



Mayor
ROB MEDINA
Deputy Mayor
KENNY JOHNSON
Councilmembers
JEFF BAILEY
RANDY FOSTER
DONNY FELIX

AGENDA

Thursday

December 10, 2020 - 6:00 PM

Council Chambers - 120 Malabar Road SE, Palm Bay FL 32907

CALL TO ORDER:

ROLL CALL:

BUSINESS:

1. Dan Kleman, Senior Advisor, Florida City/County Manager's Association - overview of Council-Manager Form of Government; review of City Charter.
2. Patricia Smith, City Attorney - review of Chapter 59, Quasi-Judicial Proceedings, Palm Bay Code of Ordinances.

ADJOURNMENT:

Quasi-judicial proceeding.

Councilmembers who are members of the Space Coast Transportation Planning Organization (TPO) may discuss TPO issues which may subsequently be addressed by the TPO.

If an individual decides to appeal any decision made by the City Council with respect to any matter considered at this meeting, a record of the proceedings will be required, and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based (FS 286.0105). Such person must provide a method for recording the proceedings verbatim.

Any aggrieved or adversely affected person desiring to become a party in the quasi-judicial proceeding shall provide written notice to the City Clerk which notice shall, at a minimum, set forth the aggrieved or affected person's name, address, and telephone number, indicate how the aggrieved or affected person qualifies as an aggrieved or affected person and indicate whether the aggrieved or affected person is in favor of or opposed to the requested quasi-judicial action. The required notice must be received by the Clerk no later than five (5) business days at the close of business, which is 5 p.m., before the hearing. (59.03, Palm

Bay Code of Ordinances).

In accordance with the Americans with Disabilities Act, persons needing special accommodations for this meeting shall, at least 48 hours prior to the meeting, contact the Office of the City Clerk at (321) 952-3414 or Florida Relay System at 711.

Pursuant to Council Policies and Procedures, members of the public wishing to use electronic media when addressing City Council must provide the electronic file to staff for screening no later than 2:00 P.M. on the day of the meeting; audio presentations must be submitted to the City Clerk at least twenty-four (24) hours prior to the meeting.

THIS MEETING IS BROADCAST LIVE ON THE CITY'S WEBSITE AND TELEVISED ON THE SPACE COAST GOVERNMENT TV CHANNEL.



LEGISLATIVE MEMORANDUM

DATE: 12/10/2020

RE: Dan Kleman, Senior Advisor, Florida City/County Manager's Association - overview of Council-Manager Form of Government; review of City Charter.

ATTACHMENTS:

Description

Palm Bay City Charter

CHARTER

Section

Preamble

Article I. Creation, Powers, and Definitions

- 1.01 Creation, powers, and definitions
- 1.02 Incorporation
- 1.03 Extraterritorial powers
- 1.04 Construction
- 1.05 Succession
- 1.06 Intergovernmental relations
- 1.07 Corporate seal

Article II. Boundaries

- 2.01 Description of boundaries

Article III. Legislative

- 3.01 Form of government
- 3.02 City council; composition
- 3.03 Compensation
- 3.04 Mayor and deputy mayor
- 3.05 Prohibitions
 - 3.051 Appointment and removals
 - 3.052 Interference with administration
 - 3.053 Holding other office
 - 3.054 Conflict of interest
- 3.06 Vacancies
 - 3.061 Forfeiture of office
 - 3.062 Filling of vacancies
 - 3.063 Absenteeism
 - 3.064 Extraordinary vacancies
- 3.07 City clerk
 - 3.071 Removal
 - 3.072 Compensation
- 3.08 Procedures
 - 3.081 Meetings
 - 3.082 Rules and order
 - 3.083 Voting
- 3.09 Petitions to amend the city charter or to adopt or repeal ordinances
 - 3.091 Commencement of proceedings
 - 3.092 Petitions
 - 3.093 Certificate of clerk; amendment
 - 3.094 Action by council
 - 3.095 Submission to electors
 - 3.096 Results of elections

- 3.10 Ordinances and resolutions
 - 3.101 Emergency ordinances
- 3.11 City attorney
 - 3.111 Appointment or employment
 - 3.112 Qualifications
 - 3.113 Duties
 - 3.114 Remuneration
- 3.12 Codes of technical regulations

Article IV. Administrative

- 4.01 City manager
 - 4.011 Appointment
 - 4.012 Removal
 - 4.013 Compensation
 - 4.014 Bond
 - 4.015 Powers and duties
 - 4.016 Supervision of departments
 - 4.017 Administrative code
- 4.02 Acting city manager
- 4.03 Personnel system
- 4.04 Fiscal year
- 4.05 Independent annual audit
- 4.06 Fines, fees, forfeitures and penalties

Article V. Qualifications and Elections

- 5.01 Nonpartisan elections
- 5.02 Qualifications
- 5.03 Form of ballots
- 5.04 Elections
 - 5.041 Councilmembers
 - 5.042 Elections and terms of office
 - 5.043 Primary elections
 - 5.044 Election returns
- 5.05 Recall
- 5.06 Election districts (voting precincts)
 - 5.061 Number of precincts
 - 5.062 Registration of electors

Article VI. Taxes and Fees

- 6.01 Taxes
- 6.02 Special assessments
- 6.03 Licensing fees

Article VII. City Borrowing

- 7.01 Authority to borrow
- 7.02 Bond issues

7.03 Sinking funds

Article VIII. Public Safety

8.01 Police department

8.02 Fire department

8.03 Civil defense

Article IX. Miscellaneous Provisions

9.01 Charter review commission

9.02 Boards, committees, commissions

Article X. Transition Schedule

10.01 Conflicting laws and ordinances

10.02 Pending matters

10.03 Severability clause

10.04 Effective date

PREAMBLE

We, the citizens of this city, in order to build a municipality which enhances the ideals of community living, to secure the benefits of municipal home rule and local self-government granted to us by the laws of this state, and to promote our God given rights of life, liberty, and the pursuit of happiness, do hereby adopt this as our charter for the city of Palm Bay, in the county of Brevard, state of Florida.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Statutory reference:

Municipal charter and charter amendment, see Fla. Stat. §§ 166.01 et seq.

ARTICLE I. CREATION, POWERS, AND DEFINITIONS

Section 1.01 CREATION, POWERS, AND DEFINITIONS.

The existing municipal corporation known as the city of Palm Bay, Brevard County, Florida, is hereby continued and reestablished. It shall have and may exercise all governmental, corporate and proprietary powers under the Constitution, general and special acts of the state of Florida as fully and completely as if specifically enumerated in this charter to enable it to conduct municipal government, perform municipal functions and render municipal services.

Wherever the word "city" shall appear in this charter, it shall be construed to mean the "city of Palm Bay". Wherever the word "manager" shall appear in this charter, it shall be construed to mean the "city manager". Wherever the words "council," "city council", or "city of Palm Bay" shall appear in this charter, it shall be construed to mean "the mayor and the other councilmembers", unless specifically excepted by other provisions of this charter.

When any reference herein is made to any gender, such reference shall be deemed to include either masculine, feminine or neuter, as appropriate, and any reference herein to any number shall be deemed to include both singular and plural where the context of the provisions of this document shall permit or require.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 1.02 INCORPORATION.

The existing municipal corporation known as the city of Palm Bay, Brevard County, Florida, is hereby continued and reestablished. The inhabitants of the territory hereinafter described shall constitute a body politic and corporate in perpetuity:

Begin at a point on the west channel of the Indian River which point of beginning is projected from and parallel with the north line of Section 31, Township 28 South, Range 38 East. From said point of beginning run west and along the north line of Section 31, said township and range, to its point of intersection with the western right of way of U.S. Highway No. 1 (Florida State Road No. 5, Road Section No. 70010-277 per right of way map dated 3-27-61); Thence run southerly along said western right of way a distance of 229.57 feet more or less to the point of intersection with the northerly boundary of Riverview Homes Subdivision as recorded in Plat Book 13, Page 3, of the Public Records of Brevard County, Florida; Thence run westerly along said northerly line a distance of 290.57 feet to a point; Thence run northerly on a bearing of N8°34'13"W a distance of 233.87 feet to a point of intersection with the north line of said Section 31; Thence run west along the north line of said Section 31, Township 28 South, Range 38 East and continuing across the north line of Section 36 and Section 35, in Township 28 South, Range 37 East, to the northwest corner of the Northeast Quarter of the Northwest Quarter of Section 35, Township 28 South, Range 37 East; Thence south along the west line of the East Half of the Northwest Quarter of said Section 35 to the northwest corner of Lot 11, Plat of Florida Indian River Land Company as recorded in Plat Book 1, Page 164, Public Records of Brevard County, Florida; Thence continue south along the west line of

