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## ARTICLE III. - LEGISLATIVE

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### Sec. 3.01. - City council: powers, composition and salaries.

- (a) At the time of adoption of this charter, there shall be a city council consisting of five (5) members including the mayor. This council shall have all of the legislative powers of the city vested therein including the appointment of the city attorney. The city council may authorize the city attorney to employ one or more assistants, a city prosecutor, and to engage special counsel where the circumstances of a particular case warrant, and city attorney shall be authorized to appoint, suspend, demote or dismiss any employee in the office of the city attorney in accordance with law.
- (b) Salaries of the mayor and council members shall be set by ordinance during the year in which city elections are held. Said salaries shall become effective the following January first and commencing in 2007 upon the first Tuesday in December. Salary may be tied to the consumer price index.

*(Ord. No. 1997-32, § 1, 7-1-97; Ord. No. 2001-51, § 4, 8-21-01)*

*Editor's note—*

Ord. No. 1997-32 was approved at a special election held on September 2, 1997. Ord. No. 2001-51 was approved by the voters at referendum on Oct. 9, 2001.

### Sec. 3.02. - Elections and terms.

- (a) The regular election of mayor and/or city council members shall be held on the date or dates and in the manner provided in article V of this Charter, and shall be for four-year terms, except that in the regular elections scheduled for 2005 and 2007, the term of office for the duly elected council members shall expire on the first Tuesday in December, 2010 and 2012, respectively. The terms and provisions of this section shall supersede and amend any other charter terms or provisions to the contrary.
- (b) No member of the city council, including the mayor, shall serve more than three (3) consecutive terms. A term shall be defined as holding office as a council member, including mayor, for more than 738 days. Consecutive terms shall mean the continued tenure without interruption as a council member, including mayor, notwithstanding, that some tenure may not constitute a term.

*(Ord. No. 1983-33, § 1, 11-7-83; Ord. No. 1993-25, § 1, 8-10-93; Ord. No. 1993-26, § 1, 8-10-93; Ord. No. 1993-27, § 1, 8-10-93; Ord. No. 1993-28, § 1, 8-10-93; Ord. No. 1997-33, § 1, 7-1-97; Ord. No. 2001-51, § 4, 8-21-01; Ord. No. 2008-35, § 2, 10-21-08)*

*Editor's note—*

Ord. No. 1993-25, Ord. No. 1993-26, Ord. No. 1993-27 and Ord. No. 1993-28 were approved at a special election held on October 5, 1993. Ord. No. 1997-33 was approved at a special election held on September 2, 1997. Ord. No. 2001-51 was approved by the voters at referendum on Oct. 9, 2001.

**Exemption from [F.S.] Chapters 98-506 and 95-462.** Pursuant to the applicable procedures in [F.S.] Chapter[s] 98-506 and 95-462, the city exempts itself from the requirements of these laws and shall hold its elections as otherwise set forth in Ordinance No. 2008-35.

### Sec. 3.03. - Mayor and vice mayor.

- (a) The mayor shall preside at meetings of the council, shall be recognized as head of city government for all ceremonial purposes, by the governor for purposes of military law, for service of process, execution of contracts, deeds, and other documents, and as the city official designated to represent the city in all agreements with other governmental entities or certifications to other governmental entities, but shall have no administrative duties except as required to carry out the responsibilities herein. The mayor shall annually present a state of the city message, present the agenda for all meetings of the council, name committees of the council and, in consultation with the council, shall appoint members of the city boards with the approval of the council.
- (b) The mayor shall be an elector of the city elected to a four-year term by the electors of the city, except as otherwise provided in this charter.
- (c) Both the mayor and the vice mayor shall be entitled to vote at all council proceedings.
- (d) The vice mayor shall be elected at the first meeting of the newly elected council after the regular city elections; and, in nonelection years, at the first regular council meeting in January and commencing in 2007 at the first regular council meeting in December. The vice mayor shall act as mayor during the absence or disability of the mayor. In case of death, resignation, or removal of the mayor, the vice mayor shall serve as mayor for the remaining unexpired term of such office. The council vacancy left by the vice mayor shall be filled as provided in section 3.05(c). A vice mayor shall be elected by the council from its members either before or after the filling of the council vacancy as provided in the preceding sentence. In all instances, the vice mayor shall be elected by the affirmative vote of the majority of the council.

