



TOWN COUNCIL AGENDA SPECIAL MEETING

THURSDAY
AUGUST 19, 2021 – 3:00 P.M.

TOWN COUNCIL CHAMBERS
4300 S. ATLANTIC AVENUE, PONCE INLET, FL

SUNSHINE LAW NOTICE FOR BOARD MEMBERS – Notice is hereby provided that one or more members of the Town’s various boards may attend and speak at this meeting.

1. Call to Order.
2. Pledge of Allegiance.
3. Roll Call.
4. Review of Articles I, II, and III of the Town Charter.
 - A. Public Comment regarding Articles for discussion.
 - B. Council discussion of noticed Articles.
5. Determination of next meeting date.
6. Adjournment.

Persons who require an accommodation in order to attend this meeting should contact the Ponce Inlet Town Hall at 236-2150 at least 3 business days prior to the meeting in order to request such assistance.

A complete copy of the materials for this agenda is available at Town Hall.



Memo

To: Council Members

From: Cliff Shepard

CC: Jeaneen Witt

Re: Charter Review Process – Recommended Procedure

Date: July 23, 2021

I was asked my recommendation of how best to conduct a comprehensive, efficient, and effective review of the Town charter. Based on having participated in numerous charter reviews as legal counsel, my strong recommendation is as follows:

- Keep the charter review process with the members of the Council (as opposed to forming a separate citizen committee).
- Schedule a series of special public meetings limited to the charter review itself (rather than as an add-on to a regular meeting agenda).
- Make the agenda for each charter review meeting specific to certain sections of the charter, starting at the beginning, and moving through to the end of the document. That way, every section of the document gets reviewed and both the members and the public know what to expect.
- Conduct the meetings like regular meetings by allowing a public comment period at the beginning, before getting into the actual discussion of the charter sections on the agenda for that specific meeting. Once the working portion of the meeting begins (council discussion of the various sections), make sure the discussion stays with the council and does not become an open forum.

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- Set a time limit for the meetings (2 hours for example) and stick to it.
- Include legal counsel at all meetings (in person or by Zoom) so any suggestions for changes that may be headed down an illegal path can be redirected before they gain traction. In other words, before the community and council members get invested in a change that doesn't pass legal muster.

I have sound reasoning for all these recommendations based on actual experiences which I am happy to discuss but wanted to keep this memo short and to the point. I hope it helps provide some direction.

CHARTER

ARTICLE I. PURPOSE AND POWERS

Section 1.01. Purpose.

We, the people of Ponce Inlet, do ordain and establish this Charter of the Town of Ponce Inlet, Florida, in order to avail ourselves of all municipal home rule powers consistent with the Constitution and laws of Florida. It is the intent of this charter to adopt the Town Manager form of government by assigning all legislative and policy-making authority to the Town Council and all administrative authority to the Town Manager, except as specifically provided by this charter amendment.

This charter amends and supersedes the whole of the existing charter of the Town of Ponce Inlet, Florida. Any provision of the existing charter or ordinances in conflict with this amendment are hereby repealed. This amendment shall be known as the Revised Charter of the Town of Ponce Inlet of 2001 and shall be the primary authority for the structure and operation of the government of Ponce Inlet, Florida.

Section 1.02. Powers.

The Town of Ponce Inlet, unless otherwise prohibited, shall have all powers provided by the Constitution and Statutes of the State of Florida and such other powers and immunities, expressed and implied, as are customarily vested in municipalities of the State of Florida.

State law reference(s)—Home rule powers generally, F.S. § 166.021.

Section 1.03. Severability Clause.

If any article, section, subsection, sentence, clause, or provision of this charter is held to be invalid for any reason, such holding shall not be construed to affect the remainder of this charter or any ordinances made thereunder.

ARTICLE II. BODY CORPORATE

Section 2.01. Body Corporate.

The incorporated municipality of the Town of Ponce Inlet, now existing, shall continue to be the body corporate under the name of the Town of Ponce Inlet, and, as such, shall have perpetual succession.

Section 2.02. Boundaries.

