

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
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www.westmelbourne.org

CHARTER REVIEW COMMITTEE

AGENDA

September 12, 2019
6:30 p.m.

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

The Committee is asked to approve the minutes of July 11, 2019.

5. **SUMMARY OF CHANGES**

As the Committee continues their review, any changes approved by the Committee will be compiled into a continuing document. I have attached the changes approved at the meeting of July 11, 2019. As future recommendations are made, they will be added to this document.

6. **RESPONSE TO QUESTIONS**

In response to the questions that were raised at the last meeting, attached is a memo provided by City Attorney Richardson. Review of this information pertains to Article III, Section 7 of the Charter. Also attached is a history of City Council rewards prepared by Harry Stapor. City Attorney Richardson refers to the Meeting Rules and Order, a copy of which will be provided to you at the meeting.

Also attached is a review prepared by Mr. Stapor on remote participation. Mr. Stapor is proposing a change to Article III, Section 9 on Forfeiture of Office and Article III, Section 13 on Council quorum and rules.

Lastly, a memo is provided that summarizes the cost to enroll the Mayor and Council in the FRS. Additional information is provided under separate cover.

7. REVIEW OF CHARTER

Attached is a portion of Article III and Articles IV and V for review. Staff is proposing a change to Section 7 – Compensation for mayor and council members Article IV covers the election of officials; the companion language in the City's Code (Chapter 22) is also included. City Clerk will update the Committee on a proposed amendment to Chapter 22 approved by Council.

8. PUBLIC COMMENTS

9. ADJOURNMENT

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

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CHARTER REVIEW COMMITTEE

MINUTES

July 11, 2019

1. CALL TO ORDER

Chair Phrampus called the meeting to order at 6:01 p.m.

2. PLEDGE OF ALLEGIANCE

Chair Phrampus led the pledge of allegiance.

3. ROLL CALL

Present: Chair Stephen Phrampus, Vice-chair Michele Rutledge, Committee Members Bill Mettrick, Chris Gibbs, and Matthew Brothers.

Absent: Committee Members Sandra Carbon and Sandra Michelson.

Committee Member Mettrick moved to excuse Sandra Carbon and Sandra Michelson. Committee Member Gibbs seconded the motion, which passed 5-0.

4. APPROVAL OF MINUTES

Chair Phrampus moved to approve the minutes of June 13, 2019. Vice-chair Rutledge seconded the motion, which passed 5-0.

5. MEETING RULES

Committee Members agreed to set a time limit on the meetings to 8:00 p.m. All members agreed.

Committee Member Brothers moved to require that motions must pass by a majority vote of those present. Vice-chair Rutledge seconded the motion, which passed 5-0.

6. SURVEY OF COUNCIL COMPENSATION

City Clerk Hanscom reviewed the survey conducted of those cities that were included in the salary and compensation survey of employees and asked for compensation levels for elected officials. Much of the information was available publicly through the City's charter. In most cases, the Mayor has a higher salary than the other Council members.

City Clerk Hanscom reviewed several differences including the monthly stipend that is provided by some cities in addition to the annual salary. She noted the City of West Melbourne officials are provided an annual increase according to the Consumer Price Index (CPI), which was not found in other charters. The City of Rockledge's charter provided for salaries to be increased by ordinance, which means the elected officials can increase their salaries without approval of the voters. Another difference is that many of the cities offer a monthly stipend in addition to the salary.

City Clerk Hanscom also noted that the form of governments were similar in that they were Council-Manager excepting the City of Orlando, which had a strong Mayor-Council form of government and the salaries for the elected officials was reflective of the difference.

City Clerk Hanscom also reviewed the benefits and noted that two of the cities surveyed required elected officials to pay the full cost of the benefits. The City of West Melbourne, like many of the other cities, offer health benefits at the same level as other employees.

Chair Phrampus asked if it would be beneficial to update the language to reflect what salaries are now with the increases that have occurred. City Clerk Hanscom noted that it would not change current practice and would need to be approved by the voters. She reminded the Committee that they should be selective on the number of changes.

Chair Phrampus asked if the amendments could be linked so that one vote could change several sections. City Clerk Hanscom stated that she would need to check with the City Attorney.

7. REVIEW OF CHARTER

City Clerk Hanscom reviewed Article I and Article II and the amendments that have occurred. Chair Phrampus distributed copies of the state statutes for home rule in Chapter 166 for further information. Committee Members saw no changes necessary for these two Articles.

City Clerk Hanscom noted that Article III addressed the elected officials and the powers and duties. She noted that staff suggested changes were proposed based on past issues. Staff was not necessarily recommending the changes but wanted the Committee to be aware of the suggested changes.

The Committee reviewed Sections 1-4 of Article III and had no proposed changes.

City Clerk Hanscom explained that a change to Section 5 was to allow for the Deputy Mayor to be selected by the Council every year. She noted when Council had 2-year terms there was an election every year. Since going to 4-year terms, there is no election in odd-numbered years. Therefore, to allow for the selection of a Deputy Mayor every year, the language was changed to select a Deputy Mayor in November.

Harry Stapor, 640 Manor Place, stated that the purpose of selecting a Deputy Mayor was to do so after the election. Therefore, he suggested the language include a statement that the Deputy Mayor should be chosen following the certification of the election. He noted that there were other areas of the charter would need to address the change to 4-year terms.