said Lot 11 to the northeast corner of Lot 7 of said plat; Thence west to the northeast corner of Lot 3, Section 34 of said plat; Thence south to the southeast corner of Lot 3 of said Section 34; Thence west to the northwest corner of Lot 29, Plat of Florida Indian River Land Company as recorded in Plat Book 1, Page 165B, Public Records of Brevard County Florida, Section 3, Township 29 South, Range 37 East; Thence south to the southwest corner of Lot 20 of said plat; Thence west to the northwest corner of Lot 12 of said plat; Thence south to the southwest corner of Lot 12 of said plat; Thence west to the northwest corner of Lot 6 of said plat; Thence south to the southwest corner of Lot 6 of said plat; Thence west to the east right of way line of Babcock Street; Thence south along the east right of way line of Babcock Street through Section 10 to the north line of Section 15; Thence west to the northwest corner of Section 15, Township 29 South, Range 37 East; Thence south along the west line of Section 15 a distance of 1000 feet to the south line of the north 1000 feet of Lot 25, Florida Indian River Land Company as recorded in Plat Book 1, Page 165B, Public Records of Brevard County, Florida; Thence east along said south line to the east line of said Lot 25; Thence south along the east line of Lot 25 to the southeast corner of the east half of the south 200 feet of the north 1600 feet of Lot 25; Thence west along the south line of said east half of the south 200 feet, to the east line of the west half of Lot 25; Thence south along said east line to the south line of Lot 25; Thence west along the south line of Lot 25 to the southwest corner of Lot 25, also being the west line of Section 15. Less and except the east 25 feet, and the south 25 feet of Lot 25; Thence south along the west line of Section 15 to the north line of the south 435 feet of the west 350 feet of Lot 24 of said plat; Thence east along said north line to the east line of said south 435 feet of the west 350 feet; Thence south along said east line to the south line of Lot 24; Thence west along said south line to the west line of said Section 15. Less and except the south 35 feet of Lot 24; Thence south along the west line of Section 15 to the south line of the north 800 feet of the south $\frac{3}{4}$ of Lot 9, Florida Indian River Land Company Subdivision of Section 15, Township 29 South, Range 37 East as recorded in Plat Book 1, Page 165B of the Public Records of Brevard County, Florida; Thence east along said south line to the east line of said Lot 9; Thence south along said east line of Lot 9 and Lot 8 of said plat to the north right of way of Valkaria Road; Thence west along said north right of way to the east line of the west 230 feet of Lot 8. Less and except the east 25 feet of said Lots 8 and 9; Thence south along said east line and the east line of the west 230 feet of the north $\frac{1}{4}$ of Lot 25, Section 22, Township 29 South, Range 37 East, Florida Indian River Land Company as recorded in Plat Book 1, Page 165B, Public Records of Brevard County, Florida, to the north line of the north 200 feet of the south $\frac{3}{4}$ of Lot 25; Thence east along the north line of the north 200 feet of the south $\frac{3}{4}$ of Lot 25 and Lot 26 of said plat, to the east line of the west $\frac{1}{2}$ of the north 200 feet of the south $\frac{3}{4}$ of Lot 26; Thence south along said east line to the south line of said north 200 feet of the south $\frac{3}{4}$ of Lot 26; Thence west along said south line of the said north 200 feet of the south $\frac{3}{4}$ of Lots 26 and 25 to the west line of said Section 22; Thence south along the west line of Section 22, and Section 27 to the north line of the west $\frac{1}{2}$ of the south 200 feet of the north $\frac{3}{4}$ of Lot 24, Florida Indian River Land Company Subdivision of Section 27, Township 29 South, Range 37 East, as recorded in Plat Book 1, Page 165A of the Public Records of Brevard County, Florida; Thence east along said north line to the east line of the west $\frac{1}{2}$ of the south 200 feet of the north $\frac{3}{4}$ of Lot 24; Thence south along said east line to the north line of the south $\frac{1}{4}$ of Lot 24; Thence east along said north line to the east line of Lot 24; Thence south along said east line to the southeast corner of Lot 24; Thence west along said south line to the southwest corner of Lot 24 also being the west line of Section 27. Less and except the east 25 feet and the south 35 feet of Lot 24; Thence south along the west line of Section 27 to the north line of Lot 8, Florida Indian River Land Company Subdivision of Section 27, Township 29 South, Range 37 East as recorded in Plat Book 1, Page 165A of the Public Records of Brevard County Florida; Thence east along the north line of Lot 8 to the northeast corner of Lot 8; Thence south along the east line of Lot 8 to the north right of way of Grant Road; Thence west along the north right of way of Grant Road to the west line of Section 27; Thence south along the west line of Section 27 to the southwest corner of Section 27, also being the northwest corner of Section 34; Thence south along the west line of Section 34 to the northwest corner of the Southwest Quarter of Section 34; Thence east along the north line of the Southwest Quarter of Section 34 to the northeast corner of the Southwest Quarter of said Section 34, also being the northwest corner of Lot 13, Florida Indian River Land Company Subdivision of Section 34, Township 29 South, Range 37 East, as recorded in Plat Book 1, Page 165A of the Public Records of Brevard County, Florida; Thence continue east along the north line of Lot 13 to the east line of the west $\frac{1}{2}$ of the north $\frac{1}{4}$ of Lot 13; Thence south along said east line to the south line of the west $\frac{1}{2}$ of the north $\frac{1}{4}$ of Lot 13; Thence west along said south line to the east line of the Southwest Quarter of Section 34. Less and except the north 35 feet of Lot 13; Thence south along the east line of the Southwest Quarter of said Section 34 to the south line of said Section 34, also being the north line of Section 3, Township 30 South, Range 37 East; Thence east along the north line of Section 3 to the northwest corner of a tract of land described as the West Half of the East Half of the Northwest Quarter of the Northeast Quarter of Section 3; Thence south along the west line of said tract to the southwest corner of said tract; Thence east along the south line of said tract to the southeast corner of said tract; Thence north along the east line of said tract to the northeast corner of said tract, also being the north line of Section 3; Thence east along the north line of Section 3, Section 2 and the West Half of Section 1 to the northeast corner of the Northwest Quarter of Section 1, Township 30 South, Range 37 East; Thence south along the east line of the West Half of Section 1 and the east line of the Northwest Quarter of Section 12 to the north line of the South Half of Section 12. Less and except a portion of the Northwest Quarter of Section 3 described in Official Record Book 4603, Page 3856 and Official Record Book 4657, Page 1881, Public Records of Brevard County, Florida. Also less and except the Southeast Quarter of the Southeast Quarter of Section 3. Also less and except the West Half of the Southwest Quarter of the Southwest Quarter of Section 2. Also less and except Borrow Pit No. 5 and the Haul Route from Borrow Pit No. 5 described in Official Record Book 5391, Page 5437. Also less and except a strip of land 200 feet in width constituting the main canal of the San Sebastian Drainage District and traversing the Northwest Quarter of Section 12, the North Half of Section 11 and the Northeast Quarter of Section 10 as described in Official Record Book 5391, Page 5437; Thence east along the north line of the South Half of Section 12 a distance of 294.46 feet to the northeast corner of the west 18 acres of the Southeast Quarter of said section 12; Thence south along the east line of the said west 18 acres to the north line of the Northeast Quarter of Section 13; Thence east along the north line of the Northeast Quarter of Section 13 to the northeast corner of the west 37 acres of the Northeast Quarter of Section 13; Thence south along the east line of said west 37 acres to the north right of way of Micco Road, a 100 foot right of way described in Official Record Book 620, Page 793 of the Public Records of Brevard County Florida; Thence continue south along said

