS	E-MAIL ADDRESS	Date of Appointment Current Term of Service
Matthew Brothers	157 Virginia Road West Melbourne, FL 32904	321-917-7328	<a href="mailto:thew1228@gmail.com">thew1228@gmail.com</a>	5/2019
Sandra Carbon	1116 Stockbridge Way West Melbourne, FL 32904	321-473-8720	<a href="mailto:sand14@aol.com">sand14@aol.com</a>	5/2019
Chris Gibbs	300 Hollywood Blvd West Melbourne, FL 32904	321-258-5579	<a href="mailto:patgibbs@aol.com">patgibbs@aol.com</a>	5/2019
Bill Mettrick	2533 Ventura Circle West Melbourne, FL 32904	321-537-5042(c) 321-473-7289 (w)	<a href="mailto:wjmettrick@bellsouth.net">wjmettrick@bellsouth.net</a>	5/2019
Sandra Michelson	745 Greenwood Manor Cir West Melbourne, FL 32904	321-729-0755	<a href="mailto:sandyzonta13@cfl.rr.com">sandyzonta13@cfl.rr.com</a>	5/2019
Stephen Phrampus	3401 Watergrass St West Melbourne, FL 32904	856-265-1271	<a href="mailto:stephenphrampus@gmail.com">stephenphrampus@gmail.com</a>	5/2019
Michele Rutledge	546 Lake Ashley Circle West Melbourne, FL 32904	321-220-0135(h) 321-700-0631(c)	<a href="mailto:Mbrconsultingllc@gmail.com">Mbrconsultingllc@gmail.com</a>	5/2019
Staff Support				

# FLORIDA COMMISSION ON ETHICS



GUIDE  
to the  
SUNSHINE AMENDMENT  
and  
CODE of ETHICS  
for Public Officers and Employees

---

**2019**

State of Florida  
COMMISSION ON ETHICS

**Guy W. Norris, *Chair***  
Lake City

**Kimberly Bonder Rezanka, *Vice Chair***  
Cocoa

**Jason David Berger**  
Palm City

**Daniel Brady, PH.D.**  
Miami Shores

**Antonio Carvajal**  
Tallahassee

**Joanne Leznoff**  
Tallahassee

**F. Shields McManus**  
Stuart

**William “Willie” N. Meggs**  
Tallahassee

**Garrett S. Richter**  
Naples

**Virlindia Doss**  
*Executive Director*  
P.O. Drawer 15709  
Tallahassee, FL 32317-5709  
[www.ethics.state.fl.us](http://www.ethics.state.fl.us)  
(850) 488-7864\*

\*Please direct all requests for information to this number.

# TABLE OF CONTENTS

I. HISTORY OF FLORIDA’S ETHICS LAWS.....	1
II. ROLE OF THE COMMISSION ON ETHICS .....	2
III. THE ETHICS LAWS.....	2
A. PROHIBITED ACTIONS OR CONDUCT .....	3
1. Solicitation or Acceptance of Gifts .....	3
2. Unauthorized Compensation .....	3
3. Misuse of Public Position .....	4
4. Disclosure or Use of Certain Information.....	4
5. Solicitation or Acceptance of Honoraria .....	4
B. PROHIBITED EMPLOYMENT AND .. BUSINESS RELATIONSHIPS.....	5
1. Doing Business With One’s Agency.....	5
2. Conflicting Employment or Contractual Relationship.....	5
3. Exemptions.....	5
4. Additional Exemption.....	6
5. Lobbying State Agencies by Legislators.....	7
6. Employees Holding Office .....	7
7. Professional & Occupational Licensing Board Members .....	7
8. Contractual Services: Prohibited Employment .....	7
9. Local Government Attorneys .....	7
10. Dual Public Employment .....	7
C. RESTRICTIONS ON APPOINTING, EMPLOYING, AND CONTRACTING WITH RELATIVES.....	8
1. Anti-Nepotism Law .....	8
2. Additional Restrictions .....	8
D. POST OFFICEHOLDING & EMPLOYMENT (REVOLVING DOOR) RESTRICTIONS .....	8
1. Lobbying By Former Legislators, Statewide Elected Officers, and Appointed State Officers .....	8
2. Lobbying By Former State Employees.....	8
3. Additional Restrictions on Former State Employees .....	9
4. Lobbying By Former Local Government Officers and Employees.....	10
E. VOTING CONFLICTS OF INTEREST .....	10

F. DISCLOSURES .....	11
1. Form 1 - Limited Financial Disclosure .....	11
2. Form 1F - Final Form 1.....	14
3. Form 2 - Quarterly Client Disclosure .....	15
4. Form 6 - Full and Public Disclosure .....	15
5. Form 6F - Final Form 6.....	16
6. Form 9 - Quarterly Gift Disclosure .....	16
7. Form 10 - Annual Disclosure of Gifts from Governmental Entities and Direct Support Organizations and Honorarium Event-Related Expenses .....	16
8. Form 30 - Donor’s Quarterly Gift Disclosure.....	17
9. Forms 1X and 6X – Amendments .....	18
IV. AVAILABILITY OF FORMS.....	18
V. PENALTIES.....	19
A. For Violations of the Code of Ethics .....	19
B. For Violations by Candidates .....	19
C. For Violations by Former Officers and Employees .....	19
D. For Lobbyists and Others.....	19
E. Felony Convictions: Forfeiture of Retirement Benefits .....	20
F. Automatic Penalties for Failure to File Annual Disclosure.....	20
VI. ADVISORY OPINIONS.....	20
A. Who Can Request an Opinion.....	20
B. How to Request an Opinion.....	20
C. How to Obtain Published Opinions.....	21
VII. COMPLAINTS.....	21
A. Citizen Involvement .....	21
B. Referrals .....	21
C. Confidentiality.....	21
D. How the Complaint Process Works .....	22
E. Dismissal of Complaint at Any Stage of Disposition .....	23
F. Statute of Limitations.....	23
VIII. EXECUTIVE BRANCH LOBBYING .....	23
IX. WHISTLE-BLOWER’S ACT .....	24
X. ADDITIONAL INFORMATION .....	24
XI. ONLINE TRAINING .....	25

## I. HISTORY OF FLORIDA'S ETHICS LAWS

Florida has been a leader among the states in establishing ethics standards for public officials and recognizing the right of citizens to protect the public trust against abuse. Our state Constitution was revised in 1968 to require a code of ethics, prescribed by law, for all state employees and non-judicial officers prohibiting conflict between public duty and private interests.

Florida's first successful constitutional initiative resulted in the adoption of the Sunshine Amendment in 1976, providing additional constitutional guarantees concerning ethics in government. In the area of enforcement, the Sunshine Amendment requires that there be an independent commission (the Commission on Ethics) to investigate complaints concerning breaches of public trust by public officers and employees other than judges.

The Code of Ethics for Public Officers and Employees is found in Chapter 112 (Part III) of the Florida Statutes. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service.

Criminal penalties, which initially applied to violations of the Code, were eliminated in 1974 in favor of administrative enforcement. The Legislature created the Commission on Ethics that year "to serve as guardian of the standards of conduct" for public officials, state and local. Five of the Commission's nine members are appointed by the Governor, and two each are appointed by the President of the Senate and Speaker of the House of Representatives. No more than five Commission members may be members of the same political party, and none may be lobbyists, or hold any public employment during their two-year terms of office. A chair is selected from among the members to serve a one-year term and may not succeed himself or herself.

In 2018, Florida's Constitutional Revision Commission proposed, and the voters adopted, changes to Article II, Section 8. The earliest of the changes will take effect December 31, 2020, and will prohibit officials from abusing their position to obtain a disproportionate benefit for themselves or their spouse, child, or employer, or for a business with which the official contracts or is an officer, partner, director, sole proprietor, or in which the official owns an interest. Other changes made to the Constitution place restrictions on lobbying by certain officeholders and employees, and put additional limits on lobbying by former public officers and employees. These changes will become effective December 31, 2022.

## **II. ROLE OF THE COMMISSION ON ETHICS**

In addition to its constitutional duties regarding the investigation of complaints, the Commission:

- Renders advisory opinions to public officials;
- Prescribes forms for public disclosure;
- Prepares mailing lists of public officials subject to financial disclosure for use by Supervisors of Elections and the Commission in distributing forms and notifying delinquent filers;
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws, since it does not impose penalties;
- Administers the Executive Branch Lobbyist Registration and Reporting Law;
- Maintains financial disclosure filings of constitutional officers and state officers and employees; and,
- Administers automatic fines for public officers and employees who fail to timely file required annual financial disclosure.

## **III. THE ETHICS LAWS**

The ethics laws generally consist of two types of provisions, those prohibiting certain actions or conduct and those requiring that certain disclosures be made to the public. The following descriptions of these laws have been simplified in an effort to provide notice of their requirements. Therefore, we suggest that you also review the wording of the actual law. Citations to the appropriate laws are in brackets.

The laws summarized below apply generally to all public officers and employees, state and local, including members of advisory bodies. The principal exception to this broad coverage is the exclusion of judges, as they fall within the jurisdiction of the Judicial Qualifications Commission.

Public Service Commission (PSC) members and employees, as well as members of the PSC Nominating Council, are subject to additional ethics standards that are enforced by the Commission on Ethics under Chapter 350, Florida Statutes. Further, members of the governing boards of charter schools are subject to some of the provisions of the Code of Ethics [Sec. 1002.33(26), Fla. Stat.], as are the officers, directors, chief executive officers and some employees of business entities that serve as the chief administrative or executive officer or employee of a political subdivision. [Sec. 112.3136, Fla. Stat.].

## A. PROHIBITED ACTIONS OR CONDUCT

### 1. *Solicitation and Acceptance of Gifts*

Public officers, employees, local government attorneys, and candidates are prohibited from soliciting or accepting anything of value, such as a gift, loan, reward, promise of future employment, favor, or service that is based on an understanding that their vote, official action, or judgment would be influenced by such gift. [Sec. 112.313(2), Fla. Stat.]

Persons required to file financial disclosure FORM 1 or FORM 6 (see Part III F of this brochure), and state procurement employees, are prohibited from **soliciting** any gift from a political committee, lobbyist who has lobbied the official or his or her agency within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist or from a vendor doing business with the official's agency. [Sec. 112.3148, Fla. Stat.]

Persons required to file FORM 1 or FORM 6, and state procurement employees are prohibited from directly or indirectly **accepting** a gift worth more than \$100 from such a lobbyist, from a partner, firm, employer, or principal of the lobbyist, or from a political committee or vendor doing business with their agency. [Sec.112.3148, Fla. Stat.]