Committee Members discussed the Deputy Mayor serving for two years and whether that would be an issue. Committee Member Mettrick stated that he did not believe it would be an issue. Council had selected the same individual for Deputy Mayor in consecutive years in the past.

Committee Member Gibbs stated he believed the proposed language as provided by staff would accomplish what was being proposed by Mr. Stapor.

Committee Member Brothers moved to accept the change to Section 5 to state that a deputy mayor is selected every year in the third week of November. For those years with a general election, the deputy mayor shall not be selected until the election has been certified by city council. Committee Member Mettrick seconded the motion, which passed 5-0.

The Committee reviewed Section 6 which addressed terms of office. City Clerk Hanscom explained the second paragraph of this section addresses how the seats would run for 4-year terms based on the change from 2-year terms. This language could be changed to clean up some of the verbiage to simply say when the seats would run, but it would not change the current practice. Therefore, based on discussions with the City Attorney, it is recommended that the language stay the same.

Committee Members discussed having the elections held according to seat number. City Clerk Hanscom noted that this change occurred in 2006. She asked Mr. Stapor to provide a reasoning behind why this occurred. Mr. Stapor stated that it was done to remove the politics from the election. Having candidates run at large means that they are all running to represent the city rather than running against an individual.

Bob Willmarth, 261 Naylor Drive and former Council Member and Mayor, stated that a candidate had to select a seat. In many cases, the candidate would run against an individual that they felt they had a better chance of winning. He stated that the present system of running at large was much better.

Mayor Hal Rose noted that there could be reasons for running by seat versus at large. He noted that a weak council member could be voted out if a better candidate was running against him/her. In addition, the candidates are listed on the ballot in alphabetical order and some voters may not vote for a really good candidate that is

further down on the list. In addition, voters are told to select three candidates and may only select one. Voters may make more selections if there was one selection for each seat.

Committee Member Brothers stated he could see reasons for running according to seat. For example, if you strongly disagreed with a council member, you could run against him/her in the next election by running by that specific seat number. He also agreed the voters may only select the first three on the list.

Chair Phrampus stated he believed it was the candidate's job to go out to the residents to garner support. Therefore, he was in favor of the current system.

City Clerk Hanscom noted that running by seat number would fall under Article IV so this issue may come back to the Committee when that is reviewed.

Committee Member Mettrick moved to not make any changes to Section 6. Committee Member Gibbs seconded the motion, which passed with a 5-0 vote.

The next section reviewed was Section 7, which was on compensation for mayor and council members. City Clerk Hanscom stated staff had chosen not to make any recommendations on this section. She noted that information had been provided to members from Charles Settgast on his concerns. The Committee reviewed the information provided via email from Mr. Settgast.

City Clerk Hanscom explained previous charter committee members had revised the charter to use the word "remuneration" to include all compensation for council. It was the goal of the committee members to use this word so that it would include all benefits. However, the previous City Attorney had opined that the word "remuneration" would not include benefits. As a result, the City Council had approve health benefits for elected officials.

Chair Phrampus stated he had looked up the definition of "remuneration" in several locations and stated he would agree with Mr. Settgast and did not understand how the City Attorney at that time would recommend that it would not include benefits. However, he stated that he did not see a problem with providing benefits to Council Members. Committee Member Brothers agreed that he did not see a problem with Council Members receiving benefits. He noted that he had reviewed the email from Mr. Settgast and disagreed that someone would run for Council solely to receive the health benefit.

Chair Phrampus stated that if the language stays the same, there would be no change in current practice. Committee Member Brothers suggested that the wording be changed to clearly state what should be included in the compensation for Council.

Mr. Willmarth stated that it was the clear intent that the salary would pay for everything. He stated that no one would run for Council to get rich and it was not meant to be a full-time job.

Mr. Stapor commented that the money paid to Council is collected from residents and businesses in the City and the cost of providing is through public funds. The cost of providing benefits is double the amount of money provided for council salaries. This did not go to the voters for consideration. He noted that the comments at the time when considering health benefits from Council Members was that it was not for the sitting board but was to encourage others to run for council. He stated that serving on council was not like a full-time job and should not receive full-time benefits. He felt the public got “duped” and there was a loss of integrity.

Chair Phrampus asked about Council Members receiving benefits. City Clerk Hanscom noted that all Council Members have chosen the health benefit. In some cases, if alternate health care was available to the Council Member, the dental and vision only benefit was chosen.

Committee Member Brothers stated, although he did not see an issue with council receiving health benefits, it was troubling on how it occurred. He stated that it needed to be clarified. Vice-chair Rutledge agreed and stated that it needed to be transparent going forward so the voters know.

Chair Phrampus asked, if language only included specifics regarding the salary and nothing about benefits, would that restrict what benefits could be provided. City Clerk Hanscom stated that excluding the language in the Charter on the prohibition of benefits would allow Council to consider providing the benefits.

Vice-Chair Rutledge stated that she believed it should be spelled out. She also recommended that any loophole to take a payout for not taking the benefit should not be permitted. Committee Members agreed.

Committee Members discussed an option for retirement and asked that clarification be provided on the state law that requires retirement be provided for elected officials that have served 20 years.