The municipality, known and designated as the Town of Ponce Inlet, shall embrace, include and have jurisdiction over all of that territory in the County of Volusia and the State of Florida, described as follows:

"Begin at a point in a line that is 1125 feet South of, as measured at right angles to, and paralleled to the South line of Curlew Street as shown on the plat of Wilbur-by-the-Sea, Florida Addition, of record in Map Book 6, Page 97, Public Records of Volusia County, Florida: Said point being two (2) miles easterly of the shore line of the Atlantic Ocean: thence southwesterly along said line and extension thereof to the easterly line of Harbor Oaks Subdivision #1, of record in Map Book 10, Page 145, Public Records of Volusia County, Florida, being the westerly shore line of the Halifax River; thence southeasterly along said shore line, being westerly of the Mangrove Islands, and just easterly of U.S. Highway #1, to an intersection with the northerly corporate limits of New Smyrna Beach; to a point that is two (2) miles easterly of the shore line of the Atlantic Ocean; thence northerly and parallel to said shore line to the point of the beginning.

Less and except a part of Section 36, Township 16 south, Range 33 east, Volusia County, Florida recorded in official records Book 7409, Page 3641, of the public records of Volusia County, Florida, described as follows:

From the northwest corner of Government Lot 3, said Section 36, run s.89°31'27"e., along the north line of said Government Lot 3, a distance of 676.86 feet to the east right-of-way line of State Road No. 5 (U.S. No. 1), a variable width right-of-way and the point of beginning; thence departing said east right-of-way line, run n.61°48'34"e., a distance of 477.00 feet; thence s.30°47'26"e., a distance of 100.55 feet to the easterly and southerly boundary of mangroves as described in Trustees of the Internal Improvement Trust Fund disclaimer no. 26103 (2966-64); thence run along said mangrove boundary the following courses and distances: n.62°13'17"e., a distance of 45.11 feet; thence n.57°43'08"e., a distance of 63.46 feet; thence n.65°55'12"e., a distance of 99.98 feet; thence n.66°01'44"e., a distance of 99.05 feet; thence n.59°42'20"e., a distance of 22.01 feet; thence n.45°11'46"e., a distance of 48.30 feet; thence n.45°11'56"w., a distance of 75.30 feet to a point on the existing mean high water line of Redland Canal as described in said Trustees disclaimer; thence run along said existing mean high water line the following courses and distances: n.30°51'40"e., a distance of 23.50 feet; thence n.71°33'29"e., a distance of 13.18 feet; thence s.73°51'12"e., a distance of 26.16 feet; thence s.75°13'46"e., a distance of 70.84 feet; thence s.48°49'25"e., a distance of 31.45 feet; thence s.34°28'08"e., a distance of 23.30 feet; thence s.04°03'27"e., a distance of 14.61 feet; thence s.30°47'01"w., a distance of 18.41 feet; thence s.61°56'57"w., a distance of 55.20 feet; thence s.57°43'06"w., a distance of 80.63 feet; thence s.63°32'20"w., a distance of 126.17 feet; thence s.60°20'37"w., a distance of 139.24 feet; thence s.66°26'11"w., a distance of 45.35 feet; thence departing said mean high water line, run s.30°47'26"e., a distance of 72.92 feet; thence s.61°48'34"w., a distance of 65.40 feet; thence n.89°31'27"w., along the north line of said Government Lot 3, and the south line of Government Lot 2, said section 36, a distance of 481.05 feet to the point of beginning."

The boundaries and corporate limits existing at the time of the adoption of this charter may be amended from time to time as provided by law.

(Ord. No. 2020-03 , § 3(Exh. B), 1-23-2020)

State law reference(s)—Municipal annexation or contraction, F.S. ch. 171.

ARTICLE III. LEGISLATIVE

Section 3.01. Town Council; Powers.

- (a) The Town Council may enact ordinances and resolutions, as provided by F.S. ch. 166.
- (b) At the time of adoption of this Charter, there shall be a Town Council consisting of five (5) members including the Mayor. This council shall have all of the legislative powers of the Town vested therein, including the appointment of the Town Attorney, the Town Manager, a Consulting Engineer, and such other consultants as may be required.

Section 3.02. Election and Terms.

- (a) Members of the Town Council must be electors of the Town of Ponce Inlet.
- (b) The regular election of Town Council members shall be held according to the Volusia County Uniform Municipal Election Schedule. Newly elected members shall take office at the first regular Council meeting in the month of November immediately following their election and upon having filed a written oath of office with the clerk. Members of the council may succeed themselves.
- (c) The Town Council shall be composed of five (5) members elected at large by the qualified electors of the Town of Ponce Inlet. Four (4) Council members shall be elected to staggered terms of two (2) years; the Mayor shall be elected to a term of two (2) years. Each Council member shall run for a numbered seat. The Council members shall be elected for seats two (2) and four (4) in even numbered years and for seats three (3) and five (5) in odd numbered years. Seat one (1) shall be the Mayor who shall run in odd numbered years.

