

CITY OF NEW SMYRNA BEACH
Draft Revised Charter

PREAMBLE

Under the authority conferred by the Constitution of the State of Florida, the people of the City of New Smyrna Beach enact this charter as the law of the city (“City of New Smyrna Beach”) for the purpose of protecting and enhancing the health, safety, environment, and general welfare of the people; to enable municipal government to provide services and meet the needs of the people efficiently; to allow fair and equitable participation of all persons in the affairs of the city; to provide for transparency, strategic planning, accountability, and ethics in governance and civil service; to ensure our city fosters fiscal responsibility; to meet the broad needs for a healthy, forward-thinking community by creating an open, diverse, inclusive, and responsive government while preserving our natural resources, rich history, coastal lifestyle, and unique quality of life for our current residents and future generations.

~~PART I – CHARTER~~

~~CHAPTER 1. – ORGANIZATION OF CITY~~

~~CHAPTER 2. ARTICLE I ESTABLISHMENT AND POWERS~~

~~Sec. 7 Sec. 1.01. - Powers of the city.~~

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

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

~~Sec. 7A Sec. 101 A. Annexation.~~

(A) The city may annex contiguous territory by one of the two (2) following methods:

(1) ~~{Involuntary annexation.}~~ As provided by state law (F.S. 171).

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

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

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

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

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

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

(Here describe territory)

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

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

(d) When completed, such petitions, and additional or supplemental petitions, shall be filed with the City Clerk of the City of New Smyrna Beach, who shall, within five (5) days after the filing of such petitions with ~~him~~ the Clerk, deliver the same to the ~~supervisor of registration~~ Property Appraiser of Volusia County, who shall thereupon check the names of petitioners and shall certify within thirty (30) days that the signatures on each petition are genuine, and that the petitioners whose names appear on said petitions are qualified in all respects under this act to sign said petitions. In the event that the number of qualified petitioners is found to be insufficient, supplemental petitions may be filed until the sufficient number is obtained, and the ~~supervisor of registration~~ Property Appraiser shall have the same time, as herein provided, to check such supplemental petition as the original

petition. After filing with the City Clerk, no petition shall be withdrawn, nor shall any petitioner be permitted to withdraw his or her signature therefrom.

- (e) The petition or petitions meeting the requirements of this act shall thereupon be presented to the City Commission of the City of New Smyrna Beach, at its next regular meeting, together with the aforesaid certificate of the ~~supervisor of registration~~ Property Appraiser, and a certificate from the City Attorney, showing a sufficient legal description of the area to be annexed.
 - (f) Within six (6) months after the presentation of such approved petitions, the City Commission in its discretion may adopt a resolution or enact an ordinance setting forth the filing of said petitions, certification ~~of~~ by the supervisor of registration Property Appraiser as to the sufficiency of each petition and the certification of the engineer or the surveyor as to the sufficiency of the description of the land contained therein, and shall resolve or ordain that the said area is incorporated into the municipality, effective as of a particular date, determined by the City Commission, which effective date shall be not more than one year from the time of the presentation of the petition for annexation as provided for under the provisions of this act; or the governing body may reject said petitions by resolution within such six (6) months' period or by nonaction on their part within said period, whereupon said petitions shall become null and void. No petitions for annexing the same territory shall be filed until after a lapse of one year from the time of such rejection by resolution or nonaction.
- (B) Upon the adoption of a resolution or enactment of an ordinance annexing any such unincorporated territory to the City of New Smyrna Beach, such territory shall become a part of said City of New Smyrna Beach on the effective date; provided, however, that such territory shall not be subject to ad valorem taxation until January first following the effective date of annexation; provided, however, that territory annexed pursuant to this act shall be subject to the prior bonded indebtedness of said city; and such territory shall be subject to the jurisdiction, obligations, benefits and privileges of the municipality, except as herein otherwise provided, the same as the area constituting the municipality to which it was annexed.
- (C) After the effective date of such annexation all residents in the newly annexed territory shall have the same rights to vote in city elections and to hold public office in the city, as though the newly annexed territory had been a part of the said City of New Smyrna Beach for at least three months prior to the effective date of annexation. If the city should have a division into municipal districts or wards for election purposes, the newly annexed territory shall be added to such districts or wards as the governing body of the city shall in its discretion determine.
- (D) All persons, firms or corporations lawfully licensed to engage in any profession, occupation, trade or business within the annexed territory on the effective date of its annexation may upon paying the license taxes required by the City of New Smyrna Beach thereupon be entitled to carry on such profession, occupation, trade or business in the annexed area without obtaining a required permit or certificate granted by any examining board of the city; but such right may be terminated for cause after a hearing by the appropriate examining board of the city. Such licenses [licensees] must qualify with said

examining boards to engage in any profession, occupation, trade or business in the existing area to which the new territory was annexed.

Sec. 1.02. Construction of the Charter.

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

Sec. 1.03. Intergovernmental Relations.

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

Sec. 1.04. Form of Government.

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

ARTICLE II CITY COMMISSION

~~Sec. 8. Commissioner-manager plan of government.~~ Sec. 2.01. Creation of Commission.

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

~~CHAPTER 3. CITY COMMISSION~~

~~Sec. 9. Sec. 2.02. Composition and~~ Creation of commission; terms of office.

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

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

Sec. 10. Sec. 2.03. Limitations, Powers and Duties of Commission.

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

Sec. 11. Sec. 2.04. Qualifications of Members.

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

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

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

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

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

Sec. 2.05. Prohibitions.

(a.) Holding Other Office. Except where authorized by law, neither the Mayor nor any Commissioner shall hold any other elected public office during the term for which the Mayor or Commissioner was elected to the Commission. No Commission Member shall be employed by the City of New Smyrna Beach or hold any other elected office in the city during the term for which the Mayor or Commissioner was elected to the Commission. No former Commission member shall hold any compensated appointive office or employment with the city until one year after the expiration of the term for which the Mayor or Commissioner was elected to the Commission. The Mayor and Commissioners shall not be interested in the profits or emoluments of any contract, work, or service for the municipality, and any such contract in which any elected official is, or may become interested, shall be void.