east line a distance of 100 feet to the south right of way of Micco Road; Thence east along said south right of way through Section 13, Township 30 South, Range 37 East and Sections 18 and 17, Township 30 South, Range 38 East, to its intersection with the northwesterly boundary line of the George Fleming Grant, also being the centerline of Micco Road; Thence continue east to the southeasterly right of way of Micco Road; Thence northeasterly along the southeasterly right of way of Micco Road a distance of 3861.31 feet; Thence east along said right of way a distance of 1721 feet to the centerline of a north-south drainage ditch; Thence south along the centerline of said ditch a distance of 5560.76 feet to the north line of the lands described in Official Record Book 1012, Page 656, Public Records of Brevard County, Florida; Thence west along said north line a distance of 7,193.98 feet to its intersection with the northwesterly line of said George Fleming Grant; Thence southwesterly along said George Fleming Grant line a distance of 4,735.07 feet to the southwest corner of fractional Section 19; Thence north along the west line of fractional Section 19 to the northwest corner of said Section 19, also being the southeast corner of the Southeast Quarter of Section 13, Township 30 South, Range 37 East. Said corner was set by agreement as recorded in Official Record Book 5537, Page 2752 of the Public Records of Brevard County, Florida; Thence west along the south line of said Section 13 to the southeast corner of the Southwest Quarter of the Southwest Quarter of said Section 13; Thence S89°32'47"W along said south line a distance of 292.06 feet; Thence N0°01'06"E a distance of 1,319.67 feet to the north line of said Southwest Quarter of the Southwest Quarter, also being the south line of the North Half of the Southwest Quarter of said Section 13; Thence west along said south line to the west line of the east 65 acres of the North Half of the Southwest Quarter of Section 13; Thence north along said west line of the east 65 acres to the south right of way of Micco Road; Thence continue north to the north right of way of Micco Road; Thence west along said north right of way to the west line of the Northwest Quarter of Section 13; Thence north along said west line to the northwest corner of Section 13, also being the southwest corner of Section 12; Thence north along the west line of the Southwest Quarter of Section 12 to the west quarter corner of Section 12, also being the southeast corner of the North Half of Section 11; Thence west along the south line of the North Half of Section 11 and the south line of the Northeast Quarter of Section 10 to the southwest corner of the Northeast Quarter of Section 10; Thence north along the west line of said Northeast Quarter to the north line of Section 10; Thence north along the east line of the West Half of Section 3 to the south boundary line of Wheeler Farms as described in Official Record Book 5352, Page 1538, Public Records of Brevard County, Florida; Thence west along said south boundary line to the northerly extension of the east line of Lot 22 of Cape Kennedy Groves Unit 9 as recorded in Plat Book 21, Page 77 of the Public Records of Brevard County, Florida; Thence south along said northerly extension and the east line of said Lot 22 to the southeast corner of Lot 22; Thence west along the south line of Lots 22, 21 and 20 to the southwest corner of Lot 20, also being the northeast corner of Lot 65; Thence south along the east line of Lot 65 to the southeast corner of Lot 65; Thence west along the south line of Lots 65 through 72 to the southwest corner of Lot 72; Thence north along the west line of Lots 72 and 12 and the northerly extension of the west line of Lot 12 to the south line of said Wheeler Farms; Thence west along the south line of Wheeler Farms through the West Half of Section 3 and Section 4 to the east line of Section 5. Less and except the right of way of Babcock Street in Sections 3 and 4 described in Official Record Book 2304, Page 544, Public Records of Brevard County, Florida lying west of and adjoining the properties described in Official Record Book 2226, Page 1842, Official Record Book 2251. Page 1801, and Official Record Book 2624, Page 812; Thence south along the east line of Section 5 and Section 8 to the northeast corner of Lot 44, Plot Plans of Sunshine Groves, Unit 7 as recorded in Plat Book 21, Page 78 of the Public Records of Brevard County, Florida; Thence west along the north line of said lot 44 and the north line of said Unit 7 to the northwest corner of Lot 6 of said Unit 7; Thence south along the west line of Lot 6 to the southwest corner of Lot 6; Thence east along the south line of Lot 6 to the southeast corner of Lot 6, also being the northeast corner of Lot 84 of said Unit 7; Thence south along the east line of Lot 84 to the north right of way of Willowbrook Road; Thence west along the north right of way of Willowbrook Road to the west line of Lot 86 of said Unit 7; Thence north along the west line of Lot 86 and Lot 4 to the northwest corner of Lot 4, also being the northeast corner of Lot 1 of said Unit 7; Thence west along the north line of Lot 1 to the east line of the Northwest Quarter of said Section 8; Thence south along the east line of the Northwest Quarter of Section 8 to the southeast corner of the Northwest Quarter of Section 8; Thence west along the south line of the Northwest Quarter of Section 8 and the south line of the North Half of Section 7, Township 30 South, Range 37 East to the northeast corner of the Southwest Quarter of Section 7. Less and except that part of the North Half of Section 7 and the Northwest Quarter of Section 8 lying south of and adjacent to the westerly extension of San Sebastian Drainage District Main Canal (aka Sottile Canal), as described in Official Record Book 2234, Page 2693; Thence south along the east line of said Southwest Quarter to the southeast corner of said Southwest Quarter; Thence west along the south line of said Southwest Quarter to a point lying 730 feet easterly of the southwest corner of Section 7; Thence north and parallel with the west line of Section 7 a distance of 336 feet; Thence west and parallel with the south line of Section 7 a distance of 730 feet to the west line of Section 7; Thence south along the west line of Section 7 and Section 18 to the southwest corner of Section 18, also being the northwest corner of Section 19; Thence east along the north line of Section 19 and Section 20 to the northeast corner of Section 20, also being the northwest corner of Section 21. Less and except Lots 71, 72, and 81, Hayward's Prosperity Farms, as recorded in Plat Book 4, Page 99, Public Records of Brevard County, Florida; Thence south along the west line of Section 21 to the southwest corner of the North Three-quarters of the North Half of Section 21; Thence east along the south line of the North Three-quarters of the North Half of Section 21 to the west right of way of Babcock Street; Thence south along the west right of way of Babcock Street through Section 21 and Section 28 to the centerline of Centerlane Road; Thence N89°11'06"W along the centerline of Centerlane Road a distance of 6481.67 feet; Thence S1°08'05"W a distance of 7693.86 feet to the north right of way of C-54 Canal as described in Official Record Book 880, Page 739 of the Public Records of Brevard County, Florida; Thence along the north right of way of C-54 Canal run the following three courses: N89°40'58"W, 1534.97 feet; Thence N0°19'02"E, 80.0 feet; Thence N89°40'58"W, 50.0 feet; Thence leaving said right of way run N0°24'30"E along the approximate centerline of an existing canal and along the centerline of a 100 foot wide drainage easement recorded in Official Record Book 3099, Page 3780 of the Public Records of Brevard County, Florida, a distance of 7637.65 feet to the centerline of Centerlane Road; Thence N89°11'10"W along the centerline of Centerlane Road a distance of 1082.84 feet; Thence S0°24'30"W, 3591.02 feet; Thence N89°38'11"W along a wire fence a distance of 1765.85 feet; Thence N0°24'32"E, 3529.96 feet to the south right of way of Centerlane Road, a 150

foot wide right of way; Thence west along the south right of way of Centerlane Road a distance of 49.0 feet; Thence S0°24'37"W a distance of 7669.18 feet to the north right of way of C-54 Canal; Thence along the north right of way of C-54 Canal run the following 12 courses: N89°49'29"W, 2394.11 feet; Thence N0°10'31"E, 80.0 feet; Thence N89°49'29"W, 100.0 feet; Thence S0°10'31"W, 80.0 feet; Thence N89°47'35"W, 2260.90 feet; Thence N89°54'32"W, 3085.40 feet; Thence N0°05'28"E, 80.0 feet; Thence N89°54'32"W, 80.0 feet; Thence S0°05'32"W, 80.0 feet; Thence N89°54'32"W, 715.0 feet; Thence S89°16'52"W, 1414.35 feet; Thence N89°45'05"W, 722.57 feet to the east line of the lands described as the western portion of O.L.C., Inc. - Mary "A" Ranch Property recorded in Official Record Book 4914, Page 1678, Public Records of Brevard County, Florida; Thence run the following three courses along the said east line of the Mary "A" Ranch: N0°38'52"E, 12,666.88 feet; Thence N89°47'51"W, 2806.02 feet; Thence N0°27'00"E, 3154.03 feet to the approximate centerline of a canal running easterly and westerly; Thence N89°19'12"W along said centerline a distance of 1039.98 feet; Thence N88°45'34"W, 1089.07 feet; Thence N89°32'55"W, 1927.00 feet; Thence S0°27'13"W, 275.0 feet to the centerline of a 60 foot platted right of way, as shown on the Plat of Ammoniate Products Corporation's Subdivision Of Unsurveyed Township 30 South Of Range 36 East, recorded in Plat Book 5, Page 11, Public Records of Brevard County, Florida; Thence along said centerline N89°32'55"W, 3226.75 feet; Thence, departing said centerline, N5°13'01"E, 907.09 feet; Thence along the east toe of slope of an existing levee, N0°25'08"E, 2153.27 feet; Thence N0°14'40"E, 1030.12 feet; Thence N0°38'28"E, 1065.15 feet; Thence N0°42'18"E, 1098.48 feet; Thence N0°39'29"E, 1057.99 feet; Thence N0°54'13"E, 268.52 feet; Thence, departing said east toe of slope, N89°59'47"W, 1022.12 feet; Thence N0°00'07"E, 1288.60 feet; Thence S89°59'42"E, 1042.40 feet to the east toe of slope of an existing levee; Thence N0°54'18"E along said east toe of slope a distance of 1437.00 feet; Thence N01°20'11"E a distance of 1089.90 feet; Thence N0°41'41"E, 1170.38 feet; Thence N0°01'17"E, 1115.45 feet; Thence N1°11'22"E, 1701.31 feet; Thence departing said toe of slope, S89°59'51"W, 28.97 feet; Thence N0°00'09"W, 157.51 feet to the north line of Township 30 South, Range 36 East, also being the south line of Section 34, Township 29 South, Range 36 East; Thence westerly along said south line to the southwest corner of said Section 34; Thence north along the west line of Section 34, Section 27, Section 22, Section 15 and Section 10, all being in said Township 29 South, Range 36 East to the west Quarter Corner of Section 10, also being the southeast corner of the Northeast Quarter of Section 9; Thence west along the south line of the Northeast Quarter of Section 9 to the southwest corner of said Northeast Quarter; Thence north along the west line of said Northeast Quarter to the southeast corner of the North 5/8ths of the East Half of the Northwest Quarter of Section 9; Thence west along the south line of said North 5/8ths of the East Half of the Northwest Quarter to the southwest corner of said North 5/8ths of the East Half of the Northwest Quarter; Thence north along the west line of the East Half of the Northwest Quarter of Section 9 to the north line of Section 9. Less and except the west 48 feet of the south 3/8ths of the Northeast Quarter of Section 9; Thence west along the north line of Section 9 to the northwest corner of Section 9, also being the southwest corner of Section 4; Thence north along the west line of Section 4 to the northwest corner of the South Half of Section 4; Thence east along the north line of the South Half of Section 4 to the southwest corner of the East Half of the Northeast Quarter of Section 4; Thence north along the west line of the East Half of the Northeast Quarter of Section 4 to the south right of way of Malabar Road; Thence west along the south right of way of Malabar Road to the east line of the West 7/8ths of the Northwest Quarter of the Northeast Quarter of Section 4; Thence south along the east line of said West 7/8ths of the Northwest Quarter to the southeast corner of said West 7/8 of the Northwest Quarter; Thence west along the south line of the Northwest Quarter of the Northeast Quarter of Section 4 to the west line of the Northeast Quarter of Section 4; Thence north along the west line of said Northeast Quarter to the south right of way of Malabar Road.; Thence west along the south right of way line of Malabar Road to the east line of Section 5. Less and except the west 60 feet of the Southwest Quarter of Section 4 for canal right of way, and less and except the west 64 feet of the Northwest Quarter of the Northeast Quarter of Section 4 for canal right of way; Thence south along the east line of Section 5 to the south line of the North Half of the Northeast Quarter of Section 5; Thence west along said south line to the west line of said Northeast Quarter; Thence north along said west line to the north line of Section 5. Less and except the east 60 feet and the west 57 feet for canal rights of way of said North Half of the Northeast Quarter of Section 5. Also less and except those certain parcels of land recorded in Official Record Book 3955, Page 1686 and Official Record Book 4537, Page 422, Public Records of Brevard County, Florida; Thence west along the north line of Section 5 also being the south line of Section 32, Township 28 South, Range 36 East to the southwest corner of Section 32; Thence north along the west line of Section 32, Section 29 and Section 20 to the northwest corner of said Section 20. Less and except the west 65 feet for canal right of way and less and except the south 33 feet for road right of way of West Half of said Section 32; Thence east along the north line of Section 20 and Section 21 to the northwest corner of the East Half of the Northeast Quarter of the Northwest Quarter of said Section 21; Thence south along the west line of said East Half to the northeast corner of the Southwest Quarter of the Northeast Quarter of the Northwest Quarter of said Section 21; Thence west along the north line of said Southwest Quarter to the northwest corner of said Southwest Quarter; Thence south along the west line of said Southwest Quarter to the southwest corner of said Southwest Quarter; Thence east along the south line of said Southwest Quarter and the south line of said East Half of the Northeast Quarter of the Northwest Quarter of Section 21 to the east line of the West Half of said Section 21; Thence north along said east line to the northeast corner of the Northwest Quarter of said Section 21; Thence east along the north line of Section 21, Section 22, and Section 23 of said Township and Range, to the northeast corner of said Section 23; Thence south along the east line of said Section 23 to the southeast corner of the Northeast Quarter of said Section 23, also being the southwest corner of the Northwest Quarter of Section 24 of said Township and Range; Thence east along the north line of the South Half of said Section 24 to the west line of Lot 4, Block 2 of Melbourne Poultry Colony Addition No. 1 as recorded in Plat Book 7, Page 12 of the Public Records of Brevard County, Florida; Thence north along the west line of Lot 4 and Lot 3 to the northwest corner of Lot 3 of said Block 2; Thence east along the north line of Lot 3 and the extension of said north line to the east line of Section 24; Thence south along the east line of Section 24 to the westerly extension of the north right of way of Palm Bay Road. Less and except the Minton Road right of way, lying north of the westerly extension of the north right of way of Palm Bay Road, in Section 24; Thence east along said westerly extension and the north right of way of Palm Bay Road through Sections 19 and 20, Township 28 South, Range 37 East, to the centerline of Dairy Road and the west line of Section 21; Thence south to the west Quarter Corner of Section 21; Thence