**However**, notwithstanding Sec. 112.3148, Fla. Stat., no Executive Branch lobbyist or principal shall make, directly or indirectly, and no Executive Branch agency official who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. [Sec. 112.3215, Fla. Stat.] Typically, this would include gifts valued at less than \$100 that formerly were permitted under Section 112.3148, Fla. Stat. Similar rules apply to members and employees of the Legislature. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.]

Also, persons required to file Form 1 or Form 6, and state procurement employees and members of their immediate families, are prohibited from accepting any gift from a political committee. [Sec. 112.31485, Fla. Stat.]

### 2. *Unauthorized Compensation*

Public officers or employees, local government attorneys, and their spouses and minor children are prohibited from accepting any compensation, payment, or thing of value when they know, or with the exercise of reasonable care should know, that it is given to influence a vote or other official action. [Sec. 112.313(4), Fla. Stat.]

### *3. Misuse of Public Position*

Public officers and employees, and local government attorneys are prohibited from corruptly using or attempting to use their official positions or the resources thereof to obtain a special privilege or benefit for themselves or others. [Sec. 112.313(6), Fla. Stat.]

### *4. Disclosure or Use of Certain Information*

Public officers and employees and local government attorneys are prohibited from disclosing or using information not available to the public and obtained by reason of their public position, for the personal benefit of themselves or others. [Sec. 112.313(8), Fla. Stat.]

### *5. Solicitation or Acceptance of Honoraria*

Persons required to file financial disclosure FORM 1 or FORM 6 (see Part III F of this brochure), and state procurement employees, are prohibited from **soliciting** honoraria related to their public offices or duties. [Sec. 112.3149, Fla. Stat.]

Persons required to file FORM 1 or FORM 6, and state procurement employees, are prohibited from knowingly **accepting** an honorarium from a political committee, lobbyist who has lobbied the person's agency within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist, or from a vendor doing business with the official's agency. However, they may accept the payment of expenses related to an honorarium event from such individuals or entities, provided that the expenses are disclosed. See Part III F of this brochure. [Sec. 112.3149, Fla. Stat.]

Lobbyists and their partners, firms, employers, and principals, as well as political committees and vendors, are prohibited from **giving** an honorarium to persons required to file FORM 1 or FORM 6 and to state procurement employees. Violations of this law may result in fines of up to \$5,000 and prohibitions against lobbying for up to two years. [Sec. 112.3149, Fla. Stat.]

However, notwithstanding Sec. 112.3149, Fla. Stat., no Executive Branch or legislative lobbyist or principal shall make, directly or indirectly, and no Executive Branch agency official who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. [Sec. 112.3215, Fla. Stat.] This may include honorarium event related expenses that formerly were permitted under Sec. 112.3149, Fla. Stat. Similar rules apply to members and employees of the Legislature. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.]

## **B. PROHIBITED EMPLOYMENT AND BUSINESS RELATIONSHIPS**

### *1. Doing Business With One's Agency*

(a) A public employee acting as a purchasing agent, or public officer acting in an official capacity, is prohibited from purchasing, renting, or leasing any realty, goods, or services for his or her agency from a business entity in which the officer or employee or his or her spouse or child owns more than a 5% interest. [Sec. 112.313(3), Fla. Stat.]

(b) A public officer or employee, acting in a private capacity, also is prohibited from renting, leasing, or selling any realty, goods, or services to his or her own agency if the officer or employee is a state officer or employee, or, if he or she is an officer or employee of a political subdivision, to that subdivision or any of its agencies. [Sec. 112.313(3), Fla. Stat.]

### *2. Conflicting Employment or Contractual Relationship*

(a) A public officer or employee is prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. [Sec. 112.313(7), Fla. Stat.]

(b) A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will pose a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties. [Sec. 112.313(7), Fla. Stat.]

(c) Limited exceptions to this prohibition have been created in the law for legislative bodies, certain special tax districts, drainage districts, and persons whose professions or occupations qualify them to hold their public positions. [Sec. 112.313(7)(a) and (b), Fla. Stat.]

*3. Exemptions—Pursuant to Sec. 112.313(12), Fla. Stat., the prohibitions against doing business with one's agency and having conflicting employment may not apply:*

(a) When the business is rotated among all qualified suppliers in a city or county.

(b) When the business is awarded by sealed, competitive bidding and neither the official nor his or her spouse or child have attempted to persuade agency personnel to enter the contract. NOTE: Disclosure of the interest of the official, spouse, or child and the nature of the business must be filed prior to or at the time of submission of the bid on Commission FORM 3A with the Commission on Ethics or Supervisor of Elections, depending on whether the official serves at the state or local level.

(c) When the purchase or sale is for legal advertising, utilities service, or for passage on a common carrier.

(d) When an emergency purchase must be made to protect the public health, safety, or welfare.

(e) When the business entity is the only source of supply within the political subdivision and there is full disclosure of the official's interest to the governing body on Commission FORM 4A.

(f) When the aggregate of any such transactions does not exceed \$500 in a calendar year.

(g) When the business transacted is the deposit of agency funds in a bank of which a county, city, or district official is an officer, director, or stockholder, so long as agency records show that the governing body has determined that the member did not favor his or her bank over other qualified banks.

(h) When the prohibitions are waived in the case of ADVISORY BOARD MEMBERS by the appointing person or by a two-thirds vote of the appointing body (after disclosure on Commission FORM 4A).

(i) When the public officer or employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency.

(j) When the public officer or employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of his or her agency where the price and terms of the transaction are available to similarly situated members of the general public and the officer or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

#### *4. Additional Exemptions*

No elected public officer is in violation of the conflicting employment prohibition when employed by a tax exempt organization contracting with his or her agency so long as the officer is not directly or indirectly compensated as a result of the contract, does not participate in any way in the decision to enter into the contract, abstains from voting on any matter involving the employer, and makes certain disclosures. [Sec. 112.313(15), Fla. Stat.] A qualified blind trust established pursuant to Sec. 112.31425, Fla. Stat., may afford an official protection from conflicts of interest arising from assets placed in the trust.

#### *5. Legislators Lobbying State Agencies*

A member of the Legislature is prohibited from representing another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals. [Art. II, Sec. 8(e), Fla. Const., and Sec. 112.313(9), Fla. Stat.]

#### *6. Employees Holding Office*

A public employee is prohibited from being a member of the governing body which serves as his or her employer. [Sec. 112.313(10), Fla. Stat.]

#### *7. Professional and Occupational Licensing Board Members*

An officer, director, or administrator of a state, county, or regional professional or occupational organization or association, while holding such position, may not serve as a member of a state examining or licensing board for the profession or occupation. [Sec. 112.313(11), Fla. Stat.]

#### *8. Contractual Services: Prohibited Employment*

A state employee of the executive or judicial branch who participates in the decision-making process involving a purchase request, who influences the content of any specification or procurement standard, or who renders advice, investigation, or auditing, regarding his or her agency's contract for services, is prohibited from being employed with a person holding such a contract with his or her agency. [Sec. 112.3185(2), Fla. Stat.]

#### *9. Local Government Attorneys*

Local government attorneys, such as the city attorney or county attorney, and their law firms are prohibited from representing private individuals and entities before the unit of local government which they serve. A local government attorney cannot recommend or otherwise refer to his or her firm legal work involving the local government unit unless the attorney's contract authorizes or mandates the use of that firm. [Sec. 112.313(16), Fla. Stat.]

#### *10. Dual Public Employment*

Candidates and elected officers are prohibited from accepting public employment if they know or should know it is being offered for the purpose of influence. Further, public employment may not be accepted unless the position was already in existence or was created without the anticipation of the official's interest, was publicly advertised, and the officer had to meet the same qualifications and go through the same hiring process as other applicants. For elected public officers already holding public

employment, no promotion given for the purpose of influence may be accepted, nor may promotions that are inconsistent with those given other similarly situated employees. [Sec. 112.3125, Fla. Stat.]

### **C. RESTRICTIONS ON APPOINTING, EMPLOYING, AND CONTRACTING WITH RELATIVES**

#### *1. Anti-Nepotism Law*

A public official is prohibited from seeking for a relative any appointment, employment, promotion, or advancement in the agency in which he or she is serving or over which the official exercises jurisdiction or control. No person may be appointed, employed, promoted, or advanced in or to a position in an agency if such action has been advocated by a related public official who is serving in or exercising jurisdiction or control over the agency; this includes relatives of members of collegial government bodies. NOTE: This prohibition does not apply to school districts (except as provided in Sec. 1012.23, Fla. Stat.), community colleges and state universities, or to appointments of boards, other than those with land-planning or zoning responsibilities, in municipalities of fewer than 35,000 residents. Also, the approval of budgets does not constitute “jurisdiction or control” for the purposes of this prohibition. This provision does not apply to volunteer emergency medical, firefighting, or police service providers. [Sec. 112.3135, Fla. Stat.]

#### *2. Additional Restrictions*

A state employee of the executive or judicial branch or the PSC is prohibited from directly or indirectly procuring contractual services for his or her agency from a business entity of which a relative is an officer, partner, director, or proprietor, or in which the employee, or his or her spouse, or children own more than a 5% interest. [Sec. 112.3185(6), Fla. Stat.]

### **D. POST OFFICE HOLDING AND EMPLOYMENT (REVOLVING DOOR) RESTRICTIONS**

#### *1. Lobbying by Former Legislators, Statewide Elected Officers, and Appointed State Officers*

A member of the Legislature or a statewide elected or appointed state official is prohibited for two years following vacation of office from representing another person or entity for compensation before the government body or agency of which the individual was an officer or member. Former members of the Legislature are also prohibited for two years from lobbying the executive branch. [Art. II, Sec. 8(e), Fla. Const. and Sec. 112.313(9), Fla. Stat.]

#### *2. Lobbying by Former State Employees*

Certain employees of the executive and legislative branches of state government are prohibited from personally representing another person or entity for compensation before the agency with which

they were employed for a period of two years after leaving their positions, unless employed by another agency of state government. [Sec. 112.313(9), Fla. Stat.] These employees include the following:

(a) Executive and legislative branch employees serving in the Senior Management Service and Selected Exempt Service, as well as any person employed by the Department of the Lottery having authority over policy or procurement.

(b) Persons serving in the following position classifications: the Auditor General; the director of the Office of Program Policy Analysis and Government Accountability (OPPAGA); the Sergeant at Arms and Secretary of the Senate; the Sergeant at Arms and Clerk of the House of Representatives; the executive director and deputy executive director of the Commission on Ethics; an executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, legislative analyst, or attorney serving in the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, the Senate Minority Party Office, the House Majority Party Office, or the House Minority Party Office; the Chancellor and Vice-Chancellors of the State University System; the general counsel to the Board of Regents; the president, vice presidents, and deans of each state university; any person hired on a contractual basis and having the power normally conferred upon such persons, by whatever title; and any person having the power normally conferred upon the above positions.