Nothing in this section shall be construed to prohibit the Commission from selecting any current or former Commission Member to represent the city on the governing board of any regional or other intergovernmental agency.

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

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

~~Sec. 13.~~ Sec. 2.06. Judge of its own election Qualifications, Election, and Forfeiture.

The City Commission shall be the judge of the election and qualifications and election of its own members and of the grounds for forfeiture of office, subject to review by the courts. Any member

~~of the city commission who shall be convicted of a felony, while in office, shall thereby forfeit his office.~~ In order to exercise these powers, the Commission shall have power to subpoena witnesses, administer oaths, and require the production of evidence. The City Commission shall use the following procedure when forfeiture of office for one of its members is considered:

- The accused Commissioner shall not be entitled to participate in the deliberations or decision in relation to the Commissioner's suspension or removal.
- A Mayor or Commissioner may only be removed from office by an affirmative vote of at least three (3) members of the existing membership eligible to vote for such action.
- Written notice, approved by at least three (3) members of the existing membership of the City Commission that are eligible to vote on the matter, must be delivered to the accused Commissioner who shall have an opportunity to be heard and defend against the accusation.
- Subsequent to written notice being delivered to the accused, the Commission by an affirmative vote of no less than three (3) of the members eligible to vote for such action, shall have the authority to suspend a Commissioner pending the disposition of charges for removal.
- The accused Commissioner shall have the right to defend against the charges as provided in this Section.
- Where a suspension of a Commissioner occurs pursuant to this section of the Charter, the suspended official shall have the right to an immediate hearing upon demand to determine if there is sufficient evidence to establish the following two elements: (1) that probable cause exists to believe that the charges are true; and (2) that, if true, the charges would be grounds for removal. This hearing shall be held and the matter decided by the City Commission. The rules of procedure shall be the same as those which apply to the hearing for removal.
- If the City Commission does not find by an affirmative vote of at least three (3) of the existing members of the Commission that are eligible to vote on the matter that the evidence produced at the hearing is sufficient to establish the aforementioned two elements, the suspension shall terminate immediately and the official shall be reinstated pending a final hearing on removal.
- A final hearing for removal must take place and a decision rendered within ninety (90) calendar days after receipt of the above-mentioned written notice unless both the City Commission, by affirmative vote of at least three (3) Commissioners eligible to vote on the matter, and the accused agree to extend the time.
- In order for the City Commission to remove the accused official from office, the Commission must find that the substantial competent evidence presented at the hearing supports the charges which are the basis for the removal proceeding.
- If, after the final hearing, the City Commission is unable to support such a finding by an affirmative vote of at least three (3) of the existing membership of the City Commission that is eligible to vote on the matter, any suspension of the accused shall terminate and the accused shall be reinstated to office for any unfinished portion of the official's term.

- During a hearing regarding suspension or removal, the accused shall have the right to present evidence and testimony and to cross examine witnesses.
(the suggested language for this section has not been discussed or approved at this time)

~~Sec. 15~~ Sec. 2.07. Forfeiture of Office.

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

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

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

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

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

- Vacancies. The office of Mayor or Commissioner shall become vacant upon the Mayor or Commissioner's death, resignation, or removal from office or forfeiture of office in any manner authorized by law.
- Filling of Vacancies. Should a vacancy in the office of Mayor or City Commissioner occur when there are one hundred twenty (120) days or less left in the unexpired term, no appointment shall be made and that vacancy will be filled at the next regular municipal election. Should a vacancy occur when there are more than one hundred twenty (120) days left in the unexpired term, that vacancy shall be filled by the City Commission within thirty (30) days of the date of the vacancy with any qualified resident so appointed to serve until a successor is elected at the next regular municipal election. If a vacancy is not filled by the City Commission within thirty (30) days after the vacancy occurs as described above, a special election shall be held within ninety (90) days after such vacancy occurs or as soon thereafter as such election may be held; and the person so elected shall serve the remaining unexpired term of office.

Section 2.09. Investigations.

The City Commission may request investigations into the affairs of the city and the conduct of any department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence.

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

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

Section 2.11. Compensation.

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

Section 2.12. Voting.

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

~~Sec. 18~~ Sec. 2.13. Functions and powers of Mayor.

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

~~Sec. 21. — Penalty for absence.~~

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

CHAPTER 4.— CITY MANAGER

ARTICLE III CHARTER OFFICERS

Sec. 3.01. Appointment and Removal.

The City Commission shall designate the following as Charter Officers and shall appoint and remove them by a majority vote of the entire City Commission: City Manager, City Attorney, City Clerk.

Sec. 3.02. City Manager

~~See. 28~~ Sec. 3.02(a). Appointment and qualifications of the City Manager.

The City Commission shall appoint a City Manager by a majority vote of the entire Commission who shall be the administrative head of the municipal government under the direction and supervision of the City Commission, and he The City Manager shall hold office at the pleasure of the City Commission. He The Manager shall be chosen solely on the basis of his executive and administrative qualifications, without regard to his political beliefs, and he need not be a resident of the city or county at the time of his appointment. education and experience in the accepted competencies and practices of local government management. The Manager need not be a resident of the city or state at the time of appointment, but within six (6) months shall reside in the city unless otherwise approved by a vote of the City Commission.

~~See. 29~~ Sec. 3.02(b). Compensation of the City Manager.

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

~~See. 30~~ Sec. 3.02(c). Removal.

The City Manager shall be removable by the City Commission; but if removed at any time after having served six (6) months, he the Manager may demand written charges and a public hearing upon the same before the City Commission, and his final removal of the City Manager shall not take effect until such hearing has been had, but the City Commission may suspend him the Manager from office pending such hearing.

Sec. 3.02(d). Acting City Manager

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

~~See. 31~~ Sec. 3.02(e). Powers and Duties.