Chair Phrampus also asked that the cost of adding the elected official class to the City’s retirement system with FRS be provided to the committee. He said that this is more beneficial than health benefits. He would like to see Council Members awarded for the time that they have served.

The Committee asked that they continue discussion Section 7 at the August meeting.

The Committee then reviewed Section 8 on prohibitions for Council and the Mayor. No changes were suggested by staff.

The Committee reviewed Section 9 on forfeiture of office. Mr. Stapor stated the spirit and intent of government in the sunshine was to be able to attend and view the proceeding. However, when a Council Member attended remotely, that could not be done. He suggested that the fourth item include a statement on being physically present. And suggested that remotely attending three consecutive meetings could be considered as grounds for forfeiture of office.

Mr. Stapor also suggested that a fifth item be added stating that remotely participating in more than three regular meetings in any calendar year would be grounds for forfeiture of office.

Committee members discussed the sunshine law and whether or not physical attendance was required at meetings. It was asked that verification be obtained on whether physical attendance was required. It was noted that the member attending remotely would not count toward meeting the quorum. The Committee would come back to address this section once that information was provided.

8. PUBLIC COMMENTS

Mayor Rose suggested that any motion should pass with at least 4 affirmative votes. Committee members agreed to discuss this at the next meeting.

9. ADJOURNMENT

Committee Member Mettrick moved to adjourn the meeting at 8:01 p.m. Chair Phrampus seconded the motion, which passed 5-0.

Chair Stephen Phrampus

Cynthia S. Hanscom, City Clerk

Summary of Changes Proposed by the Charter Review Committee

ARTICLE III. CITY COUNCIL AND MAYOR

Section 5. - Deputy mayor.

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

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TO: Charter Review Committee

FROM: Morris Richardson, City Attorney

DATE: August 2, 2019

RE: Questions from 7/11/19 Charter Review Committee Meeting

1. Can amendments be linked or bundled on the ballot?

Yes. Under the present state of the law, a single subject requirement does not presently exist with respect to City of West Melbourne Charter amendments. The seminal case on this matter is *Charter Review Commission of Orange County v. Scott*, 647 So.2d 835 (Fla. 1994). In that case, the Florida Supreme Court considered whether a single subject requirement applied to an Orange County Charter amendment proposed by the CRC that both created a Citizen Review Board reviewing use of force or abuse of power allegations relating to Sheriff’s deputies, and converted the Sheriff, Property Appraiser, and Tax Collector into charter officers, abolishing their constitutional officer status. After analysis, including a review of four instances in which a single subject requirement is expressly imposed in the text of the Florida Constitution or Florida Statutes, the court held that a single subject requirement does not apply to county charter amendments proposed by a charter review commission. *Id.* at 837. Subsequently, in *Seminole County v. City of Winter Springs*, 935 So.2d 521, 528 (Fla. 5th DCA 2006), the Fifth District Court of Appeals (the state appellate court applicable to Brevard County), in upholding a charter amendment proposed by the Seminole County Commission, observed that, “Neither the Florida Constitution nor the Florida Statutes applies a single subject rule to proposed amendments to county or city charters; therefore, any such limitation must be found within the charter itself.” *Accord, Shulmister v. Larkins*, 856 So.2d 1149, 1151 (Fla. 4th DCA 2003).

2. How does the Sunshine law or case law address attending Council meetings remotely? And, Can the City prohibit remote attendance?

Section 286.011(1), Florida Statutes, Florida’s Government-in-the-Sunshine Law, provides:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has

not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

The Sunshine Law contemplates that meetings of bodies such as our City Council will be held in a public place with the members physically present. The City Charter also requires that all meetings of the Council shall be open to the public and shall be held within the city limits. On a number of occasions, the Office of Attorney General has opined regarding the practice of conducting public business by electronic means and whether this practice complies with the Sunshine Law. The Attorney General's office has concluded that "the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness." AGO 03-41; *see also* AGO 02-82 (physically disabled members of a committee could participate and vote on board matters by electronic means if they are unable to attend); AGO 92-44 (county commissioner who was physically unable to attend a meeting because of medical treatment could participate in the meeting by using an interactive video and The Office of the Attorney General cautions, however, that "the participation of an absent member in the meeting by telephone conference should be permitted only in extraordinary circumstances and when a quorum of the board members is physically present at the meeting. Whether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgement of the board." AGO 03-41 (emphasis added). The Attorney General's office "has been reluctant to extend the participation in public meetings of public officials by electronic means to situations other than those involving a serious medical condition and the presence otherwise of a quorum at the public meeting place." AGO 02-82.

Section 3.5 of the City Council's Meeting Rules and Order states:

- A. Councilmembers, due to a physical disability or illness or who may be out of town, state, or the country, and unable to attend a scheduled council meeting, may participate and vote in a council meeting by the use of communications media technology, that is currently utilized by the city, provided a quorum is physically present at the meeting. The absent member may not be counted for purposes of constituting a quorum.
- B. The communications media utilized must enable the absent member to participate in the discussions, to be heard and/or seen by the other councilmembers and the public, and to hear discussions taking place during the meeting. (AGO 92-44 and 94-55).