This prohibition does not apply to a person who was employed by the Legislature or other agency prior to July 1, 1989; who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994; or who reached normal retirement age and retired by July 1, 1991. It does apply to OPS employees.

**PENALTIES:** Persons found in violation of this section are subject to the penalties contained in the Code (see PENALTIES, Part V) as well as a civil penalty in an amount equal to the compensation which the person received for the prohibited conduct. [Sec. 112.313(9)(a)5, Fla. Stat.]

### *3. Additional Restrictions on Former State Employees*

A former executive or judicial branch employee or PSC employee is prohibited from having employment or a contractual relationship, at any time after retirement or termination of employment, with any business entity (other than a public agency) in connection with a contract in which the employee participated personally and substantially by recommendation or decision while a public employee. [Sec. 112.3185(3), Fla. Stat.]

A former executive or judicial branch employee or PSC employee who has retired or terminated employment is prohibited from having any employment or contractual relationship for two years with

any business entity (other than a public agency) in connection with a contract for services which was within his or her responsibility while serving as a state employee. [Sec.112.3185(4), Fla. Stat.]

Unless waived by the agency head, a former executive or judicial branch employee or PSC employee may not be paid more for contractual services provided by him or her to the former agency during the first year after leaving the agency than his or her annual salary before leaving. [Sec. 112.3185(5), Fla. Stat.]

These prohibitions do not apply to PSC employees who were so employed on or before Dec. 31, 1994.

#### *4. Lobbying by Former Local Government Officers and Employees*

A person elected to county, municipal, school district, or special district office is prohibited from representing another person or entity for compensation before the government body or agency of which he or she was an officer for two years after leaving office. Appointed officers and employees of counties, municipalities, school districts, and special districts may be subject to a similar restriction by local ordinance or resolution. [Sec. 112.313(13) and (14), Fla. Stat.]

### **E. VOTING CONFLICTS OF INTEREST**

State public officers are prohibited from voting in an official capacity on any measure which they know would inure to their own special private gain or loss. A state public officer who abstains, or who votes on a measure which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate, must make every reasonable effort to file a memorandum of voting conflict with the recording secretary in advance of the vote. If that is not possible, it must be filed within 15 days after the vote occurs. The memorandum must disclose the nature of the officer's interest in the matter.

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss, or which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate. The officer must publicly announce the nature of his or her interest before the vote and must file a memorandum of voting conflict on Commission Form 8B with the meeting's recording officer within 15 days after the vote occurs disclosing the nature of his or her interest in the matter. However, members of community redevelopment agencies and district officers elected on a one-acre, one-vote basis are not required to abstain when voting in that capacity.

No appointed state or local officer shall participate in any matter which would inure to the officer's special private gain or loss, the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate, without first disclosing the nature of his or her interest in the matter. The memorandum of voting conflict (Commission Form 8A or 8B) must be filed with the meeting's recording officer, be provided to the other members of the agency, and be read publicly at the next meeting.

If the conflict is unknown or not disclosed prior to the meeting, the appointed official must orally disclose the conflict at the meeting when the conflict becomes known. Also, a written memorandum of voting conflict must be filed with the meeting's recording officer within 15 days of the disclosure being made and must be provided to the other members of the agency, with the disclosure being read publicly at the next scheduled meeting. [Sec. 112.3143, Fla. Stat.]

A qualified blind trust established pursuant to Sec. 112.31425, Fla. Stat., may afford an official protection from voting conflicts of interest arising from assets placed in the trust.

## **F. DISCLOSURES**

Conflicts of interest may occur when public officials are in a position to make decisions that affect their personal financial interests. This is why public officers and employees, as well as candidates who run for public office, are required to publicly disclose their financial interests. The disclosure process serves to remind officials of their obligation to put the public interest above personal considerations. It also helps citizens to monitor the considerations of those who spend their tax dollars and participate in public policy decisions or administration.

All public officials and candidates do not file the same degree of disclosure; nor do they all file at the same time or place. Thus, care must be taken to determine which disclosure forms a particular official or candidate is required to file.

The following forms are described below to set forth the requirements of the various disclosures and the steps for correctly providing the information in a timely manner.

### **1. FORM 1 - Limited Financial Disclosure**

#### **Who Must File:**

Persons required to file FORM 1 include all state officers, local officers, candidates for local elective office, and specified state employees as defined below (other than those officers who are required by law to file FORM 6).

STATE OFFICERS include:

- 1) Elected public officials not serving in a political subdivision of the state and any person appointed to fill a vacancy in such office, unless required to file full disclosure on Form 6.
- 2) Appointed members of each board, commission, authority, or council having statewide jurisdiction, excluding members of solely advisory bodies; but including judicial nominating commission members; directors of Enterprise Florida, Scripps Florida Funding Corporation, and CareerSource Florida, and members of the Council on the Social Status of Black Men and Boys; the Executive Director, governors, and senior managers of Citizens Property Insurance Corporation; governors and senior managers of Florida Workers' Compensation Joint Underwriting Association, board members of the Northeast Florida Regional Transportation Commission, and members of the board of Triumph Gulf Coast, Inc.; members of the board of Florida is for Veterans, Inc.; and members of the Technology Advisory Council within the Agency for State Technology.
- 3) The Commissioner of Education, members of the State Board of Education, the Board of Governors, local boards of trustees and presidents of state universities, and members of the Florida Prepaid College Board.

LOCAL OFFICERS include:

- 1) Persons elected to office in any political subdivision (such as municipalities, counties, and special districts) and any person appointed to fill a vacancy in such office, unless required to file full disclosure on Form 6.
- 2) Appointed members of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision: the governing body of the subdivision; a community college or junior college district board of trustees; a board having the power to enforce local code provisions; a planning or zoning board, board of adjustments or appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and similar groups who only have the power to make recommendations to planning or zoning boards, except for representatives of a military installation acting on behalf of all military installations within that jurisdiction; a pension board or retirement board empowered to invest pension or retirement funds or to determine entitlement to or amount of a pension or other retirement benefit.
- 3) Any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

- 4) Persons holding any of these positions in local government: mayor; county or city manager; chief administrative employee or finance director of a county, municipality, or other political subdivision; county or municipal attorney; chief county or municipal building inspector; county or municipal water resources coordinator; county or municipal pollution control director; county or municipal environmental control director; county or municipal administrator with power to grant or deny a land development permit; chief of police; fire chief; municipal clerk; appointed district school superintendent; community college president; district medical examiner; purchasing agent (regardless of title) having the authority to make any purchase exceeding \$20,000 for the local governmental unit.
- 5) Members of governing boards of charter schools operated by a city or other public entity.
- 6) The officers, directors, and chief executive officer of a corporation, partnership, or other business entity that is serving as the chief administrative or executive officer or employee of a political subdivision, and any business entity employee who is acting as the chief administrative or executive officer or employee of the political subdivision. [Sec. 112.3136, Fla. Stat.]

SPECIFIED STATE EMPLOYEE includes:

- 1) Employees in the Office of the Governor or of a Cabinet member who are exempt from the Career Service System, excluding secretarial, clerical, and similar positions.
- 2) The following positions in each state department, commission, board, or council: secretary or state surgeon general, assistant or deputy secretary, executive director, assistant or deputy executive director, and anyone having the power normally conferred upon such persons, regardless of title.
- 3) The following positions in each state department or division: director, assistant or deputy director, bureau chief, assistant bureau chief, and any person having the power normally conferred upon such persons, regardless of title.
- 4) Assistant state attorneys, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, public counsel, full-time state employees serving as counsel or assistant counsel to a state agency, judges of compensation claims, administrative law judges, and hearing officers.
- 5) The superintendent or director of a state mental health institute established for training and research in the mental health field, or any major state institution or facility established for corrections, training, treatment, or rehabilitation.

6) State agency business managers, finance and accounting directors, personnel officers, grant coordinators, and purchasing agents (regardless of title) with power to make a purchase exceeding \$20,000.

7) The following positions in legislative branch agencies: each employee (other than those employed in maintenance, clerical, secretarial, or similar positions and legislative assistants exempted by the presiding officer of their house); and each employee of the Commission on Ethics.

#### What Must Be Disclosed:

FORM 1 requirements are set forth fully on the form. In general, this includes the reporting person's sources and types of financial interests, such as the names of employers and addresses of real property holdings. NO DOLLAR VALUES ARE REQUIRED TO BE LISTED. In addition, the form requires the disclosure of certain relationships with, and ownership interests in, specified types of businesses such as banks, savings and loans, insurance companies, and utility companies.

#### When to File:

CANDIDATES for elected local office must file FORM 1 together with and at the same time they file their qualifying papers.

STATE and LOCAL OFFICERS and SPECIFIED STATE EMPLOYEES are required to file disclosure by July 1 of each year. They also must file within thirty days from the date of appointment or the beginning of employment. Those appointees requiring Senate confirmation must file prior to confirmation.

#### Where to File:

Each LOCAL OFFICER files FORM 1 with the Supervisor of Elections in the county in which he or she permanently resides.

A STATE OFFICER or SPECIFIED STATE EMPLOYEE files with the Commission on Ethics. [Sec. 112.3145, Fla. Stat.]

## 2. *FORM 1F - Final Form 1 Limited Financial Disclosure*

FORM 1F is the disclosure form required to be filed within 60 days after a public officer or employee required to file FORM 1 leaves his or her public position. The form covers the disclosure period between January 1 and the last day of office or employment within that year.

### 3. *FORM 2 - Quarterly Client Disclosure*

The state officers, local officers, and specified state employees listed above, as well as elected constitutional officers, must file a FORM 2 if they or a partner or associate of their professional firm represent a client for compensation before an agency at their level of government.

A FORM 2 disclosure includes the names of clients represented by the reporting person or by any partner or associate of his or her professional firm for a fee or commission before agencies at the reporting person's level of government. Such representations do not include appearances in ministerial matters, appearances before judges of compensation claims, or representations on behalf of one's agency in one's official capacity. Nor does the term include the preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license, so long as the issuance of the license does not require a variance, special consideration, or a certificate of public convenience and necessity.

#### When to File:

This disclosure should be filed quarterly, by the end of the calendar quarter following the calendar quarter during which a reportable representation was made. FORM 2 need not be filed merely to indicate that no reportable representations occurred during the preceding quarter; it should be filed ONLY when reportable representations were made during the quarter.

