

ORDINANCE NO. 77-20

AN ORDINANCE OF THE CITY OF NEW SMYRNA BEACH PROPOSING AMENDMENTS TO THE CITY OF NEW SMYRNA BEACH CHARTER; SETTING A CHARTER AMENDMENT REFERENDUM; AMENDING THE CHARTER OF THE CITY OF NEW SMYRNA BEACH TO ADOPT A PREAMBLE, REORGANIZE, RENUMBER AND REFORMAT EXISTING LANGUAGE, REVISE QUALIFICATIONS AND DUTIES OF MEMBERS OF THE CITY COMMISSION, REVISE ELECTION PROCEDURES, REVISE QUALIFICATIONS AND DUTIES OF CHARTER OFFICERS, ADOPT PROVISIONS RELATED TO FINANCIAL MANAGEMENT AND SUSTAINABILITY, INCLUDING LIMITATIONS ON THE TRANSFER OF OWNERSHIP OR LEASE OF CERTAIN LANDS, PROVIDE FOR CITIZEN PARTICIPATION, INCLUDING AN INITIATIVE AND REFERENDUM PROCESS, AND REQUIRE REGULAR REVIEWS OF THE CHARTER; PROVIDING FOR AN ELECTION ON THE OFFICIAL BALLOT OF THE GENERAL ELECTION TO BE HELD NOVEMBER 3, 2020, IN WHICH QUALIFIED ELECTORS OF THE CITY MAY VOTE FOR OR AGAINST THIS CHARTER AMENDMENT; PROVIDING FOR A BALLOT QUESTION; PROVIDING FOR PUBLIC NOTICE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Charter of the City of New Smyrna Beach, Florida, may be amended pursuant to the Municipal Home Rule Powers Act found in Chapter 166, Florida Statutes; and

WHEREAS, Section 166.031(1), Florida Statutes, provides that the governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter; and

WHEREAS, Section 166.031(1), Florida Statutes, further provides that the governing body of the municipality shall place the proposed amendment contained in the petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose; and

WHEREAS, amendments to City of New Smyrna Beach’s Charter have been submitted to the City of New Smyrna Beach by its Charter Review Committee; and

89 The City of New Smyrna Beach hereby created and established shall have perpetual
 90 succession; and shall have the power, by and through its city commission herein created to
 91 purchase, lease, acquire by eminent domain, receive and hold property, real and personal, within
 92 or without the limits of territorial boundaries of said municipality; and to sell, alienate, convey,
 93 lease or otherwise dispose of the same for the benefit and advantage of said municipality; and
 94 may purchase, acquire by eminent domain, lease, receive and hold property, real and personal,
 95 within or without the limits or territorial boundaries of said municipality for such other public
 96 purposes as the city commission may by ordinance or otherwise deem necessary and proper, and
 97 may sell, lease or otherwise dispose of said property for the benefit of said municipality to the
 98 same extent that natural persons might or could do; to pass and enforce ordinances for the
 99 preservation of the property of said municipality and to preserve order on the same, either within
 100 or without its limits, and all powers possible for a city to have under the constitution and laws of
 101 this state as fully and completely as though they were specifically enumerated in this charter.

102 ~~The enumeration of the particular powers herein shall not be held or deemed to be exclusive,~~
 103 ~~but in addition to the powers enumerated herein or implied hereby, the city shall have and may~~
 104 ~~exercise all other powers which under the Constitution and laws of Florida it would be~~
 105 ~~competent for this paragraph specifically to enumerate. All the powers hereby conferred upon~~
 106 ~~said city shall be exercised in the manner hereinafter prescribed or in the manner prescribed by~~
 107 ~~the laws of the State of Florida applicable thereto.~~

108 Sec. 1.02. Construction of the Charter.

109 The powers of the city under this charter shall be construed liberally in favor of the city, and the
 110 specific mention of particular powers in the charter shall not be construed as limiting in any way
 111 the general powers granted in this article.

112
 113 Sec. 1.03. Intergovernmental Relations.

114 The city may participate by contract or otherwise with any governmental entity of this state or
 115 any other state or states or the United States in the performance of any activity which one or
 116 more of such entities has the authority to undertake.

117
 118 Sec. 1.04. Form of Government.

119 The form of government of the City of New Smyrna Beach provided for under this charter shall
 120 be known as the Commission-Manager plan.

121
 122 ~~Sec. 7A~~ Sec. 105. Annexation.

123 ~~(A)~~(a) The city may annex contiguous territory in accordance with state law and by one of the
 124 two (2) following additional methods:

125 (1) ~~[Involuntary annexation.]~~

126 (2) Any unincorporated territory lying contiguous or adjacent to any boundary of the City of
 127 New Smyrna Beach, Volusia County, may be annexed to and become part of such City of
 128 New Smyrna Beach subject to the jurisdiction, obligation[s], benefits and privileges of the
 129 City of New Smyrna Beach, except as herein otherwise provided, under the following
 130 method, to wit:

131

132 (a1) Such territory may be integrated into and made a part of the City of New Smyrna
133 Beach upon petition of not less than two-thirds of the qualified electors residing in
134 the territory to be integrated into and made a part of said City of New Smyrna
135 Beach, who are registered freeholders on the county registration records.

136 (b2) The petition or petitions for integration into the City of New Smyrna Beach shall
137 be substantially in the following form:

138 "PETITION TO INTEGRATE TERRITORY INTO THE CITY OF NEW
139 SMYRNA BEACH, VOLUSIA COUNTY, FLORIDA.

140 This petition is filed pursuant to Laws of Fla., ch. 57-1606, for the purpose of
141 integrating the herein described lands into the City of New Smyrna Beach, Florida.

142 We, the undersigned, being qualified electors residing in the hereinafter
143 described territory, who are duly registered as freeholders on the county registration
144 records, hereby file this, our petition, for annexation of the following described
145 territory into the City of New Smyrna Beach, Florida, in accordance with the above
146 referred to laws of Florida, to wit:

147 (Here describe territory)

148 (Here place signatures of petitioners, showing in detail place of residence, with
149 street and number where available.)"

150 (c3) As many separate petitions as may be desired may be filed affecting the same
151 area and if such petitions are insufficient for any reason, additional or supplemental
152 petitions may be filed.

153 (d4) When completed, such petitions, and additional or supplemental petitions, shall
154 be filed with the City Clerk of the City of New Smyrna Beach, who shall, within
155 five (5) days after the filing of such petitions with ~~him~~ the Clerk, deliver the same to
156 the Supervisor of registrationElections of Volusia County, who shall thereupon
157 check the names of petitioners and shall certify within thirty (30) days that the
158 signatures on each petition are genuine, and that the petitioners whose names
159 appear on said petitions are qualified in all respects under this act to sign said
160 petitions. In the event that the number of qualified petitioners is found to be
161 insufficient, supplemental petitions may be filed until the sufficient number is
162 obtained, and the Supervisor of registrationElections shall have the same time, as
163 herein provided, to check such supplemental petition as the original petition. After
164 filing with the City Clerk, no petition shall be withdrawn, nor shall any petitioner
165 be permitted to withdraw his or her signature therefrom.

166 (e5) The petition or petitions meeting the requirements of this act shall thereupon be
167 presented to the City Commission of the City of New Smyrna Beach, at its next
168 regular meeting, together with the aforesaid certificate of the Supervisor of
169 registrationElections, and a certificate from the City Attorney, showing a sufficient
170 legal description of the area to be annexed.

171 (f6) Within six (6) months after the presentation of such approved petitions, the City
172 Commission in its discretion may adopt a resolution or enact an ordinance setting
173 forth the filing of said petitions, certification ~~of~~ by the Supervisor of

174 ~~registration~~ Elections as to the sufficiency of each petition and the certification of
175 the engineer or the surveyor as to the sufficiency of the description of the land
176 contained therein, and shall resolve or ordain that the said area is incorporated into
177 the municipality, effective as of a particular date, determined by the City
178 Commission, which effective date shall be not more than one year from the time of
179 the presentation of the petition for annexation as provided for under the provisions
180 of this act; or the governing body may reject said petitions by resolution within
181 such six (6) months' period or by nonaction on their part within said period,
182 whereupon said petitions shall become null and void. No petitions for annexing the
183 same territory shall be filed until after a lapse of one year from the time of such
184 rejection by resolution or nonaction.

185 (Bb) Upon the adoption of a resolution or enactment of an ordinance annexing any such
186 unincorporated territory to the City of New Smyrna Beach, such territory shall become a
187 part of said City of New Smyrna Beach on the effective date; provided, however, that such
188 territory shall not be subject to ad valorem taxation until January first following the effective
189 date of annexation; provided, however, that territory annexed pursuant to this act shall be
190 subject to the prior bonded indebtedness of said city; and such territory shall be subject to
191 the jurisdiction, obligations, benefits and privileges of the municipality, except as herein
192 otherwise provided, the same as the area constituting the municipality to which it was
193 annexed.

194 (Cc) After the effective date of such annexation all residents in the newly annexed territory
195 shall have the same rights to vote in city elections and to hold public office in the city, as
196 though the newly annexed territory had been a part of the said City of New Smyrna Beach
197 for at least three months prior to the effective date of annexation. If the city should have a
198 division into municipal districts or wards for election purposes, the newly annexed territory
199 shall be added to such districts or wards as the governing body of the city shall in its
200 discretion determine.

201 (Dd) All persons, firms or corporations lawfully licensed to engage in any profession,
202 occupation, trade or business within the annexed territory on the effective date of its
203 annexation may upon paying the license taxes required by the City of New Smyrna Beach
204 thereupon be entitled to carry on such profession, occupation, trade or business in the
205 annexed area without obtaining a required permit or certificate granted by any examining
206 board of the city; but such right may be terminated for cause after a hearing by the
207 appropriate examining board of the city. Such licenses [licensees] must qualify with said
208 examining boards to engage in any profession, occupation, trade or business in the existing
209 area to which the new territory was annexed.

210
211 **CHAPTER 3.—ARTICLE II CITY COMMISSION**

212 ~~Sec. 8.—Commissioner manager plan of government.~~ **Sec. 2.01. Creation of Commission.**

213 ~~The form of government of the City of New Smyrna Beach provided for under this act shall~~
214 ~~be known as the "commissioner manager plan," and t~~ The city commission shall consist of five
215 (5) citizens, who shall be elected in the manner hereinafter provided. The City Commission shall
216 constitute the governing body with powers hereinafter provided to pass ordinances, adopt
217 regulations, and appoint a chief administrative officer to be known as the "City Manager" and to
218 exercise all other powers hereinafter provided.

Attachment: Ord 77-20 Proposed Charter Ballot Language 7.23.2020 (Ordinance No. 77-20: Charter Amendment)

220 ~~Sec. 9. Sec. 2.02. Composition and~~ Creation of commission; Terms of Office.

221 ~~The elected officers of said city which shall constitute t~~ The City Commission shall consist
 222 of four (4) Commissioners and a Mayor. The mayor and city commissioners shall be the
 223 governing body of the city. The Mayor shall be a member of the City Commission. The Mayor
 224 shall serve a term of two (2) years. There shall be an election for Mayor every two (2) years
 225 beginning with the general election to be held in November, 2012. There shall be one
 226 Commissioner from each zone within the city. Each Commissioner shall serve a term of four (4)
 227 years. Commissioners from zones 1 and 2 shall be elected every four (4) years beginning with
 228 the general election to be held in November, 2014. Commissioners from zones 3 and 4 shall be
 229 elected every four (4) years beginning with the general election to be held in November, 2012.
 230 The Mayor and each Commissioner shall be elected by a majority of those qualified electors
 231 voting in a citywide election. No vote shall be counted for Mayor or Commissioner except those
 232 cast by the duly qualified electors under the laws of the State of Florida.

233 ~~On or before the first regularly scheduled meeting of the city commission in November of~~
 234 ~~each year, the city commission shall choose a vice mayor from among its membership to serve in~~
 235 ~~the absence of the mayor, and who shall serve as vice mayor for a period of one year.~~

236 ~~Sec. 10. Sec. 2.03. Limitations, p~~ Powers and Duties of Commission.