Section 3.03. Mayor and Vice Mayor.

- (a) The Mayor shall preside at meetings of the Council; shall be recognized as the head of the Town government for all ceremonial purposes, by the Governor for purposes of military law; for service of process and for the execution of contracts, deeds, and other documents, as approved by Council except as provided by ordinance or resolution, and as the Town official designated to represent the Town in all agreements with other governmental entities or certifications to other governmental entities, but shall have no administrative duties except as required to carry out the responsibilities herein. He shall annually present a State of the Town message.

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- (b) The Town council, at the first regular meeting following the Town election, shall choose one of its members to serve as the Vice Mayor. The Vice Mayor shall act as Mayor during the absence or disability of the Mayor. In case of death, resignation, or removal of the Mayor, the Vice Mayor shall serve as Mayor until the next regular election. The Council vacancy left by the Vice Mayor shall be filled by temporary appointment by the Council. A temporary Vice Mayor shall be elected by the Council from its members.
 - (c) The Mayor and Vice Mayor shall be entitled to vote at all Council meetings.

Section 3.04. Prohibitions.

- (a) *Appointments and Removals.* Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any Town officers or employees whom the Town Manager or any of his subordinates are empowered to appoint, but the Council shall have the power to express its views and freely discuss with the Manager anything pertaining to appointment and removal of such officers and employees.
- (b) *Interference with Administration.* Except for the purpose of inquiries in investigation, the Council or its members shall deal with Town Officers and employees who are subject to the direction and supervision of the Manager solely through the Manager concerning Town Business. Nothing in the foregoing is to be construed to prohibit individual members of the Council from closely scrutinizing by questions and personal observations, all aspects of Town government operations so as to obtain independent information to assist the members in the formulation of sound policies to be considered by the Council. It is the express intent of this Charter, however, that recommendations for improvement in Town government operations by individual Council members be made to and through the Town Manager, so that the Manager may coordinate efforts of all Town departments to achieve the greatest possible savings through the most efficient and sound means available.
- (c) *Holding Other Office.* No former or currently elected Town official shall hold any salaried appointive Town office or employment until six (6) months after the expiration of the term for which he was elected.

Section 3.05. Vacancies: Forfeiture of Office: Filling of Vacancies.

- (a) *Vacancies.* The office of a Councilmember shall become vacant upon his death, resignation, removal from office in any manner authorized by law or forfeiture of his office, such forfeiture to be declared by the remaining members of the Council.
- (b) *Forfeiture of Office.* Any member of the Town Council who shall cease to reside within the Town or to have or possess any of the qualifications herein imposed for members of the Town Council or who shall, while in office, be convicted or admit guilt to a felony, shall forfeit his office and the seat shall be deemed to be vacant immediately. Absence from three (3) consecutive regular meetings of the Town Council shall operate to vacate the seat of a member unless a leave of absence is first granted by the other members of the Town Council by resolution setting forth the fact of such excuse, duly entered in the minutes.
- (c) *Filling of Vacancies.* The Town Council shall appoint a successor to fill a vacancy in the office of a Councilmember until a successor is elected at the next regular municipal election, taking into consideration all candidate qualification deadlines. To maintain

staggered seats, the term length will be for less than the normal full term length. Thereafter, the seat will be elected as set forth in Section 3.02(c).

- (d) *Extraordinary Vacancies.* If at any time the membership of the Town Council is reduced to less than three (3), the Governor shall be requested to make interim appointments to fill such vacancies until successors are elected at the next regular election.

(Ord. No. 2006-24, § 1, 12-20-2006)

Section 3.06. Procedure.