It is my opinion that Section 3.5 of the Meeting Rules and Order generally complies with the intent of the Sunshine Law. However, in 2016, I recommended the following revisions (deletions in ~~strike through~~, additions in underline), which have not been formally considered:

- A. Councilmembers who, due to extraordinary circumstances such as a physical disability or illness ~~or who may be out of town, state, or the country, and~~, are unable to attend a scheduled council meeting, may participate and vote in a council meeting by the use of communications media technology, that is currently utilized by the city, provided a quorum is physically present at the meeting and a majority of the council members present vote in favor of approving such participation. The absent member may not be counted for purposes of constituting a quorum.
- B. The communications media utilized must enable the absent member to participate in the discussions, to be heard and/or seen by the other councilmembers and the public, and to hear discussions taking place during the meeting. (AGO 92-44 and 94-55).

Whether or not scheduling conflicts constitute sufficient “extraordinary circumstances” should be determined by Council on a case-by-case basis. Occasional business travel that cannot reasonably be scheduled to avoid conflicting with a meeting may be a valid example of an “extraordinary circumstance.” Being out of town for a vacation, or because one has moved to, or is frequently in, a different state, is not an example of an “extraordinary circumstance” that would justify remote participation. I would also caution that remote participation in a quasi-judicial matter may be inappropriate under any circumstances, because the absent council member may not have access to any additional evidence presented and may not be able to judge the credibility of the witnesses.

Yes, the City could prohibit remote participation. The City Council could do so within its Meeting Rules, or the Charter could be amended to do so. However, the existing constraints of the Sunshine Law and requirements of due process as outlined above seem to strike an appropriate balance that allows for remote participation in legislative matters in extraordinary circumstances, and when a quorum is physically present. I do not recommend an inflexible prohibition on all remote participation.

3. What does the state law say in regards to requiring retirement be provided to elected officials after serving for 20 years?

And I quote:

Florida Statutes § 112.048. Voluntary retirement with half pay authorized for elective officers of cities or towns; appropriation

(1) The intent of the Legislature is to authorize and direct each city and town to provide a system of retirement for elected officials, but it is further the intent that each city or town may determine whether the system will be contributory or noncontributory.

(2)(a) From and after June 3, 1939, whenever any elective officer of any city or town of this state has held any elective office of such city or town for a period of 20 years or more consecutively, or for a period of 20 years or more consecutively, except for one period not exceeding 6 months, such elective officer may

voluntarily resign or retire from such elective office with the right to be paid on the officer's own requisition by such city or town during the remainder of his or her natural life a sum equal to one-half of the full amount of the annual or monthly salary that such city or town was authorized by law to pay said elective officer at the time of resignation or retirement; and such city and town shall appropriate and provide in its annual budget sufficient moneys to meet the requirements of this section when no other plan is available for elected local officials. In cases in which an elective officer during any term of office entered or enters and served or serves in the Armed Forces of the United States during any period during which the United States was or shall be engaged in war and thereafter was or shall be appointed or again elected to the same elective office prior to discharge from such service in the Armed Forces, such time of service in the Armed Forces shall not be construed to be a break in consecutive service and shall be counted in determining the years of consecutive service of such elective officer.

(b) The provisions of this subsection shall not operate to preclude any elected officer from retiring under, and receiving benefits pursuant to, the provisions of this section as it existed prior to October 1, 1973, if such officer had, prior to that date, completed the required 20 years of service or been elected to a term upon the expiration of which he or she completes the required 20 years of service. However, if on October 1, 1973, an elected officer had completed at least 10 of the required 20 years of service, the city or town may elect to provide an annual or monthly retirement salary as provided in this subsection.

(3) Each city or town may by ordinance establish a contributory retirement system for those officials defined in subsection (2). The rules for participation, the amount of the official's contributions, and the method of appropriation and payment may be determined by ordinance of the city or town.

A Brief History of City Council Rewards

Prior to 2006

As of 1-January-2006 the text of **Charter Article III Section 7, Compensation for mayor and council members**, was as follows.

The initial salary of members of the city council, except the Mayor, shall be two hundred dollars (\$200.00) per month. The initial salary of the Mayor shall be two hundred fifty dollars (\$250.00) per month. The city council shall, by majority vote, submit to the electors at a regular city election date any future salary changes for council members. No salary change shall be effective unless such change is approved by a majority of the electors voting in such referendum election.

Charter Review Committee of 2006

Early in the tenure of the 2006 Charter Review Committee, it was identified to the members that in addition to the monthly compensation specified in Charter Article III, Section 7, previous City Council Administrations had decided to authorize an additional payment to each City Council Member which in 2006 consisted of two separate monthly awards of \$100 each -- one for “normally recurring monthly office expenses” and the other for “normally recurring monthly travel expenses” to attend various meetings with other governmental administrations, both municipal and county. A further stipulation was that both of these “augmenting monthly \$100.00 payments” would not only be automatic but also that neither would require the submission of any itemized expense report as justification for such payments. It was explained that these monthly “compensation augmenting” authorizations -- beyond the amounts specified in Charter Article III Section 7 -- were enacted after several attempts to amend the City Charter to increase the monthly compensation for City Council Members failed to enjoy the required approval of the electors. Perhaps the majority of these electors remembered a warning attributed to Benjamin Franklin, one of this Country’s “Founding Fathers”, who observed:

“When the people find that they can vote themselves money, that will herald the end of the republic.”