#### Where To File:

LOCAL OFFICERS file with the Supervisor of Elections of the county in which they permanently reside.

STATE OFFICERS and SPECIFIED STATE EMPLOYEES file with the Commission on Ethics. [Sec. 112.3145(4), Fla. Stat.]

### 4. *FORM 6 - Full and Public Disclosure*

#### Who Must File:

Persons required by law to file FORM 6 include all elected constitutional officers and candidates for such office; the mayor and members of the city council and candidates for these offices in Jacksonville; the Duval County Superintendent of Schools; judges of compensation claims (pursuant to Sec. 440.442, Fla. Stat.); members of the Florida Housing Finance Corporation Board and members of expressway authorities, transportation authorities (except the Jacksonville Transportation Authority), bridge authority, or toll authorities created pursuant to Ch. 348 or 343, or 349, or other general law.

## What Must be Disclosed:

FORM 6 is a detailed disclosure of assets, liabilities, and sources of income over \$1,000 and their values, as well as net worth. Officials may opt to file their most recent income tax return in lieu of listing sources of income but still must disclose their assets, liabilities, and net worth. In addition, the form requires the disclosure of certain relationships with, and ownership interests in, specified types of businesses such as banks, savings and loans, insurance companies, and utility companies.

## When and Where To File:

Incumbent officials must file FORM 6 annually by July 1 with the Commission on Ethics. CANDIDATES must file with the officer before whom they qualify at the time of qualifying. [Art. II, Sec. 8(a) and (i), Fla. Const., and Sec. 112.3144, Fla. Stat.]

### 5. *FORM 6F - Final Form 6 Full and Public Disclosure*

This is the disclosure form required to be filed within 60 days after a public officer or employee required to file FORM 6 leaves his or her public position. The form covers the disclosure period between January 1 and the last day of office or employment within that year.

### 6. *FORM 9 - Quarterly Gift Disclosure*

Each person required to file FORM 1 or FORM 6, and each state procurement employee, must file a FORM 9, Quarterly Gift Disclosure, with the Commission on Ethics on the last day of any calendar quarter following the calendar quarter in which he or she received a gift worth more than \$100, other than gifts from relatives, gifts prohibited from being accepted, gifts primarily associated with his or her business or employment, and gifts otherwise required to be disclosed. FORM 9 NEED NOT BE FILED if no such gift was received during the calendar quarter.

Information to be disclosed includes a description of the gift and its value, the name and address of the donor, the date of the gift, and a copy of any receipt for the gift provided by the donor. [Sec. 112.3148, Fla. Stat.]

### 7. *FORM 10 - Annual Disclosure of Gifts from Government Agencies and Direct-Support Organizations and Honorarium Event Related Expenses*

State government entities, airport authorities, counties, municipalities, school boards, water management districts, and the South Florida Regional Transportation Authority, may give a gift worth more than \$100 to a person required to file FORM 1 or FORM 6, and to state procurement employees, if a public purpose can be shown for the gift. Also, a direct-support organization for a governmental entity

may give such a gift to a person who is an officer or employee of that entity. These gifts are to be reported on FORM 10, to be filed by July 1.

The governmental entity or direct-support organization giving the gift must provide the officer or employee with a statement about the gift no later than March 1 of the following year. The officer or employee then must disclose this information by filing a statement by July 1 with his or her annual financial disclosure that describes the gift and lists the donor, the date of the gift, and the value of the total gifts provided during the calendar year. State procurement employees file their statements with the Commission on Ethics. [Sec. 112.3148, Fla. Stat.]

In addition, a person required to file FORM 1 or FORM 6, or a state procurement employee, who receives expenses or payment of expenses related to an honorarium event from someone who is prohibited from giving him or her an honorarium, must disclose annually the name, address, and affiliation of the donor, the amount of the expenses, the date of the event, a description of the expenses paid or provided, and the total value of the expenses on FORM 10. The donor paying the expenses must provide the officer or employee with a statement about the expenses within 60 days of the honorarium event.

The disclosure must be filed by July 1, for expenses received during the previous calendar year, with the officer's or employee's FORM 1 or FORM 6. State procurement employees file their statements with the Commission on Ethics. [Sec. 112.3149, Fla. Stat.]

However, notwithstanding Sec. 112.3149, Fla. Stat., no executive branch or legislative lobbyist or principal shall make, directly or indirectly, and no executive branch agency official or employee who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. This may include gifts or honorarium event related expenses that formerly were permitted under Sections 112.3148 and 112.3149. [Sec. 112.3215, Fla. Stat.] Similar prohibitions apply to legislative officials and employees. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.] In addition, gifts, which include anything not primarily related to political activities authorized under ch. 106, are prohibited from political committees. [Sec. 112.31485 Fla. Stat.]

#### 8. *FORM 30 - Donor's Quarterly Gift Disclosure*

As mentioned above, the following persons and entities generally are prohibited from giving a gift worth more than \$100 to a reporting individual (a person required to file FORM 1 or FORM 6) or to a state procurement employee: a political committee; a lobbyist who lobbies the reporting individual's or procurement employee's agency, and the partner, firm, employer, or principal of such a lobbyist; and vendors. If such person or entity makes a gift worth between \$25 and \$100 to a reporting individual or state procurement employee (that is not accepted in behalf of a governmental entity or charitable

organization), the gift should be reported on FORM 30. The donor also must notify the recipient at the time the gift is made that it will be reported.

The FORM 30 should be filed by the last day of the calendar quarter following the calendar quarter in which the gift was made. If the gift was made to an individual in the legislative branch, FORM 30 should be filed with the Lobbyist Registrar. [See page 35 for address.] If the gift was to any other reporting individual or state procurement employee, FORM 30 should be filed with the Commission on Ethics.

However, notwithstanding Section 112.3148, Fla. Stat., no executive branch lobbyist or principal shall make, directly or indirectly, and no executive branch agency official or employee who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. This may include gifts that formerly were permitted under Section 112.3148. [Sec. 112.3215, Fla. Stat.] Similar prohibitions apply to legislative officials and employees. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.] In addition, gifts from political committees are prohibited. [Sec. 112.31485, Fla. Stat.]

#### 9. *FORM 1X AND FORM 6X - Amendments to Form 1 and Form 6*

These forms are provided for officers or employees to amend their previously filed Form 1 or Form 6.

### **IV. AVAILABILITY OF FORMS**

LOCAL OFFICERS and EMPLOYEES who must file FORM 1 annually will be sent the form by mail from the Supervisor of Elections in the county in which they permanently reside not later than JUNE 1 of each year. Newly elected and appointed officials or employees should contact the heads of their agencies for copies of the form or download it from [www.ethics.state.fl.us](http://www.ethics.state.fl.us), as should those persons who are required to file their final disclosure statements within 60 days of leaving office or employment.

ELECTED CONSTITUTIONAL OFFICERS, OTHER STATE OFFICERS, and SPECIFIED STATE EMPLOYEES who must file annually FORM 1 or 6 will be sent these forms by mail from the Commission on Ethics by JUNE 1 of each year. Newly elected and appointed officers and employees should contact the heads of their agencies or the Commission on Ethics for copies of the form or download it from [www.ethics.state.fl.us](http://www.ethics.state.fl.us), as should those persons who are required to file their final disclosure statements within 60 days of leaving office or employment.

Any person needing one or more of the other forms described here may also obtain them from a Supervisor of Elections or from the Commission on Ethics, P.O. Drawer 15709, Tallahassee, Florida 32317-5709. They are also available on the Commission's website: [www.ethics.state.fl.us](http://www.ethics.state.fl.us).

## V. PENALTIES

### A. *Non-criminal Penalties for Violation of the Sunshine Amendment and the Code of Ethics*

There are no criminal penalties for violation of the Sunshine Amendment and the Code of Ethics. Penalties for violation of these laws may include: impeachment, removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary level, forfeiture of no more than one-third salary per month for no more than twelve months, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received, and triple the value of a gift from a political committee.

### B. *Penalties for Candidates*

CANDIDATES for public office who are found in violation of the Sunshine Amendment or the Code of Ethics may be subject to one or more of the following penalties: disqualification from being on the ballot, public censure, reprimand, or a civil penalty not to exceed \$10,000, and triple the value of a gift received from a political committee.

### C. *Penalties for Former Officers and Employees*

FORMER PUBLIC OFFICERS or EMPLOYEES who are found in violation of a provision applicable to former officers or employees or whose violation occurred prior to such officer's or employee's leaving public office or employment may be subject to one or more of the following penalties: public censure and reprimand, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received, and triple the value of a gift received from a political committee.

### D. *Penalties for Lobbyists and Others*

An executive branch lobbyist who has failed to comply with the Executive Branch Lobbying Registration law (see Part VIII) may be fined up to \$5,000, reprimanded, censured, or prohibited from lobbying executive branch agencies for up to two years. Lobbyists, their employers, principals, partners, and firms, and political committees and committees of continuous existence who give a prohibited gift or honorarium or fail to comply with the gift reporting requirements for gifts worth between \$25 and \$100, may be penalized by a fine of not more than \$5,000 and a prohibition on lobbying, or employing a lobbyist to lobby, before the agency of the public officer or employee to whom the gift was given for up to two years. Any agent or person acting on behalf of a political committee giving a prohibited gift is personally liable for a civil penalty of up to triple the value of the gift.

Executive Branch lobbying firms that fail to timely file their quarterly compensation reports may be fined \$50 per day per principal for each day the report is late, up to a maximum fine of \$5,000 per report.

*E. Felony Convictions: Forfeiture of Retirement Benefits*

Public officers and employees are subject to forfeiture of all rights and benefits under the retirement system to which they belong if convicted of certain offenses. The offenses include embezzlement or theft of public funds; bribery; felonies specified in Chapter 838, Florida Statutes; impeachable offenses; and felonies committed with intent to defraud the public or their public agency. [Sec. 112.3173, Fla. Stat.]

*F. Automatic Penalties for Failure to File Annual Disclosure*

Public officers and employees required to file either Form 1 or Form 6 annual financial disclosure are subject to automatic fines of \$25 for each day late the form is filed after September 1, up to a maximum penalty of \$1,500. [Sec. 112.3144 and 112.3145, Fla. Stat.]

## **VI. ADVISORY OPINIONS**

Conflicts of interest may be avoided by greater awareness of the ethics laws on the part of public officials and employees through advisory assistance from the Commission on Ethics.