- (a) *Meetings.* The Council shall meet regularly at least once in every month at such times and places as the Council may prescribe by rule. Special meetings may be held on the call of the Mayor, any two (2) of the Council members, or the Town Manager, and whenever practicable, upon no less than twenty-four (24) hours notice to each member and the public. Emergency meetings may be held according to State Law.
- (b) *Rules and Minutes.* The Council shall determine its own rules and order of business, shall establish by-laws for the orderly conduct of all meetings, and shall maintain minutes of Council business.
- (c) *Voting.* A majority of the Council shall constitute a quorum. Voting, on ordinances and resolutions, shall be by roll call on final action and shall be recorded in the minutes. The Town Council may enact ordinances and resolutions as provided by F.S. ch. 166. No action of the Council shall be valid or binding unless adopted by the affirmative vote of at least the majority of the Council. However, an affirmative vote of at least four members of Town Council shall be required for adoption of all proposed rezonings not subject to quasi judicial proceedings, comprehensive land use plan, and comprehensive land use plan amendments, unless such requirement is in violation of Florida law.

(Ord. No. 2007-17, § 4, 7-18-07)

Section 3.07. Initiative and Referendum.

- (a) (1) *Initiative.* The qualified voters of the Town shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a Town election; provided that such power shall not extend to the budget, any capital program adopted by council to avoid danger to the health, safety, or welfare of the Town, or any ordinance relating to appropriation of money, levy of taxes, salaries of Town officers or employees, quasi-judicial rezonings, or any subject matter otherwise pre-empted by law.
- (2) *Referendum.* The qualified voters of the Town shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a Town election, provided that such power shall not extend to the budget, any capital program adopted by council to avoid danger to the health, safety, or welfare of the Town, or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes,

salaries of Town officers or employees, quasi-judicial rezonings, or any subject matter otherwise pre-empted by law.

(b) *Commencement of proceedings.* Any five qualified voters may commence initiative or referendum proceedings by filing with the Town clerk an affidavit stating they will constitute the petitioner's committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered. Promptly after the affidavit of the petitioners' committee is filed, the clerk shall issue the appropriate petition blanks to the petitioners' committee.

(c) *Petitions.*

- (1) *Number of signatures.* Initiative and referendum petitions must be signed by qualified voters of the Town equal in number to at least fifteen per cent (15%) of the total number of qualified voters registered to vote at the last regular Town election.
- (2) *Form and content.* All papers of a petition shall be uniform in size and style and shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
- (3) *Affidavit of circulator.* Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
- (4) *Time for filing referendum petitions.* Referendum petitions with all sufficient signatures must be filed within 45 days after adoption by the council of the ordinance sought to be reconsidered.
- (5) *Time period for petition drive.* The petition drive to initiate an ordinance shall terminate six (6) months after commencement of proceedings under this section. In the event sufficient signatures are not acquired during that six-month period, the petition shall be rendered null and void, and none of the signatures may be carried over onto another identical or similar petition.

(d) *Procedure for filing.*

- (1) *Certificate of clerk; amendment.* Within 20 days after the petition is filed, the Town clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. Grounds for insufficiency of a referendum petition are only those in subsection (c). A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of his/her certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such

supplementary petition shall comply with the requirements of subsections (c)(2) and (c)(3), and within five days after it is filed the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and petitioners' committee does not elect to amend or request council review under subsection (2) below within the time required, the clerk shall promptly present his/her certificate to the council and the certificate shall then be a final determination as to the sufficiency of the petition.

- (2) *Council review.* If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition.
 - (3) *Court review; new petition.* A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.
- (e) *Referendum petitions; suspension of effect of ordinance.* When a referendum petition is certified as sufficient by the Town clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when or if:
- (1) There is a final determination of insufficiency of the petition, or
 - (2) The petitioners' committee withdraws the petition, or
 - (3) The council repeals the ordinance, or
 - (4) After a vote of the Town electors on the ordinance has been certified.
- (f) *Action on petitions.*
- (1) *Action by council.* When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance or reconsider the referred ordinance by voting its repeal in the manner provided in F.S. § 166.041. If the council fails to adopt a proposed initiative ordinance without any change in substance within sixty days or fails to repeal the referred ordinance within thirty days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the Town.
 - (2) *Submission to voters.* The vote of the Town on a proposed or referred ordinance shall be held not less than thirty days and not later than one year from the date of the final council vote thereon. If no regular Town election is to be held within the period prescribed in this subsection, the council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the council may in its discretion provide for a special election at an earlier date within the

prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

- (3) *Withdrawal of petitions.* An initiative or referendum petition may be withdrawn at any time prior to the thirtieth (30th) day preceding the day scheduled for a vote of the Town by filing with the Town clerk a request for withdrawal signed by at least four members of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

(g) *Results of election.*

- (1) *Initiative.* If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.
- (2) *Referendum.* If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

(Ord. No. 2007-18, § 4, 8-15-07)

ARTICLE IV. ADMINISTRATIVE

Section 4.01. Town Manager.