237 ~~All powers of the city except as are otherwise provided in this act or by the constitution~~
 238 ~~of this state hereby are vested in the city commission, and except as otherwise provided~~
 239 ~~by this act or by the constitution of this state, the city commission may by ordinance or~~
 240 ~~resolution provide the manner in which any power of the city shall be exercised. It shall~~
 241 ~~be the duty of the commission at a regular or special meeting to approve all bills against~~
 242 ~~the city by the affirmative vote of a majority of its members present, provided that~~
 243 ~~wherever in this Charter and amendments thereto it is specified that a matter or thing~~
 244 ~~shall be accomplished by the passage of an ordinance, the city commission is empowered~~
 245 ~~to accomplish the same by a motion duly made and passed and entered in the minutes of~~
 246 ~~the meeting or by resolution except that nothing contained herein shall be construed as~~
 247 ~~repealing the Charter provision for the enactment of ordinances of a general or permanent~~
 248 ~~nature or resolutions and ordinances providing for public improvements, to pay the cost~~
 249 ~~for which special assessments are to be made, nor shall any matter or thing be put into~~
 250 ~~effect by the city commission except by ordinance when a penalty, whether by fine or~~
 251 ~~imprisonment is to be imposed. shall be vested in the City Commission, except as~~
 252 ~~otherwise provided by the Constitution of the State of Florida, this charter, or the Volusia~~
 253 ~~County Charter. The City Commission shall comply with and provide for the exercise~~
 254 ~~thereof and for the performance of all duties and obligations imposed on the city by law~~
 255 ~~and by this charter. The City Commission shall annually perform performance reviews on~~
 256 ~~the following charter officers: the City Manager, the City Attorney, and the City Clerk.~~
 257 ~~The City Commission shall conduct an annual strategic planning process which includes~~
 258 ~~implementation strategies.~~

260 ~~Sec. 11. Sec. 2.04. Qualifications of m~~ Members.

261
 262 Members of the City Commission including the Mayor shall have been residents of the City
 263 of New Smyrna Beach, Florida, for a period of at least one (1) year immediately prior to
 264 qualifying for office, and, in addition thereto, shall have the qualifications of electors under the
 265 laws of the State of Florida.

266 The four (4) Commissioners elected from zones shall have resided within the zone from
 267 which they are elected for at least ~~six (6) months~~ one (1) year prior to the date on which they
 268 qualified to run for office. Any such Commissioner who shall ~~remove his residency from no~~
 269 longer reside in the zone from which ~~he~~ the Commissioner is elected shall thereupon become
 270 disqualified to represent said zone as commissioner and ~~his~~ that office of Commissioner shall be
 271 deemed vacant.

272 ~~It shall disqualify any person to hold office under this act by reason of the fact that such~~
 273 ~~person also holds a county or state elective office. Officers and employees of the city shall not be~~
 274 ~~interested in the profits or emoluments of any contract, work or service for the municipality, and~~
 275 ~~any such contract in which any officer or employee is, or may become interested, shall be void.~~

276 ~~Sec. 12. — Canvass by candidates for commission.~~

277 ~~Candidates for the office of city commission may make personal canvass among the voters~~
 278 ~~to secure his nomination or election or the nomination and election of any other candidate in the~~
 279 ~~same election. He may cause notice of his candidacy to be published in the newspapers. Each~~
 280 ~~candidate shall circulate his own petition for a nomination personally and may in any legal way~~
 281 ~~solicit anyone to support him or vote for him. He shall not promise any money, office,~~
 282 ~~employment or any other thing of value to secure nomination or election. Violation of these~~
 283 ~~provisions or any of them, shall disqualify him from holding the office if elected and the person~~
 284 ~~receiving the next highest number of votes, who has observed the foregoing conditions, shall be~~
 285 ~~entitled to the office.~~

286 Sec. 2.05. Prohibitions.

287 (a) Holding Other Office. Except where authorized by law, neither the Mayor nor any
 288 Commissioner shall hold any other elected public office, or otherwise be employed by the City
 289 of New Smyrna Beach, during the term for which the Mayor or Commissioner was elected to the
 290 Commission. No former Commission member shall hold any compensated appointive office or
 291 employment with the city until one year after the expiration of the term for which the Mayor or
 292 Commissioner was elected to the Commission. The Mayor and Commissioners shall not be
 293 interested in the profits or emoluments of any contract, work, or service for the municipality, and
 294 any such contract in which any elected official is, or may become interested, shall be void.
 295 Nothing in this section shall be construed to prohibit the Commission from selecting any current
 296 or former Commission Member to represent the city on the governing board of any regional or
 297 other intergovernmental agency.

298
 299 (b) Appointments and Removals. Neither the City Commission nor any of its members shall in
 300 any manner control or demand the appointment or removal of any city administrative officer or
 301 employee whom the City Manager or any subordinate of the Manager is empowered to appoint,
 302 but the Commission may express its views and fully and freely discuss with the City Manager
 303 anything pertaining to appointment and removal of such officers and employees.

304
 305 (c) Interference with Administration. Except for the purpose of inquiries and investigations
 306 under Sec. 2.09, or asking questions and gaining information to assist the members in the
 307 formulation of sound policies, the Commission or its members shall deal with city officers and
 308 employees who are subject to the direction and supervision of the City Manager, the City
 309 Attorney, and the City Clerk solely through these charter officers, and neither the Commission
 310 nor its members shall give orders to any such officer or employee, either publicly or privately.

311

312 ~~Sec. 15~~ Sec. 2.06. Forfeiture of Office.

313 ~~Any member of the city commission created by this act who shall cease to possess any of the~~
314 ~~qualifications required under the preceding sections shall forthwith forfeit his office.~~

315 The Mayor or a Commissioner shall forfeit that office if the Mayor or Commissioner:

- 316 (a) Fails to meet the residency requirements, or
317 (b) Violates any express prohibition of this charter, or
318 (c) Is convicted of a crime involving moral turpitude, or
319 (d) Fails to attend three (3) consecutive regular meetings of the Commission
320 without being excused by the Commission.

321
322 ~~Sec. 13.~~ Sec. 2.07. Judge of its own election Qualifications, Election, and Forfeiture.

323 The City Commission shall be the judge of the election and qualifications and election of its own
324 members and of the grounds for forfeiture of office, subject to review by the courts. Any member
325 of the city commission who shall be convicted of a felony, while in office, shall thereby forfeit
326 his office. In order to exercise these powers, the Commission shall have power to subpoena
327 witnesses, administer oaths, and require the production of evidence. The City Commission shall
328 use the following procedure when forfeiture of office for one of its members is considered:

329
330 (a) Written notice, approved by the remaining four (4) members of the City
331 Commission, must be delivered to the accused Commissioner who shall have an
332 opportunity to be heard and defend against the accusation.

333
334 (b) Subsequent to written notice being delivered to the accused, the Commission by
335 an affirmative vote of four (4), shall have the authority to suspend a Commissioner
336 pending the disposition of charges for removal.

337
338 (c) Where a suspension of a Commissioner occurs pursuant to this section of the
339 charter, the suspended official shall have the right to an immediate hearing upon
340 demand to determine if there is sufficient evidence to establish the following two
341 elements:

- 342 (1) that probable cause exists to believe that the charges are true; and
343 (2) that, if true, the charges would be grounds for removal.

344
345 (d) The suspension hearing shall be held and the matter decided by the City
346 Commission. The rules of procedure shall be the same as those which apply to the
347 hearing for removal.

348
349 (e) If the City Commission does not find by an affirmative vote of four (4) of the
350 existing members of the Commission that are eligible to vote on the matter that the
351 evidence produced at the hearing is sufficient to establish the aforementioned two
352 elements, the suspension shall terminate immediately and the official shall be
353 reinstated pending a final hearing on removal.

354
355 (f) A final hearing for removal must take place and a decision rendered within ninety
356 (90) calendar days after receipt of the above-mentioned written notice unless both the
357 City Commission, by affirmative vote of four (4) Commissioners, and the accused
358 agree to extend the time.

359
360 (g) In order for the City Commission to remove the accused official from office, the
361 Commission must find that the substantial competent evidence presented at the
362 hearing supports the charges which are the basis for the removal proceeding.

363
364 (h) A Mayor or Commissioner may only be removed from office by an affirmative
365 vote of four (4) members of the existing membership eligible to vote for such action.

366
367 (i) If, after the final hearing, the City Commission is unable to support such a finding
368 by an affirmative vote of four (4) members of the City Commission, any suspension
369 of the accused shall terminate and the accused shall be reinstated to office for any
370 unfinished portion of the official's term.

371
372 (j) The accused Commissioner shall have the right to defend against the charges and
373 has the right to present evidence and testimony and to cross-examine witnesses during
374 any hearing regarding suspension or removal.

375
376 (k) The accused Commissioner shall not be entitled to participate in the deliberations
377 or decision in relation to the Commissioner's suspension or removal.

378
379 ~~Sec. 16. Sec. 2.08. Vacancies; Filling Vacancies in on Commission.~~

380 ~~When there is a vacancy in the city commission, the same shall be filled by appointment by~~
381 ~~the city commission, if less than sixty (60) days ensue before the next general or special election;~~
382 ~~if more than sixty (60) days before such election, then an election shall be called to fill such~~
383 ~~vacancy.~~

384 (a) Vacancies. The office of Mayor or Commissioner shall become vacant upon the
385 Mayor or Commissioner's death, resignation, or removal from office or forfeiture
386 of office in any manner authorized by law.

387
388 (b) Filling of Vacancies. Should a vacancy in the office of Mayor or City
389 Commissioner occur when there are one hundred twenty (120) days or less left in
390 the unexpired term, no appointment shall be made and that vacancy will be filled
391 at the next regular municipal election. Should a vacancy occur when there are
392 more than one hundred twenty (120) days left in the unexpired term, that vacancy
393 shall be filled by the City Commission within thirty (30) days of the date of the
394 vacancy with any qualified resident from the same zone so appointed to serve
395 until a successor is elected at the next regular municipal election. If the vacancy
396 occurs in the office of Mayor, the City Commission may fill the vacancy with any
397 qualified resident from any zone. If a vacancy is not filled by the City
398 Commission within thirty (30) days after the vacancy occurs as described above, a
399 special election shall be held within ninety (90) days after such vacancy occurs or
400 as soon thereafter as such election may be held; and the person so elected shall
401 serve the remaining unexpired term of office.

406 Section 2.09. Investigations.

407 The City Commission may request investigations into the affairs of the city and the conduct of
 408 any department, office, or agency.

409
 410 ~~Sec. 17~~ Sec. 2.10. Organization of Commission.

411 The City Commission shall organize after the general election biennially, on the second Tuesday
 412 in November. On or before the first regularly scheduled meeting of the City Commission in
 413 November of each year, the City Commission shall choose a Vice-Mayor from among its
 414 membership to serve in the absence of the Mayor, and who shall serve as Vice-Mayor for a
 415 period of one year.

416
 417 Section 2.11. Compensation.

418 The City Commission shall determine the annual salary of the Mayor and Commissioners by
 419 ordinance.

420
 421 Section 2.12. Voting.

422 The affirmative vote of three (3) members of the City Commission shall be necessary to adopt
 423 any ordinance, resolution, or motion. The passage of all ordinances, resolutions, and motions
 424 shall be taken by a “yes” or “no” vote and entered upon the minutes.

425
 426 ~~Sec. 18~~ Sec. 2.13. Functions and Powers of Mayor.

427 The Mayor shall be considered a member of the City Commission and he shall have all the
 428 powers, rights, duties and obligations of a City Commissioner. The Mayor shall preside at all
 429 meetings of the City Commission and perform such duties consistent with his the office as may
 430 be imposed by it; and shall have a voice and vote in the proceedings of the City Commission, but
 431 no veto power; and shall present an annual state of the city address at a meeting open to the
 432 public. HeThe Mayor may use the title of Mayor in any case in which legal instruments of
 433 writing or other necessity arising from the general laws of the state so require; but this shall not
 434 be construed as conferring upon himthe Mayor the administrative or judicial functions of Mayor
 435 under the general laws of the state. HeThe Mayor shall be recognized as the official head of the
 436 city by the courts for the purpose of serving civil processes, by the government in the exercise of
 437 military law, and for all ceremonial purposes. HeThe Mayor may take command of the police in
 438 governing the city by proclamation under the direction of the city commission in times of grave
 439 public danger or emergency, and the City Commission shall be the judge of what constitutes
 440 such public danger or emergency. The powers and duties of the Mayor shall be such as are
 441 conferred upon himthat office by the City Commission in pursuance of the provisions of this act
 442 and no others. In the absence of the Mayor and of the Vice-Mayor, the other members of the City
 443 Commission shall select one of their number to perform his the duties of the Mayor.