The city manager shall be responsible to the city commission for the proper administration of all affairs of the city, and to that end his powers are, and they shall be:

The City Manager shall be the chief executive officer of the city, responsible to the City Commission for the management of all city affairs placed in the Manager's charge by and under this charter. The City Manager shall:

- ~~(a1)~~ To sSee that the laws and ordinances are enforced;
- ~~(b2)~~ To aAppoint and remove all subordinate officers and employees of the city, except that the appointment and removal of department heads shall be subject to the approval of the City Commission; provided, however, that the removal of any and all employees that are covered by the merit plan (see Appendix A Personnel Policies and Procedures Sec. 1) shall be subject to appeal as provided by the merit plan of the city;
- ~~(c3)~~ To eExercise, control and direct supervision over all departments and divisions of the municipal government under this Charter, or which may hereafter be created by the City Commission, except for the offices of City Attorney, City Clerk, boards, commissions and authorities;
- ~~(d4)~~ To sSee that all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchise are faithfully kept and performed; and upon knowledge of any violation thereof, to call the same to the attention of the City Attorney, whose duty it is hereby made to take such legal steps as may be necessary to enforce the same;
- ~~(e5)~~ To aAttend all meetings of the City Commission, and of the committees, with the right to take part in discussions without having a vote;
- ~~(f6)~~ To rRecommend to the City Commission for adoption such measures as he the Manager may deem necessary or expedient in the interest of the city;
- ~~(g7)~~ To kKeep the City Commission fully advised as to the financial condition and future needs of the city; prepare and to submit for its consideration an the annual budget and capital program to the City Commission; and, implement the final budget approved by the commission to achieve the goals of the city;
- (8) Submit to the City Commission and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;
- (9) Make such other reports as the City Commission may require concerning operations;
- (10) Assist the City Commission to develop long term goals for the city and strategies to implement these goals;
- (h11) Promote partnerships among the Commission, staff, and residents in developing public policy and building a sense of community; and
- ~~(h12)~~ To pPerform such other duties as may be prescribed under this act or as may be required of him the City Manager by ordinance or a resolution or motion of the City Commission.
- ~~(i) He shall be the purchasing agent of the city, by whom all purchases of supplies shall be made. In the capacity of purchasing agent, he shall also conduct all sales of personal~~

~~property which the city commission may authorize to be sold as having become unnecessary or unfit for the city's use.~~

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

~~CHAPTER 5.—ADMINISTRATIVE OFFICERS AND DEPARTMENTS~~

~~Sec. 32.—Distribution of powers.~~

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

~~CITY ATTORNEY~~

~~Sec. 33 Sec. 3.03. Appointment and duties of: City Attorney~~

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

~~Sec. 3.03(a). Duties.~~

~~The City Attorney shall serve as chief legal adviser to the City Commission, the Manager, the City Clerk, and all city departments, offices and agencies; shall represent the city in all legal proceedings and shall perform any other duties prescribed by state law, by this charter, or by ordinance.~~

~~Sec. 35 Sec. 3.03(b). Qualifications.~~

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

~~Sec. 3.04. City Clerk.~~

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

~~ADVISORY BOARDS~~

Sec. 77. – How constituted.

~~The city commission may at any time appoint an advisory board, or advisory boards, who [which] shall be composed of citizens who are qualified to act in an advisory capacity to the city commission, the city manager or to any department of the city government, with respect to the conduct and the management of any property or institution or the exercise of any public functions of the city. The members of such board shall serve without compensation for the time fixed in their appointment, or at the pleasure of the city commission, and their duties shall be to consult and advise with such municipal officers and make written recommendations which shall become part of the records of the city.~~

Article IV FINANCIAL MANAGEMENT

Sec. 4.01. Fiscal Year.

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

Sec. 4.02. Submission of Budget and Budget Message.

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

Sec. 4.03. Budget Message.

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

Sec. 4.04. Budget.

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

Sec. 4.05. Administration and Fiduciary Oversight of the Budget.

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

Sec. 4.06. Independent Audit.

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

ARTICLE V SUSTAINABILITY

Sec. 5.01. Environmental Stewardship.

The City of New Smyrna Beach in order to insure the health and safety of its citizens and visitors shall enact the following ordinances to strengthen city standards in respect to air quality, water quality, and flooding:

- (a) Tree protection sufficient to maintain a substantial tree canopy for air quality and removal of pollutants draining into the aquifer.
- (b) Water run-off requirements that include best practices for all sources, including storm water, creating run-off into the Indian River Lagoon, marshes, and fresh water retention areas.
- (c) Limitations on the use of impervious materials.
- (d) Disallowance of the addition of new septic tanks.
- (e) Incentives for the removal of existing septic tanks.
- (f) Design standards for building or rebuilding in flood-prone areas.

Sec. 5.02. Zoning Goals.

The City of New Smyrna Beach in order to preserve the special character of the city's mid-eighteenth century history; strengthen the city's economic base; and enhance the environmental quality and sense of place in neighborhoods, shall enact ordinances that:

- (a) Preserve the scale and character of the city's neighborhoods.
- (b) Maintain the city's tree canopy, green areas, and historic footprint.
- (c) Create standards in ordinances ensuring the sustainability of a parcel zoned for building purposes without danger from flood or other inundation or from any other menace to health, safety, or public welfare.

Sec. 5.03. Historic Preservation.

The City of New Smyrna Beach in order to preserve and enhance the historic quality of the city; foster economic development; manage growth; improve property values; and add to the quality of life of its citizens and visitors shall enact ordinances that strengthen the city's commitment to historic stewardship:

- (a) Update the definition of historic to the standard used by state and federal agencies such as the National Registry of Historic Places.
- (b) Expand and make contiguous the Coronado Historic and Mainland Historic Districts.
- (c) Expand the city's historic overlay districts.
- (d) Develop proactive ordinances that will create a seam less methodology for owners to access historic preservation property tax exemptions (Section 50-34 NSB Code of Ordinances).
- (e) Empower code enforcement to assist and facilitate owners of historic properties to utilize the Historic Grant Program (Article III, Chapter 50 Section 50-43 NSB Code of Ordinances) and other grant sources.