After considerable discussion, during which the displeasure of the citizens with respect to the City Council authorizing additional monthly payments to “augment” the monthly compensation identified in Charter Article III Section 7 was nearly unanimous among the 2006 CRC Members, the 2006 CRC recommendation to the City Council was to offer for voter approval a proposal to amend the text of Charter Article III Section 7 as follows.

The remuneration, including salary plus necessary and ordinary expenses shall be four hundred dollars (\$400.00) for council members per month and four hundred fifty dollars (\$450.00) per month for the mayor. The remuneration of the city council and the mayor shall increase or decrease annually based on the change in consumer price index (all urban consumers CPI) from its value on January 1, 2007. 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.

Although the City Council endorsed the idea of changing the existing text for Charter Article III Section 7, they chose to change the wording proposed by the 2006 CRC recommendation by proposing instead to eliminate the existing text in its entirety replacing it with the following.

The compensation for the mayor and council members shall be established by ordinance.

Per the 7-November-2006 General Election results, the City Council Approved Amendment to Charter Article III Section 7 was DEFEATED by the City's Electors:

- **2,653 Opposing the proposed change**
- **2,170 Approving the proposed change.**

Once again, perhaps a majority of the City's electors remembered Benjamin Franklin's warning.

Charter Review Committee of 2007

The 2007 CRC reconsidered the changes to Charter Article III Section 7 proposed by the 2006 CRC and once again recommended revising the text for Charter Article III Section 7 as follows.

The remuneration, including salary plus necessary and ordinary expenses shall be four hundred dollars (\$400.00) for council members per month and four hundred fifty dollars (\$450.00) per month for the mayor. The remuneration of the city council and the mayor shall increase or decrease annually based on the change in consumer price index (all urban consumers CPI) from its value on January 1, 2007. 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. The city council shall, by majority vote, submit to the electors at a regular city election date any future salary changes for council members. No salary change shall be effective unless such change is approved by a majority of the electors voting in such referendum election.

This year, the City Council approved, without change, the 2007 CRC recommendation for amending the text of Charter Article III Section 7 and authorized its placement on the 6-November-2007 General Election Ballot for the consideration of the City's Electors.

Per the 6-November-2007 General Election results, the 2007 CRC Recommended / City Council Approved Amendment to Charter Article III Section 7 was APPROVED by the City's Electors:

- **1,330 Approving the proposed change**
- **494 Opposing the proposed change.**

The unambiguous message here is that the City Elector's are fair but do not desire to empower the City Council with the authority to determine their own remuneration by ordinance -- a process that does not require elector approval and is exempt from the Referendum empowerment of Charter Article XV, Section 14, Paragraph (a), Subparagraph (2).

Charter Review Committee of 2010

During the 1-February-2010 meeting, the Committee discussed rewording Article III Section 7 to clarify language on Council Compensation. Chair Sett gast informed the Committee that this issue arose from a recent proposal to provide health insurance to council members. The Committee members were asked to consider language revisions to be discussed at the next meeting.

During the 1-March-2010 meeting, the 2010 CRC reviewed proposed language prepared by Chair Sett gast to clarify language in Charter Article III, Section 7 on compensation for the mayor and council members. The proposed text change -- ***represented in underlined italic font*** -- to this Article is as follows.

*The remuneration, including salary plus necessary and ordinary expenses, **and any other benefit or compensation that originates from City funds** shall be four hundred dollars (\$400.00) for council members per month and four hundred fifty dollars (\$450.00) per month for the mayor. The remuneration of the city council and the mayor shall increase or decrease annually based on the change in consumer price index (all urban consumers CPI) from its value on January 1, 2007. 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. The city council shall, by majority vote, submit to the electors at a regular city election date any future salary changes for council members. No salary change shall be effective unless such change is approved by a majority of the electors voting in such referendum election.*

This proposed change was unanimously approved by thirteen 2010 CRC Members present.

Per the minutes for the 26-April-2010 CRC meeting, the text for Item 2 states that City Attorney James Wilson was present. Subsequently, the text for Item 4 states:

“Committee Members agreed that Chair Sett gast and Vicky Treadwell should work with the City Attorney to come up with language for Council Compensation to be considered by the Committee at their next meeting.”

Per the minutes for the 3-May-2010 CRC meeting, the text for Item 6 indicates that the Committee discussed the two options suggested by the City Attorney and unanimously agreed to the first one -- leaving the text of Charter Article III Section 7 UNCHANGED from that approved by the City Elector’s on the 6-November-2007 Ballot.

Accordingly, NO CHANGE to the text (adopted by the City’s Electors during the 6-November-2007 General Election) of Charter Article III Section 7 was tendered by the 2010 CRC to the City Council. However, prior to summarizing the vote on accepting the first option offered by the City Attorney, the text for Item 6 of the 3-May-2010 CRC meeting concludes with:

It was suggested this item (Council Compensation) be considered with the next Charter Review.