east along the north line of the South Half of Section 21, Township 28 South, Range 37 East, to the southwest corner of Lot 17 of the Plat of Florida Indian River Land Company as recorded in Plat Book 1, Page 164 lying in Section 21, Township 28 South, Range 37 East; Thence north along the west line of said Lot 17 to the south line of the north 735 feet of said Lot 17; Thence east along said south line to the east line of Section 21, Township 28 South, Range 37 East; Thence north along the east line of said Section 21 to the southeast corner of the north 435 feet of said Lot 17; Thence west along the south line of the north 435 feet of said Lot 17 a distance of 280 feet; Thence north and parallel with the east line of Lot 17 a distance of 135 feet to the south line of the north 300 feet of said Lot 17; Thence east along the south line of the north 300 feet a distance of 280 feet to the east line of Section 21, Township 28 South, Range 37 East; Thence north along the east line of said Section 21 to the southeast corner of the north 225 feet of said Lot 17; Thence west along the south line of the north 225 feet of said Lot 17 to the southwest corner of the north 225 feet of said Lot 17; Thence north along the west line of said Lot 17 and Lot 32 to the north line of said Section 21; Thence east along the north line of said Section 21 and Section 22 to the southwest corner of Section 14 of said Township and Range; Thence north along the west line of said Section 14 to the northwest corner of Section 14; Thence east along the north line of said Section 14 to the west right of way of the Florida East Coast Railway; Thence in a northerly direction and along the west right of way of the Florida East Coast Railway to a point on the south line of the North Half of the Northeast Quarter of the Southwest Quarter of Section 11 of said Township and Range; Thence east along the south line of the North Half of the Northeast Quarter of the Southwest Quarter of said Section 11 to a point on the west line of Government Lot 3 of said Section 11; Thence north along the west line of said Government Lot 3 to the north line of the South Half of said Section 11; Thence east along the north line of the South Half of said Section 11 and on a projection thereof to a point on the West Channel of the Indian River; Thence in a southerly direction along the West Channel of the Indian River to the point of beginning. Less and except Section 25, Township 28 South, Range 36 East.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

(Amended by Ordinance 96-49, passed 9-19-96, and Ordinance 2015-06, passed 3-5-15, in accordance with Fla. Stat. § 166.031(3))

Section 1.03 EXTRATERRITORIAL POWERS.

The extraterritorial powers conferred upon the existing municipal corporation are hereby continued to include municipal sharing of personnel and services such as fire and police protection and mutual aid with Brevard County and other municipalities.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 1.04 CONSTRUCTION.

The powers of the city shall be construed liberally in favor of the city, limited only by the Constitution, general and special acts and laws of the state of Florida and specific limitations contained herein. Future special acts, pertaining to the jurisdiction and exercise of powers by the city may be considered amendments to this charter and, pursuant to the provisions adopted for incorporation of other charter amendments, may be incorporated as official amendments to this charter.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 1.05 SUCCESSION.

The city shall continue to own and possess all property, real and personal, property rights heretofore owned, possessed or held by the city, interest, uncollected taxes, franchises, claims, judgments, and may sue and be sued. The city shall assume, manage, and dispose of all trusts in any way connected therewith and may purchase, receive, hold and enjoy or sell and dispose of any real and personal property.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 1.06 INTERGOVERNMENTAL RELATIONS.

The city may exercise any of its powers to perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one (1) or more states or agencies thereof, other counties or municipalities, or the United States or agencies thereof, to the fullest extent permitted by law.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 1.07 CORPORATE SEAL.

The city shall have a common seal and the council may change the same at its pleasure. The keeper of the seal shall be the city clerk.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

ARTICLE II. BOUNDARIES

Section 2.01 DESCRIPTION OF BOUNDARIES.

The boundaries of the city shall remain fixed and established as they exist on the date this charter takes effect. Changes in

boundaries shall be accomplished as prescribed by law.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

ARTICLE III. LEGISLATIVE

Section 3.01 FORM OF GOVERNMENT.

The form of government provided by this charter shall be known as the "council-manager government". Pursuant to its provisions and subject only to the limitations imposed by the Constitution, general and special acts and laws of the state of Florida and by this charter, all legislative powers of the city shall be vested in an elected council, hereinafter referred to as the "council". It shall enact ordinances, adopt resolutions, adopt budgets, determine policies and appoint a city manager. The city manager shall execute the laws and administer the government of the city. All powers of the city shall be exercised in the manner prescribed by this charter. If the manner is not prescribed, then the powers shall be exercised in such manner as may be prescribed by ordinances.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 3.02 CITY COUNCIL; COMPOSITION.

There shall be a five (5) member council consisting of a mayor and four (4) other members, who shall be electors of the city.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 3.03 COMPENSATION.

Effective November 9, 2016, the salary for the office of Mayor shall be at the rate of 20 cents per capita, and the salary for the office of Councilmember shall be set at the rate of 10 cents per capita. The per capita numbers utilized shall be the population as of the date of approval of this revision as set forth in the most recent population estimate of the Bureau of Economic and Business Research of the University of Florida. The annual salary of the Council shall not be increased by more than the increase in the Consumer Price Index, or the annual increase given to City employees, whichever is lower. The annual salary shall be reviewed during the City's annual budget process. No increase in salary shall become effective until October 1.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92) (Amendment adopted by electorate 11-8-16)

Section 3.04 MAYOR AND DEPUTY MAYOR.

The mayor shall preside at meetings of the council, shall be recognized as head of city government for all ceremonial purposes, and by the governor for purposes of military law. The mayor shall be the person upon whom service of process can be made. The mayor shall sign contracts, deeds, and other documents, and shall be the city official designated to represent the city in all agreements with other governmental entities or certifications to other governmental entities, but shall have no administrative duties except as required to carry out the responsibilities herein. Annually, the mayor shall deliver a state-of-the-city message. At the first council meeting following the first Tuesday after the first Monday in November or following any city run-off election, whichever is later, the council shall elect one (1) of its members as deputy mayor. The deputy mayor shall act as mayor during the absence or disability of the mayor. In case of the death, resignation, or removal of the mayor, the deputy mayor shall serve as mayor until the vacancy of the mayor's office is filled in accordance with subsection 3.062, "Filling of vacancies."

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 3.05 PROHIBITIONS.

3.051 Appointment and removals. No member of the council shall, in any manner, dictate the appointment or removal of any city administrative officer or employee whom the city manager or any of his subordinates are empowered to appoint. However, the council may express its view and fully and freely discuss, with the manager, anything pertaining to appointment and removal of such officer or employee.

3.052 Interference with administration. Neither the council nor its members shall either direct, interfere, or otherwise deal with city officers and employees who are subject to the direction and supervision of the city manager, except through the city manager. Neither the council nor its members shall give orders to any such officer or employee. However, after reasonable notice to the city manager, individual members of the council may closely scrutinize, by questions and observations, all aspects of city government operations, solely for the purpose of obtaining information to assist the council in the formulation of sound policies to be considered. All recommendations for improvement in city government operation by individual councilmembers shall be made to and through the city manager.

3.053 Holding other office.

(a) No former elected city official, nor any relative of such former elected city official, shall hold any compensated appointive city office or employment until, at least, two (2) years after the expiration of the term for which elected. This provision shall not apply to relatives of any current or former elected city official holding a compensated appointive city office or position of employment prior to November 9, 2016.

(b) For the purposes of this section, "relative" shall mean an individual who is related to the former elected city official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(Amendment adopted by electorate 11-8-16)

3.054 Conflict of interest. Officers, employees, or elected officials shall not directly or indirectly contract to do any work, render any service or furnish any material or equipment to or for the city with any association, partnership, firm, business entity, person or corporation in which they have a financial interest.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 3.06 VACANCIES.