*(Ord. No. 1982-30, § 1, 7-19-82; Ord. No. 1993-29, § 1, 8-10-93; Ord. No. 2001-51, § 4, 8-21-01; Ord. No. 2008-35, § 3, 10-21-08)*

*Editor's note—*

Ord. No. 1993-29 was approved at a special election held on October 5, 1993. Ord. No. 2001-51 was approved by the voters at referendum on Oct. 9, 2001.

**Exemption from [F.S.] Chapters 98-506 and 95-462.** Pursuant to the applicable procedures in [F.S.] Chapter[s] 98-506 and 95-462, the city exempts itself from the requirements of these laws and shall hold its elections as otherwise set forth in Ordinance No. 2008-35.

### Sec. 3.04. - Prohibitions.

- (a) *Appointment and removals.* Neither the council nor any of its members shall in any manner dictate the appointment or removal of any city administrative officers or employees whom the manager or any of his subordinates are empowered to appoint, but the council may express

its views and freely discuss with the manager anything pertaining to appointment and removal of such officers and employees.

- (b) *Interference with administration.* Except for the purpose of inquiries and investigation, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the manager solely through the manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately. Nothing in the foregoing is to be construed to prohibit individual members of the council from closely scrutinizing by questions and personal observation, all aspects of city government operations so as to obtain independent information to assist the members in the formulation of sound policies to be considered by the council. It is the express intent of this charter, however, that recommendations for improvement in city government operations by individual council members be made to and through the city manager, so that the manager may coordinate efforts of all city departments to achieve the greatest possible savings through the most efficient and sound means available.
- (c) *Holding other office.* No former elected city official shall hold any salaried appointive city office or employment until one year after the expiration of the term for which he was elected.

### Sec. 3.05. - Vacancies; forfeiture of office; filling of vacancies.

- (a) *Vacancies.* The office of a council member shall become vacant upon his death, resignation, removal from office in any manner authorized by law or forfeiture of his office, such forfeiture to be declared by the remaining members of the council.
- (b) *Forfeiture of office.* Any member of the city council who shall cease to reside within the city or to have or possess any of the qualifications herein imposed for members of the city council or who shall, while in office, be convicted of a felony, shall forfeit his office, and the seat shall be deemed to be vacant immediately. Absence from three consecutive regular meetings of the city council shall operate to vacate the seat of a member unless a leave of absence is first granted by the city council or such absence is excused by the city council by approval of a motion setting forth the fact of such excuse, duly entered in the minutes.
- (c) *Filling of vacancies.* A vacancy of the council shall be filled in one of the following ways: (1) If there are less than twelve (12) months remaining in the unexpired term or if there are less than twelve (12) months before the next regular city election, the council by a majority vote of the remaining members shall choose a successor to serve until the newly elected council member is qualified; (2) if there are more than twelve (12) months remaining in the unexpired term and no regular city election is scheduled within twelve (12) months, the council shall fill the vacancy on an interim basis as provided in (1), and shall schedule a special election and a primary election to fill the vacancy for the remainder of the unexpired term. The special election and primary election may be held on the day of any state or county primary or general election. Notwithstanding any quorum requirements established herein, if at any time the membership of the council is reduced to less than a quorum, the remaining members may by majority vote appoint additional members under either (1) or (2) above.
- (d) *Extraordinary vacancies.* In the event that all members of the council are removed by death, disability, law or forfeiture of office, the governor shall appoint an interim council that shall call a special election as provided in (c) above.

(Ord. No. 1993-30, § 1 8-10-93; Ord. No. 1993-31, § 1, 8-10-93)

Editor's note—

Ord. No. 1993-30 and Ord. No. 1993-31 were approved at a special election held on October 5, 1993.