City Council Actions since 2010

At the 17-July-2012 Council Meeting, Agenda Item 8E addressed Resolution 2012-18 which authorized the Council Members to voluntarily participate on an individual basis in the City's Health, Dental and Life Insurance programs whereby the City would pay the entire monthly premium for single party coverage as negotiated for the 1-August-2012 through 31-July-2013 plan year. The Staff Report included in this particular agenda item provides an interesting history for such actions, commencing with the 17-November-2009 Council Meeting and then progressing to the 20-March-2012 Council Meeting when Resolution 2012-11 was adopted by the Council where the 50% cost payment by the City at that time for single party coverage would be deducted from the monthly compensation payment to City Council Members authorized by Charter Article III, Section 7.

Under the provisions of Resolution 2012-18 not only would the entire cost of the single party coverage be borne by the City -- WITHOUT reducing the amount of compensation authorized by Charter Article III, Section 7 -- but Resolution 2012-11 would be rescinded in its entirety. For the coverage limitations negotiated by the City for the 1-August-2012 through 31-July-2013 plan year, the annual cost, to be paid in 12 equal monthly installments by the City, for each single party participating in the City's Dental, Health and Life Insurance programs was \$6,930.24 -- which is equivalent to a monthly payment of \$577.52.

Bolstered by the West Melbourne City Attorney's interpretation, based upon an archaic definition, that the word "remuneration" does not include "benefits" -- even though Mr. Bentley "Googled" the word while sitting on the dais and read aloud the first definition which included words to the effect that "... *in addition to wage or salary, a number of complementary benefits are increasingly popular remuneration mechanisms ...*" -- the West Melbourne City Attorney steadfastly maintained that "remuneration" does not include "benefits" and therefore the financial responsibilities within Resolution 2012-18 were separate and apart from the limitations imposed by Charter Article III, Section 7. Ah yes, archaic definitions, once upon a time the word "gay" meant only happy and festive (as in the Christmas Carole "*Deck The Halls*") but not so much today. The point is, the accepted definition of words (in the vernacular of the people) evolve over time -- independent of whether or not the legal profession accepts such change.

Is such a "City Council favorable" interpretation of the word "remuneration" by the City Attorney all that unusual? Can not attorneys routinely be found in court passionately arguing opposing sides of a common issue, and just who are these attorneys passionate for? It is their clients that not only retained them but can also dismiss them at will. After all, if an attorney cannot passionately represent his client, that attorney can always decline the representation offer. At that time Mr. Wilson, the West Melbourne City Attorney, often expressed that although his title was City Attorney, he was the City Council's Attorney since Charter Article VII exclusively empowers the City Council with the authority to hire and fire the City Attorney -- and Mr. Wilson only commenced to negotiate his September-2015 resignation in the spring of 2015.

Of great interest is that during the discussion of Agenda Item 8E every Council Member -- even the Council sponsor of this Agenda Item -- publicly stated "*This benefit is not for me, I have my own insurance*", yet no Council Member offered a second to a motion by Mr. Bentley amending the main motion to adopt Resolution 2012-18 whereby this benefit package would not be available to any current City Council Members for the remainder of their unexpired terms. The main theme voiced by the supporters of this "City Funded" insurance initiative alleged that

authorizing voluntary participation in this benefit program among the winners of City Council elections would serve to increase the number of City Residents declaring their candidacy for City Council elections. Is it truly in the City's best interests for the voters to suspect that the primary reason for a particular candidacy is that person's hope of securing Dental, Health and Life Insurance coverage if actually elected?

Ultimately Resolution 2012-18 was approved "4-to-3" by the City Council with Members Bentley, Mettrick and Young dissenting. After the adoption of Resolution 2012-18, early the next morning, Mr. Tice -- the Council sponsor who had been recognized to speak a second time during the discussion so that he too could utter "***This benefit is not for me, I have my own insurance***" -- was the first Council Member to enroll in this benefit program.

Once again, the public was deceived by "self-benefiting" Council actions to secure financial rewards without the "check and balance" of voter approval. But then, it happened at least twice prior to 2006 with the two separate monthly payments evolving to \$100.00 each. **However, with the sound defeat -- during the 7-November-2006 General Election -- of the City Council's proposed amendment to Charter Article III, Section 7 that would authorize the City Council to establish its own compensation by ordinance exclusive of voter approval, the voters established a clear and unambiguous mandate that the "check and balance" of voter approval for any change in Council Compensation was overwhelmingly desired by the voters.** If you're keeping score, the award of benefits in 2012 was the "Third Strike" by the Council in awarding itself routinely recurring monthly financial rewards without voter approval.

Suggested action for the 2019 CRC with respect to Charter Article III, Section 7.

1. Whereas, the City has no money of its own to fund the remuneration for City Council Members that was not first taken from City Residents and Businesses; and,
2. Whereas, City Residents and Businesses have a monetary interest in the preservation of the "check and balance" of voter approval (per Charter Article III, Section 7) for all City funds normally and routinely provided to City Council Members on a monthly recurring basis without the need for any expense report justifications; and,
3. Whereas, the Referendum empowerment defined in Charter Article XV, Section 14, Paragraph (a), Subparagraph (2) -- which provides residents a mechanism to rescind an action by the City Council -- **DOES NOT** "... *extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money, levy of taxes ...*";
4. Therefore, a revised variant -- bringing both of the dollar amount value limitations current as of June-2019 -- of the 2010-CRC recommendation (that was never tendered to the City Council) **limiting the City's financial exposure for monthly payments solely benefiting the City Council Members**, such as follows, seems entirely appropriate and absolutely justified for **Charter Article III, Section 7**.