*A. Who Can Request an Opinion*

Any public officer, candidate for public office, or public employee in Florida who is in doubt about the applicability of the standards of conduct or disclosure laws to himself or herself, or anyone who has the power to hire or terminate another public employee, may seek an advisory opinion from the Commission about himself or herself or that employee.

*B. How to Request an Opinion*

Opinions may be requested by letter presenting a question based on a real situation and including a detailed description of the situation. Opinions are issued by the Commission and are binding on the conduct of the person who is the subject of the opinion, unless material facts were omitted or misstated in the request for the opinion. Published opinions will not bear the name of the persons involved unless they consent to the use of their names; however, the request and all information pertaining to it is a public record, made available to the Commission and to members of the public in advance of the Commission's consideration of the question.

*C. How to Obtain Published Opinions*

All of the Commission's opinions are available for viewing or download at its website:  
[www.ethics.state.fl.us](http://www.ethics.state.fl.us).

## **VII. COMPLAINTS**

*A. Citizen Involvement*

The Commission on Ethics cannot conduct investigations of alleged violations of the Sunshine Amendment or the Code of Ethics unless a person files a sworn complaint with the Commission alleging such violation has occurred, or a referral is received, as discussed below.

If you have knowledge that a person in government has violated the standards of conduct or disclosure laws described above, you may report these violations to the Commission by filing a sworn complaint on the form prescribed by the Commission and available for download at [www.ethics.state.fl.us](http://www.ethics.state.fl.us). The Commission is unable to take action based on learning of such misdeeds through newspaper reports, telephone calls, or letters.

You can obtain a complaint form (FORM 50), by contacting the Commission office at the address or phone number shown on the inside front cover of this booklet, or you can download it from the Commission's website:  
[www.ethics.state.fl.us](http://www.ethics.state.fl.us).

*B. Referrals*

The Commission may accept referrals from: the Governor, the Florida Department of Law Enforcement, a State Attorney, or a U.S. Attorney. A vote of six of the Commission's nine members is required to proceed on such a referral.

*C. Confidentiality*

The complaint or referral, as well as all proceedings and records relating thereto, is confidential until the accused requests that such records be made public or until the matter reaches a stage in the Commission's proceedings where it becomes public. This means that unless the Commission receives a written waiver of confidentiality from the accused, the Commission is not free to release any documents or to comment on a complaint or referral to members of the public or press, so long as the complaint or referral remains in a confidential stage.

A COMPLAINT OR REFERRAL MAY NOT BE FILED WITH RESPECT TO A CANDIDATE ON THE DAY OF THE ELECTION, OR WITHIN THE 30 CALENDAR DAYS PRECEDING THE ELECTION DATE, UNLESS IT IS BASED ON PERSONAL INFORMATION OR INFORMATION OTHER THAN HEARSAY.

*D. How the Complaint Process Works*

Complaints which allege a matter within the Commission's jurisdiction are assigned a tracking number and Commission staff forwards a copy of the original sworn complaint to the accused within five working days of its receipt. Any subsequent sworn amendments to the complaint also are transmitted within five working days of their receipt.

Once a complaint is filed, it goes through three procedural stages under the Commission's rules. The first stage is a determination of whether the allegations of the complaint are legally sufficient: that is, whether they indicate a possible violation of any law over which the Commission has jurisdiction. If the complaint is found not to be legally sufficient, the Commission will order that the complaint be dismissed without investigation, and all records relating to the complaint will become public at that time.

In cases of very minor financial disclosure violations, the official will be allowed an opportunity to correct or amend his or her disclosure form. Otherwise, if the complaint is found to be legally sufficient, a preliminary investigation will be undertaken by the investigative staff of the Commission. The second stage of the Commission's proceedings involves this preliminary investigation and a decision by the Commission as to whether there is probable cause to believe that there has been a violation of any of the ethics laws. If the Commission finds no probable cause to believe there has been a violation of the ethics laws, the complaint will be dismissed and will become a matter of public record. If the Commission finds probable cause to believe there has been a violation of the ethics laws, the complaint becomes public and usually enters the third stage of proceedings. This stage requires the Commission to decide whether the law was actually violated and, if so, whether a penalty should be recommended. At this stage, the accused has the right to request a public hearing (trial) at which evidence is presented, or the Commission may order that such a hearing be held. Public hearings usually are held in or near the area where the alleged violation occurred.

When the Commission concludes that a violation has been committed, it issues a public report of its findings and may recommend one or more penalties to the appropriate disciplinary body or official.

When the Commission determines that a person has filed a complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations, the complainant will be liable for costs plus reasonable attorney's fees incurred by the person complained against. The Department of Legal Affairs may bring a civil action to recover such fees and costs, if they are not paid voluntarily within 30 days.

*E. Dismissal of Complaints At Any Stage of Disposition*

The Commission may, at its discretion, dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, in which case the Commission will issue a public report stating with particularity its reasons for the dismissal. [Sec. 112.324(12), Fla. Stat.]

*F. Statute of Limitations*

All sworn complaints alleging a violation of the Sunshine Amendment or the Code of Ethics must be filed with the Commission within five years of the alleged violation or other breach of the public trust. Time starts to run on the day AFTER the violation or breach of public trust is committed. The statute of limitations is tolled on the day a sworn complaint is filed with the Commission. If a complaint is filed and the statute of limitations has run, the complaint will be dismissed. [Sec. 112.3231, Fla. Stat.]

## **VIII. EXECUTIVE BRANCH LOBBYING**

Any person who, for compensation and on behalf of another, lobbies an agency of the executive branch of state government with respect to a decision in the area of policy or procurement may be required to register as an executive branch lobbyist. Registration is required before lobbying an agency and is renewable annually. In addition, each lobbying firm must file a compensation report with the Commission for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. As noted above, no executive branch lobbyist or principal can make, directly or indirectly, and no executive branch agency official or employee who files FORM 1 or FORM 6 can knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. [Sec. 112.3215, Fla. Stat.]

Paying an executive branch lobbyist a contingency fee based upon the outcome of any specific executive branch action, and receiving such a fee, is prohibited. A violation of this prohibition is a first degree misdemeanor, and the amount received is subject to forfeiture. This does not prohibit sales people from receiving a commission. [Sec. 112.3217, Fla. Stat.]

Executive branch departments, state universities, community colleges, and water management districts are prohibited from using public funds to retain an executive branch (or legislative branch) lobbyist, although these agencies may use full-time employees as lobbyists. [Sec. 11.062, Fla. Stat.]

Online registration and filing is available at [www.floridalobbyist.gov](http://www.floridalobbyist.gov). Additional information about the executive branch lobbyist registration system may be obtained by contacting the Lobbyist Registrar at the following address:

Executive Branch Lobbyist Registration  
Room G-68, Claude Pepper Building  
111 W. Madison Street  
Tallahassee, FL 32399-1425  
Phone: 850/922-4987

## **IX. WHISTLE-BLOWER'S ACT**

In 1986, the Legislature enacted a "Whistle-blower's Act" to protect employees of agencies and government contractors from adverse personnel actions in retaliation for disclosing information in a sworn complaint alleging certain types of improper activities. Since then, the Legislature has revised this law to afford greater protection to these employees.

While this language is contained within the Code of Ethics, the Commission has no jurisdiction or authority to proceed against persons who violate this Act. Therefore, a person who has disclosed information alleging improper conduct governed by this law and who may suffer adverse consequences as a result should contact one or more of the following: the Office of the Chief Inspector General in the Executive Office of the Governor; the Department of Legal Affairs; the Florida Commission on Human Relations; or a private attorney. [Sec. 112.3187 - 112.31895, Fla. Stat.]

## **X. ADDITIONAL INFORMATION**

As mentioned above, we suggest that you review the language used in each law for a more detailed understanding of Florida's ethics laws. The "Sunshine Amendment" is Article II, Section 8, of the Florida Constitution. The Code of Ethics for Public Officers and Employees is contained in Part III of Chapter 112, Florida Statutes.

Additional information about the Commission's functions and interpretations of these laws may be found in Chapter 34 of the Florida Administrative Code, where the Commission's rules are published, and in The Florida Administrative Law Reports, which until 2005 published many of the Commission's final orders. The Commission's rules, orders, and opinions also are available at [www.ethics.state.fl.us](http://www.ethics.state.fl.us).

If you are a public officer or employee concerned about your obligations under these laws, the staff of the Commission will be happy to respond to oral and written inquiries by providing information about the law, the Commission's interpretations of the law, and the Commission's procedures.

## **XI. TRAINING**

Constitutional officers and elected municipal officers are required to receive a total of four hours training, per calendar year, in the area of ethics, public records, and open meetings. The Commission on Ethics does not track compliance or certify providers.

Visit the training page on the Commission's website for up-to-date rules, opinions, audio/video training, and opportunities for live training conducted by Commission staff. A comprehensive online training course addressing Florida's Code of Ethics, as well as Sunshine Law, and Public Records Act is available via a link on the Commission's homepage.

## Charter Review Committee

### Meeting Schedule

First Meeting	Thursday, June 13, 2019, 6:30 p.m.
	Thursday, July 11, 2019, 6:30 p.m.
	Thursday, August 8, 2019, 6:30 p.m.
	Thursday, September 12, 2019, 6:30 p.m.
	Thursday, October 10, 2019, 6:30 p.m.
	Thursday, November 14, 2019, 6:30 p.m.
	Thursday, December 12, 2019, 6:30 p.m.
	Thursday, January 9, 2019, 6:30 p.m.
	Thursday, February 13, 2019, 6:30 p.m.
Recommendation To City Council	Thursday, March 12, 2019, 6:30 p.m.
	Thursday, April 11, 2019, 6:30 p.m. (if needed)

PART I - CHARTER<sup>[1]</sup>

**ORDINANCE NO. 83-36**

A Charter creating, establishing, and organizing a Municipal Corporation to be known as and designated as the City of West Melbourne, to be located in Brevard County, Florida, defining its territorial boundaries, providing for and describe its government, jurisdiction, powers, duties, franchises, and privileges, and providing for perpetual existence of the City of West Melbourne, Florida.

BE IT ENACTED BY THE ELECTORS OF THE CITY OF WEST MELBOURNE, BREVARD COUNTY, FLORIDA:

**PREAMBLE**

We the citizens of West Melbourne, in accordance with the Constitution and laws of the State of Florida, in order to provide for the benefits of local government responsive to the will and values of our citizens, do hereby adopt this charter to define the powers and structure of our council-manager form of government. By this action, we wish to make West Melbourne a great place to live and work by fostering visionary leadership, fiscal responsibility, high ethical standards, and citizen involvement.

