

MAYOR
Hal J. Rose

DEPUTY MAYOR
John Dittmore

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



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

CHARTER REVIEW COMMITTEE

AGENDA

January 9, 2020
6:30 p.m.

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

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

5. **SUMMARY OF CHANGES**

As the Committee continues their review, any changes will be compiled into a continuing document. I have attached the changes approved at previous meetings to date.

6. **REVIEW OF CHARTER**

The Charter Review Committee delayed review of Article XIV at the request of Planning Director Christy Fischer. Attached is a staff report explaining the changes that are being requested for the Committee's review and consideration.

7. **PUBLIC COMMENTS**

8. **ADJOURNMENT**

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

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CHARTER REVIEW COMMITTEE

MINUTES

December 12, 2019
6:30 p.m.

1. CALL TO ORDER

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

2. ROLL CALL

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

Absent: Committee Member Bill Mettrick

Chair Phrampus moved to excuse Committee Member Bill Mettrick. Committee Member Carbon seconded the motion, which passed 6-0.

Also present: City Attorney Morris Richardson, City Clerk Cynthia Hanscom,

3. APPROVAL OF MINUTES

Chair Phrampus asked that the minutes be amended on the first page, last paragraph, to show that a "... the Council Member's term could be **lengthened** if there is **more** time left on the Mayor's term ...".

Vice Chair Rutledge moved to approve the minutes of November 11, 2019, as corrected. Committee Member Carbon seconded the motion, which passed 6-0.

4. SUMMARY OF CHANGES

Committee Members reviewed a summary of the changes that had been approved to date. Committee Member Michelson stated that the salaries showed a modification but the strike-through on the number 4 could not be seen.

5. RECONSIDERATION OF SECTION 10 – Vacancies

The Committee was provided a background on language that was added for the Mayor. City Attorney Richardson stated that this would modify the language so that a vacancy in the office of mayor is replaced similar to that for city council. He noted that staff did not originally provide this change because city council would appoint a member from the council, which had all been selected through the democratic process. The new language stated that, if a vacancy occurs 90 days or more before the next general elections, Council shall select a mayor from its members to serve until the next general election. If the vacancy occurs less than 90 days before a general election, the mayor will serve until the next election.

Chair Phrampus noted one correction to (2) under the vacancy for mayor be changed to state “office of mayor” rather than city council.

Chair Phrampus asked why they could not be six members. City Attorney Richardson indicated that it could be problematic as it would create the possibility of tie votes.

The Committee discussed the terms and how a council member could be giving up several years in their term on the council to serve as the mayor. Chair Phrampus asked if the individual could then step back into their previous council seat and serve the remainder of the term. City Clerk Hanscom stated that would not occur as there would be a vacancy created that would be filled according to the charter.

City Attorney Richardson stated the mayor had some duties beyond that of a council member and the individual may want to serve. The individual filling the vacancy for the mayor could then chose to run for mayor at the next election. He noted it was more likely that the individual selected to fill the mayor’s vacant seat would have the same term.

Vice-Chair Rutledge moved to approve the change to Section 10 – Vacancies, to include additional language for filling a vacancy in the Mayor’s seat. Committee Member Brothers seconded the motion, which passed 6-0.

6. Reconsideration of Article XI – Police Department

Staff presented proposed language to amendment Article XI – Police Department to add qualification language for the police chief. City Attorney Richardson stated he had talked to Chief Rick Wiley about specific qualifications and believed that it should be general as training could change and the language needed to be flexible. He stated he was proposing language that would mirror qualification language for the city attorney and city manager.

Committee Members discussed positions within the department. City Attorney Richards stated that the city council has position control and approves a certain number of positions. That would not change. The police chief then has the authority to hire for those positions. This language is consistent with the current practice.

Committee Members discussed adding more specific language for law enforcement experience and education.

Chair Phrampus stated he would like to see language requiring 10 years of local government law enforcement experience and some level of education. Committee members reviewed the job description specific for Chief of Police which stated “a minimum of twelve (12) years of experience in modern Police work which has afforded progressively responsible experience in a variety of Police functions, including five (5) years in a command capacity,” and “Bachelor's degree in a related field required with Master's degree in a related field preferred. FBI National Academy or any equivalent Executive Command school completion is preferred.” Chair Phrampus stated that the job description could be waived when hiring. City Attorney Richardson stated that the job description has minimum requirements.

Chair Gibbs stated that this would go through the City Manager so the hiring could not be waived by the City Council. City Clerk Hanscom stated that is a recommendation of the Charter. Chair Phrampus asked if the job description could be changed by the City Manager. City Attorney Richardson commented that it would require Council approval.