The office of a councilmember shall become vacant upon death, resignation, removal from office in any manner authorized by law or by forfeiture of that office, and such vacancy is to be declared, by resolution stating cause, by the remaining members of the council at a regular or special council meeting.

3.061 Forfeiture of office. If, during the term of office, the state commission on ethics finds that a councilmember has violated any provision of this charter or is found guilty by a judge or jury or pleads guilty or *nolo contendere* to any felony or a crime involving moral turpitude whether or not adjudication is withheld, such councilmember shall be deemed to have forfeited his office. Forfeiture of such office shall be affirmed and ratified by a resolution duly adopted by the other members of the city council.

3.062 Filling of vacancies. When a vacancy occurs on council as a result of death, resignation, illness, disability, written court order, forfeiture of office, or other lawful written order or action, such vacancy shall be filled in accordance with the procedures prescribed by ordinance.

3.063 Absenteeism.

(1) Absence from four (4) consecutive regular meetings of the council, or a total of six (6) within a twelve (12) month period, shall vacate the seat of the member. The city clerk shall notify the council of the third and fourth consecutive absences or the sixth within a twelve (12) month period of any councilmember.

(2) Absences created by illness, mental or physical disability, written suspension by court order, or other lawful written order or action shall not be considered absences for purposes of this subsection. However, the existence of an illness or mental or physical disability must be established by written medical evidence setting forth in detail the nature and cause of the illness or mental or physical disability and the prognosis thereof.

3.064 Extraordinary vacancies.

(1) In the event that all members of the council are removed by death, disability, law, or forfeiture of office, the governor shall appoint an interim council that shall call a special election as provided in subsection 3.062.

(2) If at any time the membership of the council is reduced to less than a quorum, the remaining members may, by majority vote, appoint additional members pursuant to subsection 3.062.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92) (Amendment adopted by electorate 11-6-12)

Section 3.07 CITY CLERK.

The council shall appoint an officer of the city who shall have the title of city clerk. The city clerk shall coordinate with the city manager and shall give notice of council meetings to its members and to the public, shall keep the minutes of its proceedings, and perform such other duties as are assigned by this charter or by the council.

3.071 Removal. The council may remove the city clerk by majority vote of all of the councilmembers, by a resolution, which states the cause(s) for removal.

3.072 Compensation. The compensation of the city clerk shall be fixed by the council and shall not be reduced during the city clerk's period of employment except by the consent of the city clerk.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 3.08 PROCEDURES.

3.081 Meetings. The council shall have regular council meetings at least twice each month, at the city hall or other municipal building, at such times and places as the council may prescribe. Special meetings and workshops may be held at the call of any councilmember and, whenever practicable, upon no less than twenty-four (24) hours verbal and written notice to each member and the public. Such notice shall state the specific purpose or purposes of the meeting. No additional items shall be considered at such special meetings.

3.082 Rules and order. The council shall determine its own rules and order of business.

3.083 Voting. A majority of the council shall constitute a quorum. No action of the council, except as otherwise provided in the preceding sentence and in section 3.06, shall be valid or binding unless adopted by the affirmative vote of the majority

of a quorum present.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 3.09 PETITIONS TO AMEND THE CITY CHARTER OR TO ADOPT OR REPEAL ORDINANCES.

(1) The electors of the city shall have the power, by petition, to propose amendments to the city charter not inconsistent with the State Constitution or general law. Upon submission of a petition meeting the signature requirements set forth in subsection 3.092 and certification of same as provided in subsection 3.093, the city council shall submit the proposed amendment to a vote of the electors.

(2) The electors of the city shall have the power, by petition, to propose ordinances to the council not inconsistent with the State Constitution or general law. If the council fails to adopt an ordinance so proposed without any change in substance, such ordinance shall be placed on the ballot for the electorate to either adopt or reject, provided that such power to petition shall not extend to matters relating to the budget or capital program or any ordinance relating to the appropriation of money, method of levy of taxes, zoning, or salaries of city officers or employees.

(3) The electors of the city shall have the power, by petition, to request the council to repeal any adopted ordinance if such repeal is not inconsistent with the State Constitution or general law. If the council fails to repeal such ordinance, it shall be placed on the ballot for the electorate to consider; provided that such power to petition shall not extend to matters relating to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money, method of levy of taxes, zoning, or salaries of city officers or employees.

3.091 Commencement of proceedings. Any elector(s) may commence proceedings by filing with the city clerk an affidavit stating that the elector(s) will constitute a committee being responsible to circulate a petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed charter amendment, the proposed ordinance or citing the ordinance sought to be repealed. Within ten (10) days after the affidavit is filed, the city clerk shall issue the appropriate petition blanks to the petitioners' committee. The committee shall be responsible for all costs involved in the petitioning process including any fee required to be paid to the supervisor of elections to verify the petitions. The process to amend the city charter or to adopt or repeal an ordinance shall be completed and the certificate of sufficiency submitted to the city council, as provided herein, not less than ninety (90) days before a special or regular municipal election.

3.092 Petitions.

(1) Number of signatures. All petitions must be signed by at least ten percent (10%) of the electors of the city. They need not be in affidavit form. The petition to amend the charter must be signed by at least ten percent (10%) of the electors of the city of the registered electors as of the last preceding municipal general election or as provided in section 166.031 Florida Statutes as may be amended from time to time. Petitions to propose or repeal ordinances must be signed by at least five percent (5%) of the registered electors as of the last preceding municipal general election.

(2) Form and content. The city clerk shall consult with the supervisor of elections to create a standard form of petition, which shall be used for all proposed charter amendments and proposals to adopt or repeal an ordinance. Each page of a petition shall be numbered, shall be uniform in size and style, shall be executed in ink, and shall be followed by the address of the person signing. Each petition circulated shall contain or have attached to it, at least once, the full text of the proposed charter amendment, the proposed ordinance, or the ordinance sought to be repealed. Each page provided for signatures shall contain the caption of either the proposed charter amendment, the proposed ordinance, or the ordinance sought to be repealed.

(3) Affidavit of circulators. Each petition shall have attached to it, when filed, an affidavit executed by the circulator indicating the number of pages and the number of signatures contained therein, that the circulator personally circulated the paper, that all the signatures were affixed in the circulator's presence, that the circulator believes them to be signatures of electors, and that each elector had an opportunity before signing to read the full text of the proposed charter amendment, the proposed ordinance or the ordinance sought to be repealed.

3.093 Certificate of clerk; amendment.

(1) Within ten (10) days after the petition has been filed, the city clerk shall submit it to the county supervisor of elections or other official designated by city council to certify the number of registered voters who signed it. The city clerk, supervisor of elections or other official designated by city council shall use the signature verification process for petitions set forth in section 99.097, Florida Statutes, as may be amended from time to time. The city clerk shall, within three (3) working days of certification or after receipt of certification, send a copy of the certificate to the committee, by certified mail, indicating its sufficiency or insufficiency and the grounds therefore.

(2) Grounds for insufficiency are only those specified in subsection 3.092. A petition certified insufficient may be amended once if the committee files with the city clerk (i) a notice of intention to amend the petition within two (2) working days after receiving the copy of the certificate and (ii) an amended petition within ten (10) working days after receiving the copy of such certificate. Such amended petition shall comply with the requirements of subsection 3.092 and the city clerk shall, within three (3) working days after receipt of the amended petition, notify the committee either that it is sufficient or insufficient and the reasons for same. If the insufficiency is based upon the lack of requisite signatures, within five (5) working days after it is filed, the city clerk shall examine or submit the amended petition to the supervisor of elections or the official designated by city council to determine the number of registered voters who signed it. The city clerk shall, within three (3) working days after certification or receipt of the certification, send a copy of the certificate to the committee by

certified mail as in the case of an original petition.

(3) If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient, the city clerk shall present a certificate to the council, at the next regular or special council meeting, and the certificate shall then be a final determination as to the sufficiency or insufficiency of the petition.

3.094 Action by council. When a petition to amend the charter or to adopt or repeal an ordinance has been determined sufficient, the council shall consider such amendment, adoption, or repeal. If the council fails to adopt a proposed ordinance without any change in substance or fails to repeal an ordinance, both or either of them shall be submitted to the electors of the city in accordance with subsection 3.095. If a petition to amend the charter is deemed sufficient, the proposed amendment shall be submitted to the electors of the city in accordance with subsection 3.095.

3.095 Submission to electors. The city council shall submit the charter amendment, adoption or repeal of an ordinance to the electorate at a special or regular municipal election held no less than ninety (90) days nor more than one hundred eighty (180) days from the date the supervisor of elections' certificate of sufficiency is presented to the city council. A copy of the ordinance to be adopted or repealed or a copy of the proposed charter amendment, or a summary thereof, shall be published in a newspaper of general circulation once in the fifth week prior to the election and once in the third week prior to the election. The full text of an ordinance to be adopted or repealed and charter amendment shall be posted at the polls.

3.096 Results of elections.

(1) If a majority of the voting electors vote in favor of a proposed ordinance, it shall be considered adopted upon certification and approval of the election results and shall be treated as an ordinance adopted by the council. In the event conflicting ordinances are approved at the same election, the one receiving the greater number of "yes" votes shall become effective.

(2) If a majority of the electors vote to repeal an ordinance, the ordinance shall be considered repealed upon certification and approval of the election results.

(3) If a majority of the voting electors vote in favor of a proposed amendment to the city charter, the amendment to the charter shall become effective upon certification by the state of Florida. The city clerk shall submit the results of the election to the state within five (5) days after the city council certifies the results. In the event conflicting amendments are approved at the same election, the one receiving the greater number of "yes" votes shall become effective.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92) (Amendment adopted by electorate 11-6-12) (Amendment adopted by electorate 11-05-19)

Section 3.10 ORDINANCES AND RESOLUTIONS.