In order to limit the City's routinely recurring financial exposure and insure the "check and balance" of ultimate voter approval, the total remuneration, including salary plus necessary and ordinary expenses, and any other benefit or compensation that originates from City funds -- excluding only the employer paid portion of the mandatory FICA deduction on employee salary -- paid to the mayor shall be five hundred fifty dollars (\$550.00) per month while each of the remaining council members shall be paid five hundred dollars (\$500.00) per month. The remuneration of the mayor and the remaining council members shall increase or decrease annually based on the change in consumer price index (all urban consumers CPI) from its value on January 1, 2019. No increase in the remuneration of the mayor and the remaining council members beyond that afforded by the CPI shall be effective unless such change is submitted to the electors at a regular city election date and such change is approved by a majority of the electors voting in such referendum election.

Lastly, keep in mind the following three key thoughts:

- 1. The ONLY money the City has to fund any Council remuneration package is money the City first took from its residents and businesses.**
- 2. WITHOUT the check and balance of VOTER APPROVAL for every action of the City Council awarding themselves routinely recurring benefits and monies for which the cost is satisfied from Public Funds, either in whole or in part, the City Council Members are acting with UNCHECKED Absolute Power.**
- 3. There is far more than a modicum of truth in the folk adage "Power Corrupts, and Absolute Power Corrupts Absolutely".**

Harry J. Stapor

City Resident and Member of the 2006, 2007 and 2010 Charter Review Committees

Charter Amendments Constraining Remote Participation

In the recent past, remote participation at Council Meetings -- which per the Florida “*Government In The Sunshine*” statute must necessarily be conducted in the open before the public -- by a particular Council Member has been exploited in the extreme not only to the detriment of the public but also in possible violation with the intent of the Florida “*Government In The Sunshine*” statute whereby the public has a genuine expectation of being able to observe both the actions of the participating Council Members as well as the interactions among not only all the Council Members but also between any of the Council Members and the public.

In contrast to an open meeting conducted before the public, where the participating Council Members can be readily observed by the public in attendance at the meeting, any Council Member exercising remote participation to date has only been able to be heard, **but not seen**, by the public. Therefore, any remote participating Council Member cannot be observed by the public in an equivalent manner as can those Council Members “Physically Present” within the meeting chamber concurrent with the conduct of the meeting.

And even in the event that such remote participation is possible in the future via two-way video conference, the field of view for the display showing any remotely participating Council Member would be so limited that it would not be able to simultaneously show the public not only the remotely participating Council Member but also the area nearby that remotely participating Council Member -- in which some other people attempting to influence the remotely participating Council Member might be located -- in an equivalent manner that the public can observe the Council Members “Physically Present” within the meeting chamber concurrent with the conduct of the meeting.

There are sound reasons for the restrictions of the Florida “*Government In The Sunshine*” statute, at least some of which are to bolster public confidence in the actions taken by their elected representatives and the subsequent consequences of those actions. Accordingly, the following amendments are offered for consideration by the 2020 Charter Review Committee.

Article III, 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, ***by being physically present within the meeting chamber concurrent with the conduct of the meeting***, three (3) consecutive regular meetings of the council without being excused by the council, or
- (5) ***Remotely participates in more than three (3) regular meetings of the council in any calendar year.***

Article III, Section 13. Council quorum and rules.

- (a) Four members of the council shall constitute a quorum, which can be constituted by only those members physically present within the meeting chamber concurrent with the conduct of the meeting, but a smaller number may adjourn from time to time and may require the physical attendance of ~~absent~~ members who are not physically present within the meeting chamber concurrent with the conduct of the meeting 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 who are included in the quorum determination. Although council members may participate remotely in any meeting where a vote on a particular topic may occur, the extent of this remote participation is expressly limited to the discussion of the topic because only council members physically present within the meeting chamber concurrent with the conduct of the meeting are allowed to vote. Voting shall be accomplished by having the presiding officer of the council request affirmative and negative votes. The total of affirmative and negative votes, including an indication of how each council member voted, shall be recorded in the minutes of the council.
- (b) Beyond the above restrictions, 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.