444 ~~Sec. 21.~~ Penalty for absence.

445 ~~Absence from four (4) consecutive regular meetings of the city commission shall operate to~~
 446 ~~vacate the seat of a member unless a leave of absence is first granted by the city commission or~~
 447 ~~unless such absence is excused by the city commission, by resolution setting forth the fact of~~
 448 ~~such excuse duly entered upon its minutes.~~

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~~CHAPTER 13. REGISTRATION AND ARTICLE III ELECTIONS~~

~~Sec. 3.01. Nonpartisan Elections.~~

~~All qualifications and elections for the offices of City Commissioner and Mayor shall be conducted on a nonpartisan basis without regard for designation of political party affiliation of any candidate, nominee, or any nomination petition or ballot.~~

~~Sec. 3.02. Conduct of Elections.~~

~~City elections shall be conducted in accordance with the general election laws of the State of Florida.~~

~~Sec. 169 Sec. 3.03. Time of Holding Elections; Primary and General.~~

~~Elections to elect the Mayor and City Commissioners whose terms expire in that year shall be held in each even-numbered year as follows:~~

~~The general election for Mayor and City Commissioners, if necessary, shall be held in each even-numbered year at the same time as and as part of the general election of the State of Florida.~~

~~The primary election for Mayor and City Commissioners, if necessary, shall be held in each even-numbered year at the same time as and as part of the primary election of the State of Florida.~~

~~Sec. 170 Sec. 3.04. – Canvassing Board of elections.~~

~~A city canvassing board shall be established for the purposes of canvassing ballots and election results. The canvassing board shall be composed of the City Clerk and the two (2) City Commissioners whose zones are not on the ballot. After any primary or general election, the Volusia County Canvassing Board may serve in lieu of the city canvassing board.~~

- ~~(1) The board of elections for the City of New Smyrna Beach shall be composed of the mayor, vice mayor and city commissioners.~~
- ~~(2) The board shall organize itself before each municipal election by electing from its members the following officers: a chair and a vice chair, who shall perform the duties usually appertaining to their respective offices. The city clerk shall be secretary to the board and shall keep minutes of its meetings.~~
- ~~(3) A majority of the members of the board shall constitute a quorum for the exercise and performance of all the powers and duties hereby vested in the board. A majority of the members of the board present at any meeting where there is a quorum shall control.~~
- ~~(4) The board shall conduct, hold and regulate all municipal elections of ever kind, nature or character whatsoever held within the city, or any political subdivision thereof, including general, special, primary, bond, referendum, charter elections and all other municipal elections, unless otherwise provided by state law.~~
- ~~(5) No municipal election of any kind, nature or character whatsoever shall be held within the city or any political subdivision thereof, except in accordance with the provisions of this Charter and under the supervision and regulation of the board, unless otherwise provided by state law.~~

- 492 ~~(6) All powers and duties imposed upon and vested in the mayor, the city commission and the~~
 493 ~~city clerk by the general and the special laws of the State of Florida applicable to the city,~~
 494 ~~and the ordinances of the city passed in pursuance of said laws, with reference to~~
 495 ~~conducting, holding and regulating of municipal elections, be and they are hereby imposed~~
 496 ~~upon and vested in the board of elections created by this Charter, and it shall perform and~~
 497 ~~exercise all such duties and powers.~~
- 498 ~~(7) Except as otherwise provided by this Charter, all municipal elections held within the city,~~
 499 ~~or any political subdivision thereof, shall be conducted in such manner as may be provided~~
 500 ~~for such elections by the general and the special laws of the State of Florida, applicable to~~
 501 ~~the city, and the ordinances of the city passed in pursuance of such laws, provided that such~~
 502 ~~laws and such ordinances shall not conflict with this Charter.~~
- 503 ~~(8) All acts and things necessary to be done to completely accomplish and carry out the~~
 504 ~~conducting, holding and regulating of municipal elections, and declaring the results thereof~~
 505 ~~are authorized to be done and performed by the board under the authority of this chapter,~~
 506 ~~unless otherwise provided by state law.~~
- 507 ~~(9) All ballots to be used in any municipal election shall be prepared under the supervision and~~
 508 ~~direction of the county supervisor of elections in accordance with state law, unless otherwise~~
 509 ~~provided by state law.~~
- 510 ~~(10) Every person who is qualified to vote under state law shall be a qualified elector at all~~
 511 ~~municipal elections in the city.~~
- 512 ~~(11) The city clerk shall, after the last day of qualifying, certify a list of the candidates in such~~
 513 ~~election whose names are entitled to appear on the ballot as being the list of candidates for~~
 514 ~~nomination or election, or question to be voted upon, as the case may be, together with the~~
 515 ~~names of the offices for which nomination or election is to be made at such election, as the~~
 516 ~~case may be, and shall cause the same to be transmitted to the Supervisor of Elections of~~
 517 ~~Volusia County by 5 p.m. the next business day.~~
- 518 ~~(12) No later than noon of the second day after any election, or sooner, if the returns shall have~~
 519 ~~been received, unless otherwise provided by law, it shall be the duty of the board to meet~~
 520 ~~and proceed publicly to canvass the vote given for the several persons as shown by the~~
 521 ~~returns then on file in its office. Such canvass shall be made, solely, exclusively and entirely~~
 522 ~~from the returns, and in no case shall the board change or vary in any manner the number of~~
 523 ~~votes cast for the candidates respectively in any polling place in the city, as shown by the~~
 524 ~~returns of such polling place, provided that all returns shall be made to the board on or~~
 525 ~~before the said second day after such election, and if not so returned the vote of all missing~~
 526 ~~zones shall be ignored and the results as shown by the returns then on file shall be certified~~
 527 ~~as herein provided.~~
- 528 ~~(13) In case any city officer shall be elected at any election, the board shall give to the person~~
 529 ~~who shall be elected a certificate of his or her election, and the board shall give any person~~
 530 ~~desiring a copy of such returns or any other records in custody of the board from the record~~
 531 ~~a certified copy thereof or of such party thereof as may be desired, upon the payment to it of~~
 532 ~~the customary fees for copying and certifying papers.~~
- 533 ~~(14) The right to contest any municipal election is hereby created. The election or nomination~~
 534 ~~of any person to a municipal elective office may be contested by any defeated candidate for~~

535 ~~such office or nomination in the same manner and by the procedure now provided by the~~
 536 ~~laws of the State of Florida for the contest of the election of any person to the office of~~
 537 ~~county judge. Any question which may be submitted to the voters of the city may be~~
 538 ~~contested by any qualified elector in the manner provided by law. Nothing herein shall be~~
 539 ~~construed to abrogate or abridge in any way any remedy that may now exist by quo warranto~~
 540 ~~or mandamus, but in such case the proceedings hereinabove provided shall be taken to be~~
 541 ~~alternative or cumulative.~~

542 ~~The board is a proper party defendant in all matters affecting the truth and accuracy of the~~
 543 ~~election returns.~~

544 ~~(15) — The board shall have full exclusive power and authority to police all municipal elections,~~
 545 ~~unless otherwise provided by state law. It may also call upon the sheriff of Volusia County,~~
 546 ~~Florida, and his deputies, and the chief of police and the police officers of the City of New~~
 547 ~~Smyrna Beach, and all other peace officers within the city, and such officers shall serve in~~
 548 ~~such elections under the direction of the board.~~

549 ~~(16) — The board shall have power and authority to make by resolution any additional rules and~~
 550 ~~regulations concerning electors and elections in the city as may be necessary for the full and~~
 551 ~~complete exercise of the powers and authority herein vested in the board, which such rules~~
 552 ~~and regulations shall be as valid as if specifically provided by this Charter, provided that~~
 553 ~~such rules and regulations shall not conflict with the provisions of law.~~

554 ~~Sec. 172. — Elections, applicability of general laws.~~

555 ~~The qualifications of electors, the registration of voters, the oath of registrant, the~~
 556 ~~maintenance of registration books, the use of voting machines, the appointment of personnel for~~
 557 ~~the conduct of an election, challenges to voters and watchers of elections shall be governed by~~
 558 ~~the provisions of the general laws of Florida.~~

559 ~~Sec. 177. — Elections, how arranged for, inspectors and clerks, published notice.~~

560 ~~The board of elections shall make all necessary arrangements for holding all city elections,~~
 561 ~~and shall declare the result thereof. The board of elections shall issue a proclamation calling any~~
 562 ~~special election, except as herein otherwise provided for, stating therein where the same shall be~~
 563 ~~held, and naming the different offices to be filled or questions to be decided and shall cause the~~
 564 ~~same to be published once a week for two (2) consecutive weeks immediately preceding the day~~
 565 ~~of election, in a newspaper published in the city, the first publication to be not less than fourteen~~
 566 ~~(14) days prior to said election.~~

567 ~~Sec. 178. — Ballots.~~

568 ~~The ballots shall conform as nearly as possible to the form of ballots prescribed by the~~
 569 ~~general election laws of the State of Florida.~~

570 ~~Sec. 179. — Nomination of candidates, petitions for place on ballot.~~

571 ~~Candidates for the office of mayor or for the office of city commissioner shall be nominated~~
 572 ~~only by a nonpartisan primary election, if one need be called. The name of any elector of the city~~
 573 ~~shall be printed on the primary ballot if there is filed with the board of elections a petition in~~
 574 ~~accordance with the following provisions and if the person whose name is to appear on said~~
 575 ~~petition is qualified for the office he or she is seeking in all other respects as set forth in this~~
 576 ~~Charter.~~

577 (a) ~~Such petition shall state the name of each person whose name is presented for a place~~
 578 ~~upon the ballot and that he or she is a candidate for the office of mayor or for the office~~
 579 ~~of city commissioner for the City of New Smyrna Beach, Florida, and, if he or she is a~~
 580 ~~candidate for the office of city commissioner, the said petition shall state the zone from~~
 581 ~~which the candidate is running.~~

582 (b) ~~In the case of a person who is a candidate for mayor, his or her petition shall be signed~~
 583 ~~by at least twenty five (25) duly registered, qualified electors of the city. In the case of a~~
 584 ~~candidate for commissioner, such petition shall be signed by at least twenty five (25)~~
 585 ~~duly registered, qualified electors of the city, fifteen (15) of which must be residents~~
 586 ~~from the zone from which said candidate is running.~~

587 (c) ~~Each elector signing a petition shall add to his or her signature the date of signing. All~~
 588 ~~signatures shall be made with ink or indelible pencil.~~

589 (d) ~~The signatures of all of the petitioners need not be appended to one paper, but to each~~
 590 ~~separate paper there shall be attached an affidavit of the candidate circulating the same,~~
 591 ~~stating the number of signers thereto, that each person signed in his or her presence on~~
 592 ~~the date mentioned, and that the signature is that of the person whose name it purports~~
 593 ~~to be; but all of said petitions, whether consisting of one paper or several, must be~~
 594 ~~circulated by the candidate himself or herself.~~

595 (e) ~~The qualifying period for the general city election shall be the same as the qualifying~~
 596 ~~period for the general election of the State of Florida. The names of all candidates and~~
 597 ~~the offices for which they have filed shall be received by the supervisor of elections~~
 598 ~~from the city clerk by 5:00 p.m. on the next business day after the close of qualifying.~~

599 ~~In the event of a special election held to fill a vacancy in the office of mayor or seat on the~~
 600 ~~city commission, rather than a general election, the qualifying period shall be established by the~~
 601 ~~board of elections.~~

602 ~~Sec. 180. Acceptance by candidate.~~

603 ~~Any person whose name has been submitted for candidacy by any such petition shall file his~~
 604 ~~or her acceptance of such candidacy, together with his or her affidavit to the effect that he or she~~
 605 ~~is qualified to vote at such election, with the city clerk no later than the last day of qualification;~~
 606 ~~otherwise his or her name shall not appear upon the ballot. In the event of a special election to~~
 607 ~~fill a vacancy in the office of mayor or seat on the city commission, rather than a general~~
 608 ~~election, any person whose name has been submitted for candidacy by any such petition shall file~~
 609 ~~his or her acceptance of such candidacy, together with his or her affidavit to the effect that he or~~
 610 ~~she is qualified to vote at such election, with the board of elections not later than the last day of~~
 611 ~~qualification; otherwise his or her name shall not appear upon the ballot.~~

612 ~~Sec. 181~~Sec. 3.05. Nomination and Election; procedure when; wWhen Primary Election
 613 Unnecessary; when general election unnecessary.; Tie Vote.