Every proposed ordinance or resolution shall be introduced in the final written or printed form required for adoption. The enacting clause of ordinances shall recite: "Be it enacted by the city council of the city of Palm Bay, Brevard County, Florida." A proposed ordinance may be read by title, or in full, on at least two (2) separate days.

A proposed ordinance may be amended at either reading. However, no ordinance shall be amended at the second or later reading so as to change its intent without a reading at least ten (10) days later. The council shall provide for public hearings or for the publication of notice concerning the subject matter of any proposed ordinance or amendment as provided by general law. Ordinances and resolutions shall become effective upon passage unless otherwise specified therein. Every ordinance or resolution shall, upon final passage, be authenticated by the mayor and the city clerk, and shall be recorded and published as the council shall prescribe.

3.101 Emergency ordinances. Notwithstanding the provisions of the foregoing sections, the council may enact emergency ordinances to meet serious public emergencies, as determined by the city council, affecting the general welfare, health or safety of the city or its inhabitants. An emergency ordinance shall be introduced in the form and manner prescribed for other ordinances except that it shall be plainly designated as emergency ordinance and the conditions constituting such emergency shall be stated therein. It may be adopted or rejected, with or without amendment, at the meeting at which introduced. Emergency ordinances shall expire thirty (30) days after enactment unless sooner specified therein.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 3.11 CITY ATTORNEY.

3.111 Appointment or employment. The city council shall appoint or employ a city attorney and such assistant attorney(s) as required to act as legal advisor(s) to the council and officials of the city as designated in [subsection] 3.123(b) and serve at the pleasure of the council.

3.112 Qualifications. The city attorney shall be a practicing attorney with at least five (5) years' experience and practice in the courts of the state of Florida.

3.113 Duties.

(a) General. The city attorney, and/or his assistant attorney(s), shall perform such professional duties as may be required by ordinance or resolution of the council, or as prescribed for city attorneys under the general laws of the state of Florida, that are not inconsistent with the specific provisions of this charter.

(b) Legal advisor. The city attorney, and/or assistant attorney(s), shall provide required legal advice to the council and to

the city manager. Officially constituted boards, committees, and commissions of the city, relating to their official duties, may obtain legal advice upon the approval of the council.

3.114 Remuneration. The council shall determine the remuneration to be paid the city attorney and/or assistant attorney(s).

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 3.12 CODES OF TECHNICAL REGULATIONS.

The council shall adopt appropriate, standard codes of technical regulations by reference thereto in an adopting ordinance.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

ARTICLE IV. ADMINISTRATIVE

Section 4.01 CITY MANAGER.

There shall be a city manager who shall be the chief executive and administrative officer of the city. The manager shall be responsible to the council for the administration of all city affairs placed in the manager's charge by or under this charter.

4.011 Appointment. The council shall appoint a manager by a majority vote of all councilmembers. The manager shall be selected solely on the basis of administrative and executive qualifications. At the time of appointment, the manager need not be a resident of the city or state. However, should the manager change residency subsequent to his appointment, the manager shall reside within the city during his tenure.

4.012 Removal. The council may remove the manager by majority vote of all the councilmembers, by a resolution, which states the cause(s) for removal, unless by contract, cause(s) is not required.

4.013 Compensation. The compensation of the manager shall be fixed by the council and shall not be reduced during the manager's period of employment except by the consent of the manager.

4.014 Bond. The city manager shall furnish a surety bond to be approved by the council. The premium of the bond shall be paid by the city. The amount of the bond shall be fixed by the council.

4.015 Powers and duties. The city manager shall:

(a) Appoint, and when deemed necessary for the good of the city, suspend or remove city employees or appointive administrative officers provided for by this charter, except as otherwise provided by law, this charter, or personnel rules adopted pursuant to this charter. The manager may authorize any administrative officer who is subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency.

(b) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law.

(c) Attend council meetings unless excused by council, and then he should have a designated replacement.

(d) Ensure that all laws, provisions of this charter and acts of the council, subject to enforcement by the manager or by officers subject to the manager's direction and supervision, are faithfully executed.

(e) Prepare and submit the annual budget, budget message, and capital program to the council in a form provided by ordinance.

(f) Submit to the council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year.

(g) Make such other reports as the council may require concerning the operations of city departments, offices and agencies, subject to the manager's direction and supervision.

(h) Keep the council fully advised as to the financial condition and future needs of the city and make such recommendations to the council concerning the affairs of the city as deemed desirable.

(i) Execute contracts on behalf of the city pursuant to the provisions of appropriation ordinances or resolutions.

(j) Perform such other duties as are specified in this charter or may be required by the council.

4.016 Supervision of departments. Except as otherwise provided in this charter or by general law, the city manager shall be responsible for the supervision and direction of all departments, agencies and offices of the city. All departments, offices and agencies under the direction and supervision of the manager, shall be administered by an officer appointed by and subject to the direction and supervision of the manager. With the consent of the council, the manager may serve as the head of one (1) or more such departments, offices or agencies or may appoint one (1) person as the head of two (2) or more of them.

4.017 Administrative code. The manager shall develop and keep current an administrative code for the purpose of implementing ordinances passed by the council.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 4.02 ACTING CITY MANAGER.

By letter filed with the council, the city manager shall appoint a qualified city administrative officer to exercise the powers and perform the duties of manager during the city manager's temporary absence or disability. During such temporary absence or disability, the council may revoke such appointment at any time and appoint another officer of the city to serve until the city manager shall return or the disability shall cease.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 4.03 PERSONNEL SYSTEM.

All appointments and promotions of city officials and employees, except those specifically exempted by ordinance, shall be made solely on the basis of merit and qualifications demonstrated by examination or other evidence of competence and to this end, the council shall, by ordinances, establish personnel policies. The city manager shall establish personnel procedures and rules consistent with these policies.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 4.04 FISCAL YEAR.

The fiscal year of the city shall begin on the first day of October and end on the last day of September.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 4.05 INDEPENDENT ANNUAL AUDIT.

Prior to the end of each fiscal year, the council shall designate certified public accountants to make an independent audit of accounts and all other financial transactions of the city government existing at the end of the fiscal year. Reports of audit shall be made directly to the council. Accountants selected to make such audits shall have no personal interest, direct or indirect, in the fiscal affairs of the city government or of any of its officers. They shall not maintain any accounts or records of the city business. The auditors shall post-audit the books and documents kept by the city and all separate or subordinate accounts kept by any other office, agency or department of the city government. The same auditor or auditing firm shall not perform the city audit for more than four (4) consecutive years.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 4.06 FINES, FEES, FORFEITURES AND PENALTIES.

The city shall have the power to impose and collect fines, fees, forfeitures and penalties for enforcement, administration and violation of the provisions of this charter and the ordinances of the city in a manner consistent with law, and to otherwise collect fines, fees, forfeitures, and penalties as may be provided by law. All such sums collected shall be paid to the city finance director, to be deposited in the proper accounts as provided by law.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

ARTICLE V. QUALIFICATIONS AND ELECTIONS

Section 5.01 NONPARTISAN ELECTIONS.

All elections for councilmembers shall be conducted on a nonpartisan basis without regard for or designation of political party affiliation of any candidate.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 5.02 QUALIFICATIONS.

Candidates for the office of city council shall be a resident of the city and shall have been for at least two (2) years immediately preceding the election, shall be a registered voter residing at a city address, and shall qualify for such office by complying with the Florida Statutes and in such manner as may be prescribed by ordinance and shall continue to be a resident and an elector of the city during the term of office.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92) (Amendment adopted by electorate 11-6-12, 11-8-16)

Section 5.03 FORM OF BALLOTS.

The form of the ballot shall be determined by state law and municipal ordinance.

A charter amendment or other municipal issue to be voted upon shall be presented for voting as prescribed by state law.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 5.04 ELECTIONS.

5.041 Councilmembers. A councilmember shall be elected to a specific seat on the council. The councilmember shall be

elected by receiving the highest vote total of the votes cast in the election for a designated council seat. In the event of a tie vote in a special or regular election in which two (2) or more candidates are seeking the same designated seat on the council, a run-off election will only be held if breaking the tie would determine the successful candidate. Each elective officer shall hold such office until a successor is elected and qualified. Absentee voting shall be permitted in all elections as provided by law.

5.042 Elections and terms of office. A primary election and a general election are to be held pursuant to law. The regular or general election of councilmembers shall be held on the first Tuesday after the first Monday of November. Councilmembers shall be elected to a four (4) year term of office and limited to three (3) consecutive four (4) year terms. For the purpose of this limitation, a partial term shall be considered a full term, except for appointments of less than one (1) year. No councilmember may appear on the ballot for reelection if by the end of the current term of office, the councilmember will have served (or, but for resignation, would have served) in that office for twelve (12) consecutive years. All councilmembers shall be elected at-large. The mayor and two (2) other councilmembers, Seats 2 and 3, shall be elected in the same year as the presidential election. The two (2) additional councilmembers, Seats 4 and 5, shall be elected in the following even year.

(Amendment adopted by electorate 11-8-16)

5.043 Primary elections. Primary Elections shall be held on the Tuesday nine weeks prior to the general election or such other date as established by applicable general law of the state for primary elections.

(a) Should there be more than two (2) qualifying candidates for Mayor or for a given Council seat, their names will be placed on the primary ballot. The two (2) primary candidates receiving the highest number of votes shall be the candidates in the general election. The candidate receiving the highest number of votes in the general election shall be declared elected to the office for which he or she was a candidate. In the event there are fewer than three (3) qualifying candidates for Mayor or for a given Council seat, their names will not appear on the primary election ballot but they will appear on the general election ballot. If a candidate for Mayor or for a given Council seat receives more than fifty percent (50%) of the vote in a primary election, then said candidate shall be declared elected to the office and no names shall appear on the general election ballot.