Harry J. Stapor

City Resident and Member of the 2006, 2007 and 2010 Charter Review Committees

Attachment: 1-Page Tabulation of Attendance, 1-January-2012 thru 31-August-2012

City of West Melbourne Council Meetings 1-January-2012 through 31-August-2012

PPAM = Physically Present At Meeting

PIAVT = Participated In Absentia Via Telephone

Council Meeting		Mayor Rose	D. Mayor Eley	Member Bentley	Member Hazlett	Member Mettrick	Member Tice	Member Young
Date	Type							
17-Jan	Regular	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM
07-Feb	Regular	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM
21-Feb	Regular	PPAM	PPAM	PPAM	PIAVT	PPAM	PPAM	PPAM
06-Mar	Regular	PPAM	PPAM	PIAVT	PPAM	PPAM	PPAM	PPAM
20-Mar	Workshop	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM
20-Mar	Regular	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM
03-Apr	Workshop	PPAM	PPAM	PPAM	Absent	PPAM	PPAM	PPAM
03-Apr	Regular	PPAM	PPAM	PPAM	PIAVT	PPAM	PPAM	PPAM
17-Apr	Workshop	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM
17-Apr	Regular	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM
01-May	Workshop	PPAM	PPAM	PPAM	PIAVT	PPAM	PPAM	PPAM
01-May	Regular	PPAM	PPAM	PPAM	PIAVT	PPAM	PPAM	PPAM
03-May	Special	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM
15-May	Regular	PPAM	PPAM	PIAVT	PIAVT	PPAM	PPAM	PPAM
05-Jun	Workshop	PPAM	PPAM	Absent	PPAM	PPAM	PPAM	PPAM
05-Jun	Regular	PPAM	PPAM	PIAVT	PPAM	PPAM	PPAM	PPAM
19-Jun	Workshop	PPAM	PPAM	PPAM	PIAVT	PPAM	PPAM	PPAM
19-Jun	Regular	PPAM	PPAM	PPAM	PIAVT	PPAM	PPAM	PPAM
10-Jul	Special	PPAM	PPAM	PPAM	PIAVT	PPAM	PPAM	PPAM
17-Jul	Regular	PPAM	PPAM	PPAM	PIAVT	PPAM	PPAM	PPAM
04-Aug	Special	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM	PPAM
21-Aug	Regular	PPAM	PPAM	PPAM	PIAVT	PPAM	PPAM	PPAM

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

TO: Charter Review Committee

FROM: Cynthia S. Hanscom, City Clerk

DATE: August 5, 2019

RE: FRS for Elected Officials

Information is being provided to answer the question posed at the last Charter Review Committee meeting on the cost to provide FRS for elected officials. This subject was proposed and passed by resolution in July 2013 by a 4-3 vote. However, it was brought back to Council one month later and was tabled until further information could be provided. Then in November 2013, Council voted to rescind the resolution.

At the time it was proposed in July 2013, the cost to the City of enrolling the Mayor and Council Members as Regular Class members in FRS was \$216.52 per month, or approximately \$2,600 per year. Council Members would be required to participate and would pay 3% of their salary into the plan. If Council then decided to convert to the Elected Officers' Class and no elected officials opted out, the annual costs to the City would increase by approximately \$10,500 to around \$13,100 per year. The City officials would be required to contribute 3% of their current salary to the plan. The costs to the City to provide these benefits today would be about the same.

A summary of the actions of Council will be provided under separate cover.

EXCERPT FROM CHARTER, Article III-V

ARTICLE III. - CITY COUNCIL AND MAYOR

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. A vacancy on the city council shall be filled as follows: When such a vacancy occurs, the remaining council members shall appoint a person to fill the vacancy, except that no such appointment shall be made during the period between any election and the time the newly elected council members are seated. Appointment of such a person shall be by the affirmative vote of four (4) council members, with each member having but one vote. Such a person shall meet the qualifications for council members specified in this Charter and shall serve the remainder of the unexpired term for the vacant seat or until the next even-numbered year of the general election, whichever is first. The candidate receiving the fourth highest number of votes at the general election shall serve in the vacated seat for a 2-year term.~~

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

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

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

~~(4) In an election in which seats for full and unexpired terms are to be filled, the three (3) candidates receiving the greatest number of votes shall~~

be elected to the council seats having full terms. The candidate receiving the fourth greatest number of votes shall be determined elected to the council seat having the longest unexpired term, and those candidates successively receiving the next greatest numbers of votes shall be determined elected to the respective vacant seats having the next longest unexpired terms until all of the unexpired terms are so filled.

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

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

(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)

Chapter 22 - ELECTIONS^[1]

Sec. 22-1. - Dates established.

- (a) As provided in the Charter, general city elections shall be held on the first Tuesday following the first Monday in November of even numbered years.
- (b) Special elections shall be held at such times as may be determined by resolution of the city council and for such purposes as it may designate or when necessary under the Charter and city ordinances and the general laws of the state.

Sec. 22-2. - Candidate qualifications period.

- (a) Any registered voter of the city who has resided in the city for one year immediately prior to the date of qualification for office may qualify as a candidate for any elective office of the city by presenting his nominating petition signed by 75 qualified voters as certified for the last general election, together with a qualifying fee of \$25.00, to the city clerk no sooner than 12:00 noon on the 89th day, nor later than 12:00 noon of the 75th day before any regular election date. Under extenuating circumstances, (i.e., declaration of emergency), the city clerk may extend the qualifying period.
- (b) It shall be the duty of the city clerk to determine that all prospective candidates for elective office have properly qualified as provided in subsection (a) of this section and the Charter.
- (c) Write-in candidates for elective office shall be qualified as provided by the general law of the state; provided however, any write-in candidate shall meet all requirements set forth in the Charter for the office which such candidate is seeking.

Charter reference— Qualifications, art. III, § 3; elections and recall, art. IV, §§ 1—5.

Sec. 22-3. - Conduct and procedures.

The county supervisor of elections shall conduct all city elections. All election procedures shall be in accordance with and shall conform to the requirements of the general laws of the state regarding elections.