614 When there are less than three (3) qualified persons nominated by petition for the office of
 615 Mayor or Commissioner, as set forth in section 179 hereof, then and in that event, no primary
 616 election shall be held for the election of a Mayor or Commissioner and the City Clerk shall
 617 declare the person or persons so nominated qualified by petition as aforesaid as nominees for the
 618 office of mayor for said city at the general election; However, if more than two (2) qualified
 619 persons are nominated for the office of Mayor or Commissioner, then the City Clerk shall

620 include the nominees in the primary election as herein provided. The names of the two (2)
 621 candidates for nomination to the office of Mayor or Commissioner who shall receive the greatest
 622 vote in such primary election shall be placed on the ballot at the next general municipal election,
 623 ~~and~~The candidate at the general election who shall receive the greatest number of votes ~~at said~~
 624 ~~general election~~ for the office of Mayor or Commissioner shall be declared the Mayor or
 625 Commissioner.

626
 627 ~~When there are less than three (3) qualified persons nominated by petition for the office of~~
 628 ~~mayor, as set forth in section 179 hereof, then and in that event no primary election shall be held~~
 629 ~~for the election of a mayor and the city clerk shall declare the person or persons so nominated by~~
 630 ~~petition as aforesaid as nominee or nominees for the office of mayor for said city at the general~~
 631 ~~election; however, if more than two (2) qualified persons are nominated for the office of mayor,~~
 632 ~~then the city clerk shall include the nominees in the primary election as herein provided. The~~
 633 ~~names of the two (2) candidates for nomination to the office of mayor who shall receive the~~
 634 ~~greatest vote in such primary election shall be placed upon the ballot at the next general~~
 635 ~~municipal election and the candidate at the general election who shall receive the greatest~~
 636 ~~number of votes at said general election for the office of mayor shall be declared to be the~~
 637 ~~mayor. However, if and when a candidate for mayor in a primary election receives a greater~~
 638 ~~number of votes in said primary election than the combined votes of all other candidates for the~~
 639 ~~office of mayor, then and in that event the candidate receiving the majority of all the votes cast in~~
 640 ~~said primary election for that office shall be declared to be elected as mayor and thereafter it~~
 641 ~~shall not be necessary to place his or her name on the ballot for the general election.~~

642 ~~When there are less than three (3) qualified persons in any zone nominated by petition, for~~
 643 ~~the office of commissioner, then and in that event no primary election shall be held for the~~
 644 ~~election of the commissioner from that zone and the city clerk shall declare the person or persons~~
 645 ~~so nominated by petition as aforesaid nominee or nominees for the office of city commissioner~~
 646 ~~from said zone at the general municipal election; however, if more than two (2) qualified persons~~
 647 ~~in said zone are nominated by petition, then the city clerk shall include the nominees in said zone~~
 648 ~~in the primary election as herein provided.~~

649 ~~The names of the two (2) candidates for nomination to the office of city commissioner from~~
 650 ~~a particular zone who shall receive the greatest vote in said primary election shall be placed on~~
 651 ~~the ballot at the next general municipal election. However, if and when a candidate for the office~~
 652 ~~of city commissioner from a particular zone in a primary election receives a great number of~~
 653 ~~votes in said primary election than the combined votes of all those other candidates for city~~
 654 ~~commission running from that particular zone, then and in that event the candidate receiving the~~
 655 ~~majority of all votes cast in said primary election for that particular zone shall be declared to be~~
 656 ~~elected as city commissioner from that zone, and thereafter, the said candidate(s) name from said~~
 657 ~~zone need not be placed on the ballot for the general election. A tie vote between two (2) or more~~
 658 ~~candidates for the office of mayor or between two (2) or more candidates for the office of city~~
 659 ~~commissioner from any zone shall be determined by special election in the city at large, to be~~
 660 ~~held in accordance with the provisions of this Charter. The ballot to be used at said elections~~
 661 ~~shall be so arranged as to show clearly and so as to designate the names of the candidates for~~
 662 ~~mayor and the names of the candidates for commissioner from each zone, together with the~~
 663 ~~particular zone from which said candidate for commissioner is running.~~

664 A tie vote between two (2) or more candidates for the office of Mayor or between two (2) or
 665 more candidates for the office of City Commissioner shall be determined by the drawing of lots.
 666

667 ~~Sec. 182~~ Sec. 3.06. When Term of Office Commences.

668 The terms of office for Mayor and City Commissioners shall commence on the ~~seventh day~~
 669 ~~after the general election~~ first Tuesday after certification of the general election in which the
 670 Mayor or City Commissioner was elected. The term of office for the Mayor shall expire two (2)
 671 calendar years hence after the start of the term. The term of office for City Commissioners shall
 672 expire four (4) calendar years hence after the start of the term. The term of office and assumption
 673 of the duties by the Mayor-Elect and City Commissioners-elect shall commence on said day
 674 upon the respective Mayor-Elect or City Commissioner-Elect taking and subscribing to his or her
 675 oath of office.

676 In the event that the Mayor or a Commissioner is either appointed or elected by special
 677 election to fill a vacancy pursuant to the provisions of section ~~46~~ 2.08 of the New Smyrna Beach
 678 City Charter, he or she shall assume the office immediately upon taking and subscribing to the
 679 oath of office. The term of office for the Mayor or Member of the Commission appointed or
 680 elected by special election to fill a vacancy shall end on the same day that the person for whom
 681 he or she was appointed or elected to fill the term of office would have ended.

682 ~~Sec. 183. General laws to apply.~~

683 ~~All elections shall be conducted, except as otherwise specifically provided under this act,~~
 684 ~~under the rules and conditions prescribed by law, and subject to the general election laws of the~~
 685 ~~state.~~

686 Sec. 3.07. Commission Zones; Adjustment of Zones.

687 (a) Number of Zones. There shall be four (4) City Commission zones.

688
 689 (b) Commission to Redraw Zone Boundaries. Following each decennial census, or more often if
 690 deemed necessary because of population fluctuations, the City Commission shall by ordinance
 691 adjust the boundaries of the four (4) city commission zones using these criteria:

692 (1) Zones shall be equal in population except where deviations from equality result from
 693 the application of the provisions hereinafter set forth, but no such deviation may
 694 exceed five percent of the average population for all City Commission zones
 695 according to the figures available from the most recent census.

696
 697 (2) Zones should be drawn in a manner that keeps neighborhoods intact to the extent
 698 possible.

699
 700 (3) Zones shall consist of contiguous territory; but land areas separated by waterways
 701 shall not be included in the same zone unless said waterways are traversed by
 702 highway bridges, tunnels, or regularly scheduled ferry services both termini of which
 703 are within the zone, except that, population permitting, islands not connected to the
 704 mainland or to other islands by bridge, tunnel, or regular ferry services shall be
 705 included in the same zone as the nearest land area within the city.

706
 707 (4) Consistent with the foregoing provisions, the aggregate length of all zone boundaries
 708 shall be as short as possible.

- 709
- 710 (c) Procedures.
- 711 (1) The City Commission shall complete the reapportionment plan within six (6) months
- 712 after the official publication of the census.
- 713
- 714 (2) Proposed plans must be available to the public for inspection and comment not less
- 715 than one (1) month before the first public hearing on said plan. The plan shall include a
- 716 map and description of the zones recommended.
- 717
- 718 (3) The City Commission shall review and adopt the reapportionment plan as an
- 719 ordinance by an affirmative vote of three (3) Members of the Commission.
- 720
- 721 (d) Failure to Enact Ordinance. If the City Commission fails to enact a reapportionment plan
- 722 within the required time, the City Attorney shall petition the circuit court having jurisdiction in
- 723 the county to make such reapportionment.
- 724
- 725 (e) The redrawing of zones, upon becoming law, shall not affect the remaining terms of those
- 726 presently elected officials.
- 727
- 728 ~~Sec. 184~~ Sec. 3.08. Pernicious Political Activities.
- 729 (a) It shall be unlawful for any person to intimidate, threaten or coerce, or attempt to
- 730 intimidate, threaten or coerce, any person for the purpose of interfering with the right of such
- 731 other person to vote or to vote as he or she may choose, or of causing such other person to vote
- 732 for, or not to vote for, any candidate for the office of Mayor or City Commissioner at any
- 733 election held solely or in part for the purpose of selecting a Mayor or City Commissioner in the
- 734 city.
- 735
- 736 (b) It shall be unlawful for any person employed in any administrative position by the city or
- 737 by any department, independent agency or other agency of the city to use his or her official
- 738 authority for the purpose of interfering with, or affecting the election or the nomination of any
- 739 candidate for the office of Mayor or City Commissioner in the city.
- 740
- 741 (c) It shall be unlawful for any person, directly or indirectly, to promise any employment,
- 742 position, work, compensation or other benefit provided for or made possible in whole or in part
- 743 by any resolution or ordinance of the City Commission, to any person as consideration, favor or
- 744 reward for any political activity or for the support of or opposition to any candidate in any
- 745 election.
- 746
- 747 (d) It shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by
- 748 any means, any person of any employment, position, work, compensation or any other benefits
- 749 provided for or made possible by any resolution or ordinance of the City Commission
- appropriating funds for work or relief on account of race, creed, color or political activity,
- support of, or opposition to any candidate in any election.
- 750
- 751 (e) It shall be unlawful for any person employed in the executive branch of the city
- 752 government or any agency or department thereof to use his or her official authority or influence
- 753 for the purpose of interfering with an election or affecting the result thereof. All such persons
- shall retain the right to vote as they may choose and to express their opinions on all political

754 subjects. For the purpose of this section the term "officer" or "employee" shall not be construed
755 to include the Mayor or any of the City Commissioners.

756 (f) Any person who violates any of the foregoing provisions of this section upon conviction
757 thereof shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more
758 than sixty (60) days, or both and may be prosecuted in any court of the State of Florida having
759 jurisdiction.

760 ~~Sec. 184.1. Referendum elections for Charter amendments.~~

761 ~~In addition to any other manner provided by the general laws of the State of Florida for the~~
762 ~~calling of special referendum elections, a special referendum election may be called for the~~
763 ~~purpose of amending or changing the Charter upon a petition or petitions directed to the city~~
764 ~~commission and signed by twenty (20) percent of the duly qualified electors residing within the~~
765 ~~City of New Smyrna Beach, at the time of signing said petition, which said residence shall be~~
766 ~~continuous until the date of election. When the requisite twenty (20) percent of said city electors~~
767 ~~have signed a petition or petitions within sixty (60) days from the filing of the same with the city~~
768 ~~clerk, the city commission shall, after the said signatures have been certified either by the city~~
769 ~~clerk or by the supervisor of elections for Volusia County, Florida, provide for referendum~~
770 ~~election to consider the proposed Charter changes, and said election shall be called in accordance~~
771 ~~with the provisions contained in this Charter for the calling and holding of general elections, or,~~
772 ~~in accordance with the general laws of the State of Florida. Said election shall be citywide and~~
773 ~~shall be approved, if passed, by a majority of those qualified electors of the city who have been~~
774 ~~residing in the city for thirty (30) days prior to said election, voting at said election.~~

775
776 ~~CHAPTER 4. CITY MANAGER~~

777 ~~ARTICLE IV CHARTER OFFICERS~~

778 ~~Sec. 4.01. Appointment and Removal.~~

779 ~~The City Commission shall designate the following as Charter Officers and shall appoint and~~
780 ~~remove them by a majority vote of the entire City Commission: City Manager, City Attorney,~~
781 ~~City Clerk. If any Charter Officer is removed at any time after having served six (6) months, the~~
782 ~~Charter Officer may demand written charges and a public hearing upon the same before the City~~
783 ~~Commission, and final removal shall not take effect until such hearing has been had, but the City~~
784 ~~Commission may suspend the Charter Officer from office pending such hearing.~~

785
786 ~~Sec. 4.02. City Manager~~

787
788 ~~See: 28 Sec. 4.02(a). Appointment and qualifications of the City Manager.~~
789 ~~The City Commission shall appoint a City Manager by a majority vote of the entire Commission~~
790 ~~who shall be the administrative head of the municipal government under the direction and~~
791 ~~supervision of the City Commission, and he The City Manager shall hold office at the pleasure~~
792 ~~of the City Commission. He The Manager shall be chosen solely on the basis of his executive~~
793 ~~and administrative qualifications, without regard to his political beliefs, and he need not be a~~
794 ~~resident of the city or county at the time of his appointment. education and experience in the~~
795 ~~accepted competencies and practices of local government management. The Manager need not~~
796 ~~be a resident of the city or state at the time of appointment, but within six (6) months shall reside~~
797 ~~in the city unless otherwise approved by a vote of the City Commission.~~

798 ~~See: 29 Sec. 4.02(b). Compensation of the City Manager.~~

799 The City Manager shall receive such compensation as the City Commission may by resolution
800 fix.

801 ~~Sec. 30~~ Removal.