Sec. 5.04. Sale, Lease, Trade, or Gifting of Public Land and Structures.

All land, including marshland, and structures owned by the City of New Smyrna Beach may not be sold, leased, traded, or given away by the city unless such sale, lease, trade, or gift is approved by a majority vote of the electors of the City of New Smyrna Beach. The City Commission shall pass an ordinance by a majority vote to place the matter of sale, lease, trade, or gift on the ballot for the voters to decide. The decision of the voters will be binding. If approved by the voters, the City Commission shall have the authority to issue such documents as needed to complete the transaction

~~CHAPTER 13.— REGISTRATION AND ARTICLE VI - ELECTIONS~~

Sec. 6.01. 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. 6.02. Conduct of Elections.

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

~~Sec. 169~~ Sec. 6.03. 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. 6.04. — 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.~~
- ~~(6) All powers and duties imposed upon and vested in the mayor, the city commission and the city clerk by the general and the special laws of the State of Florida applicable to the city, and the ordinances of the city passed in pursuance of said laws, with reference to conducting, holding and regulating of municipal elections, be and they are hereby imposed upon and vested in the board of elections created by this Charter, and it shall perform and exercise all such duties and powers.~~
- ~~(7) Except as otherwise provided by this Charter, all municipal elections held within the city, or any political subdivision thereof, shall be conducted in such manner as may be provided for such elections by the general and the special laws of the State of Florida, applicable to the city, and the ordinances of the city passed in pursuance of such laws, provided that such laws and such ordinances shall not conflict with this Charter.~~
- ~~(8) All acts and things necessary to be done to completely accomplish and carry out the conducting, holding and regulating of municipal elections, and declaring the results thereof are authorized to be done and performed by the board under the authority of this chapter, unless otherwise provided by state law.~~
- ~~(9) All ballots to be used in any municipal election shall be prepared under the supervision and direction of the county supervisor of elections in accordance with state law, unless otherwise provided by state law.~~
- ~~(10) Every person who is qualified to vote under state law shall be a qualified elector at all municipal elections in the city.~~
- ~~(11) The city clerk shall, after the last day of qualifying, certify a list of the candidates in such election whose names are entitled to appear on the ballot as being the list of candidates for nomination or election, or question to be voted upon, as the case may be, together with the names of the offices for which nomination or election is to be made at such election, as the case may be, and shall cause the same to be transmitted to the Supervisor of Elections of Volusia County by 5 p.m. the next business day.~~
- ~~(12) No later than noon of the second day after any election, or sooner, if the returns shall have been received, unless otherwise provided by law, it shall be the duty of the board to meet and proceed publicly to canvass the vote given for the several persons as shown by the returns then on file in its office. Such canvass shall be made, solely, exclusively and entirely from the returns, and in no case shall the board change or vary in any manner the number of votes cast for the candidates respectively in any polling place in the city, as shown by the returns of such polling place, provided that all returns shall be made to the board on or before the said second day after such election, and if not so returned the vote of all missing zones shall be ignored and the results as shown by the returns then on file shall be certified as herein provided.~~

~~(13) — In case any city officer shall be elected at any election, the board shall give to the person who shall be elected a certificate of his or her election, and the board shall give any person desiring a copy of such returns or any other records in custody of the board from the record a certified copy thereof or of such part thereof as may be desired, upon the payment to it of the customary fees for copying and certifying papers.~~

~~(14) — The right to contest any municipal election is hereby created. The election or nomination of any person to a municipal elective office may be contested by any defeated candidate for such office or nomination in the same manner and by the procedure now provided by the laws of the State of Florida for the contest of the election of any person to the office of county judge. Any question which may be submitted to the voters of the city may be contested by any qualified elector in the manner provided by law. Nothing herein shall be construed to abrogate or abridge in any way any remedy that may now exist by quo warranto or mandamus, but in such case the proceedings hereinabove provided shall be taken to be alternative or cumulative.~~

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

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

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

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

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

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

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

~~Sec. 178. — Ballots.~~

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

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

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

- ~~(a) — Such petition shall state the name of each person whose name is presented for a place upon the ballot and that he or she is a candidate for the office of mayor or for the office of city commissioner for the City of New Smyrna Beach, Florida, and, if he or she is a candidate for the office of city commissioner, the said petition shall state the zone from which the candidate is running.~~
- ~~(b) — In the case of a person who is a candidate for mayor, his or her petition shall be signed by at least twenty-five (25) duly registered, qualified electors of the city. In the case of a candidate for commissioner, such petition shall be signed by at least twenty-five (25) duly registered, qualified electors of the city, fifteen (15) of which must be residents from the zone from which said candidate is running.~~
- ~~(c) — Each elector signing a petition shall add to his or her signature the date of signing. All signatures shall be made with ink or indelible pencil.~~
- ~~(d) — The signatures of all of the petitioners need not be appended to one paper, but to each separate paper there shall be attached an affidavit of the candidate circulating the same, stating the number of signers thereto, that each person signed in his or her presence on the date mentioned, and that the signature is that of the person whose name it purports to be; but all of said petitions, whether consisting of one paper or several, must be circulated by the candidate himself or herself.~~
- ~~(e) — The qualifying period for the general city election shall be the same as the qualifying period for the general election of the State of Florida. The names of all candidates and the offices for which they have filed shall be received by the supervisor of elections from the city clerk by 5:00 p.m. on the next business day after the close of qualifying.~~

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

~~Sec. 180. — Acceptance by candidate.~~

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

his or her acceptance of such candidacy, together with his or her affidavit to the effect that he or she is qualified to vote at such election, with the board of elections not later than the last day of qualification; otherwise his or her name shall not appear upon the ballot.