**Sec. 3.06. - Procedure.**

- (a) *Meetings.* The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor or any two of the members and, whenever practicable, upon no less than 24 hours notice to each member and the public. Members of the city council duly elected at regular elections shall assume office on the first Tuesday after the first Monday of January following the regular election at 7:00 p.m. and commencing in 2007 on the first Tuesday in December at 7:00 p.m. They shall meet at said date and time in Port Orange and shall organize under the provisions of Article III of this charter.
- (b) *Rules and journal.* The council shall determine its own rules and order of business and shall maintain a journal of council business.
- (c) *Voting.* Voting, on ordinances and resolutions, shall be by roll call on final action and shall be recorded in the journal. A majority of the council shall constitute a quorum; but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. No action of the council except as otherwise provided in the preceding sentence and in section 3.05, shall be valid or binding unless adopted by the affirmative vote of the majority of the council.

*(Ord. No. 1982-31, § 1, 7-19-82. Ord. No. 2001-51, § 4, 8-21-01)*

*Editor's note—*

Ord. No. 2001-51 was approved by the voters at referendum on Oct. 9, 2001.

**Sec. 3.07. - Initiative and referendum.**

- (1) (a) *Initiative.* The qualified voters of the city shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, provided that such power shall not extend to the budget or capital program or any resolution relating to appropriation of money, levy of taxes or salaries of city officers or employees.
- (b) *Referendum.* The qualified voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, provided that such power shall not extend to the budget or capital program or any emergency ordinance or resolution relating to appropriation of money, levy of taxes or salaries of city officers or employees.
- (2) *Commencement of proceedings.* Any five qualified voters may commence initiative or referendum proceedings by filing with the city clerk or other official designated by the council 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 address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered. Promptly after the affidavit of the petitioners' committee is filed, the clerk or other official designated by the council may, at the committee's request, issue the appropriate petition blanks to the petitioners' committee at the committee's expense.
- (3) *Petitions.*
  - (a)

- Number of signatures.* Initiative and referendum petitions must be signed by qualified voters of the city equal in number to at least 20 percent of the total number of qualified voters registered to vote at the last regular city election.
- (b) *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.
  - (c) *Affidavit of circulator.* Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be the genuine signature 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.
  - (d) *Time for filing referendum petitions.* Referendum petitions must be filed within 30 days after adoption by the council of the ordinance sought to be reconsidered.
- (4) *Procedure for filing.*
- (a) *Certificate of clerk; amendment.* Within 20 days after the initiative petition is filed and five days for a referendum petition, the city clerk or other official designated by the council 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 petitioner's committee by certified mail, return receipt requested. Grounds for insufficiency are only those specified in subsection (3). 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 or other official designated by the council within two days after receiving the copy of the certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsections 3(b) and 3(c) of section 3.07, and within five days after it is filed the clerk or other official designated by the council 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, return receipt requested 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 council review under subsection (b) of this section within the time required, the clerk or other official designated by the council shall promptly present his certificate [which] shall then be a final determination as to the sufficiency of the petition.
  - (b) *Council review.* If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition.
- (5) *Referendum petitions; suspension of effect of ordinance.* When a referendum petition is filed with the city clerk or other official designated by the council, the ordinance sought to be reconsidered shall be suspended from taking effect. Such a suspension shall terminate when:

- (a) There is a final determination of insufficiency of the petition; or
  - (b) The petitioners' committee withdraws the petition; or
  - (c) The council repeals the ordinance; or
  - (d) After a vote of the city on the ordinance has been certified.
- (6) *Action on petitions.*
- (a) *Action by council.* When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance in the manner provided in Article III or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiative ordinance without any change in substance within 60 days or fails to repeal the referred ordinance within 30 days, it shall submit the proposed or referred ordinance to the voters of the city.
  - (b) *Submission to voters.* The vote of the city on a proposed or referred ordinance shall be held not less than 30 days and not later than 60 days from the date that the petition was determined sufficient. If no regular city election is to be held within the period described in this subsection, the council shall provide for a special election, except that the council may, in its discretion, provide for a special election at an earlier date within the described period. Copies of the proposed or referred ordinance shall be made available at the polls.
  - (c) *Withdrawal of petitions.* An initiative or referendum petition may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for a vote of the city by filing with the city clerk or other official designated by the council a request for withdrawal signed by at least four members of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.
- (7) *Results of election.*
- (a) *Initiative.* If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.
  - (b) *Referendum.* If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

(Ord. No. 2001-51, § 4, 8-21-01)

Editor's note—

Ord. No. 2001-51 was approved by the voters at referendum on Oct. 9, 2001.