802 ~~The city manager shall be removable by the city commission; but if removed at any time after~~
803 ~~having served six (6) months, he may demand written charges and a public hearing upon the~~
804 ~~same before the city commission, and his final removal shall not take effect until such hearing~~
805 ~~has been had, but the city commission may suspend him office pending such hearing.~~

806 Sec. 4.02(c). Acting City Manager

807 By letter filed with the city clerk, the City Commission shall designate a city officer or employee
808 to exercise the powers and perform the duties of the City Manager during the Manager's
809 temporary absence or disability; the City Commission may revoke such designation at any time
810 and appoint another officer of the city to serve until the city manager returns.

811
812 ~~Sec. 31~~Sec. 4.02(d). Powers and Duties.

813 ~~The city manager shall be responsible to the city commission for the proper administration~~
814 ~~of all affairs of the city, and to that end his powers are, and they shall be: The City Manager shall~~
815 ~~be the chief executive officer of the city, responsible to the City Commission for the~~
816 ~~management of all city affairs placed in the Manager's charge by and under this charter. The~~
817 ~~City Manager shall:~~

- 818
- 819 (a1) ~~To s~~See that the laws and ordinances are enforced;:
- 820 (b2) ~~To a~~Appoint and remove all subordinate officers and employees of the city, ~~except~~
821 ~~that the appointment and removal of department heads shall be subject to the approval~~
822 ~~of the city commission; provided, however, that the removal of any and all employees~~
823 ~~that are covered by the merit plan (see Appendix A Personnel Policies and Procedures~~
824 ~~Sec. 1) shall be subject to appeal as provided by the merit plan of the city;:~~
- 825 (e3) ~~To e~~Exercise, control and direct supervision over all departments and divisions of the
826 municipal government under this Charter, or which may hereafter be created by the City
827 Commission, except for the offices of City Attorney, City Clerk, boards, commissions
828 and authorities;:
- 829 (d4) ~~To s~~See that all terms and conditions imposed in favor of the city or its inhabitants in
830 any public utility franchise are faithfully kept and performed; and upon knowledge of
831 any violation thereof, to call the same to the attention of the City Attorney, whose duty
832 it is hereby made to take such legal steps as may be necessary to enforce the same;:
- 833 (e5) ~~To a~~Attend all meetings of the City Commission, ~~and of the committees~~, with the right
834 to take part in discussions without having a vote;:
- 835 (f6) ~~To r~~Recommend to the City Commission for adoption such measures as ~~he~~ the Manager
836 may deem necessary or expedient in the interest of the city;:
- 837 (g7) ~~To k~~Keep the City Commission fully advised as to the financial condition and future
838 needs of the city; prepare and to submit for its consideration an the annual budget and
839 capital program to the City Commission; and, implement the final budget approved by
840 the commission to achieve the goals of the city;:

841 (8) Submit to the City Commission and make available to the public a complete report on
842 the finances and administrative activities of the city as of the end of each fiscal year;
843

844 (9) Make such other reports as the City Commission may require concerning operations;
845

846 (10) Assist the City Commission to develop long term goals for the city and strategies to
847 implement these goals;
848

849 (11) Promote partnerships among the Commission, staff, and residents in developing
850 public policy and building a sense of community; and
851

852 ~~(12) To perform~~ Perform such other duties as may be prescribed under this act or as may be
853 required of ~~him~~ the City Manager by ordinance or a resolution or motion of the City
854 Commission.

855 ~~(i) He shall be the purchasing agent of the city, by whom all purchases of supplies shall be~~
856 ~~made. In the capacity of purchasing agent, he shall also conduct all sales of personal~~
857 ~~property which the city commission may authorize to be sold as having become~~
858 ~~unnecessary or unfit for the city's use.~~

859 ~~(j) To negotiate and enter into settlement agreements of litigation or potential litigation on~~
860 ~~behalf of the City of New Smyrna Beach for claims against the City of New Smyrna~~
861 ~~Beach [as provided in Code of Ordinances section 2-286].~~

862
863 CHAPTER 5.— ADMINISTRATIVE OFFICERS AND DEPARTMENTS
864 Sec. 32.— Distribution of powers.

865 ~~The executive and administrative powers of the city not herein otherwise provided for shall~~
866 ~~be vested in and exercised by the following officers and departments: A city attorney and such~~
867 ~~departments as may be created by the city commission.~~

868 CITY ATTORNEY

869 ~~Sec. 33~~ Sec. 4.03. Appointment and duties of City Attorney

870 ~~The city commission shall appoint a city attorney who shall serve and hold office at the~~
871 ~~pleasure of the city commission, upon such terms as may be agreed upon at the time of his~~
872 ~~appointment, who shall act as the legal advisor to, and attorney and counselor for, the~~
873 ~~municipality and all of its officers in matters relating to their official duties.~~

874 Sec. 4.03(a). Duties.

875 The City Attorney shall serve as chief legal adviser to the City Commission, the City Manager,
876 the City Clerk, and all city departments, offices and agencies, excluding the Utilities
877 Commission who shall have independent representation; shall represent the city in all legal
878 proceedings and shall perform any other duties prescribed by state law, by this charter, or by
879 ordinance. The City Commission may authorize the City Attorney to employ assistant city
880 attorneys or engage outside counsel whenever it is deemed necessary or expedient to employ
881 such additional counsel, and such attorneys are to be selected by the City Attorney and their
882 compensation shall be fixed and determined by the City Commission.
883

884 ~~Sec. 35~~ Sec. 4.03(b). Qualifications.

885 The City Attorney shall be a practicing attorney, a member in good standing of the Florida Bar,
 886 and shall be admitted to and have authority to practice in all the courts of the State of Florida, and
 887 have experience in local government law.

888
 889 Sec. 4.04. City Clerk.

890
 891 Sec. 4.04(a). Duties.

892 The City Clerk shall be the custodian of all city records; shall give notice of Commission
 893 meetings to its members and the public; shall keep minutes of its proceedings; serve as the
 894 election official; and perform such other duties as are assigned by this charter or the City
 895 Commission.

896
 897 Sec. 4.04(b). Qualifications.

898 The City Clerk shall have a minimum experience of three years in progressively responsible
 899 related governmental administrative work or a comparable amount of training, education, or
 900 experience.

901
 902 Article V FINANCIAL MANAGEMENT

903 Sec. 5.01. Fiscal Year.

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

906
 907 Sec. 5.02. Submission of Budget and Budget Message.

908 On or before the first day of August of each year, the City Manager shall submit to the City
 909 Commission a budget for the ensuing fiscal year and an accompanying message.

910
 911 Sec. 5.03. Budget Message.

912 The City Manager's message shall explain the budget both in fiscal terms and in terms of the
 913 work programs, linking those programs to organizational goals and community priorities. It shall
 914 outline the proposed financial policies of the city for the ensuing fiscal year and the impact of
 915 those policies on future years. It shall describe the important features of the budget, indicate any
 916 major changes from the current year in financial policies, expenditures, and revenues together
 917 with the reasons for such changes; summarize the city's debt position, including factors affecting
 918 the ability to raise resources through debt issues; and include such other material as the city
 919 manager deems desirable.

920
 921 Sec. 5.04. Budget.

922 The budget shall provide a complete financial plan of all city funds and activities for the ensuing
 923 fiscal year and, except as required by law or this charter, shall be in such form as the City
 924 Manager deems desirable or the City Commission may require for effective management and an
 925 understanding the relationship between the budget and the city's strategic goals. The budget shall
 926 begin with a clear general summary of its contents; shall show in detail all estimated income,
 927 indicating the proposed property tax levy, and all proposed expenditures, including debt service,
 928 for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual

929 and estimated income and expenditures of the current fiscal year and actual income and
 930 expenditures of the preceding fiscal year.

931
 932 Sec. 5.05. Administration and Fiduciary Oversight of the Budget.

933 The City Commission shall provide by ordinance the procedures for administration and fiduciary
 934 oversight of the budget.

935
 936 Sec. 5.06. Independent Audit.

937 The City Commission shall provide for an independent annual audit of all city accounts and may
 938 provide for more frequent audits as it deems necessary. An independent certified public
 939 accountant or firm of such accountants shall make such audits. Such audits should be performed
 940 in accordance with Generally Accepted Auditing Standards (GAAS) and Generally Accepted
 941 Governmental Auditing Standards (GAGAS). The City Commission shall, using competitive
 942 bidding, designate such accountant or firm annually, or for a period not to exceed five (5) years,
 943 but the designation for any particular fiscal year shall be made no later than thirty (30) days after
 944 the beginning of such fiscal year. The standard for independence is that the auditor must be
 945 capable of exercising objective and impartial judgment on all issues encompassed within the
 946 audit engagement. No accountant or firm may provide any other services to the city during the
 947 time it is retained to provide for independent audits fo the city. The City Commission may waive
 948 this requirement by a majority vote at a public hearing.

949
 950 ARTICLE VI SUSTAINABILITY

951 Sec. 6.01. Environmental Stewardship.

952 The City of New Smyrna Beach, in order to insure the health and safety of its citizens and
 953 visitors, shall strengthen city standards with respect to air quality, water quality, sea level rise,
 954 and flooding, including:

- 955
 956 (a) Tree protection sufficient to maintain a substantial tree canopy for air quality and
 957 removal of pollutants.
- 958 (b) Enhanced stormwater quality standards that sufficiently protect all receiving water
 959 bodies, including, ponds, lakes, creeks, streams, and wetland areas, whether man-made or
 960 not.
- 961 (c) Enhanced stormwater volume and rate of discharge standards that protect surrounding
 962 properties.
- 963 (d) Floodplain management standards that utilize the best coastal management practices to
 964 protect existing and future development from flooding impacts.
- 965 (e) Limitations on the use of impervious materials.
- 966 (f) Programs and policies that support the removal of existing septic tanks.

967 Sec. 6.02. Land Development and Zoning.

968 The City of New Smyrna Beach, in order to preserve the special character of the city's history,
 969 strengthen the city's economic base, and enhance the sense of place in the residential
 970 neighborhoods, shall strengthen city standards, including:

971

- 972 (a) Preserving the scale and character of the city's neighborhoods.
- 973 (b) Maintaining the city's tree canopy, green areas, and historic footprint.
- 974 (c) Ensuring the sustainability of a parcel zoned for development without endangering the
975 public health, safety, or welfare.

976 Sec. 6.03. Historic Preservation.

977 The City of New Smyrna Beach, in order to preserve and enhance the historic quality of the city,
978 foster economic development, manage growth, improve property values, and add to the quality
979 of life of its citizens and visitors, shall strengthen the city's commitment to historic stewardship
980 by:

- 981 (a) Updating the regulations pertaining to historic properties.
- 982 (b) Creating and expanding upon local historic districts.
- 983 (c) Developing guidelines that will assist owners in obtaining historic preservation property
984 tax exemptions.
- 985 (d) Assist and facilitate owners of historic properties to access existing grant sources.

987 Sec. 6.04. Sale or Lease of Significant Public Lands.

988 Any transfer of ownership, or lease lasting longer than 10 years, of lands owned by the City of
989 New Smyrna Beach lying contiguous to a named body of water, shall only occur after a
990 unanimous vote of approval by all five members of the City Commission.