There shall be a Town Manager who shall be the Chief Administrative Officer of the Town. The Manager shall be responsible to the Council for the administration of all Town affairs placed in his charge by or under this Charter.

Section 4.02. Appointment: Removal: Compensation.

- (a) *Appointment.* The Council shall appoint a Town Manager for an indefinite contractual term by a four-fifths ($\frac{4}{5}$) vote of all the Council members. The Town Manager shall be chosen on the basis of professional training, executive and administrative experience, and other qualifications as outlined by the Council.
- (b) *Removal.* The Council may remove the Manager by a vote of four-fifths ($\frac{4}{5}$) of all the Council members.
- (c) *Compensation.* The compensation of the Manager shall be fixed by the Council.

Section 4.03. Acting Town Manager.

By letter filed with the Council, the Town Manager shall designate, subject to approval of the Council, a qualified acting Town Administrative Officer to perform the duties of the

Manager except those specified in 4.04(a) during his temporary absence or disability. During such absence or disability, the Council may revoke such designation at any time, and appoint another officer of the Town to serve until the Manager shall return or his disability shall cease.

Section 4.04. Powers and Duties of the Town Manager.

The Town Manager shall:

- (a) Appoint and remove all subordinate officers and employees of the Town except that the appointment and removal of department heads shall be subject to the approval of the Town Council; provided, however, that the removal of any and all employees that are covered by the personnel rules and regulations shall be subject to appeal as provided by these rules of the Town of Ponce Inlet. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.
- (b) Direct and supervise the administration of all departments, offices and agencies of the Town, except as otherwise provided by this Charter or by law.
- (c) Prepare the Agenda and attend all Council meetings and shall be required to take part in discussion and furnish information as requested by the Council, by [but] may not vote.
- (d) See that all laws, provisions of this Charter and acts of the Council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed.
- (e) Prepare and submit the annual budget, budget message, and capital program to the Council in a form provided by ordinance.
- (f) Submit to the Council and make available to the public a complete report on the finances and administrative activities of the Town as of the end of each fiscal year.
- (g) Make such other reports as the Council may require concerning the operations of Town departments, offices and agencies, subject to his direction and supervision.
- (h) Keep the Council fully advised as to the financial condition and future needs of the Town and make recommendations to the Council concerning the affairs of the Town.
- (i) Co-sign contracts on behalf of the Town pursuant to the provisions of ordinances or resolutions.
- (j) Perform such other duties as are specified in this charter or may be required by the Council.
- (k) Perform the duties of Town Clerk of the Town in addition to the duties of Town Manager, during any period of time that he is appointed by the Town council to do so, without additional compensation.
- (l) Perform the duties of Treasurer/Finance Director of the Town, in addition to the duties of Town Manager, during any period of time that he is appointed by the Town Council to do so, without additional compensation.

Section 4.05. Administrative Code.

The Town Manager shall propose and the Town Council may amend and shall adopt by a vote of a majority of the full Council, an administrative code which shall set forth the departmental organization for the Town government.

Section 4.06. Personnel Rules and Regulations.

The Town Manager shall propose and the Town Council may amend and shall adopt, certain Personnel Rules and Regulations to serve as the basis for administrative actions as they relate to employment by the Town: to insure the efficiency of the departments that serve the Town; and to insure the rights and safety of Town employees.

Section 4.07. Legal Protection for Town Officials, Elected and Appointed.

The Town Manager shall propose and the Town Council may amend and shall adopt, certain rules and regulations to provide legal services for the protection of all elected or appointed officials, administrative officers and staff, where the need arises as a result of the performance of their official duties. These rules and regulations shall be in accordance with F.S. § 111.07.

ARTICLE V. QUALIFICATIONS AND ELECTIONS¹

Section 5.01. Nonpartisan Elections.

All qualifications and elections for the office of Town Council and Mayor shall be conducted on a nonpartisan basis without designation of political party affiliation of any nominee on any nomination petition or ballot.