Chair Phrampus asked about command experience. City Attorney Richardson explained command experience was beyond supervisory.

Committee Member discussed the language in the job description versus the language change in the charter and several members stated that it should not be too narrow.

Committee members agreed that the language in the job description would address their concerns.

Council Member Dittmore spoke on a problem that occurred in the City of Palm Bay where the City Manager decided to forego normal hiring practices and bypassed the recommendations from the recruiting firm to hire someone else that had no local government experience. Therefore, he would recommend that language be included to require command experience with a department of equal or larger size.

Committee Member Brothers moved to approve adding language to state: “The Chief of Police shall be appointed solely on the basis of education and experience in the accepted competencies and practices of law enforcement agency management. The Police Chief must be certified by the Florida Department of Law Enforcement within twelve (12) months of appointment.” Committee Member Gibbs seconded the motion, which passed 5-1, with Chair Phrampus opposed.

City Attorney Richardson updated the Committee on remote participation reporting that the City Council had adopted a resolution amending the meeting rules for remote participation that mirrored the sunshine law stating that it would need to be extraordinary circumstances. Chair Phrampus stated that all of the meeting rules should be reviewed and updated.

Chair Phrampus asked if a committee would be reviewing the meeting rules. City Attorney Richardson stated that they did not any direction for continued review but the meeting rules are for Council.

7. REVIEW OF CHARTER

The Committee agreed to review Article XIV – Planning and Zoning in January when the Planning Director could be present. The Committee reviewed Articles XV through XVI. City Clerk Hanscom stated that the general provisions left in the charter were standardized and she did not see a need for a change except for the Article XVI, to change the date of the amended charter.

Committee Member Michelson asked how many signatures would be needed to get 15 percent of the voters for a petition. Based on 17,000 voters, 2,550 signatures of registered voters would be needed.

Chair Phrampus moved to accept the change in the date for the amended Charter to stated November 3, 2020. Committee Member Brothers seconded the motion, which passed 6-0.

8. PUBLIC COMMENTS

Mayor Rose commented that the change to allow for 75 signatures on the candidates form was limited to those who had been registered in the previous election. Chair Phrampus stated that a change had been approved to allow for signatures of registered votes without a time frame.

9. ADJOURNMENT

There being no further business, Chair Phrampus adjourned the meeting at 7:20 p.m.

Chair Stephen Phrampus

Cynthia S. Hanscom, City Clerk

Summary of Changes Proposed by the Charter Review Committee

ARTICLE III. CITY COUNCIL AND MAYOR

Section 5. - Deputy mayor.

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

Section 7. - Compensation for mayor and council members.

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

Section 10. - Vacancies.

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

(1) Ninety (90) days or more prior to the next regularly scheduled city council election. When a vacancy in the office of mayor occurs ninety (90) days or more prior the next generally scheduled city council election, the council shall appoint a mayor from among its members to serve until the next regularly scheduled city council election, at which time a person shall be

elected to office for a term of four (4) years. In the event the council is unable to fill such vacancy in this manner within sixty (60) days after it occurs, the city clerk shall immediately call a special election to fill the vacancy for the remainder of the unexpired term.

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

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

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

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

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

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

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

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

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

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

ARTICLE IV. - ELECTIONS AND RECALL

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

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

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

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

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

ARTICLE V. - CITY MANAGER

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

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

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

- k) Perform such other duties as are specified in the Charter or as may be required by the council.
- l) Lead the city staff in such a manner as to fulfill the mission statement, goals, and objectives as established by the council.

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

ARTICLE XI. - POLICE DEPARTMENT

Section 1. - Establishment.

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

Section 2. - Appointment and removal.

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

Section ~~23~~. - Chief of police; duties and authority.

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

ARTICLE XVI. - SEPARABILITY AND REPEAL OF CONFLICT

Section 1. - Separability clause.

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

Section 2. - Conflicts with other laws.

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

Section 3. - Effective date.

This amended Charter shall take effect immediately upon approval by a majority vote of the electors of the City of West Melbourne voting in the election on **November 3, 2020**.



AGENDA ITEM

January 9, 2020, Charter Review Committee

Prepared and Presented By:

Christy Fischer

Christy Fischer, Planning Director

To: Members of the West Melbourne Charter Review Committee
From: Christy Fischer, AICP, Planning Director
Date: January 9, 2020

SUBJECT

Informational only – Charter language regarding planning and board duties

RECOMMENDATION

Consider the attached strike through and underline from the Charter to allow flexibility to Council about planning types of duties and volunteer appointment

FISCAL IMPACT

The fiscal impact to the City will be the costs associated with a referendum ordinance.