Footnotes:

--- (1) ---

**Editor's note**— Printed herein is the Charter of the City of West Melbourne, as adopted by Ordinance Number 83-36 on September 20, 1983, and by referendum on November 8, 1983. Amendments to the Charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original Charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.

**State Law reference**— Municipal home rule powers, F.S. ch. 166.

**ARTICLE I. - CREATION**

There is hereby created a municipal corporation in the County of Brevard, State of Florida, to be known as the City of West Melbourne. The boundary description of the city is on file in the City Clerk's office. The corporate limits of the city may be extended and enlarged in compliance with the laws of the State of Florida.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

## ARTICLE II. - CITY POWERS

The city shall have all of the powers, functions and immunities granted to municipal corporations by the Constitution and laws of the State of Florida, including the Municipal Home Rule Act, as now or hereinafter existing, together with the implied powers necessary to carry into execution all the powers granted. The enumeration of particular powers by this Charter shall not be deemed to be exclusive, and in addition to the powers enumerated herein or implied hereby, or appropriate to the exercise of such powers, it is intended that the city shall have and exercise all powers not otherwise prohibited to municipal corporations by the constitution and laws of this state.

**State Law reference—** Municipal home rule powers, F.S. ch. 166

## ARTICLE III. - CITY COUNCIL AND MAYOR

### Section 1. - Powers and duties.

- a) *General powers and duties.* All powers of the city shall be vested in an elected council, and an elected mayor, except as otherwise provided by law or by this Charter. The council shall provide for the exercise by the city of its municipal powers and for the performance of all duties and obligations imposed on the city by law.
- b) *Removal of members of boards, commissions or agencies.* Except as provided in this Charter, a member of any board or commission or agency of the city who has been appointed by the city council may be removed by the city council.
- c) *Investigations.* The City Council may make investigations into the affairs of the city and the conduct of any city department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Failure or refusal to obey a lawful order issued in exercise of these powers by the Council shall be a misdemeanor punishable by applicable law.
- d) *Official bonds.* The city council shall determine whether or not each officer, clerk or employee of the city shall give bond, and the amount thereof, but all officers, clerks and employees authorized to sign checks or expend funds of the city shall be required to give bond to the city, which bond shall be procured from a regularly accredited surety company, authorized to do business in the State of Florida, the premiums of such bond to be paid by the city. All such bonds shall be filed in the office of the city clerk.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

### Section 2. - Reserved.

**Editor's note**— Ord. No. 2007-30, Exh. A, adopted Sept. 4, 2007 and approved by general election on Nov. 6, 2007, deleted § 2 of Art. III, which pertained to "limitations on powers of city council" and derived from Ord. No. 83-36, adopted Sept. 20, 1983.

### Section 3. - Composition and qualifications of city council.

The city council shall consist of seven (7) members, which shall include the Mayor and six (6) council members holding consecutively numbered seats 1 through 6 all of whom shall be elected by the qualified voters of the city. Members of the city council shall have been residents of the city for at least one year prior to the date of qualification for office, shall continue to reside in the city during their entire term of office, and shall have the qualifications of a city elector.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

### Section 4. - Mayor.

The mayor shall be the presiding officer of the city council. The mayor may participate in deliberations of the city council and may make recommendations to the city council on any matter under consideration by the council. The mayor shall be entitled to cast a vote during council meetings in the same manner as any other council member.

The mayor shall be the head of the city government for ceremonial purposes, for the purposes of service of civil process, and for the purposes of martial law. The mayor shall execute all instruments to which the city is a party, as the city council may direct, unless otherwise provided by this Charter or by law.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988)

### Section 5. - Deputy mayor.

The city council shall at its first meeting following the general election each 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.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988)

### Section 6. - Terms of office.

After certification of the election, city council members shall take office at the commencement of "New Business" on the agenda of the next scheduled council meeting. If no meeting is scheduled, a special meeting must be held within twenty-one (21) days of certification of the election.

Council seats numbered 1, 2 and 3 shall be filled in a general election to be held in November 2012 for a term of four (4) years. Council seats numbered 4, 5, and 6 shall

be filled in a general election to be held in November 2011 and shall remain in office for a term of three (3) years. The Officer of Mayor shall be filled in a general election to be held in November 2013 for a three year term. Beginning with the election to be held in November 2014 and each even numbered year thereafter, Council members and the Mayor shall be elected to office for a term of four (4) years, or until their successors are elected and qualified.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006; Ord. No. 2010-16, §§ II, III, 7-6-2010/11-2-2010)

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

The remuneration, including salary plus necessary and ordinary expenses, shall be four hundred dollars (\$400.00) per month for Council Members and four hundred fifty dollars (\$450.00) per month for the Mayor. The remuneration 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, 2008. No increase in the remuneration 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.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 01-23, Exh. A(IV), 8-21-2001/11-6-2001; Ord. No. 2007-30, Exh. A, 9-4-2007/11-6-2007)

#### Section 8. - Prohibitions for council members and the mayor.

- a) *Holding other office.* Except where authorized by law, no council member shall hold any other city office or city employment during the terms for which he is elected to the city council, and no former member of the city council shall hold any compensated appointive city office or city employment until one year after the expiration of the terms for which he was elected. This provision shall not prevent participation in, nor compensation from, activities connected with any volunteer organization of the city.
- b) *Interference with administration.* Except for the purpose of inquiries and investigations, the city council and its members shall deal with the city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the city council nor its members shall give orders to any such officer or employee, either publicly or privately.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988)

#### Section 9. - Forfeiture of office.

A council member shall forfeit that office if the council member:

- 1) Fails to meet the residency requirements,

- 2) Willfully violates any express prohibition of this charter,
- 3) Is convicted of a crime involving moral turpitude, or
- 4) Fails to attend three (3) consecutive regular meetings of the council without being excused by the council.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

#### 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 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.
- 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. 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.
- 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.
- 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.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

#### Section 11. - Judge of qualifications.

The council shall be the sole judge of the election and qualifications of its members and for such purposes shall have the power to subpoena witnesses and require the production of evidence. The decision of the council in any such case shall be subject to review by the courts.

A council member accused of violating any of the conditions of Article III Section 9, obliging the immediate forfeiture of office may request a public hearing. If requested, this public hearing shall be held before the council votes on the motion. Concurrence of at least four (4) council members is required to sustain a council decision that the office must be immediately forfeited. Further, the accused shall not be entitled to vote on this forfeiture of office decision.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 2007-30, Exh. A, 9-4-2007/11-6-2007)

#### Section 12. - Council meetings.

- (a) The council shall meet regularly at such times and places as it may prescribe, but in no event less than once each month. All meetings of the council shall be open to the public, and all regular meetings shall be held at a specific time and place within the city limits.
- (b) Special meetings, limited to the subjects specified in the call, may be convened by the mayor or any other council member through the city manager. At least forty-eight (48) hours' notice shall be provided to each member and the public. A notice stating the time, place, and subject matter of said meeting shall be posted at the city hall. The council shall prescribe the means of serving or furnishing such notice to its members. The first order of business shall be the determination by a vote of four (4) members of the council that a special meeting is justified.
- (c) Emergency meetings may be convened by the mayor, or any other council member through the city manager, with the maximum reasonable period of notice given to each member and to the public, as prescribed by the council and state law. The first order of business shall be the determination, by a vote of at least seventy-five (75) percent of the council members present, that an emergency situation

involving health, safety or public welfare warranting council action exists. Only matters relating to the emergency may be considered at said meeting.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006; Ord. No. 2010-16, § I, 7-6-2010/11-2-2010)

Section 13. - Council quorum and rules.

- a) Four (4) members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may require the attendance of absent members in such manner and under such penalties as the council may prescribe. No action of the council, except raising a quorum, shall be valid or binding unless adopted by the affirmative vote of at least four (4) members of the council. Voting shall be accomplished by having the presiding officer of the council request affirmative and negative votes. The total of affirmative and negative votes shall be recorded in the minutes of the council.
- b) The council shall determine its own rules and order of business, and shall provide for the keeping of a journal of its proceedings. The council may prescribe rules for expelling disorderly persons from its meetings.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988)

Section 14. - Adoption of ordinances and resolutions.

Ordinances and resolutions shall be adopted as provided by the general law of the State of Florida.

**State Law reference**— Adoption procedure, F.S. § 166.041.

Section 15. - Adoption of codes of technical regulations.

The city council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. Adopting ordinances shall be enacted as herein prescribed. Any adopted code of technical regulation shall be made available for distribution or purchase at reasonable cost.

**State Law reference**— Construction standards, F.S. ch. 553.

Section 16. - Voting requirements to settle litigation resulting from actions of the city council or board of adjustments relating to a development order.

When the City Council is considering settlement of litigation which litigation arises out of the actions of the City Council or Board of Adjustment concerning a development order, as that term is defined by Florida Statutes, Chapter 163.3164 and Chapter 62 of the City's Land Development Regulations, such settlement shall only be approved by

the concurring vote of the same number of votes as is required to approve the development order which is the subject matter of the litigation.

(Ord. No. 01-23, Exh. A(I), 8-21-2001/11-6-2001)

ARTICLE IV. - ELECTIONS AND RECALL [\[2\]](#)

Footnotes:

--- (2) ---

**State Law reference**— Florida election code, F.S. chs. 97—106.

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.

(Ord. No. 01-22, § 1, 8-21-2001; Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006; Ord. No. 2007-24, § 1, 7-24-2007; Ord. No. 2007-30, Exh. A, 9-4-2007/11-6-2007)

**State Law reference**— Candidate's oath, F.S. ch. 97.

Section 2. - Elections: Governed by state law or ordinance.

Except as specifically provided herein, or by ordinance, all elections in the city shall be conducted in accordance with general law. Nothing herein shall preclude the city council from authorizing the administration of city elections by the county supervisor of elections.

**State Law reference**— Election code to apply to city elections, F.S. § 101.3605.

Section 3. - Election of city council.

All candidates for city council shall run at large. The names of the candidates shall be shown and listed on the election ballot in alphabetical order of their surnames. The candidates receiving the highest number of votes shall be declared the winners upon certification of the vote. In the event of a tie vote among two (2) or more candidates for city council, such office shall be filled by lot from among the candidates receiving the same number of votes. Such determination by lot shall be made under the direction of the existing city council prior to the election no later than seven (7) days after the certification of the election. The candidates shall be notified of the time and place of the drawing of lots and have the right to be present.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006; Ord. No. 2010-16, § III, 7-6-2010/11-2-2010)

Section 4. - Elections: Canvass of returns.