~~Sec. 181~~ Sec. 6.05. Nomination and election; ~~procedure when;~~ ~~w~~When primary election unnecessary; ~~when general election unnecessary.;~~ ~~t~~ Tie vote

When there are less than three (3) qualified persons nominated ~~by petition~~ for the office of Mayor or any zone Commissioner, as set forth in section 179 hereof, then and in that event, no primary election shall be held for the election of a Mayor or zone Commissioner and the City Clerk shall declare the ~~person or persons so nominated qualified by petition as aforesaid~~ as nominees for the office of mayor for said city at the general election; ~~h~~However, if more than two (2) qualified persons are nominated for the office of Mayor or any zone Commissioner, then the City Clerk shall include the nominees in the primary election as herein provided. The names of the two (2) candidates for nomination to the office of Mayor or of any zone Commissioner who shall receive the greatest vote in such primary election shall be placed on the ballot at the next general municipal election, ~~and~~ ~~t~~The candidate at the general election who shall receive the greatest number of votes at said general election for the office of Mayor or any zone Commissioner shall be declared the Mayor or zone Commissioner.

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

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

~~The names of the two (2) candidates for nomination to the office of city commissioner from a particular zone who shall receive the greatest vote in said primary election shall be placed on the ballot at the next general municipal election. However, if and when a candidate for the office~~

~~of city commissioner from a particular zone in a primary election receives a great number of votes in said primary election than the combined votes of all those other candidates for city commission running from that particular zone, then and in that event the candidate receiving the majority of all votes cast in said primary election for that particular zone shall be declared to be elected as city commissioner from that zone, and thereafter, the said candidate(s name from said zone need not be placed on the ballot for the general election. A tie vote between two (2) or more candidates for the office of mayor or between two (2) or more candidates for the office of city commissioner from any zone shall be determined by special election in the city at large, to be held in accordance with the provisions of this Charter. The ballot to be used at said elections shall be so arranged as to show clearly and so as to designate the names of the candidates for mayor and the names of the candidates for commissioner from each zone, together with the particular zone from which said candidate for commissioner is running.~~

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

~~Sec. 182~~ Sec. 6.06. When Term of Office Commences.

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

In the event that the Mayor or a Commissioner is either appointed or elected by special election to fill a vacancy pursuant to the provisions of section ~~16 2.08~~ of the New Smyrna Beach City Charter, he or she shall assume the office immediately upon taking and subscribing to the oath of office. The term of office for the Mayor or Member of the Commission appointed or elected by special election to fill a vacancy shall end on the same day that the person for whom he or she was appointed or elected to fill the term of office would have ended.

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

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

Sec. 6.07. Commission Zones; Adjustment of Zones.

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

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

- (1) Zones shall be equal in population except where deviations from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed five percent of the average population for all City Commission zones according to the figures available from the most recent census.
- (2) Zones should be drawn in a manner that keeps neighborhoods intact to the extent possible.
- (3) Zones shall consist of contiguous territory; but land areas separated by waterways shall not be included in the same zone unless said waterways are traversed by highway bridges, tunnels, or regularly scheduled ferry services both termini of which are within the zone, except that, population permitting, islands not connected to the mainland or to other islands by bridge, tunnel, or regular ferry services shall be included in the same zone as the nearest land area within the city.
- (4) Consistent with the foregoing provisions, the aggregate length of all zone boundaries shall be as short as possible.

(c) Procedures.

(1) The City Commission shall complete the reapportionment plan within six (6) months after the official publication of the census.

(2) Proposed plans must be available to the public for inspection and comment not less than one (1) month before the first public hearing on said plan. The plan shall include a map and description of the zones recommended.

(3) The City Commission shall review and adopt the reapportionment plan as an ordinance by an affirmative vote of three (3) Members of the Commission.

(d) Failure to enact Ordinance. If the City Commission fails to enact a reapportionment plan within the required time, the City Attorney shall petition the circuit court having jurisdiction in the county to make such reapportionment.

The redrawing of zones, upon becoming law, shall not affect the remaining terms of those presently elected officials.

Sec. 184 Sec. 6.08. Pernicious Political Activities.

(a) It shall be unlawful for any person to intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce, any person for the purpose of interfering with the right of such other person to vote or to vote as he or she may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of Mayor or City Commissioner at any

election held solely or in part for the purpose of selecting a Mayor or City Commissioner in the city.

- (b) It shall be unlawful for any person employed in any administrative position by the city or by any department, independent agency or other agency of the city to use his or her official authority for the purpose of interfering with, or affecting the election or the nomination of any candidate for the office of Mayor or City Commissioner in the city.
- (c) It shall be unlawful for any person, directly or indirectly, to promise any employment, position, work, compensation or other benefit provided for or made possible in whole or in part by any resolution or ordinance of the City Commission, to any person as consideration, favor or reward for any political activity or for the support of or opposition to any candidate in any election.
- (d) It shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by any means, any person of any employment, position, work, compensation or any other benefits 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.
- (e) It shall be unlawful for any person employed in the executive branch of the city government or any agency or department thereof to use his or her official authority or influence 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 subjects. For the purpose of this section the term "officer" or "employee" shall not be construed to include the Mayor or any of the City Commissioners.
- (f) Any person who violates any of the foregoing provisions of this section upon conviction thereof shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than sixty (60) days, or both and may be prosecuted in any court of the State of Florida having jurisdiction.

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

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

ARTICLE VII CITIZEN PARTICIPATION

ADVISORY BOARDS

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

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

Sec. 184.1-Section 7.02. Charter Amendments. Referendum elections for Charter amendments.

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

Amendments to this Charter may be framed and proposed pursuant to state law (F.S. 166.031 as amended).

Section 7.03. Charter Review.

There shall be a periodic review of this Charter by a Charter Review Advisory Committee appointed by the City Commission in 2026 and every five (5) years thereafter. Each Zone in the city shall have representation on the Committee.

Sec. 7.04. Recall.

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

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

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

(2). Citizen Referendum. The registered voters of the city shall have the power to require reconsideration by the Commission of any adopted ordinance and, if the Commission fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

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

Any five (5) qualified voters may commence initiative or referendum proceedings by filing with the City Clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the street address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or the ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioners' committee is filed, the Clerk ("City Clerk") shall, issue the appropriate petition blanks to the petitioners' committee at the committee's expenses

7.05(b). Petitions.