Section 5.02. Notice of Regular Elections.

The Mayor shall issue his proclamation announcing any regular election at least eight (8) weeks before the date of such regular election. This proclamation shall be published in a newspaper of general circulation in Volusia County, Florida, consecutively, once a week for eight (8) weeks or posted in three (3) public places in the Town of Ponce Inlet for such eight (8) week period.

Section 5.03. Notice of Special Elections.

The Mayor shall issue his proclamation announcing any special election at least five (5) weeks before the date of such special election. This proclamation shall be published in a newspaper of general circulation in Volusia County, Florida, as provided by F.S. ch. 100.

¹State law reference(s)—Electors and elections, F.S. ch. 97.

Section 5.04. Qualifications.

Any person who has been a resident of the Town of Ponce Inlet for at least twelve (12) months prior to filing, and has been a registered voter of Volusia County for at least six (6) months, may become a candidate for nomination to the office of Town Council or Mayor, whenever he or she files a petition signed by fifteen (15) qualified electors of the Town with the Town Clerk, requesting that said candidate's name be placed on the ballot in the ensuing election. Said candidate shall file with the Town Clerk all necessary forms as required by State Law. Election qualifying periods shall be in accordance with General Law of the State of Florida.

(Res. No. 2009-20, § 4, 11-19-2009)

Section 5.05. Form of Ballots.

The form of the ballot including the method for listing candidates for Town Council and Mayoral elections, and any other Town election, shall be as outlined in General Law. A charter amendment to be voted on by the electors shall be presented for voting by ballot title.

Section 5.06. Elections.

When two (2) or more persons qualify as candidates for any of the designated seats of the Town Council to be filled, the names of the candidates so qualified shall appear on the ballot. The person receiving the highest number of votes cast for each designated seat on the Town Council shall be elected.

In the event that two (2) or more persons shall have an equal number of votes for any office in any election, the tie shall be resolved by another election.

Section 5.07. Single Candidates.

In the event not more than one (1) person qualifies as a candidate, for a designated seat on the Town Council to be filled at an election, that seat shall not be listed on the Town election ballot. Each unopposed candidate shall be deemed to have voted for himself.

Section 5.08. Absentee Ballots.

Absentee ballots shall be provided in the same manner as outlined in General Law.

ARTICLE VI. FINANCE

Section 6.01. Fiscal Year.

The fiscal year of the Town of Ponce Inlet shall begin on October 1st of each year and end on September 30th of the following year.

State law reference(s)—Mandate for fiscal year, F.S. § 166.241.

Section 6.02. Budget.

- (a) Within sixty (60) days after the receipt of the certified assessment roll as provided in F.S. ch. 200, for each year, the Town Manager shall transmit to the Town Council a proposed budget for the ensuing fiscal year.
- (b) The budget shall provide a complete financial plan of all Town funds and activities for the ensuing fiscal year, and, except as required by general State Laws or this Charter, shall be in such form as the Town Manager deems desirable or the Council may require.
- (c) The Town Council shall adopt the budget on or before the 30th of September of each year. If it fails to adopt the budget by this date, the amounts appropriated for current operation for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it prorated accordingly, until such time as the Council adopts a budget for the ensuing fiscal year. Adoption of the budget shall constitute appropriations of the total amounts specified therein as expenditures and shall constitute a levy of the property tax therein proposed.
- (d) The Town Council shall establish a Reserve/Contingency level of operating budget in the form of a minimum-maximum number of months of operating funds.

Section 6.03. Public Records.

Copies of the budget as adopted shall be public records and shall be made available to the public at the Town Hall.

Section 6.04. Budget Amendments.

- (a) *Supplemental Appropriations.* If during the fiscal year the Town Manager certifies that there are available for appropriation revenue in excess of those estimated in the budget, the Town Council, by Ordinance, may make supplemental appropriations for the year up to the amount of such excess, so long as a fiscally responsible reserve is maintained.
- (b) *Emergency Appropriations.* To meet a public emergency affecting life, health, property, or the public peace, the Town Council, by resolution, may make emergency appropriations. Such appropriations may be made by emergency resolution in accordance with the provisions of F.S. ch. 166.

To the extent that there are no available unappropriated revenues to meet such appropriations, the Town Council may, by such emergency resolution, authorize the issuance of emergency notes, which may be renewed from time to time.