991 ~~ADVISORY BOARDS-ARTICLE VII CITIZEN PARTICIPATION~~

992 ~~Sec. 77. How constituted.~~ Sec. 7.01. Advisory Boards.

994 The City Commission may at any time appoint an advisory board, or advisory boards, ~~who~~
995 ~~{which}~~ shall be composed of citizens who are qualified to act in an advisory capacity to the City
996 Commission, the City Manager or to any department of the city government, with respect to the
997 conduct and the management of any property or institution or the exercise of any public
998 functions of the city. The members of such board shall serve without compensation for the time
999 fixed in their appointment, or at the pleasure of the City Commission, and their duties shall be to
1000 consult and advise with such municipal officers and make written recommendations which shall
1001 become part of the records of the city.

1002 ~~Sec. 184.1 Referendum elections for Charter amendments.~~ Section 7.02. Charter Amendments.

1004 ~~In addition to any other manner provided by the general laws of the State of Florida for the~~
1005 ~~calling of special referendum elections, a special referendum election may be called for the~~
1006 ~~purpose of amending or changing the Charter upon a petition or petitions directed to the city~~
1007 ~~commission and signed by twenty (20) percent of the duly qualified electors residing within the~~
1008 ~~City of New Smyrna Beach, at the time of signing said petition, which said residence shall be~~
1009 ~~continuous until the date of election. When the requisite twenty (20) percent of said city electors~~

1010 ~~have signed a petition or petitions within sixty (60) days from the filing of the same with the city~~
 1011 ~~clerk, the city commission shall, after the said signatures have been certified either by the city~~
 1012 ~~clerk or by the supervisor of elections for Volusia County, Florida, provide for referendum~~
 1013 ~~election to consider the proposed Charter changes, and said election shall be called in accordance~~
 1014 ~~with the provisions contained in this Charter for the calling and holding of general elections, or,~~
 1015 ~~in accordance with the general laws of the State of Florida. Said election shall be citywide and~~
 1016 ~~shall be approved, if passed, by a majority of those qualified electors of the city who have been~~
 1017 ~~residing in the city for thirty (30) days prior to said election, voting at said election. Amendments~~
 1018 ~~to this Charter may be framed and proposed pursuant to state law (F.S. 166.031, as amended).~~

1019
 1020 Section 7.03. Charter Review.

1021 There shall be a periodic review of this Charter by a Charter Review Advisory Committee
 1022 appointed by the City Commission in 2026 and every ten (10) years thereafter. Each zone in the
 1023 city shall have representation on the Committee.

1024
 1025 Sec. 7.04. Recall.

1026 The registered voters of the city shall have power to recall elected officials of the city pursuant to
 1027 state law (F.S. 100.361, as amended).

1028
 1029 Sec. 7.05. General Authority for Initiative and Citizen Referendum.

1030 (1) Initiative. The registered voters of the city shall have power to propose ordinances to the
 1031 Commission and, if the Commission fails to adopt an ordinance so proposed without any change
 1032 in substance, to adopt or reject it at a city election, but such power shall not extend to any
 1033 development order, local comprehensive plan amendment or map amendment, the budget or
 1034 capital program or any ordinance relating to appropriation of money, levy of taxes, or salaries of
 1035 city officers or employees.

1036
 1037 (2) Citizen Referendum. The registered voters of the city shall have the power to require
 1038 reconsideration by the Commission of any adopted ordinance and, if the Commission fails to
 1039 repeal an ordinance so reconsidered, to approve or reject it at a city election, but such power
 1040 shall not extend to any development order, local comprehensive plan amendment or map
 1041 amendment, the budget or capital program or any emergency ordinance or ordinance relating to
 1042 appropriation of money or levy of taxes.

1043
 1044 Sec. 7.05(a). Commencement of Proceedings; Petitioners' Committee; Affidavit.

1045 Any five (5) qualified voters may commence initiative or referendum proceedings by filing with
 1046 the City Clerk an affidavit stating they will constitute the petitioners' committee and be
 1047 responsible for circulating the petition and filing it in proper form, stating their names and
 1048 addresses and specifying the street address to which all notices to the committee are to be sent,
 1049 and setting out in full the proposed initiative ordinance or the ordinance sought to be
 1050 reconsidered. Promptly after the affidavit of the petitioners' committee is filed, the Clerk shall,
 1051 issue the appropriate petition blanks to the petitioners' committee at the committee's expense.

1052
 1053
 1054
 1055

1056 Sec. 7.05(b). Petitions.

- 1057 (1) Number of Signatures. Initiative and citizen referendum petitions must be signed by
 1058 the registered voters of the city equal in number to at least ten (10) percent of the total
 1059 number of registered voters at the last regular city election.
- 1060 (2) Form and Content. All papers of a petition shall be uniform in size and style and shall
 1061 be assembled as one instrument for filing. Each signature shall be executed in ink or
 1062 indelible pencil and shall be followed by the address of the person signing. Petitions
 1063 shall contain or have attached thereto throughout their circulation the full text of the
 1064 ordinance proposed or sought to be reconsidered.
- 1065 (3) Affidavit of Circulator. Each paper of a petition shall have attached to it when filed an
 1066 affidavit executed by the person circulating it stating that he or she personally
 1067 circulated the paper, the number of signatures thereon, that all the signatures were
 1068 affixed in his or her presence, that he or she believes them to be the genuine
 1069 signatures of the persons whose names they purport to be, and that each signer had an
 1070 opportunity before signing to read the full text of the ordinance proposed or sought to
 1071 be reconsidered.
- 1072 (4) Time for Filing Referendum Petitions. Referendum petitions must be filed within
 1073 thirty (30) days after adoption by the Commission of the ordinance sought to be
 1074 reconsidered.

1075 Sec. 7.05(c). Procedure after Filing.

- 1076 (1) Certificate of Clerk; Amendment. Within twenty (20) days after the petition is filed,
 1077 the City clerk shall complete a certificate as to its sufficiency, specifying, if it is
 1078 insufficient, the particulars wherein it is defective and shall promptly send a copy of
 1079 the certificate to the petitioners' committee by certified mail. A petition certified
 1080 insufficient for lack of the required number of valid signatures may be amended once
 1081 if the petitioners' committee files a notice of intention to amend it with the Clerk
 1082 within two (2) days after receiving the copy of the certificate and files a
 1083 supplementary petition upon additional papers within ten (10) days after receiving the
 1084 copy of such certificate. Such supplementary petition shall comply with the
 1085 requirements of subsections (2) and (3) of Section 7.05(b), and within five (5) days
 1086 after it is filed the Clerk or other official designated by the Commission shall
 1087 complete a certificate as to the sufficiency of the petition as amended and promptly
 1088 send a copy of such certificate to the petitioners' committee by certified mail as in the
 1089 case of an original petition. If a petition or amended petition is certified sufficient, or
 1090 if a petition or amended petition is certified insufficient and the petitioners' committee
 1091 does not elect to amend or request Commission review under subsection (2) of this
 1092 section within the time required, the Clerk shall promptly present the certificate to the
 1093 Commission and the certificate shall then be a final determination as to the
 1094 sufficiency of the petition.
- 1095
- 1096 (2) Commission Review. If a petition has been certified insufficient and the petitioners'
 1097 committee does not file notice of intention to amend it or if an amended petition has
 1098 been certified insufficient, the committee may, within two (2) days after receiving the
 1099 copy of such certificate, file a request that if be reviewed by the City Commission.
 1100 The Commission shall review the certificate at its next meeting following the filing of

1101 such request and approve or disapprove it, and the Commission's determination shall
 1102 then be a final determination as to the sufficiency of the petition.

1103 (3) Court Review; New Petition. A final determination as to the sufficiency of a petition
 1104 shall be subject to court review. A final determination of insufficiency, even if
 1105 sustained upon court review, shall not prejudice the filing of a new petition for the
 1106 same purpose.

1107 Sec. 7.05(d). Referendum Petitions; Suspension of Effect on Ordinances.

1108 When a referendum petition is filed with the City Clerk, the ordinance sought to be
 1109 reconsidered shall be suspended from taking effect. Such suspension shall terminate
 1110 when:

1111 (i) There is a final determination of insufficiency of the petition, or
 1112 (ii) The petitioner's committee withdraws the petition, or
 1113 (iii) The City Commission repeals the ordinance, or
 1114 (iv) Thirty (30) days have elapsed after a vote of the registered voters of the City of New
 1115 Smyrna Beach on the ordinance.

1116
 1117 Sec. 7.05(e). Action on Petitions.

1118 (1) Action by Commission. When an initiative or referendum petition has been finally
 1119 determined sufficient, the Commission shall promptly consider the proposed initiative
 1120 ordinance in the manner provided in Article II, or reconsider the referred ordinance by
 1121 voting its repeal. If the Commission fails to adopt a proposed initiative ordinance
 1122 without any change in substance within sixty (60) days or fails to repeal the referred
 1123 ordinance within thirty (30) days after the date the petition was finally determined
 1124 sufficient, it shall submit the proposed or referred ordinance to the voters of the city.

1125 (2) Submission to Voters. The vote of the city on a proposed or referred ordinance shall be
 1126 held not less than thirty (30) days and not later than one hundred eighty (180) days from
 1127 the date of the final commission vote thereon. If no regular city election is to be held
 1128 within the period prescribed in this subsection, the Commission shall provide for a
 1129 special election; otherwise, the vote shall be held at the same time as such regular
 1130 election, except that the Commission may, in its discretion, provide for a special election
 1131 at an earlier date within the prescribed period. Copies of the proposed or referred
 1132 ordinance shall be made available for inspection at the office of the City Clerk not less
 1133 than five (5) days prior to the election and at the polls.

1134 (3) Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any
 1135 time prior to the fifteenth (15th) day preceding the date scheduled for a vote of the city
 1136 by filing with the city clerk a request for withdrawal signed by at least two-thirds (2/3) of
 1137 the petitioners' committee. Upon the filing of such request the petition shall have no
 1138 further force or effect and all proceedings thereon shall be terminated.

1139
 1140 Sec. 7.05(f). Results of Election.

1141 (1) Initiative. If a majority of the registered voters voting on a proposed initiative ordinance
 1142 vote in its favor, it shall be considered adopted upon certification of the election results
 1143 and shall be treated in all respects in the same manner as ordinances of the same kind
 1144 adopted by the Commission. If conflicting ordinances are approved at the same election,

1145 the one receiving the greatest number of affirmative votes shall prevail to the extent of
 1146 such conflict.

1147
 1148 (2) Referendum. If a majority of the registered voters voting on a referred ordinance vote
 1149 against it, it shall be considered repealed upon certification of the election results.

1150
 1151 ~~CHAPTER 15.~~ ARTICLE VIII UTILITIES COMMISSION

1152 ~~Sec. 209~~ Sec. 8.01. Created; definitions.

1153 There is hereby created and made a part of the government of the City of New Smyrna
 1154 Beach a utilities commission to be known and designated as "Utilities Commission, City of New
 1155 Smyrna Beach, Florida," which shall consist of five (5) members. For the purposes of this act,
 1156 unless otherwise designated, the word "Commission" shall mean the Utilities Commission of
 1157 New Smyrna Beach and the word "Commissioner" shall mean a member of the said Utilities
 1158 Commission. Except as otherwise authorized, the Utilities Commission shall function the same
 1159 as it previously functioned under Laws of Fla., ch. 67-1754. This act shall not supersede or alter
 1160 the general law in effect and agreements entered into prior to the effective date of this act [June
 1161 12, 1985].

1162
 1163 ~~Sec. 210~~ Sec. 8.02. Members—Appointment; term; vacancy; removal.

1164 The Commission shall consist of five (5) members to be appointed by the City Commission.
 1165 ~~One (1) Commissioner shall serve until the first Wednesday in September, 1967, one (1) shall~~
 1166 ~~serve until the first Wednesday in September 1968, one (1) shall serve until the first Wednesday~~
 1167 ~~in September 1969, one (1) shall serve until the first Wednesday in September 1970 and one (1)~~
 1168 ~~shall serve until the first Wednesday in September 1971.~~ The City Commissioners shall appoint a
 1169 replacement for any Commissioner whose term expires and the replacement shall be appointed
 1170 for a term of three (3) years. Should a vacancy occur on the Utilities Commission by virtue of
 1171 resignation, death or removal, the unexpired term shall be filled as provided above. Any
 1172 Commissioner may be removed from office upon a majority vote of the City Commissioners for
 1173 malfeasance, misfeasance, nonfeasance, conviction of a felony or upon recommendation of a
 1174 majority of the Utilities Commissioners.