- (1) Number of Signatures. Initiative and citizen referendum petitions must be signed by the registered voters of the city equal in number to at least ten (10) percent of the total number of registered voters at the last regular city election.
- (2) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature 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 person circulating it stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she 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 must be filed within thirty (30) days after adoption by the Commission of the ordinance sought to be reconsidered.

7.05(c). - Procedure after Filing.

- (1) Certificate of Clerk; Amendment. Within twenty (20) days after the petition is filed, the City 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 certified mail. 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 (2) days after receiving the copy of the certificate and files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsections (2) and (3) of Section 7.05(b), and within five (5) days after it is filed the Clerk or other official designated by the Commission 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 certified 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 the petitioners' committee does not elect to amend or request Commission review under subsection (2) of this section within the time required, the Clerk shall promptly present the certificate to the Commission and the certificate shall then be a final determination as to the sufficiency of the petition.
- (2) Commission 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 (2) days after receiving the copy of such certificate, file a request that if be reviewed by the City Commission. The Commission shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Commission'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.

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

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

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

7.05(e). Action on Petitions.

- (1) Action by Commission. When an initiative or referendum petition has been finally determined sufficient, the Commission shall promptly consider the proposed initiative ordinance in the manner provided in Article II, or reconsider the referred ordinance by voting its repeal. If the Commission fails to adopt a proposed initiative ordinance without any change in substance within sixty (60) days or fails to repeal the referred ordinance within thirty (30) days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the city.
- (2) Submission to Voters. The vote of the city on a proposed or referred ordinance shall be held not less than thirty (30) days and not later than one hundred eighty (180) days from the date of the final commission vote thereon. If no regular city election is to be held within the period prescribed in this subsection, the Commission shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Commission 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 for inspection at the office of the City Clerk not less than five (5) days prior to the election and at the polls.
- (3) Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the fifteenth (15th) day preceding the date scheduled for a vote of the city by filing with the city clerk a request for withdrawal signed by at least two-thirds (2/3) 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.

(f). Results of Election.

- (1) Initiative. If a majority of the registered voters 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 Commission. 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 registered voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

~~CHAPTER 15.~~ ARTICLE VIII UTILITIES COMMISSION

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

There is hereby created and made a part of the government of the City of New Smyrna Beach a utilities commission to be known and designated as "Utilities Commission, City of New Smyrna Beach, Florida," which shall consist of five (5) members. For the purposes of this act, unless otherwise designated, the word "Commission" shall mean the Utilities Commission of New Smyrna Beach and the word "Commissioner" shall mean a member of the said Utilities

Commission. Except as otherwise authorized, the Utilities Commission shall function the same as it previously functioned under Laws of Fla., ch. 67-1754. This act shall not supersede or alter the general law in effect and agreements entered into prior to the effective date of this act [June 12, 1985].

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

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

~~Sec. 211~~ Sec. 8.03. - Same—Qualifications.

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

~~Sec. 212~~ Sec. 8.04. - Meetings; Rules and Regulations; Officers.

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

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

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

~~Sec. 214~~ Sec. 8.06. - Authority Over City's Utilities.

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

~~Sec. 215~~ Sec. 8.07. - Commissioners' Salary, Expenses.

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

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

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

~~Sec. 217.~~ Sec. 8.09. - General Powers and Authority.

The Commission shall have full and exclusive power and authority to prescribe rules, rates and regulations governing the sale and use of electricity, water, gas and sewage collection and treatment wherever such services are furnished by said Commission and to change the same at its pleasure, after conducting a public hearing or hearings pertaining to rate changes. The Commission is authorized to furnish electricity, power, water, gas and sewage collection and treatment to private individuals and corporations wherever the same may be required and feasible as determined by the Commission and for said purpose the Commission shall have the right to acquire, construct, maintain, extend, improve and develop electric production and distribution systems, water production and distribution facilities and systems, gas production and distribution systems and sanitary sewer facilities and systems, including the right to construct and maintain electric lines, water and gas mains and sewers in, along and under all public streets and highways and to contract with and receive grants and contributions from the United States or any of its agencies or departments, the state and any municipality, public body, corporation, partnership or individual for such purposes. The Commission may extend city utilities beyond the corporate limits of the City of New Smyrna Beach in conformance with the requirements of Chapter 366, Florida Statutes, only upon approval by ordinance of the City Commission and the Commission may enter into a contract for a term of more than four (4) years only after approval by ordinance of the City Commission. The City Commission may not withhold its approval or deny passage of an ordinance where such withholding or denial would cause the Commission to violate any of the covenants or terms of its bond resolutions and related contracts, resolutions, and documents. The Commission shall prepare and submit its budget for the ensuing year to the City Commission on or before June 1 of each year, setting forth its estimated gross revenues and estimated requirements for operations and maintenance expenses, debt service, and depreciation. A copy of the budget shall be published once in a newspaper of general circulation in the city during the month of June. The Commission shall adopt the budget for the ensuing year only upon approval by ordinance of the City Commission. The City Commission may not withhold its approval or deny passage of an ordinance approving the budget where such withholding or denial would cause the Commission to violate any of the covenants or terms of its bond resolutions and related contracts, resolutions, and documents.

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

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

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

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

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

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

~~Sec. 221.~~ Sec. 8.13. - Agreements with Holders of Revue Bonds and Other Obligations.

The Commission shall have power and authority to make agreements and covenants with the City of New Smyrna Beach and the holders of any revenue bonds or other obligations issued to finance, in whole or in part, any repairs, extensions or improvements of any utility with respect to the filing and collecting of fees, rentals and other charges for services and utilities. All such agreements and covenants shall constitute and be deemed valid contracts between the Commission and the holders of any revenue bonds or other obligations and may be enforced by any holder of such revenue bonds or any other obligations in any court of competent jurisdiction subject, however, to any provision for enforcement which may be contained in such agreements

or covenants or in the resolution or resolutions of the governing body of the city or the Commission pursuant to which such obligations were issued.