### **Sec. 3.08. - Budget and appropriations.**

The city council shall by resolution adopt the annual budget, budget amendments and authorize appropriations.

(Ord. No. 2001-51, § 4, 8-21-01)

Editor's note—

Ord. No. 2001-51 was approved by the voters at referendum on Oct. 9, 2001.

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## ARTICLE V. - QUALIFICATIONS AND ELECTIONS

Sec. 5.01. - Nonpartisan elections.

Sec. 5.02. - Qualifications.

Sec. 5.03. - Form of ballots.

Sec. 5.04. - Elections.

Sec. 5.05. - Council districts; adjustments of districts.

### Sec. 5.01. - Nonpartisan elections.

All qualifications and elections for the office of city council and mayor shall be conducted on a nonpartisan basis without regard for or designation of political party affiliation of any nominee on any nomination petition or ballot.

### Sec. 5.02. - Qualifications.

Any person who has been a resident of the City of Port Orange for at least 12 months and is a registered voter (of Volusia County) may become a candidate for nomination to the office of city council member or mayor whenever the candidate files a petition signed by 50 qualified electors of the city with the city clerk, requesting that said candidate's name be placed on the ballot in the ensuing election. Said candidate shall file such papers and pay such fees as may be required by law with the city clerk during normal business hours during the qualifying period. The qualifying period shall begin at 12:00 noon of the first (1st) day for qualifying, which shall be the seventy-first (71st) day prior to the primary election, but not later than 12:00 noon of the sixty-seventh (67th) day prior to the date of the primary election.

*(Ord. No. 1989-30, § 1, 10-3-89; Ord. No. 1999-53, § 1, 8-10-99; Ord. No. 2001-51, § 4, 8-21-01; Ord. No. 2008-35, § 4, 10-21-08)*

*Editor's note--*

Ord. No. 1989-30 was approved by the electors on December 12, 1989. Ord. No. 2001-51 was approved by the voters at referendum on Oct. 9, 2001.

**Exemption from [F.S.] Chapters 98-506 and 95-462.** Pursuant to the applicable procedures in [F.S.] Chapter[s] 98-506 and 95-462, the city exempts itself from the requirements of these laws and shall hold its elections as otherwise set forth in Ordinance No. 2008-35.

*State law reference— Authority to change election dates and qualifying periods. F.S. § 166.021(4).*

### Sec. 5.03. - Form of ballots.

The form of the ballot including the method for listing candidates for city council and mayor elections, and any other city election, shall be as outlined in general law. A charter amendment to be voted on by the city shall be presented for voting by ballot title.

### Sec. 5.04. - Elections.

- (a) *Multiple candidates.*
- (1) *Primary.* When two or more persons qualify as candidates for the office of city council member or mayor for any of the designated seats of the city council to be filled at an election, the names of the persons who so qualified shall appear on the ballot and be voted upon at a primary election to be held ten (10) weeks prior to the first Tuesday after the first Monday in November of each even-numbered year. Any candidate in the primary election who receives a majority of the votes cast for a designated seat on the city council shall be declared elected, and no regular city election for such seat will be held.
  - (2) *Regular.* In the event no candidate for a designated seat on the city council receives a majority of the votes cast for such seat in the primary election, the two persons receiving the highest number of votes cast for such designated seat shall be voted upon at the regular city election to be held on the first Tuesday after the first Monday in November of each even-numbered year, commencing in 2010. The candidate in the regular election who receives the highest number of votes cast for a designated seat on the city council shall be declared elected.
  - (3) *Special election.* When two (2) or more persons qualify as candidates for the office of city council member or mayor for any of the designated seats of the city council to be filled at a special election, the names of the persons who so qualified shall appear on the ballot and be voted upon at a primary election. Any candidate in the primary election who receives a majority of the votes cast for a designated seat on the city council shall be declared elected, and the special city election for such seat shall be canceled. In the event no candidate for a designated seat on the city council receives a majority of the votes cast for such seat in the primary election, the two (2) persons receiving the highest number of votes cast for such designated seat shall be voted upon at the special city election. The candidate in the special election who receives the highest number of votes cast for a designated seat on the city council shall be declared elected.
- (b) *Single candidates.* In the event not more than one person qualifies as a candidate, for a designated seat on the city council to be filled at an election, that seat shall not be listed on the primary or regular city election ballot. Each unopposed candidate shall be deemed to have voted for himself.