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- (c) *Reduction of Appropriations.* If at any time during the fiscal year it appears probable to the Town Manager that the revenues available will be insufficient to meet the amount appropriated, he shall report to the Town Council without delay, indicating the estimated amount of the deficit, and any remedial action taken by him, and his recommendations as to any other steps to be taken. The Town Council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose may, by resolution, reduce one or more appropriations.
 - (d) *Transfer of Appropriations.* At any time during the fiscal year, the Town Manager may transfer any unencumbered appropriation balance among programs within a department, office, or agency and, upon written request by the Town Manager, the Town Council may, by resolution, transfer any unencumbered appropriation balance from the department, office, or agency to another.
 - (e) *Limitations; Effective Date.* No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.
 - (f) *Lapse of Appropriation.* Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose of any such appropriations shall be deemed abandoned if three (3) years passes without any disbursement from or encumbrance of the appropriation.

Section 6.05. Treasurer/Finance Director.

The Town Council shall appoint a Treasurer/Finance Director, who shall be bonded in an appropriate amount as determined by the Council, upon appointment. The Treasurer/Finance Director shall keep a complete set of accounts according to forms embodying good municipal practice. The Town Council, in its discretion, may appoint the Town Manager/Clerk as Treasurer/Finance Director.

Section 6.06. Withdrawals.

All monies drawn from any depository of the Town shall be upon a check or voucher, numbered serially, approved for payment within budgetary appropriations against known balances upon approval by the Town Council and shall be signed by the Treasurer/Finance Director and the Mayor, or, in his absence, the Vice Mayor, who shall be bonded as determined by the Council upon being authorized to make withdrawals.

Section 6.07. Depository.

The Town Council shall designate insured depositories for Town funds. The accounts of the Town in any bank acting as a depository shall, at all times, be subject to inspection and audit upon direction of the Town Council.

Section 6.08. Revenue Power.

The Town of Ponce Inlet shall have the power to levy, impose, and collect all forms of taxes and licenses, both from revenue and regulatory purposes, and to provide customary municipal financing, as provided by general State Laws. The Town shall have the power to levy ad valorem taxes upon real estate situated in the Town, as provided by general State Laws.

Section 6.09. Audit.

The Town Council shall cause to be made by certified public accountant, an audit of the accounts of the Town at the end of each fiscal year, and at such times as the Town Council may deem necessary. The report of the auditor shall be a public record.

Section 6.10. Claims.

Every claim against the Town of Ponce Inlet, whether liquidated, or unliquidated, shall be presented in writing to the Town Manager, as provided by State Law.

Section 6.11. Purchasing Procedures.

The Town Council shall enact an ordinance regulating all purchasing procedures and mandating the bidding process.

ARTICLE VII. ZONING

Section 7.01. Zoning.

The Town of Ponce Inlet is vested with all powers granted to municipalities under the General Laws of the State of Florida. The Town Council shall cause to be prepared zoning ordinances and maps, regulations, together with amendments thereto, and a Planning Board and a Board of Adjustments, who shall have such powers as provided by State Law or by ordinance enacted by the Town Council. Zoning ordinances adopted by the Town Council shall be related to and consistent with the comprehensive master plan designated to provide for the orderly and desirable growth of the Town.

Section 7.02. Height Limitation.

- (a) Buildings and structures within the Town of Ponce Inlet shall be limited to a maximum height of thirty-five (35) feet. Height shall be measured from the ground in accordance with the provisions of the Land Use and Development Code. Mechanical equipment, spires, steeples, belfries, cupolas, and other architectural features shall be included in determining building height. Florida Building Code items such as chimneys, guardrails, bulkheads, and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts or ventilation or air conditioning apparatus shall not be included in determining building height; however, items required by the Florida Building Code shall be limited to the

minimum height necessary. Items or structural elements required by other state laws or the Federal Telecommunications Act shall not be included in determining building height.