1175
 1176 ~~Sec. 211~~ Sec. 8.03. Same—Qualifications.

1177 Each Commissioner shall be a qualified elector and freeholder in New Smyrna Beach, but
 1178 no employee or elected or appointed officer of the city shall be a Commissioner and no
 1179 Commissioner shall serve more than three consecutive terms.

1180
 1181 ~~Sec. 212~~ Sec. 8.04. Meetings; Rules and Regulations; Officers.

1182 The Commission shall meet at least once each month at the offices of the Commission. All
 1183 meetings of the Commission shall be open to the public and minutes shall be kept of all
 1184 meetings. The Commission shall have authority to promulgate rules and regulations for the
 1185 conduct of its meetings and the operation of its business. At the regular meeting of the
 1186 Commission in September of each year, the Commissioners shall elect a chairman, a vice-
 1187 chairman, a secretary and a treasurer from its membership; however, the office of secretary and
 1188 treasurer may be combined.

1189
 1190

1191 ~~Sec. 213.~~ Sec. 8.05. Authority to Appoint and Employ Necessary Personnel.

1192 The Commission shall have the power to appoint and employ engineers, auditors, attorneys
1193 and such other personnel as may be necessary for the efficient operation of the city's utilities and
1194 the management of its business and affairs.

1195
1196 ~~Sec. 214.~~ Sec. 8.06. Authority Over City's Utilities.

1197 The Commission shall, pursuant to the New Smyrna Beach Charter, manage, operate and
1198 control all of the city's utilities and shall employ and discharge at their pleasure all employees
1199 whose services are performed in any manner in connection with said utilities.

1200
1201 ~~Sec. 215.~~ Sec. 8.07. Commissioners' Salary, Expenses.

1202 The Commissioners shall be paid such salary as may from time to time be set by the City
1203 Commission of the City of New Smyrna Beach, but no more than one hundred dollars (\$100.00)
1204 each month, and in addition shall be paid necessary expenses incurred in carrying on and
1205 conducting the business of the Commission subject to the approval of the City Commission.

1206
1207 ~~Sec. 216.~~ Sec. 8.08. Monthly Statements; Fiscal Year; Annual Audit.

1208 The Commission shall submit to the City Commission a monthly statement showing all
1209 sums or amounts received, operating expenses, amount charged to depreciation and extensions,
1210 reserve fund and amount appropriated to interest and sinking fund. The fiscal year of the
1211 Commission shall begin October 1 and end September 30 of each year and the books and records
1212 of the Commission shall be audited by an independent certified public accountant as of the close
1213 of business of each fiscal year.

1214
1215 ~~Sec. 217.~~ Sec. 8.09. General Powers and Authority.

1216 The Commission shall have full and exclusive power and authority to prescribe rules, rates
1217 and regulations governing the sale and use of electricity, water, gas and sewage collection and
1218 treatment wherever such services are furnished by said Commission and to change the same at its
1219 pleasure, after conducting a public hearing or hearings pertaining to rate changes. The
1220 Commission is authorized to furnish electricity, power, water, gas and sewage collection and
1221 treatment to private individuals and corporations wherever the same may be required and
1222 feasible as determined by the Commission and for said purpose the Commission shall have the
1223 right to acquire, construct, maintain, extend, improve and develop electric production and
1224 distribution systems, water production and distribution facilities and systems, gas production and
1225 distribution systems and sanitary sewer facilities and systems, including the right to construct
1226 and maintain electric lines, water and gas mains and sewers in, along and under all public streets
1227 and highways and to contract with and receive grants and contributions from the United States or
1228 any of its agencies or departments, the state and any municipality, public body, corporation,
1229 partnership or individual for such purposes. The Commission may extend city utilities beyond
1230 the corporate limits of the City of New Smyrna Beach in conformance with the requirements of
1231 Chapter 366, Florida Statutes, only upon approval by ordinance of the City Commission and the
1232 Commission may enter into a contract for a term of more than four (4) years only after approval
1233 by ordinance of the City Commission. The City Commission may not withhold its approval or
1234 deny passage of an ordinance where such withholding or denial would cause the Commission to
1235 violate any of the covenants or terms of its bond resolutions and related contracts, resolutions,
1236 and documents. The Commission shall prepare and submit its budget for the ensuing year to the

1237 City Commission on or before Junely 1 of each year, setting forth its estimated gross revenues
 1238 and estimated requirements for operations and maintenance expenses, debt service, and
 1239 depreciation. A copy of the budget shall be published once in a newspaper of general circulation
 1240 in the city during the month of Junely. The Commission shall adopt the budget for the ensuing
 1241 year only upon approval by ordinance of the City Commission. The City Commission may not
 1242 withhold its approval or deny passage of an ordinance approving the budget where such
 1243 withholding or denial would cause the Commission to violate any of the covenants or terms of its
 1244 bond resolutions and related contracts, resolutions, and documents.

1245
 1246 ~~Sec. 218.~~ Sec. 8.10. Billing and Collection of Fees and Charges; Disposition of Funds Collected.

1247 The Commission shall have the exclusive power and authority to bill and collect the
 1248 prescribed fees or charges for all services and utilities under its control and when collected, the
 1249 flow of funds shall be: First, the payment of all operating and maintenance expenses of said
 1250 utilities; second, the funding of all reserves required by revenue certificates issued by the city or
 1251 said Commission for projects under Commission control including the debt service payments of
 1252 all such revenue certificates as same become due; third, the payment to the general fund of the
 1253 city a sum equal to six (6) percent of the gross revenues from utilities under Commission control;
 1254 such payments shall be made monthly. The surplus shall be paid annually to the general fund of
 1255 the city after reserving an adequate fund for operation and maintenance expenses, capital
 1256 improvements and line extensions as determined by the commission.

1257
 1258 ~~Sec. 219.~~ Sec. 8.11. Acquisition of Property by Eminent Domain; Title.

1259 The Commission is empowered, by its duly constituted authorities, to exercise the right of
 1260 eminent domain to appropriate property, except state or federal, for the purpose of obtaining,
 1261 constructing and maintaining electric plants, substations and distribution lines; water or gas
 1262 mains; reservoirs and pumping stations; sewer lines, pumping stations and disposal or processing
 1263 plants; and to acquire all such lands, waters and lands adjacent to waters which the Commission
 1264 judges may be necessary for the full and complete construction, maintenance and operation of
 1265 any utility. The title to all property, real or personal, owned or acquired by the Commission shall
 1266 be vested in the City of New Smyrna Beach.

1267
 1268 ~~Sec. 220.~~ Sec. 8.12. Authority to Shut Off and Discontinue Water, Electricity, etc.

1269 The Commission shall have the power to shut off and discontinue the supplying of water,
 1270 electricity or any other utilities or services now or hereafter under the control, management or
 1271 jurisdiction of the Commission to any and all users for violation of any of the rules or regulations
 1272 pertaining to the sale, distribution or use of such utilities and services and for nonpayment, when
 1273 due, of the fees, rentals or other charges for utilities and services. Regulations governing the
 1274 shutting off and discontinuance of any of such utilities and services and the terms and conditions
 1275 for the restoration of such utilities and services, including interest and charges for shutting off
 1276 and discontinuance or the restoration of said utilities and services may be adopted by the
 1277 Commission.

1278
 1279 ~~Sec. 221.~~ Sec. 8.13. Agreements with Holders of Revenue Bonds and Other Obligations.

1280 The Commission shall have power and authority to make agreements and covenants with the
 1281 City of New Smyrna Beach and the holders of any revenue bonds or other obligations issued to
 1282 finance, in whole or in part, any repairs, extensions or improvements of any utility with respect

1283 to the filing and collecting of fees, rentals and other charges for services and utilities. All such
 1284 agreements and covenants shall constitute and be deemed valid contracts between the
 1285 Commission and the holders of any revenue bonds or other obligations and may be enforced by
 1286 any holder of such revenue bonds or any other obligations in any court of competent jurisdiction
 1287 subject, however, to any provision for enforcement which may be contained in such agreements
 1288 or covenants or in the resolution or resolutions of the governing body of the city or the
 1289 Commission pursuant to which such obligations were issued.

1290

1291 ~~Sec. 222~~, Sec. 8.14. Borrowing Money.

1292 The Commission, upon a majority vote, is hereby authorized to borrow at any time an
 1293 amount of money equal to ten (10) percent of the book value of the electric and water plants for
 1294 any six (6) month period and to pay interest on such sum borrowed at a rate not to exceed the
 1295 then prevailing interest rate and to issue its promissory note or notes as evidence of said
 1296 indebtedness, which notes shall be signed by the Chairman of the Commission and the Secretary
 1297 thereof, provided that at no time shall such promissory note or notes exceed ten (10) percent of
 1298 the book value of such plants and provided further that money so borrowed shall be expended
 1299 only for current operating expenses.

1300

1301 ~~Sec. 223~~, Sec. 8.15. Revenue Certificates and Promissory Notes.

1302 The Commission shall, upon the approval by ordinance of the City Commission, after
 1303 conducting a public hearing or hearings, have the right, power and authority to issue revenue
 1304 certificates or promissory notes for the purpose of paying all or a part of the cost of acquisition,
 1305 construction, repairing, extensions, additions, equipping and the reconstruction of any of the
 1306 city's utilities. The City Commission shall not withhold its approval or deny passage of an
 1307 ordinance where such a withholding or denial would cause the Commission to violate any of the
 1308 covenants or terms of its bond resolutions and related contracts, resolutions and documents. All
 1309 of such revenue certificates or promissory notes while authorized and issued by the Commission
 1310 shall be obligations of the city of New Smyrna Beach and no referendum or freeholder election
 1311 shall be required as a condition precedent to the issuance of such revenue certificates or
 1312 promissory notes. All revenue certificates shall be offered for sale to not less than three (3)
 1313 responsible bond brokers and the best bid excepted unless, in the discretion of the Commission, a
 1314 better bid can be obtained by negotiation. In such cases the Commission shall have the right to
 1315 reject all bids and sell said certificates upon the best terms offered therefor.

1316 (1) Revenue certificates issued under the provisions of this act shall be payable from the
 1317 revenues derived from the operation of the city's utilities or services under the
 1318 supervision, operation and control of the Commission and from any other funds legally
 1319 available therefor.

1320 (2) The Commission shall not convey or mortgage any property or facility or any part
 1321 thereof as security for the payment of revenue certificates.

1322 (3) In the discretion of the Commission, each or any issue of such revenue certificates may
 1323 be secured by a trust agreement by and between the Commission and a corporate trustee
 1324 which may be any trust company or bank having the powers of a trust company within
 1325 or outside of the state. Such trust agreement may pledge or assign the revenues to be
 1326 received by the Commission. The resolution providing for the issuance of revenue
 1327 certificates or such trust agreement may contain such provisions for protecting and

1328 enforcing the rights and remedies of the certificate holders as may be reasonable, proper
 1329 and not in violation of law, including covenants setting forth the duties of the
 1330 Commission in relation to the acquisition, construction, improvements, maintenance,
 1331 operation, repair, equipping and insurance of the facilities, and the custody,
 1332 safeguarding and application of all monies. It shall be lawful for any bank or trust
 1333 company incorporated under the laws of this state to act as such depository and to
 1334 furnish such indemnifying bonds or to pledge such securities as may be required by the
 1335 Commission. Such resolution or such trust agreement may restrict the individual right
 1336 of action by certificate holders as is customary in trust agreements securing bonds or
 1337 debentures of corporations. In addition to the foregoing, such resolution or trust
 1338 agreement may contain such other provisions as the Commission may deem reasonable
 1339 and proper for the security of certificate holders. Except as this chapter otherwise
 1340 provides, the Commission may provide, by resolution or by trust agreement, for the
 1341 payment of the proceeds of the sale of the revenue certificates and the revenues of the
 1342 utilities and services to such officer, board or depository as it may determine for the
 1343 custody thereof and for the method of disbursement thereof with such safeguards and
 1344 restrictions as it may determine. All expenses incurred in carrying out such trust
 1345 agreement may be treated as a part of the cost of operation of the utilities affected by
 1346 such trust agreement.