DISCUSSION

Background —

The 2008 charter changes impacted both duties and membership of the Board of Adjustment. There are two planning related boards in the City, the Board of Adjustment and the Planning and Zoning Board. The duties of the Planning and Zoning Board are partially defined by their role as a “local planning agency” in the Florida Statutes so the 2008 charter did not change much of this, except it was clear that the charter

committee at that time wanted to re-assign some of the duties previously reserved for Council such as the review of apartments and subdivisions.

The City Attorney at that time informed a few of the charter review committee members at that time that Florida Statutes requires that subdivision decisions be made by a local governing body and not an advisory board. However, items such as conditional use permits, variances and apartment site plans could be assigned to various boards.

Staff Analysis—

Over the years since 2008, staff has consistently heard from City Council that they believe they should make final determinations regarding conditional use permits and apartment complex initial site plans. In 2008, staff had drafted an implementing ordinance that both complied with the language in the charter changes and the spoken desires of the previous charter review committee. However, as stated by Council and the citizens, our bifurcated system of development review and approval is complicated and removes power from City Council who are the elected officials representing the people. Appointed board members are not elected from the general population of voters, and although citizens like the rest of the population of votes, they do not report directly to the citizens.

Staff's proposed strike through and underline of the charter includes:

- Planning and Zoning Board – revise to clearly state that Council defers to the Florida Statutes for what are the duties of a local planning agency, and to clearly state that the Planning and Zoning Board provides advisement on all matters related to planning. The word “involving” was too vague and may have lead the previous charter committee to believe that the Planning and Zoning Board should be decision makers on all development matters.

Staff's opinion – It is better to have flexibility for Council to determine what development review decisions they allow the Planning and Zoning Board make and not absolutely that the board will be decision makers as the previous committee had implied.

- Board of Adjustment – revise to clearly state the board shall be appointed and duties assigned by Council. The previous version of the charter communicated specific duties assigned to the board. In so narrowly defining the function of this standing board by using the following sentences:
 - *“To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the planning and zoning board.”*

Staff's opinion - This Board is given more discretionary power than may be wise to give since situations and decision making responsibilities may change over time and flexibility by Council in deciding whether they want to make decisions on appeals and conditional use permits should be their prerogative. There is nothing in the Florida Statutes that defines that a City has to have a board of adjustment separate and apart from City Council.

- *“To hear and decide applications for special exemptions to the terms and provisions of any planning and zoning ordinance adopted by the city council.”*

Staff's opinion – The Board of Adjustment currently hears and decides on variances and conditional use permits. It is believed that the previous charter review committee was referring

to the older phrase of “special exceptions” which was replaced by “conditional use permit”. This was corroborated by the charter review committee having input into the enacting ordinance after the charter changes were past to ensure that the Board of Adjustment heard and decided both variances and conditional use permits. Other local governments have this same type of language in their charter but others may leave the duties more broadly assigned up to City Council’s discretion as to their duties. Staff is in agreement about the Board of Adjustment hearing variances and making a determination but staff believes that if a project is over a certain size, like 10 acres, that the better path would be for an applicant to go to the Board of Adjustment for their advisement and City Council for final determination. This would allow City Council to have governance over projects that might impact more of the community than the small projects.

- Composition of board of adjustment – Although the notion of having qualified members is valid for this more technical board, the list of previous experience is limiting and should either include other categories or reduce the number of board members who should have one of the four qualifications.

Staff’s opinion – The Board of Adjustment should be a board composed of professionals and civic minded volunteers. However, very few local governments probably have specific backgrounds required of a board of adjustment. Although it is true that this group acts as a governing body, their qualifications should be no more extensive than City Council’s, or provide flexibility. Staff’s strike through reduces the quantity of board members who have to specific qualifications from 4 to 3 of the following categories:

- Previous planning and zoning board experience
- Previous code enforcement board experience
- Previous municipal elected official
- ~~Professional~~ member of a planning organization

Staff suggests striking the word, “professional” because the American Planning Association encourages all board members, from Planning Commissions and Board of Adjustments to be members of their organization. So if a national organization encourages diversity and offers professional types of training to volunteer boards, why would the City limit the members to just be “professional” workers?

Or the categories could be expanded to include realtor, general contractor who works in various fields, and design civil engineer. There was a fear from the previous charter committee that allowing too many categories would result in a poorly appointed board. However, in respect to the variety of professions in the building world, the City should mimic the diversity of members of our community and rely on professional training by organizations such as the American Planning Association and Florida Planning and Zoning Association to imbue the board members with professionalism in their decision making.

