

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

## CHARTER REVIEW COMMITTEE

### AGENDA

October 10, 2019  
6:30 p.m.

**1. CALL TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**4. APPROVAL OF MINUTES**

A. According to a suggestion made at the previous meeting the Committee is asked to approve the *corrected* minutes of July 11, 2019.

B. The Committee is asked to approve the minutes of September 12, 2019.

**5. SUMMARY OF CHANGES**

As the Committee continues their review, any changes will be compiled into a continuing document. I have attached the changes approved at the meetings to date. As future recommendations are made, they will be added to this document.

**6. REMOTE PARTICIPATION**

The Committee asked that proposed language be prepared to modify Article III, Section 8. Prohibitions for council members and the mayor, addressing remote participation. The Committee is asked to review this change.

**7. REVIEW OF CHARTER**

Attached is a portion of Article III and the entire sections of Articles IV and V for review.

## **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~~ **accepted** 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.*

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Chair Stephen Phrampus

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Cynthia S. Hanscom, City Clerk

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## CHARTER REVIEW COMMITTEE

### MINUTES

September 12, 2019

#### 1. CALL TO ORDER

Chair Stephen Phrampus called the meeting to order at 6:30 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, Sandra Carbon, Matthew Brothers, and Sandra Michelson.

#### 4. APPROVAL OF MINUTES

*Committee Member Mettrick moved to approve the minutes of July 11, 2019. Vice-Chair Rutledge seconded the motion, which passed unanimously.*

#### 5. MAJORITY VERSUS SUPER MAJORITY

Chair Phrampus asked the Committee if motions should be approved by a majority vote (4) or super-majority vote (5) on the recommendations for the ballot amendments to City Council.

*Committee Member Mettrick moved to require a majority vote for each charter amendment and then a super-majority vote for the final recommendations to be forwarded to City Council for consideration. Committee Member Carbon seconded the motion, which passed unanimously.*

#### 6. RESPONSE TO QUESTIONS

Committee Members reviewed information provided in response to the questions that were raised at the last meeting. City Clerk Cynthia reviewed the memo provided by City Attorney Morris Richardson that addressed questions on bundling amendments, remote participation, and state law requirements for retirement of elected officials.

City Clerk Hanscom also distributed the Council's Meeting Rules and Order, which was referenced in the City Attorney's memo. She added that there may be some issues or concerns of the Charter Review Committee that are covered in this document.

The Committee discussed remote participation and whether or not this would be something that should be part of the charter and if the charter should be amended based on what has occurred in the past.

## **7. REVIEW OF CHARTER**

The Committee then continued their review of the Charter.

### **ARTICLE III. - CITY COUNCIL AND MAYOR**

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

City Clerk Hanscom provided a memo on suggested changes to this section in regards to compensation for the mayor and council members. She explained that, given the discrepancies in the definition of the word "remuneration," it was suggested that the word be removed with a reference to only "salary." The language would be specific only to salaries and would be moot on the issue of benefits and/or other compensation. She cautioned that by not listing other forms of compensation, it would open the door for Council to elect to provide additional benefits. The Committee discussed the fact that this would not change what Council could do in regards to benefits, but would clarify that the language in the Charter would apply to only the salary of Council.

City Clerk Hanscom also provided a second proposed change that would remove the word "remuneration" and then added a section that listed those benefits that could be provided to City Council, namely health benefits and retirement.

Harry Stapor, Manor Place, cautioned against trying to have an exhaustive list of salary and ordinary expenses. He indicated that they should know that there is an additional cost to the City in the form of social security taxes that are paid by the City. He suggested that, rather than having a salary, the language could state that the City's budget could cover a certain dollar amount and then the elected official could select how to apply that amount, which would encompass the total cost borne by the City. He added that the City has no money to give to the Council Members that is not taken from residents and businesses in the form of taxes.

Mayor Rose noted that the Florida Retirement System is paid according to a percentage and it is not a lot of money. There are several other cities that have pensions for the elected officials. He noted that the Council does receive reimbursement for some expenses but they spend their own money on things such as home electronics and travel within the County.

Chair Phrampus commented that he did not see a problem with Council receiving health care. He stated he would prefer to see the first proposal.

The committee asked about health care and the cost to provide coverage for the family. City Clerk Hanscom reviewed the cost to the employee for providing health care for spouse, children and/or family. The Committee discussed building the cost of the health care for family into the charter. Given the cost of the health care versus the salary, the amount would almost negate the ability of a Council Member to receive family coverage.