- 1347
 1348 (4) The resolution or trust agreement providing for the issuance of the revenue certificates
 1349 may also contain such limitations upon the issuance of additional revenue certificates as
 1350 the Commission may deem proper and such additional certificates shall be issued under
 1351 such restrictions or limitations as may be prescribed by the resolution or trust
 1352 agreement.

1353
 1354 ~~Sec. 224.~~ Sec. 8.16. Refunding Revenue Certificates.

1355 The Commission, upon approval by ordinance of the City Commission is authorized to
 1356 provide by resolution for the issuance of refunding revenue certificates for the purpose of
 1357 refunding any revenue certificates heretofore issued by the city of New Smyrna Beach then
 1358 outstanding or issued under the provisions of this chapter. The Commission is further authorized,
 1359 upon approval by ordinance of the City Commission, to provide by resolution for the issuance of
 1360 revenue certificates for the combined purpose of:

- 1361
 1362 (1) Paying the cost of any acquisition, construction, extension, addition, improving,
 1363 equipping or reconstruction of a facility or facilities of the Commission;
 1364
 1365 (2) Refunding revenue certificates heretofore issued by the City of New Smyrna Beach
 1366 and of the Commission which shall theretofore have been issued under the provisions of
 1367 this chapter and shall then be outstanding.

1368
 1369 The issuance of such obligations, the maturities and other details thereof, the rights and
 1370 remedies of the holders thereof, the rights, powers, privileges, duties and obligations of the
 1371 commission with respect to the same shall be governed by the foregoing provisions of this
 1372 chapter insofar as the same may be applicable. The City Commission shall not withhold its
 1373 approval or deny passage of an ordinance where such a withholding or denial would cause the

1374 commission to violate any of the covenants or terms of its bond resolutions and related contracts,
 1375 resolutions and documents.

1376

1377 ~~Sec. 225.~~ Sec. 8.17. Legal Status of Revue Certificates or Other Obligations.

1378 Any revenue certificates or other obligations issued pursuant to this chapter shall be and
 1379 constitute legal investments for bonds, savings banks, trustees, executors, administrators and all
 1380 other fiduciaries for all state, municipal and public funds and shall also be and constitute
 1381 securities eligible for deposit as security for all state, municipal or other public funds
 1382 notwithstanding the provisions of any other law or laws to the contrary.

1383

1384 ~~CHAPTER 14.~~ ARTICLE IX MISCELLANEOUS PROVISIONS

1385 ~~Sec. 185.~~ Service of utilities to consumers outside of city.

1386 The city shall have power to supply water, electricity, garbage and trash collections, and gas
 1387 for domestic and other purposes, to individuals, firms and corporations outside said city, and to
 1388 charge and collect reasonable rates, prices and compensation therefor, but the city may charge a
 1389 rate not more than twenty-five (25) percent higher to such consumers than is charged for a like
 1390 class of service to a like class of consumers within the city limits.

1391

1392 ~~Sec. 192.~~ Provision in the event of a vacancy in the office of city manager.

1393 In the event that the city commission should fail to appoint a permanent city manager or in
 1394 the event the position of city manager should become vacant by reason of resignation, death or
 1395 disability, then the city commission may appoint an acting city manager who shall be vested with
 1396 all the powers of the city manager. The city clerk may perform the duties of an acting city
 1397 manager.

1398

1399 ~~Sec. 194.~~ Authority to contract.

1400 The City of New Smyrna Beach hereby created and established, shall have power by and
 1401 through its city commission herein created, to purchase, to lease, to acquire property, real and
 1402 personal, within or without the limits of the territorial boundaries of said city and to sell, alienate,
 1403 convey, lease or otherwise dispose of same for the benefit and advantage of said city and to enter
 1404 into such contracts in connection therewith as may be determined by the city commission.

1405

1406 ~~Sec. 195.~~ Authority to acquire, construct, own and operate a golf course or golf courses.

1407 (a) ~~The City of New Smyrna Beach, situate, lying and being in Volusia County, Florida, shall~~
 1408 ~~have the power and is hereby authorized to acquire, construct, own and operate a golf course~~
 1409 ~~or golf courses and all such buildings and improvements as said city may deem necessary or~~
 1410 ~~desirable for use in connection therewith, within or outside the limits of said city; to use any~~
 1411 ~~lands now owned by said city for the purpose of a golf course or golf courses and to acquire~~
 1412 ~~by purchase, lease, condemnation or otherwise lands for such purposes and to own such~~
 1413 ~~lands within or outside the limits of said city as it may deem necessary or desirable for the~~
 1414 ~~aforesaid purposes; that said City of New Smyrna Beach may charge reasonable admission~~
 1415 ~~to or rentals or fees for the use or enjoyment of such golf course or golf courses by the users~~
 1416 ~~thereof and may prescribe reasonable rules and regulations for the use and operation thereof.~~

1417 (b) ~~Reserved.~~

1418 (c) ~~Said City of New Smyrna Beach is hereby authorized and empowered to take and acquire~~
 1419 ~~by condemnation by right of eminent domain any lands or property within or outside the~~

1420 ~~limits of said city which it may deem necessary or desirable, except state or federal, for use~~
 1421 ~~by said city for the purposes mentioned in subsection (a) hereof, and the absolute fee simple~~
 1422 ~~title to all property so taken and acquired by said city hereunder shall vest in said city unless~~
 1423 ~~said city seeks to condemn or acquire a part or lesser right or estate in such property.~~

1424
 1425 ~~Sec. 199. —Zone boundaries.~~

1426 ~~The City of New Smyrna Beach, Florida, shall be and is hereby divided into four (4) zones,~~
 1427 ~~to be known and designated as follows:~~

1428 ~~After every decennial census, beginning with the 1990 census, the commission shall prepare~~
 1429 ~~a plan for the reapportionment of the four (4) zones to ensure division into contiguous areas as~~
 1430 ~~nearly equal in population as possible. The commission shall review and adopt the~~
 1431 ~~reapportionment plan as an ordinance by a two thirds (2/3) vote of the full commission. If the~~
 1432 ~~commission is unable to complete the reapportionment of the commission zones within six (6)~~
 1433 ~~months after the official publication of the census, the city attorney upon authorization of the~~
 1434 ~~commission or petition of twenty five (25) electors of the city shall petition the circuit court~~
 1435 ~~having jurisdiction in the county to make such reapportionment. The city commission shall have~~
 1436 ~~the power to reapportion by ordinance the zone districts and to change the boundary lines thereof~~
 1437 ~~more often if deemed necessary because of population fluctuations.~~

1438 ~~Neither the creation of the office of mayor and of commissioner from each of four (4) zones~~
 1439 ~~and the redistricting contained herein, upon becoming a law, shall affect the remaining terms of~~
 1440 ~~those presently elected officials on the effective date of this act.~~

1441
 1442 ~~Sec. 205. —General laws to apply.~~

1443 ~~All general laws of the state, applicable to municipal corporations, now or which may~~
 1444 ~~hereafter be enacted and which are not in conflict with the provisions of this act or with the~~
 1445 ~~ordinances or resolutions hereafter enacted by the city commission, shall be applicable to the~~
 1446 ~~City of New Smyrna Beach; provided, however, that nothing contained in this act shall be~~
 1447 ~~construed as limiting the powers of the city commission to enact any ordinance or resolution not~~
 1448 ~~in conflict with the constitution of the state or with the express provisions of this act.~~

1450 Sec. 9.01. Force Majeure.

1451 Failure to meet any deadline or satisfy any performance requirement set forth in this Charter may
 1452 be excused due to unforeseen events such as hurricanes, natural disasters, acts of nature, fires,
 1453 acts of public enemies, pandemics, health emergencies, riots, civil disturbances, sabotage,
 1454 strikes, or restraints imposed by order of a governmental agency or court, provided any such
 1455 deadline or performance standard is cured or corrected as soon as reasonably practicable.

1456
 1457 ~~Sec. 206~~Sec. 9.02. —Saving clause-Severability.

1458 ~~If any section, subsection, sentence, clause, phrase or word of this act is for any reason held~~
 1459 ~~or declared to be unconstitutional, inoperative or void, such holding [of] invalidity shall not~~
 1460 ~~affect the remaining portions of this act, and it shall be construed to have been the legislative~~
 1461 ~~intent to pass this act without such unconstitutional, inoperative or invalid part therein; and the~~
 1462 ~~remainder of this act, after the exclusion of such part or parts, shall be deemed and held to be as~~
 1463 ~~valid as if such excluded parts had not been included herein; or if this act or any provision hereof~~
 1464 ~~shall be held inapplicable to any person, groups of persons, property, kind of property,~~
 1465 ~~circumstance or set of circumstances, such holding shall not affect the applicability thereof to~~

1466 ~~any other person, property or circumstance. If any provision of this charter is held invalid, the~~
1467 ~~other provisions of the charter shall not be affected. If the application of the charter or any of its~~
1468 ~~provisions to any person or circumstance is held invalid, the application of the charter and its~~
1469 ~~provisions to other persons or circumstances shall not be affected.~~

1470
1471 ~~Sec. 207~~Sec. 9.03. - Conflicting Laws Repealed.
1472 All laws and parts of laws in conflict herewith insofar as they apply to the City of New
1473 Smyrna Beach, and the same are, hereby repealed.

1474
1475 ~~Sec. 208. - Effective date.~~
1476 ~~This act shall take effect immediately upon its passage and approval by the governor of the~~
1477 ~~State of Florida, or becoming a law without such approval.~~

1478
1479 **SECTION 3. PROPOSED BALLOT LANGUAGE.** The question to be submitted to
1480 the electors shall appear on the ballot as follows:
1481

<p>CHARTER AMENDMENT</p> <p>ADOPTING A REVISED CHARTER FOR THE CITY OF NEW SMYRNA BEACH</p> <p>Shall the City of New Smyrna Beach adopt a revised Charter incorporating a preamble, reorganizing existing language, removing obsolete language, revising election procedures, revising qualifications and duties of members of the City Commission and Charter officers, adopting provisions related to sustainability, including limitations on the transfer of ownership or lease of certain lands, establishing requirements for financial management, providing for citizen participation, including an initiative and referendum process, and requiring regular reviews of the Charter?</p> <p style="text-align: center;">YES for Approval ___</p> <p style="text-align: center;">NO against Approval ___</p> <p>[title 13 words and summary 75 words]</p>
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1482
1483 **SECTION 4. PUBLIC HEARING.** That the public hearing considering the adoption
1484 of this ordinance shall be held at 6:30 p.m. on August 11, 2020, at the Brannon Center, 105
1485 South Riverside, New Smyrna Beach, Florida, after notice published pursuant to §166.041(3)(a),
1486 F.S.

1487
1488 **SECTION 5. PUBLIC NOTICE.** The City Manager or designee is hereby authorized
1489 and directed to provide public notice of the election in accordance with law.

1490
1491 **SECTION 6. SEVERABILITY.** If any portion or portions of this Ordinance are
1492 declared to be invalid, the remaining portions shall have the same force and effect as though such
1493 invalid portion or portions had not been included.
1494

Attachment: Ord 77-20 Proposed Charter Ballot Language 7.23.2020 (Ordinance No. 77-20: Charter Amendment)

1495 **SECTION 7. CONFLICT.** All Ordinances and parts of Ordinances in conflict herewith
1496 are hereby repealed.

1497
1498 **SECTION 8. EFFECTIVE DATE.** This Ordinance shall take effect in accordance
1499 with general law. The Charter amendments set forth in this Ordinance shall not take effect
1500 unless approved by a majority of the qualified electors of the City of New Smyrna Beach voting
1501 in an election to be called and held for that purpose on the 3rd day of November, 2020.
1502 However, if approved by the voters, the Charter amendments set forth in this Ordinance shall
1503 take effect on January 1, 2021.

1504
1505
1506

APPROVED AS TO FORM AND CORRECTNESS:

1508
1509

CARRIE AVALLONE
City Attorney

1512
1513

DATE: _____

1514
1515
1516
1517

Attachment: Ord 77-20 Proposed Charter Ballot Language 7.23.2020 (Ordinance No. 77-20: Charter Amendment)