(Ord. No. 1990-21, § 1, 6-19-90; Ord. No. 1993-32, § 1, 8-10-93; Ord. No. 1999-33, §§ 2, 3, 5-10-99; Ord. No. 20008-35, § 5, 10-21-08)

*Editor's note—*

Ord. No. 1990-21 was approved at an election held September 4, 1990. Ord. No. 1993-32 was approved at a special election held on October 5, 1993.

*State law reference— Authority to change election dates and on dates approved: S.C. Code Ann. § 5-2-14*

### **Sec. 5.05. - Council districts; adjustments of districts.**

- (a) *Number of districts.* There shall be four (4) city council districts pending subsequent changes by the districting commission established in section 5.05(b).
- (b) *District commission.* By the first day of the month following official certification of the decennial census to the state, the city council shall appoint ten city electors determined from the registration for the last statewide general election, who shall comprise the districting commission. Electors chosen shall not be employed by the city in any other capacity. The districting commission shall be empowered to divide the city into districts for the election of



council members, to increase to a maximum of seven districts, to decrease or to change the number of districts and redefine the boundaries thereof, as it deems necessary by a majority vote of those present and voting. After the division of the city into districts, one, but not more than two, council members shall reside in and qualify from each district, but shall be elected from the city at large. The districting commission will be an ongoing commission whose duties and terms of office will be spelled out in an enacting ordinance.

- (c) *Report; specifications.* Within 120 days of the appointment, the districting commission shall file with the official designated by the council, a report containing a recommended plan for adjustment of the council district boundaries to comply with these specifications:
- (1) Each district shall be formed of compact contiguous territory, and its boundary lines shall follow the centerlines of streets;
  - (2) The districts shall be based upon the principle of equal and effective representation as required by the United States constitution and as represented in the mathematical preciseness reached in the legislative apportionment of the state;
  - (3) The report shall include a map and description of the districts recommended and shall be drafted as a proposed ordinance. Once filed with the designated official the report shall be treated as an ordinance introduced by a council member;
- (d) *Support.* It shall be the responsibility of the city manager to provide staff assistance and technical data to the districting commission;
- (e) *Procedure.* The procedure for the council's consideration of the report shall be the same as for other ordinances, provided that if a summary of the ordinance is published pursuant to this charter and general law, it must include both the map and a description of the recommended districts;
- (f) *Failure to enact ordinance.* The council shall adopt a redistricting ordinance at least 90 days before the next regular city election. If the council fails to do so by such date, the report of the districting commission shall go into effect and have the effect of an ordinance;
- (g) *Effect of enactment.* The new council districts and boundaries, as of the date of enactment, shall supersede previous council districts and boundaries for all the purposes of the next regular city election, including qualifications. The new districts and boundaries shall supersede previous districts and boundaries for all other purposes as of the date on which all council members elected, subsequent to the date the new districts went into effect, take office.

(Ord. No. 1997-36, § 1, 7-1-97; Ord. No. 2001-51, § 4, 8-21-01)

*Editor's note—*

Ord. No. 1997-36 was approved at a special election held on September 2, 1997. Ord. No. 2001-51 was approved by the voters at referendum on Oct. 9, 2001.