The polls shall open at seven (7) o'clock a.m., and shall close at seven (7) o'clock p.m. The result of the voting, when ascertained, shall be certified by return in duplicate, signed by the clerk and a majority of the inspectors of the election, one copy being delivered by such clerk and inspectors to the mayor, and the other to the city clerk, both of whom shall transmit such returns to the city council at its next meeting thereafter. At such meeting, the city council shall canvass the returns, and the results as shown by such canvassed returns shall be declared as the result of the election.

Section 5. - Recall.

Recall of council members shall be in accordance with the general law of the State of Florida.

**State Law reference**— Recall, F.S. § 100.361.

ARTICLE V. - CITY MANAGER

Section 1. - Appointment; qualifications; compensation.

The council by an affirmative vote of at least four (4) members shall appoint a city manager and establish the city manager's compensation and conditions of employment. No contract for employment shall be for a period greater than five (5) years with the

option for renewal by mutual consent. The city manager shall be a U. S. citizen who is appointed solely on the basis of education and experience in the accepted competencies and practices of local government management. The manager need not be a resident of the city, but shall establish and maintain residency in Brevard County within six (6) months of being employed.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

## Section 2. - Removal.

The city manager shall serve at the pleasure of the city council and may be removed from office by the affirmative vote of four (4) members of the council. If the city manager declines to resign at the request of the city council, the city council may suspend the manager by a resolution approved by the majority of the total membership of the city council. Such resolution shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the city manager. The city manager shall have fifteen (15) days in which to reply thereto in writing, and upon request, shall be afforded a public hearing, which shall occur not earlier than ten (10) days or later than fifteen (15) days after such hearing is requested. After the public hearing, if one is requested, and after full consideration, the city council by a majority vote of its total membership may adopt a final resolution of removal. The city manager shall continue to receive full salary until the effective date of a final resolution of removal.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

## Section 3. - Acting city manager.

The city manager, subject to prior approval by the city council, shall designate by letter filed with the city clerk, an acting city manager to perform his duties during any temporary absence or disability. If the manager fails to make such a designation, the council may appoint the acting city manager. The acting city manager shall be selected from among city employees.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

## 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.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

## ARTICLE VI. - FRANCHISES

*Granting of franchises.* The city shall have power to grant a franchise to any private or public enterprise for the use of streets and other public places in the furnishing of any public utility or other service to the city and to its inhabitants. All franchises and any renewals, extensions and amendments thereto shall be granted only by ordinance.

## ARTICLE VII. - CITY ATTORNEY; APPOINTMENT AND QUALIFICATIONS

The city council shall both appoint and remove the city attorney with at least four (4) concurring votes. The city attorney shall act as the legal adviser to, and attorney, and counselor for, the city and all of its officers in matters relating to their official duties. The city attorney shall be responsible for the city's representation in all legal proceedings and shall perform any other duties prescribed by law, by this charter, or by the city council. The city attorney shall be a U.S. citizen and a member in good standing of the Florida Bar. Further, the city attorney shall be a lawyer admitted in and having authority to practice in all courts of the State of Florida and in the United States District Court for the Middle District of Florida.

(Ord. No. 2007-30, Exh. A, 9-4-2007/11-6-2007)

## ARTICLE VIII. - CREATION OF NEW DEPARTMENTS OR OFFICES; CHANGE OF DUTIES

The city council by ordinance may create, change and abolish offices, departments, boards or agencies, other than the offices, departments, boards and agencies established by this Charter. The city council may by ordinance assign additional functions or duties to the offices, departments or agencies established by this Charter, but may not discontinue or assign to any other office, department or agency any function or duty assigned by this Charter to a particular office, department or agency.

## ARTICLE IX. - INDEPENDENT ANNUAL AUDIT

At the beginning of each fiscal year the council shall designate a certified public accountant or a firm of certified public accountants, who, as of the end of the fiscal year, shall make an independent audit of accounts and other evidences of financial transactions of the city government and shall submit a written report to the council and to the city manager. Such accountants shall have no personal interest, direct or indirect, in the fiscal affairs of the city government or of any of its officers. They shall not maintain any accounts or records of the city business, but within specifications approved by the council shall post-audit all books and documents kept by any office, department or agency of the city government.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

**State Law reference**— Fiscal audit required, F.S. § 166.241.

## ARTICLE X. - CITY CLERK

### Section 1. - Duties.

The City Clerk shall give notice of the meetings of the city council and of the public meetings of all city boards and committees; shall be responsible for the keeping the minutes of these proceedings; shall be custodian of the city's seal; shall authenticate by the clerk's signature and shall record in full in books kept for that purpose all ordinances and resolutions passed by the city council; and shall perform such other duties as required by state law or as may be assigned by the city manager or council. The City Clerk shall have the power to administer oaths.

(Ord. No. 2007-30, Exh. A, 9-4-2007/11-6-2007)

### Section 2. - Appointment and removal.

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

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 2007-30, Exh. A, 9-4-2007/11-6-2007)

## 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.

### Section 2. - 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.

## ARTICLE XII. - FIRE DEPARTMENT

### Section 1. - Establishment.

The city may have a paid and/or volunteer fire department which shall consist of a fire chief and such number of paid firemen as the city council may determine. The fire chief shall be the head of the fire department.

## Section 2. - Volunteer fire department.

The city may support and assist a volunteer fire department. Such support and assistance may include, but shall not be limited to, the furnishing of city fire trucks, fire-fighting equipment and supplies for any use by the volunteer fire department; payments to volunteer firemen for attendance at volunteer fire department meetings or for answering fire alarms and calls; and the payment of premiums on life insurance and hospitalization insurance policies covering the volunteer firemen.

## ARTICLE XIII. - FINANCIAL MANAGEMENT<sup>[3]</sup>

### Footnotes:

--- (3) ---

**State Law reference**— Budget adoption procedure, F.S. ch. 500.

### Section 1. - Fiscal year.

The fiscal year for the city government shall be from October 1st through September 30th of the succeeding year.

### Section 2. - Submission of budget and budget message.

On or before the first day of August of each year, the city manager shall submit to the city council a budget for the ensuing fiscal year and an accompanying message. The message shall explain and justify the budget in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the city for the ensuing fiscal year; describe the important features of the budget; indicate all major changes from the current year in financial policies, expenditures, and revenues, together with the reason for such changes; summarize the city's debt position, including factors affecting the ability to raise resources through debt issues; and include such other material as the city manager deems necessary.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

### Section 3. - Budget.

The budget shall provide a complete financial plan of all city funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the city manager deems necessary or the city council may require for effective management and an understanding of the relationship between the budget and the city's strategic goals. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

1. The proposed goals and expenditures for current operations during the ensuing fiscal year, detailed for each fund by department or by other organization unit, and program, purpose, or activity; method of financing such expenditures; and methods to measure outcomes and performance related to the goals;
2. Proposed longer-term goals and capital expenditures during the ensuing fiscal year, detailed for each fund by department or by other organization unit when practicable, the proposed method of financing each such capital expenditure, and methods to measure outcomes and performance related to the goals; and
3. The proposed goals, anticipated income and expense, profit and loss for the ensuing year for each utility or other enterprise fund or internal service fund operated by the city, and methods to measure outcomes and performance related to the goals. For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance exclusive of reserves.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

#### Section 4. - Council action on budget.

- a) *Notice and hearing.* Upon receipt of the budget from the manager, the council shall cause to be published on the city bulletin board and in at least one local daily newspaper servicing the city, a general summary of the budget; the times and places where copies of the message and budget will be available for inspection by the public; and establish the time and place, not less than two (2) weeks after publication, for a public hearing on the budget.
- b) *Amendment before adoption.* After the public hearing, the council may adopt the budget by resolution with or without amendment. In amending the budget, it may add or increase programs or amount, and may delete or decrease any programs or amount, other than expenditures required for debt service, or for estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditure to an amount greater than the total of estimated income.
- c) *Adoption/failure to adopt.* The budget shall be finally adopted by resolution not later than the twenty-seventh day of September. Should the council take no final action on or prior to such day, the budget, as submitted, shall be deemed to have been finally adopted by the council.

(Ord. No. 01-23, Exh. A(II), 8-21-2001/11-6-2001)

#### Section 5. - Appropriations.

- a) Appropriations for expenditures shall be established by the budget, and from the effective date of the budget the several amounts stated therein as proposed

expenditures shall be and become appropriated to the several objects and purposes set forth in the budget.

- b) The city manager shall have the authority to transfer any unused and unencumbered appropriation or portion thereof between general classifications of expenditures within any office, department, or agency of the city, or may transfer any unused and unencumbered appropriation or portion thereof from one office, department or agency to another; provided however, that such transfer shall not authorize any increase in the total budget without prior approval of the city council.
- c) All appropriations shall lapse at the end of the budget year to the extent that such appropriations have not been expended or committed to expenditure, and any appropriation made in one budget year shall not be valid or effective during any subsequent budget year.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988)

#### Section 6. - Restrictions.

- a) *Contracts and expenditures prohibited.* No officer, department or agency shall, during any budget year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money for any purpose, in excess of the amounts appropriated for that general classification of expenditure pursuant to this Charter. Any contract, verbal or written, made in violation of this Charter shall be null and void. Nothing in this section contained, however, shall prevent the making of contracts or the spending of money for capital improvements to be financed in whole or in part by the issuance of bonds, nor the making of contracts of lease or for services for a period exceeding the budget year in which such contract is made, when such contract is permitted by law.
- b) *Competitive bidding.* The council shall by ordinance adopt restrictions on the use of sole-source contracts and establish the procedures for competitive bidding.
- c) *No contract executed until bond resolution or ordinance effective.* No contract shall be executed for the acquisition of any property or the construction of any improvement or betterment to be financed by the issuance of bonds until the resolution or ordinance authorizing the issuance of such bonds shall have taken effect and any contract executed before such day shall be unenforceable in any court.

(Ord. No. 01-23, Exh. A(III), 8-21-2001/11-6-01; Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

## ARTICLE XIV. - PLANNING AND ZONING

### Section 1. - Planning and zoning board.

- 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.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 2007-30, Exh. A, 9-4-2007/11-6-2007)

### Section 2. - Board of adjustment.

- 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.

(Ord. No. 88-24, Exh. A, 8-30-1988/11-8-1988; Ord. No. 2007-30, Exh. A, 9-4-2007/11-6-2007)

### 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.

(Ord. No. 2007-30, Exh. A, 9-4-2007/11-6-2007)

## ARTICLE XV. - GENERAL AND MISCELLANEOUS PROVISIONS

### Section 1. - Oath of office.

Every officer of the Charter shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the city clerk:

"I solemnly swear (or affirm) that I will support the Constitution and will obey the laws of the United States and the State of Florida, that I will, in all respects, observe the provisions of the Charter and ordinances of the City of West Melbourne, and will faithfully discharge the duties of the office of \_\_\_\_\_."