Chair Phrampus asked about the health care being provided at cost to the City for family members for the City Manager, Police Chief and City Attorney. City Clerk Hanscom noted that those positions were contract positions and the provisions were negotiated between Council Members and the employees.

Vice-Chair Rutledge noted that she had wanted more transparency in government which is why she had suggested that the benefits be listed. She agreed that Council Members should be eligible for health insurance.

Committee Members reviewed a previous document that compared Council salaries from other cities and considered increasing the Council salary to \$600 for Council and \$650 for the Mayor. This would allow Council Members to select family health coverage.

*Committee Member Mettrick moved to remove the word "remuneration" from the language and replace it with "salary" and increase the monthly salary of Council Members to \$600 and the monthly salary of the Mayor to \$650 per month, which could then be adjusted according the CPI. Committee Member Michelson seconded the motion, which passed unanimously.*

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

Committee Members had no changes for Section 8.

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

Mr. Stapor commented that there are four items listed for forfeiture of office. He suggested that an item be added indicating that the elected official would forfeit the office if attending remotely more than three times in a year. He noted that when the charter was written, there was only one way for an elected official to attend, which was physically present concurrent to the meeting.

Mayor Rose spoke saying that it was difficult to not excuse a member. Therefore, he did not see an issue of attendance remotely. He suggested that there could be a limit on the number of times for remote participation.

Committee Members reviewed the opinion of the City Attorney that was provided with the agenda.

Committee Members also discussed that the prohibition should not apply for consecutive meetings.

Committee Member Mettrick commented that he could see a reason for needing to attend remotely. He had done so a few times while he was on Council.

Vice-Chair Rutledge commented that she would not want to run the risk of removing a qualified individual. Committee Member Brothers stated he would agree with setting a limit on the number of times that an elected official could attend remotely.

City Clerk Hanscom suggested that a restriction on attendance remotely could be accomplished under Section 8, which listed prohibitions.

Committee Members agreed to consider language under Section 8 to restrict attendance remotely to three times per year. It was also suggested that this language could be placed in the Meeting Rules and Order. City Clerk Hanscom indicated she would prepare language for consideration at the next meeting.

## **8. PUBLIC COMMENTS**

Mr. Stapor spoke on the approval of the minutes of the July meeting and noted that the language indicated that a Deputy Mayor would be selected following the certification of the election. However, he noted that the City Council does not certify the election. That was done by the Supervisor of Elections. City Clerk Hanscom stated she would get a revision for consideration at the next meeting.

## **9. ADJOURNMENT**

*Committee Member Mettrick moved to adjourn the meeting at 8:07 p.m. Chair Phrampus seconded the motion, which passed 7-0.*

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Chair Stephen Phrampus

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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.

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

The ~~remuneration, including~~ salary plus necessary and ordinary expenses shall be ~~four~~ six hundred dollars (\$~~46~~600.00) per month for Council Members and ~~four~~ six hundred fifty dollars (\$~~46~~650.00) per month for the Mayor. The ~~remuneration~~ salary of the City Council and Mayor shall increase or decrease annually based on the change in the consumer price index (all urban consumers CPI.) from its value on January 1, 20~~21~~19. No increase in the ~~remuneration~~ salary of elected officials beyond that afforded by the CPI shall be effective unless such change is submitted and approved by a majority of the electors at a regular city election.

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TO: Charter Review Committee

FROM: Cynthia S. Hanscom, City Clerk

DATE: October 10, 2019

RE: Limiting Remote Participation for City Council

At the Charter Review Committee meeting on September 12, 2019, a suggestion was made to add language to Section 8. – Prohibitions for council members and the Mayor on remote participation. Below is draft language for consideration.

**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.
- (c) **Remote participation. A council member who, due to extraordinary circumstances such as a physical disability or illness, is unable to attend a meeting of the city council, may participate and vote in such meeting by electronic means, provided that a quorum is physically present at the meeting and a majority of the council members present vote in favor of approving such participation. A council member participating remotely may not be counted for the purposes of constituting a quorum. The communication media utilized must enable the absent council member to participate effectively in the meeting, and the absent council member must have sufficient access to available information to make an informed decision. In no event may a council member remotely participate in more than three meetings of the city council in a calendar year.**

# EXCERPT FROM CHARTER, Article III-V

## ARTICLE III. - CITY COUNCIL AND MAYOR

### 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)~~(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.

~~(e)~~(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** <sup>[2]</sup>

Footnotes:

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**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)