- (b) If an existing building over thirty-five (35) feet is destroyed or substantially damaged by terrorist act, accidental fire, or natural and disastrous force, such building may be built back (reconstructed):
- (1) Within its pre-disaster footprint;
 - (2) Within the three-dimensional envelope of the habitable area of the pre-disaster building;
 - (3) Up to its pre-disaster gross square footage; and
 - (4) Up to the same number of dwelling units and pre-disaster floor area ratio, but elevated above the base flood elevations required by federal flood regulations, and Article VII (Flood Hazard Reduction) of the LUDC; and
 - (5) Conforming in all other respects to the Town's Codes, the Florida Building Code, other federal and state regulations, and state coastal construction control lines in effect at the time the substantially damaged building is built back (reconstructed).
- (c) Applications to build back buildings over thirty-five (35) feet that are destroyed or substantially damaged by terrorist act, accidental fire, or natural and disastrous force must be filed in accordance with the build-back provisions of the Land Use and Development Code. Registration of nonconformities and regulations and limitations on reconstruction pursuant to this Section shall be in accordance with the Land Use and Development Code.
- (d) For purposes of this section, "substantial damage" means any damage which would otherwise trigger a loss of the nonconforming structure under the Comprehensive Plan and the Land Use and Development Code. A building over thirty-five (35) feet in height which does not incur substantial damage from a terrorist act, accidental fire, or natural and disastrous force shall be built back in accordance with the provisions of the Comprehensive Plan and Land Use and Development Code.

(Res. No. 2008-18, § 4, 11-19-2008)

Sec. 7.03. Reserved.

Editor's note(s)—At the instruction of the city, § 7.03 Editor's note(s)— has been removed from the Charter "without need for a referendum because this Charter section has been declared invalid by the Seventh Judicial Circuit, which invalidation has been affirmed by the Fifth District Court of Appeal." Former § 7.03 Editor's note(s)— pertained to dry boat storage facilities and derived from Res. No. 2008-18, § 4, adopted Nov. 19, 2008.

ARTICLE VIII. FRANCHISES

Section 8.01. Franchises.

The Town Council may grant to corporations or private individuals, franchises and privileges to operate within the municipality.

ARTICLE IX. INTOXICATING BEVERAGES²

Section 9.01. Intoxicating Beverages.

The Town Council shall shave [have] the power to determine and establish by ordinance the areas, circumstances, hours, and conditions within or upon which intoxicating beverages may be sold, bought, served or consumed.

ARTICLE X. TRANSITION SCHEDULE

Section 10.01. Continuation of Former Charter Provisions.

All provisions of the former Charter of the Town of Ponce Inlet as amended by special law or otherwise which are not embraced herein and which are not inconsistent with this Charter and the laws of the State of Florida shall become ordinances of the Town of Ponce Inlet subject to modification or repeal in the same manner as other ordinances of the Town.

Section 10.02. Ordinances Preserved.

All ordinances in effect upon the adoption of this Charter, to the extent not inconsistent with it, shall remain in force until repealed or changed as provided herein.

Section 10.03. Rights of Officers and Employees.

Nothing in this Charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are Town officers or employees at the time of adoption. Elected officers shall continue to hold their offices and discharge the duties thereof until their successors are elected.

²State law reference(s)—Alcoholic beverages, F.S. ch. 3.

Section 10.04. Pending Matters.

All rights, claims, actions[,] orders, contracts and legal or administrative proceedings involving the Town shall continue except as modified pursuant to the provisions of this Charter.

Section 10.05. Schedule.

- (a) The date of referendum for this Charter change shall be November 6, 2001.
- (b) The election of Mayor and Seats 2 and 4 in the 1990 election shall be conducted under the provisions of the old Charter.
- (c) The first election under the provisions of this Charter shall be held in 2002.
- (d) This Charter Amendment shall become effective upon filing with the Florida Department of State or on December 1, 2001, whichever is later.
- (e) The first Council meeting under the new Charter will be held in January 2002. At this meeting, the Council will organize under the provisions of Article III of this Charter.
- (f) The Council shall adopt ordinances and resolutions required to effect the transition. Ordinances adopted within sixty (60) days of the first Council meeting under this Charter for the purpose of facilitating the transition may be passed as emergency ordinances following the procedures in General Law except that transition ordinances shall be effective for up to ninety (90) days after enactment. Thereafter, such ordinances may be readopted, renewed, or otherwise continued only in the manner prescribed for non-emergency ordinances outlined in General Law.

Section 10.06. Deletion of Obsolete Schedule Items.

The Council shall have power, by resolution, to delete from this Article X any section, including this one, when all events to which the section to be deleted is or could become applicable, have occurred.

Section 10.07. Charter Amendment.

This Charter may be amended in accordance with General Law.