(Amendment adopted by electorate 11-8-16)

5.044 Election returns. Election results shall be determined, certified, and published as provided by law. A regular or special meeting shall be held within three (3) working days following the receipt by the city clerk of the official election results from the supervisor of elections at which those councilmembers present shall be given a certified copy of the official canvass of the election and the city clerk or the clerk's designee shall announce the election results. Immediately thereafter the newly elected official or officials shall then be administered the oath of office.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92) (Ord. 2002-48, passed 8-22-02) (Adopted by electorate 11-5-02) (Amendment adopted by electorate 11-6-12)

Section 5.05 RECALL.

Councilmembers may be removed from office by the electors of the city, through recall, as provided by law. The procedure for recall and filling of vacancies thereunder shall be in accordance with state law.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 5.06 ELECTION DISTRICTS (VOTING PRECINCTS).

5.061 Number of precincts. The city shall be divided into voting precincts. The boundaries of such precincts shall correspond with the boundaries of the county voting precincts.

5.062 Registration of electors. Registration of electors to qualify them to vote in all elections shall be determined as provided by Florida Statutes.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

ARTICLE VI. TAXES AND FEES

Section 6.01 TAXES.

(a) The council shall have full power and authority to levy taxes as authorized by law.

(b) Unless otherwise allowed by this subsection, the City Council shall not impose any ad valorem tax for city purposes at a millage rate which causes the budgeted revenue therefrom to the City to increase over the budgeted ad valorem revenue for the previous fiscal year by more than three percent (3%).

(c) Notwithstanding paragraph (b) of this subsection, the City Council may impose an ad valorem tax for municipal purposes at a rate which exceeds the limitations in paragraph (b) if a supermajority of the City Council concurs in a finding that such an excess is necessary because of emergency or critical need. The finding shall set forth the ultimate facts upon which it is based and shall be valid for a single budget year.

(d) In calculating the allowable increase in ad valorem revenues over the ad valorem revenues budgeted for the previous year under paragraph (b) of this subsection, the City Council shall exclude from the anticipated revenues all revenue changes from the following kinds of property not appearing on the previous year's roll: 1) new construction; 2) additions to or

demolitions in whole or in part of existing construction; and 3) changes in the value of improvements that have undergone renovation to an extent of not less than 100% increase in assessed value (as measured from the last year of assessment prior to commencement of renovation).

(e) Nothing in this subsection shall authorize imposition of a millage rate which exceeds the rate prohibited by the constitution or general laws of Florida, or prohibit imposition of a millage rate which is required by the constitution or general laws of Florida or by any final order of a court of competent jurisdiction. Nothing in this subsection shall apply to any millage necessary to the payment of general obligation bonds in accordance with all bond covenants or to any other millage approved by referendum of the electors, whether before or after the effective date of this subsection.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92) (Amendment adopted by electorate 11-8-16)

Section 6.02 SPECIAL ASSESSMENTS.

Before the governing body for the city may levy any special assessment involving more than fifty (50) property owners or involving a project expenditure of greater than twenty-five thousand dollars (\$25,000.00), the proposed assessment must first be approved, in writing, by a majority vote of the affected property owners who return a ballot.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92) (Ord. 2001-57, passed 9-6-01) (Adopted by electorate 11-6-01) (Amendment adopted by electorate 11-8-16) (Amendment adopted by electorate 11-05-19)

Section 6.03 LICENSING FEES.

The city may levy reasonable business, professional, and occupational fees on businesses, professions and occupations, according to law.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

ARTICLE VII. CITY BORROWING

Section 7.01 AUTHORITY TO BORROW.

The council may borrow money, contract loans, and issue notes and bonds as may be authorized by state law.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 7.02 BOND ISSUES.

(a) The council may authorize the issuance of bonds and notes by resolution or ordinance, or if required by the Constitution of the state of Florida by affirmative vote of the electors of Palm Bay, to finance approved city projects.

(b) The council shall approve the terms and manner of sale and distribution or other disposition of any and all notes and bonds it may issue and it shall have any and all powers necessary or convenient to such disposition.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 7.03 SINKING FUNDS.

The council may establish and administer appropriate sinking funds for the satisfaction of any outstanding indebtedness of the city.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

ARTICLE VIII. PUBLIC SAFETY

Section 8.01 POLICE DEPARTMENT.

There shall be a police department.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 8.02 FIRE DEPARTMENT.

There shall be a fire department.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 8.03 CIVIL DEFENSE.

The city manager shall cause to be prepared and maintained current a plan to deal with all disasters, emergencies and catastrophes such as floods, hurricanes, tornadoes, other "acts of God," riots, and civil disturbances.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

ARTICLE IX. MISCELLANEOUS PROVISIONS

Section 9.01 CHARTER REVIEW COMMISSION.

Within one (1) month after receipt of the results of the federal decennial census in 1990 and following each federal decennial census thereafter, the council shall appoint a commission of not less than ten (10) electors of the city, to be known as a charter review commission. The council may appoint a charter review commission at any other time when deemed appropriate. This commission shall review and recommend to the council any additions or deletions to this charter as in its judgment it deems advisable. The council shall submit to the electors any proposed additions or deletions to the charter in the manner provided in article III, section 3.09, of this charter.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 9.02 BOARDS, COMMITTEES, COMMISSIONS.

The council shall establish such boards, committees or commissions, and appoint members, as it deems advisable to make recommendations regarding the general welfare of Palm Bay residents and to ensure planned orderly growth and development of the city in accordance with state law.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

ARTICLE X. TRANSITION SCHEDULE

Section 10.01 CONFLICTING LAWS AND ORDINANCES.

Any section of a law, ordinance, or regulation, insofar as it conflicts with or is inconsistent with the provisions of this charter, is hereby repealed.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 10.02 PENDING MATTERS.

All rights, claims, actions, orders, contracts, legal or administrative proceedings involving the city shall continue except as modified pursuant to the provisions of this charter.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 10.03 SEVERABILITY CLAUSE.

If any article, part of article, or any provision of this charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this charter nor the context in which such article, part of article, or provision so held invalid may appear, except to the extent that an entire article or part may be inseparably connected in meaning and effect with the provision to which the court holding shall apply.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Section 10.04 EFFECTIVE DATE.

This charter, except as herein otherwise provided, shall take effect as prescribed by law. The city clerk shall place the effective date of this charter on the official copy filed in the clerk's office.

(Ord. 92-28, passed 9-17-92) (Adopted by electorate 11-3-92)

Referendum Election: November 3, 1992

Filed with Florida Department of State: November 16, 1992



LEGISLATIVE MEMORANDUM

DATE: 12/10/2020

RE: Patricia Smith, City Attorney - review of Chapter 59, Quasi-Judicial Proceedings, Palm Bay Code of Ordinances.

ATTACHMENTS:

Description

Chapter 59, Quasi-Judicial Proceedings

CHAPTER 59: QUASI-JUDICIAL PROCEEDINGS

Section

- 59.01 Intent
- 59.02 Definitions
- 59.03 Notice procedures for aggrieved or adversely affected persons
- 59.04 Quasi-judicial matters
- 59.05 Procedures for quasi-judicial proceedings
- 59.06 *Ex parte* communication

§ 59.01 INTENT.

It is the intent of the City Council to provide an equitable and efficient method for the Council, as well as certain city boards, committees, and authorities, to hear matters which are considered quasi-judicial in nature. These procedures shall be utilized by the City in regard to hearings on quasi-judicial matters.

(Ord. 2015-22, passed 5-7-15)

§ 59.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGGRIEVED OR ADVERSELY AFFECTED PERSON. Any person who will suffer a negative effect to a protected interest as a result of the quasi-judicial action sought by the applicant. The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in the community.

APPLICANT. Any person, corporation or other legal entity who files with the Growth Management Department an application for an action which has been determined by City staff to be quasi-judicial in nature as reflected on the agenda and within the agenda packet for that Council meeting at which said matter will be heard.

CLERK. For any proceeding before the City Council, the clerk is the City Clerk. For any other board, the clerk will be the clerk or secretary designated for the respective board, committee, agency, authority, or special magistrate.

COMPETENT SUBSTANTIAL EVIDENCE. Evidence a reasonable mind could accept as adequate to support a conclusion.

EX PARTE COMMUNICATION. Communication involving a Local Public Official and a member of the public regarding a quasi-judicial matter pending before the City Council or other Quasi-Judicial Body on which the quasi-judicial member serves. Communication between a Local Public Official and City staff shall not be considered *ex parte* communication.

LOCAL PUBLIC OFFICIAL. Any elected or appointed public official of the City of Palm Bay who recommends or takes quasi-judicial action as a member of a Quasi-Judicial Body.

PARTY or PARTIES. The applicant, the City, and any aggrieved or adversely affected person who has complied with the notice provisions set forth in § 59.03 below.

PRESIDER. For the City Council, the Mayor or, in his/her absence, the Deputy Mayor. For any other Quasi-Judicial Body, the Chair or, in his/her absence, the Vice Chair.

QUASI-JUDICIAL BODY. The City Council sitting in its quasi-judicial capacity, or any other City board, committee, authority or special magistrate sitting in its quasi-judicial capacity.

QUASI-JUDICIAL IN NATURE. The application of a general rule or policy to specific individuals, interests, or activities by the quasi-judicial body, as more specifically set forth in § 59.04 below.

(Ord. 2015-22, passed 5-7-15)

§ 59.03 NOTICE PROCEDURES FOR AGGRIEVED OR ADVERSELY AFFECTED PERSONS.