~~Sec. 222.~~ Sec. 8.14. - Borrowing Money.

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

~~Sec. 223.~~ Sec. 8.15. - Revenue Certificates and Promissory Notes.

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

- (1) Revenue certificates issued under the provisions of this act shall be payable from the revenues derived from the operation of the city's utilities or services under the supervision, operation and control of the Commission and from any other funds legally available therefor.
- (2) The Commission shall not convey or mortgage any property or facility or any part thereof as security for the payment of revenue certificates.
- (3) In the discretion of the Commission, each or any issue of such revenue certificates may be secured by a trust agreement by and between the Commission and a corporate trustee which may be any trust company or bank having the powers of a trust company within or outside of the state. Such trust agreement may pledge or assign the revenues to be received by the Commission. The resolution providing for the issuance of revenue certificates or such trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the certificate holders as may be reasonable, proper and not in violation of law, including covenants setting forth the duties of the Commission in relation to the acquisition, construction, improvements, maintenance, operation, repair, equipping and insurance of the facilities, and the custody, safeguarding and application of all monies. It shall be lawful for any bank or trust

company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the Commission. Such resolution or such trust agreement may restrict the individual right of action by certificate holders as is customary in trust agreements securing bonds or debentures of corporations. In addition to the foregoing, such resolution or trust agreement may contain such other provisions as the Commission may deem reasonable and proper for the security of certificate holders. Except as this chapter otherwise provides, the Commission may provide, by resolution or by trust agreement, for the payment of the proceeds of the sale of the revenue certificates and the revenues of the utilities and services to such officer, board or depository as it may determine for the custody thereof and for the method of disbursement thereof with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust agreement may be treated as a part of the cost of operation of the utilities affected by such trust agreement.

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

~~Sec. 224.~~ Sec. 8.16. - Refunding Revenue Certificates.

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

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

The issuance of such obligations, the maturities and other details thereof, the rights and remedies of the holders thereof, the rights, powers, privileges, duties and obligations of the commission with respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable. The City Commission shall not withhold its approval or deny passage of an ordinance where such a withholding or denial would cause the commission to violate any of the covenants or terms of its bond resolutions and related contracts, resolutions and documents.

~~Sec. 225.~~ Sec. 8.17. - Legal Status of Revenue Certificates or Other Obligations.

Any revenue certificates or other obligations issued pursuant to this chapter shall be and constitute legal investments for bonds, savings banks, trustees, executors, administrators and all other fiduciaries for all state, municipal and public funds and shall also be and constitute

securities eligible for deposit as security for all state, municipal or other public funds notwithstanding the provisions of any other law or laws to the contrary.

~~CHAPTER 14- ARTICLE IX - MISCELLANEOUS PROVISIONS~~

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

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

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

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

~~Sec. 194. — Authority to contract.~~

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

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

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

~~(b) — Reserved.~~

~~(c) — Said City of New Smyrna Beach is hereby authorized and empowered to take and acquire by condemnation by right of eminent domain any lands or property within or outside the limits of said city which it may deem necessary or desirable, except state or federal, for use by said city for the purposes mentioned in subsection (a) hereof, and the absolute fee simple~~

~~title to all property so taken and acquired by said city hereunder shall vest in said city unless said city seeks to condemn or acquire a part or lesser right or estate in such property.~~

~~Sec. 199. —Zone boundaries.~~

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

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

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

~~Sec. 205. —General laws to apply.~~

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

~~Sec. 206 Sec. 9.01. - Saving clause: Severability.~~

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

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

~~Sec. 207~~ Sec. 9.02. - Conflicting Laws Repealed.

All laws and parts of laws in conflict herewith insofar as they apply to the City of New Smyrna Beach be, and the same are, hereby repealed.

~~Sec. 208.~~ Effective date.

~~This act shall take effect immediately upon its passage and approval by the governor of the State of Florida, or becoming a law without such approval.~~

~~CHAPTER 15.~~ UTILITIES COMMISSION

~~Sec. 209 .~~ Created; definitions.

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

~~Sec. 210.~~ Members—Appointment; term; vacancy; removal.

~~The commission shall consist of five (5) members to be appointed by the city commission. One (1) commissioner shall serve until the first Wednesday in September, 1967, one (1) shall serve until the first Wednesday in September 1968, one (1) shall serve until the first Wednesday in September 1969, one (1) shall serve until the first Wednesday in September 1970 and one (1) shall serve until the first Wednesday in September 1971. The city commissioners shall appoint a replacement for any commissioner whose term expires and the replacement shall be appointed for a term of three (3) years. Should a vacancy occur on the utilities commission by virtue of resignation, death or removal, the unexpired term shall be filled as provided above. Any commissioner may be removed from office upon a majority vote of the city commissioners for malfeasance, misfeasance, nonfeasance, conviction of a felony or upon recommendation of a majority of the utilities commissioners.~~

~~Sec. 211.~~ Same—Qualifications.

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

~~Sec. 212.~~ Meetings; rules and regulations; officers.

~~The commission shall meet at least once each month at the offices of the commission. All meetings of the commission shall be open to the public and minutes shall be kept of all meetings.~~

~~The commission shall have authority to promulgate rules and regulations for the conduct of its meetings and the operation of its business. At the regular meeting of the commission in September of each year, the commissioners shall elect a chairman, a vice chairman, a secretary and a treasurer from its membership; however, the office of secretary and treasurer may be combined.~~