### Section 2. - Effect of this Charter on existing law.

All laws and parts of laws relating to or affecting the city in force when this Charter shall take effect are hereby repealed and superseded to the extent that the same are inconsistent with the provisions of this Charter; insofar as the provisions of this Charter are the same in terms or in substance and effect as provisions of law in force when this Charter shall take effect, relating to or affecting the city, the provisions of this Charter are intended to be not a new enactment but a continuation of such provisions of law and this Charter shall be so construed and applied.

### Section 3. - Rights of officers and employees preserved.

Nothing in this Charter, except as specifically provided, shall affect or impair the rights or privileges of officers or employees of the city or of any office, department, board, commission or agency existing at the time when this Charter shall take effect, and not inconsistent with the provisions of this Charter, in relation to the personnel, appointment, ranks, grades, tenure of office, promotion, removal, pension and retirement rights, civil rights, or any other rights or privileges of officers or employees of said city or any office, department, board, commission or agency thereof.

### Section 4. - Title to property reserved.

The title, rights and ownership of property, uncollected taxes, special assessments, dues, claims[,] judgments, decrees and choses in action, held or owned by the City of West Melbourne under any previous Charter, shall pass to, and be vested in the municipal corporation organized under this Charter.

### Section 5. - Continuity of officer, boards, commissions or agencies.

Any office, department, board, commission or agency provided for in this Charter with powers and duties the same or substantially the same as those of an office, department, board, commission or agency heretofore existing shall be deemed to be a continuation of such office, department, board, commission or agency by which the same were heretofore exercised, and shall have power to continue any business, proceeding or other matter within the scope of its regular powers and duties commenced by an office, department, board, commission or agency by which such powers and duties were heretofore exercised. Any provision in any law, rule, regulation,

contract, grant or other document relating to such a formerly existing office, department, board, commission or agency shall so far as not inconsistent with the provisions of this Charter, apply to such office, department, board, commission or agency provided for by this Charter.

#### Section 6. - Continuance of contracts and public improvements.

All contracts entered into by the City of West Melbourne, or for its benefit, prior to the taking effect of this Charter, shall continue in full force and effect. Public improvements, for which legislative steps have been taken under laws or Charter provisions existing at the time this Charter takes effect, may be the provisions of such existing laws and Charter provisions.

#### Section 7. - Pending actions and proceedings.

No action or proceeding, civil or criminal, pending at the time when this Charter shall take effect, brought by or against the City of West Melbourne, or any office, department, board, commission or agency or officer thereof, shall be affected or abated by the adoption of this Charter or by anything therein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any office, department, board, commission or agency or officer party thereto may by or under this Charter be assigned or transferred to another office, department, board, commission, agency or officer, but in that event the same may be prosecuted or defended by the head of the office, department, board, commission or agency to which such functions, powers and duties have been assigned or transferred by or under this Charter.

#### Section 8. - Existing Acts, ordinances, resolutions.

All existing acts, ordinances, and resolutions not in conflict with the provisions of this Charter, shall continue in effect and unimpaired until repealed, amended, or modified by the city council.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

#### Section 9. - Claims against the city.

Any person or persons, natural or artificial, who have or acquired a claim or cause of action against the city by reason of the misfeasance, negligence, malfeasance, or willful misconduct of any servant, agent, officer, or employee of the city, or any person acting by, through, or for said city, shall file a notice of said claim or cause of action in writing with the city clerk of the city.

The city clerk shall immediately notify the city attorney of the filing of a notice as provided above. It shall be the duty of the city attorney upon receiving such notice to promptly investigate the matter and lay the facts, supported by available evidence, before the city council in written report, together with his recommendations thereon, and the city council may, after such report, make reasonable settlement for the injury

suffered, or the council may deny liability and direct the city attorney to defend any suit brought against the city for the recovery of damage arising from the injury.

**State Law reference**— Tort claims against the city, F.S. § 768.28.

Section 10. - Reservation of the name "City of West Melbourne."

No municipal corporation shall be formed in the State of Florida having as part of its name the words "West Melbourne" unless the city council shall have by resolution approved such use of the name by the municipal corporation.

Section 11. - Reserved.

**Editor's note**— Ord. No. 2006-29, Exh. A, adopted September 5, 2006, and passed at referendum November 7, 2006, deleted § 11 of Art. XV, which pertained to validation of acts under the previous Charter and was derived unamended from the original current Charter.

Section 12. - Extension of the corporate limits of the city.

The corporate limits of the City of West Melbourne may be extended and enlarged in compliance with the laws of the State of Florida.

**State Law reference**— Annexation procedure, F.S. ch. 170.

Section 13. - Charter amendments.

- a) This Charter may be altered or amended at any time in accordance with the provisions of general laws of the State of Florida.
- b) At least once every ten (10) years after the adoption of this Charter and more often if the city council deems it necessary or desirable, the city council shall appoint a Charter Review Committee to review the city Charter and recommend additions, deletions, or changes to the city council for its consideration.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

**State Law reference**— Procedure for amending Charter, F.S. § 166.031.

Section 14. - Initiative and Referendum.

- a) *Generally.*
  - 1) *Initiative.* The registered voters of the city shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, but such power shall not extend to the budget or capital program or

any ordinance relating to appropriation of money, levy of taxes, or salaries of city officers or employees.

- 2) *Referendum.* The registered voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money, levy of taxes.

b) *Commencement of proceedings.*

Any five (5) registered voters may commence initiative or referendum proceedings by filing with the city clerk an affidavit stating that they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioners' committee is filed, the clerk or other official designated by the council may, at the committee's request, issue the appropriate petition blanks to the petitioners' committee at the committee's expense.

c) *Petitions.*

- 1) *Number of signatures.* Initiative and referendum petitions must be signed by registered voters of the city equal in number to at least fifteen percent (15%) of the total number of voters registered to vote at the last regular city election.
- 2) *Form and content.* All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
- 3) *Affidavit of circulator.* Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he or she personally circulated the paper, the number of signatures thereon, that all signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
- 4) *Time for filing referendum petitions.* Referendum petitions must be filed within thirty (30) days after adoption by the council of the ordinance sought to be reconsidered.

d) *Procedure for filing.*

- 1) *Certificate of clerk; amendment.* Within twenty (20) days after the petition is filed, the city clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. Grounds for insufficiency are only those specified in subsection (c). A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk or other official designated by the council within two (2) days after receiving the copy of the certificate and files a supplementary petition with additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsection (c) (2) and within five (5) days after it is filed, the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient, and the petitioner's committee does not elect to amend or request council review under paragraph (2) of this section within the time required, the clerk shall promptly present his or her certificate to the council and the certificate shall then be a final determination as to the sufficiency of the petition.
- 2) *Council review.* If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two (2) days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition
- 3) *Court Review; New Petition.* A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

e) *Referendum petitions; suspension of effect of ordinance.* When a referendum petition is filed with the city clerk the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- 1) There is a final determination of insufficiency of the petition; or
- 2) The petitioners' committee withdraws the petition; or
- 3) The council repeals the ordinance; or
- 4) Thirty (30) days have elapsed after a vote of the city on the ordinance.

f) *Action on petitions.*

- 1) *Action by council.* When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance in the manner provided in Article III or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiative ordinance without any change in substance within sixty (60) days or fails to repeal the referred ordinance within thirty (30) days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the city.
- 2) *Submission to voters.* The vote of the city on a proposed or referred ordinance shall be held not less than thirty (30) days and not later than one (1) year from the date of the final council vote thereon. If no regular city election is to be held within the period prescribed in this subsection, the council shall provide for a special election otherwise the vote shall be held at the same time as such regular election, except that the council may, in its discretion, provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.
- 3) *Withdrawal of petitions.* An initiative or referendum petition may be withdrawn at any time prior to the fifteenth (15th) day preceding the day scheduled for a vote of the city by filing with the city clerk a request for withdrawal signed by at least two-thirds ( 2/3 ) of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

g) *Results of election.*

- 1) *Initiative.* If a majority of the registered voters voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.
- 2) *Referendum.* If a majority of the registered voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006)

## ARTICLE XVI. - SEPARABILITY AND REPEAL OF CONFLICT

### Section 1. - Separability clause.

If any section or part of section of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Charter nor the

context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

Section 2. - Conflicts with other laws.

All laws or parts of laws inconsistent or in conflict with this amended Charter are hereby repealed to the extent of conflict.

Section 3. - Effective date.

This amended Charter shall take effect immediately upon approval by a majority vote of the electors of the City of West Melbourne voting in the election on November 6, 2007.

(Ord. No. 2006-29, Exh. A, 9-5-2006/11-7-2006; Ord. No. 2007-30, Exh. A, 9-4-2007/11-6-2007)

### CHARTER COMPARATIVE TABLE - ORDINANCES

This table shows the location of the sections of the basic Charter and any amendments thereto.

Ordinance Number	Adoption Date	Referendum Date	Section	Section this Charter
88-24	8-30-1988	11- 8-1988	Exh. A	Art. III, §§ 3—13
				Art. IV, § 3
				Art. V, § 2
01-22	8-21-2001		1	Art. IV, § 1
01-23	8-21-2001	11- 6-2001	Exh. A(I) Added	Art. III, § 16
			Exh. A(II)	Art. XIII, § 4(b), (c)
			Exh. A(III)	Art. XIII, § 6(b)
			Exh. A(IV)	Art. III, § 7
2006-29	9- 5-2006	11- 7-2006	Exh. A	Preamble
				Art. I
				Art. III, §§ 1(c),
				Art. IV, §§ 1, 3
				Art. V, §§ 1—3
				Art. IX
				Art. XIII, §§ 2,
				Art. XV, §§ 8,
				Art. XVI, § 3

Ordinance Number	Adoption Date	Referendum Date	Section	Section this Charter
			Rpld	Art. XV, § 11
			Added	Art. V, § 4(l)
				Art. XV, § 14
2007-24	7-24-2007		1	Art. IV, § 1
2007-30	9- 4-2007	11- 6-2007	Exh. A	Art. III,
				§§ 7, 11
			Dltd	§ 2
				Art. IV, § 1
				Art. VII
				Art. X,
				§§ 1, 2
				Art. XIV,
				§§ 1, 2
			Added	§ 3
				Art. XVI, § 3
2010-16	7-6-2010	11-2-2010	I	Art. III, § 12(b), (c)
			II	Art. III, § 6
			III	Art. III, § 6
				Art. IV, § 3