(A) Any aggrieved or adversely affected person desiring to become a party in the quasi-judicial proceeding shall provide written notice to the clerk which notice shall, at a minimum, set forth the aggrieved or affected person's name, address, and telephone number, indicate how the aggrieved or affected person qualifies as an aggrieved or affected person and indicate whether the aggrieved or affected person is in favor of or opposed to the requested quasi-judicial action. The filing of notice with the clerk shall serve as notice to the parties of the aggrieved or affected person's intent to appear at the proceeding to testify, present evidence, bring forth witnesses, and cross-examine witnesses. The required notice must be received by the clerk no later than five (5) business days at the close of business, which is 5 p.m., before the hearing.

(B) The written notice in subsection (A) above, filed with the clerk of a Quasi-Judicial Body other than City Council for a quasi-judicial matter that will procedurally be forwarded to the City Council for consideration shall also serve as the notice

for the aggrieved or affected person to appear at the proceeding held by the City Council on the same quasi-judicial matter.

(Ord. 2015-22, passed 5-7-15)

§ 59.04 QUASI-JUDICIAL MATTERS.

(A) A quasi-judicial matter is a proceeding in which a quasi-judicial board gives notice and an opportunity to be heard to aggrieved or adversely affected persons, investigate facts, ascertain the existence of facts, hold hearings, weigh evidence, draw conclusions from the facts, and apply the law to the facts. Quasi-judicial matters include, but may not necessarily be limited to, the following:

- (1) Site specific rezoning of land which rezoning will have an impact on a limited number of persons or property owners where the decision is contingent on fact(s) arrived at from distinct alternatives presented at a hearing and where the decision can be functionally viewed as policy application rather than policy setting;
- (2) Applications for conditional uses or amendments thereto;
- (3) Hearings on Code Enforcement violations by the Code Enforcement Board or Special Magistrate for Code Enforcement;
- (4) Applications for preliminary and final plats;
- (5) Variances from the application of the Land Development Code;
- (6) Appeals from an administrative determination of the Director of Growth Management or any city official interpreting the provisions of the Land Development Code; and
- (7) Hearings on applications for disability or service retirements before the Board of Trustees of the Palm Bay Police Officers and Firefighters Pension Fund.

(B) For all quasi-judicial matters which require more than one (1) reading, the first reading shall constitute the quasi-judicial proceeding. Once a decision is rendered to grant or grant with conditions the relief sought by the applicant, then the second reading shall be procedural in nature with the Quasi-Judicial Body ratifying and affirming its prior decision. If new evidence is introduced which, if brought to the attention of the Quasi-Judicial Body at the first reading, would have had a material impact on its decision, the Quasi-Judicial Body may re-open the quasi-judicial hearing. If the Quasi-Judicial Body re-opens the quasi-judicial hearing, it shall be scheduled for a date and time certain and provide notice to all parties.

(Ord. 2015-22, passed 5-7-15)

§ 59.05 PROCEDURES FOR QUASI-JUDICIAL PROCEEDINGS.

(A) The following is a guideline for conducting quasi-judicial hearings:

- (1) All testimony shall be under a sworn oath to tell the truth. The oath shall be contained on a speaker's card. All persons wishing to speak on a quasi-judicial item shall submit a speaker's card containing said oath to the clerk on duty.
- (2) The Presider shall call the cases on the agenda but shall not be bound by the order in which the cases appear on the agenda.
- (3) The Presider will introduce the case and, if appropriate, defer to the City Manager (or designee) or City Attorney (or board counsel) for either an explanation of the matter or the reading of the ordinance or resolution caption.
- (4) The Presider shall have the option of determining the order to expedite the proceedings. However, all parties shall be provided the opportunity to present their case. In the event the quasi-judicial matter constitutes a public hearing, the general order of the presentation of evidence shall be as follows:
 - (a) The applicant, having the burden of persuasion and the burden of proof, shall proceed to present its case first;
 - (b) City staff shall then present the opinion of the City or any other relevant information necessary for the quasi-judicial body's consideration.
 - (c) Any aggrieved or adversely affected person who has complied with the notice requirement set forth in §9.03 shall be heard;
 - (d) Any other person who has taken an oath upon statement of his/her name and address for the record shall be heard;
 - (e) Closing argument shall then be given by the applicant.
- (5) Any natural person or party may represent himself/herself or may be represented by an attorney. The statements or arguments of the attorney are not considered evidence. The attorney need not be sworn.
 - (a) In the event any party (other than a corporation or the City) chooses to be represented by a non-attorney, such party shall file a written, notarized power of attorney with the clerk at least five (5) calendar days prior to the hearing stating that the person appearing has the full power and authority to act on behalf of the party in the matter.
 - (b) A corporation may appear through an officer of the corporation provided the officer is listed as a current officer of

an active corporation with the Secretary of State and identifies himself/herself in that corporate capacity.

(6) The parties may:

- (a) Call and examine witnesses;
- (b) Introduce exhibits;
- (c) Cross-examine opposing witnesses;
- (d) Impeach witnesses; and
- (e) Rebut evidence.

(7) The quasi-judicial body shall have the authority to ask questions of anyone present at the proceedings prior to closing the public hearing and commencing deliberations. If during the deliberations, a question arises which the Quasi-Judicial Body desires to ask, it shall reopen the public hearing, pose the question and allow both the applicant and the City the opportunity to respond to the question posed prior to closing the public hearing again and resuming deliberations.

(8) Neither the Federal Rules of Evidence nor the Florida Evidence Code shall apply, but fundamental due process shall be observed and govern said proceedings at all times.

(9) All relevant evidence shall be admitted. The quasi-judicial body may exclude irrelevant, immaterial, or unduly repetitious evidence.

(10) Hearsay evidence may be accepted for the purpose of either supplementing or explaining any direct evidence, provided it is not offered to prove the truth of the matter asserted, but such hearsay evidence shall not, in and of itself, be considered sufficient to support a finding or decision unless the evidence would be admissible over objections in any civil litigation proceeding in a state or federal court in Florida.

(11) If, after notice of hearing, a party does not appear, the hearing may be conducted, and an order entered, in the absence of the party.

(12) The quasi-judicial body shall have the authority to issue any and all orders to afford the proper relief, and this authority shall include the authority to grant continuances to a date-certain upon good cause shown.

(13) At the conclusion of the presentation of the evidence and the taking of testimony, the quasi-judicial body shall close the public hearing and proceed to deliberate. The quasi-judicial body shall endeavor to make a determination based upon the appropriate criteria.

(14) At the conclusion of the hearing, if and only if relief is denied to the applicant, a subsequent written order shall be issued to the applicant by the Quasi-Judicial Body's legal counsel setting forth the reasons therefor.

(15) The clerk shall retain all of the evidence and documents submitted into evidence at the hearing. This shall include the official file in the matter, as well as any document presented at the hearing or demonstrative exhibit seen by the quasi-judicial body while making its decision. Nothing herein shall be deemed to prohibit any party from providing a court reporter for the proceedings. Any party wishing to appeal the decision of a quasi-judicial body shall have the responsibility to ensure compliance with Fla. Stat. 286.0105.

(Ord. 2015-22, passed 5-7-15)

§ 59.06 EX PARTE COMMUNICATION.

(A) *Ex parte* communications, while not prohibited, are improper and greatly discouraged.

(B) The following process is hereby established for *ex parte* communications with any Local Public Official:

(1) Disclosure.

(a) The Local Public Official shall disclose the occurrence of all *ex parte* communications involving said official that relate to the quasi-judicial matter pending before the quasi-judicial body on which the Local Public Official serves.

(b) The disclosure shall occur by no later than the commencement of the final public hearing, or if no formal public hearing is held, then at the commencement of any hearing at which the final decision regarding the quasi-judicial matter is made. The Local Public Official shall disclose the *ex parte* communication orally or in writing. Any such writing disclosing the occurrence of the *ex parte* communication shall be placed in the official file regarding the pending quasi-judicial matter which file shall be maintained by the City and shall be made a part of the record.

(c) At the time of disclosure, the Local Public Official shall identify the person, group, or entity with whom the *ex parte* communication took place, the general substance of the *ex parte* communication, and any matters discussed which are considered by said official to be material to said member's decision in the pending quasi-judicial matter.

(d) Pursuant to Fla. Stat. 286.0115, the foregoing process established to disclose *ex parte* communications with Local Public Officials hereby removes the presumption of prejudice from *ex parte* communications.

(C) *Commencement.* For purposes of defining an *ex parte* communication, a quasi-judicial matter shall be said to exist at the time an application is filed with the City seeking relief that is quasi-judicial in nature.

(D) *Site visits*. Site visits constitute *ex parte* information and are greatly discouraged. Any Local Public Official who conducts a site visit of any property related to a quasi-judicial matter pending before the quasi-judicial body on which the official serves must adhere to the disclosure requirements set forth in paragraph (B)(1) *supra*, date of the site visit, and any information obtained by virtue of the site visit.

(E) *Review of correspondence*. Immediately upon review of any mail, email, or other written correspondence constituting an *ex parte* communication related to a quasi-judicial matter pending before the quasi-judicial body on which the Local Public Official serves, said document shall be placed in the official file regarding the pending quasi-judicial matter.

(F) *City files*. All documents reviewed by a Local Public Official prior to the final hearing on a pending quasi-judicial matter shall be placed in the official file regarding said matter. Said documents reviewed by the Local Public Official prior to the final hearing on a pending quasi-judicial matter and any disclosure memoranda shall be available for public inspection. By no later than the commencement of the final public hearing, or if no formal public hearing is held, then at the commencement of any hearing at which the final decision regarding the quasi-judicial matter is made, the clerk shall make said correspondence, mail, written communications, and any disclosure memoranda placed in the official file a part of the record. All of the foregoing documents shall be received by the quasi-judicial body as evidence, with the exception of disclosure memoranda, subject to any objections interposed by participants at the hearing.

(Ord. 2015-22, passed 5-7-15)