Next steps:

- The Charter Review Committee could recommend to Council in favor of changes to the current charter wording regarding the planning and zoning board and board of adjustment or the committee could leave the existing charter wording as is
- If changes are suggested, then staff could prepare flowcharts and other tools to describe what types of development review processes would occur. We did this in 2008 and it seemed to help in explaining the bifurcated development system. It should be noted that only Planning staff seems to have memorized this current bifurcated system, none of the other departments

understand this system and even applicants who repeatedly submit for development projects know which path they will be on, until they have their pre-application meeting. So the system could be easier.

- The last review and final determining body will be City Council and this will be scheduled as part of Council's review of the questions to be submitted as part of the charter ballot in 2020.
- If the charter changes are approved, then City staff would revise other sections of the Code of Ordinances to be consistent with charter ballot changes.

ATTACHMENTS

1. Strike through and underline in Article XIV, Planning and Zoning

Charter Review Committee

By: Christy Fischer, Planning Director

January 9, 2020

ARTICLE XIV. - PLANNING AND ZONING

Section 1. - Planning and zoning board.

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

Section 2. - Board of adjustment.

(a) *Powers and duties.* The city council shall appoint a board of adjustment, which board shall have such powers, functions and duties as may be delegated to it and required of it by ordinance adopted by the city council. There is hereby established a board of adjustment which shall have the following powers:

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

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

(b) *Composition of board of adjustment.* The city council shall appoint a board of seven (7) persons. None of the appointed members of the board of adjustment shall hold any other public office or position in the government of the city and all members shall be residents of and registered voters within the city. At least ~~four~~ three (43) of the members of the board of adjustment shall have previously served:

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

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

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

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

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

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

[Appeals to a determination made by the planning and zoning board shall be heard by city council with a hearing within thirty \(30\) days of the planning and zoning board decision.](#)

Enacting ordinance in 2008

ORDINANCE NO. 2008-15

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, BREVARD COUNTY, FLORIDA, AMENDING SUBPART B, CHAPTER 66, ARTICLE III, DIVISION 3, SECTION 66-116 REGARDING COMPOSITION TO REFLECT THE CHARTER AMENDMENT; AMENDING SECTION 66-117 OF THE CODE OF ORDINANCES TO FURTHER DEFINE THE DUTIES OF THE BOARD OF ADJUSTMENT; PROVIDING FOR THE REPEAL OF ORDINANCES AND RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of West Melbourne voters in 2007 approved Charter Amendments which included having a separate Board of Adjustment; and

WHEREAS, the City of West Melbourne desires to amend the Land Development Regulations to include Board of Adjustment changes from the Charter Amendment; and

WHEREAS, the City of West Melbourne will initiate a new Board of Adjustment including appointing members and the City desires clear identification of duties;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of West Melbourne, Brevard County, Florida, that:

Section 1

The City of West Melbourne's Code of Ordinances, Subpart B (Land Development Regulations), Chapter 66, Article III, Division 4, Section 66-116 is hereby amended and shall read as follows:

Sec. 66-116. Composition and appointment.

(a) At least four of the members of the board of adjustment shall have previously served:

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

(b) None of the seven appointed members of the board of adjustment shall hold any other public office or position in the city government, and all members shall be residents of and registered voters within the city.

(c) The terms of the appointed board of adjustment shall be that each appointed member of the board of adjustment shall serve a two-year term with the following staggered terms:

- (1) The 2-year term of appointment for Appointees occupying Odd Numbered Seats on the Board of Adjustment expire by the end of November in Odd Numbered Years; and,
- (2) The 2-year term of appointment for Appointees occupying Even Numbered Seats on the Board of Adjustment expire by the end of November in Even Numbered Years.

- (d) Any vacancy occurring on the board shall be filled for the remainder of the term of office of the member whose resignation, death or removal created a vacancy. Any member of the board of adjustment may be removed from office by the affirmative vote of four (4) members of the city council.

Section 2.

The City of West Melbourne's Code of Ordinances, Subpart B (Land Development Regulations), Chapter 66, Article III, Division 4, Section 66-117 is hereby amended and shall read as follows:

Sec. 66-117. Powers and duties.

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

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

Section 3.

Severability/Interpretation Clause. In the event that any term, provision, clause or section of this ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, and such invalidity, or illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this ordinance, and this ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence or section did not exist.

Section 4.

That all ordinances or resolutions or parts thereof that may be determined to be in conflict herewith are hereby repealed.

Section 5.

It is the intention of the City Council of the City of West Melbourne that the provisions of this ordinance shall be made a part of the City of West Melbourne Code of Ordinances and the sections be renumbered to accomplish such intention.

Section 6.

That this Ordinance shall become effective immediately upon adoption.