~~Sec. 213.—Authority to appoint and employ necessary personnel.~~

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

~~Sec. 214.—Authority over city's utilities.~~

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

~~Sec. 215.—Commissioners' salary, expenses.~~

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

~~Sec. 216.—Monthly statements; fiscal year; annual audit.~~

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

~~Sec. 217.—General powers and authority.~~

~~The commission shall have full and exclusive power and authority to prescribe rules, rates and regulations governing the sale and use of electricity, water, gas and sewage collection and treatment wherever such services are furnished by said commission and to change the same at its pleasure, after conducting a public hearing or hearings pertaining to rate changes. The commission is authorized to furnish electricity, power, water, gas and sewage collection and treatment to private individuals and corporations wherever the same may be required and feasible as determined by the commission and for said purpose the commission shall have the right to acquire, construct, maintain, extend, improve and develop electric production and distribution systems, water production and distribution facilities and systems, gas production and distribution systems and sanitary sewer facilities and systems, including the right to construct and maintain electric lines, water and gas mains and sewers in, along and under all public streets and highways and to contract with and receive grants and contributions from the United States or any of its agencies or departments, the state and any municipality, public body, corporation, partnership or individual for such purposes. The commission may extend city utilities beyond the~~

incorporate limits of the City of New Smyrna Beach in conformance with the requirements of Chapter 366, Florida Statutes, only upon approval by ordinance of the city commission and the commission may enter into a contract for a term of more than four (4) years only after approval by ordinance of the city commission. The city commission may not withhold its approval or deny passage of an ordinance where such withholding or denial would cause the commission to violate any of the covenants or terms of its bond resolutions and related contracts, resolutions, and documents. The commission shall prepare and submit its budget for the ensuing year to the city commission on or before June 1 of each year, setting forth its estimated gross revenues and estimated requirements for operations and maintenance expenses, debt service, and depreciation. A copy of the budget shall be published once in a newspaper of general circulation in the city during the month of June. The commission shall adopt the budget for the ensuing year only upon approval by ordinance of the city commission. The city commission may not withhold its approval or deny passage of an ordinance approving the budget where such withholding or denial would cause the commission to violate any of the covenants or terms of its bond resolutions and related contracts, resolutions, and documents.

Sec. 218. — Billing and collection of fees and charges; disposition of funds collected.

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

Sec. 219. — Acquisition of property by eminent domain; title.

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

Sec. 220. — Authority to shut off and discontinue water, electricity, etc.

The commission shall have the power to shut off and discontinue the supplying of water, electricity or any other utilities or services now or hereafter under the control, management or jurisdiction of the commission to any and all users for violation of any of the rules or regulations pertaining to the sale, distribution or use of such utilities and services and for nonpayment, when due, of the fees, rentals or other charges for utilities and services. Regulations governing the shutting off and discontinuance of any of such utilities and services and the terms and conditions for the restoration of such utilities and services, including interest and charges for shutting off

and discontinuance or the restoration of said utilities and services may be adopted by the commission.

~~Sec. 221. — Agreements with holders of revenue bonds and other obligations.~~

~~The commission shall have power and authority to make agreements and covenants with the City of New Smyrna Beach and the holders of any revenue bonds or other obligations issued to finance, in whole or in part, any repairs, extensions or improvements of any utility with respect to the filing and collecting of fees, rentals and other charges for services and utilities. All such agreements and covenants shall constitute and be deemed valid contracts between the commission and the holders of any revenue bonds or other obligations and may be enforced by any holder of such revenue bonds or any other obligations in any court of competent jurisdiction subject, however, to any provision for enforcement which may be contained in such agreements or covenants or in the resolution or resolutions of the governing body of the city or the commission pursuant to which such obligations were issued.~~

~~Sec. 222. — Borrowing money.~~

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

~~Sec. 223. — Revenue certificates and promissory notes.~~

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

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

- (2) ~~The commission shall not convey or mortgage any property or facility or any part thereof as security for the payment of revenue certificates.~~
- (3) ~~In the discretion of the commission, each or any issue of such revenue certificates may be secured by a trust agreement by and between the commission and a corporate trustee which may be any trust company or bank having the powers of a trust company within or outside of the state. Such trust agreement may pledge or assign the revenues to be received by the commission. The resolution providing for the issuance of revenue certificates or such trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the certificate holders as may be reasonable, proper and not in violation of law, including covenants setting forth the duties of the commission in relation to the acquisition, construction, improvements, maintenance, operation, repair, equipping and insurance of the facilities, and the custody, safeguarding and application of all monies. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the commission. Such resolution or such trust agreement may restrict the individual right of action by certificate holders as is customary in trust agreements securing bonds or debentures of corporations. In addition to the foregoing, such resolution or trust agreement may contain such other provisions as the commission may deem reasonable and proper for the security of certificate holders. Except as this chapter otherwise provides, the commission may provide, by resolution or by trust agreement, for the payment of the proceeds of the sale of the revenue certificates and the revenues of the utilities and services to such officer, board or depository as it may determine for the custody thereof and for the method of disbursement thereof with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust agreement may be treated as a part of the cost of operation of the utilities affected by such trust agreement.~~
- (4) ~~The resolution or trust agreement providing for the issuance of the revenue certificates may also contain such limitations upon the issuance of additional revenue certificates as the commission may deem proper and such additional certificates shall be issued under such restrictions or limitations as may be prescribed by the resolution or trust agreement.~~

~~Sec. 224. Refunding revenue certificates.~~

~~The commission, upon approval by ordinance of the city commission is authorized to provide by resolution for the issuance of refunding revenue certificates for the purpose of refunding any revenue certificates heretofore issued by the city of New Smyrna Beach then outstanding or issued under the provisions of this chapter. The commission is further authorized, upon approval by ordinance of the city commission, to provide by resolution for the issuance of revenue certificates for the combined purpose of:~~

- (1) ~~Paying the cost of any acquisition, construction, extension, addition, improving, equipping or reconstruction of a facility or facilities of the commission;~~

~~(2) — Refunding revenue certificates heretofore issued by the city of New Smyrna Beach and of the commission which shall theretofore have been issued under the provisions of this chapter and shall then be outstanding.~~

~~The issuance of such obligations, the maturities and other details thereof, the rights and remedies of the holders thereof, the rights, powers, privileges, duties and obligations of the commission with respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable. The city commission shall not withhold its approval or deny passage of an ordinance where such a withholding or denial would cause the commission to violate any of the covenants or terms of its bond resolutions and related contracts, resolutions and documents.~~

~~Sec. 225. — Legal status of revenue certificates or other obligations.~~

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