



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING FEBRUARY 9, 2021

**3:30 PM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118**

Upon being recognized, a member of the public shall proceed to the podium and give his or her name and address and may, thereafter, speak for a maximum of three minutes on any matter relevant to a specific agenda item. During "Audience Comments," a member of the public may speak on any matter relevant to City business which is not on the agenda, for a maximum of three minutes in accordance with Section 2-1.1(d) and 2-2 of the City Code. In accordance with Section 2-2, during periods set aside for public discussion any person desiring to speak shall secure a form located at the agenda table, complete the form and present it to the City Clerk so the speaker can be recognized by the presiding officer. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section. It shall be the duty of the Director of Public Safety, upon the order of the presiding officer at any such meeting, to forcibly, if necessary, evict any person violating the provisions of this section from the Council Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

1. CALL TO ORDER BY MAYOR

2. NEW BUSINESS:

A. Discussion on Charter Revisions

3. ADJOURNMENT:

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF DAYTONA BEACH SHORES, 2990 S. ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118, TELEPHONE NUMBER 386-7635364,

CSCHWAB@CITYOFDBS.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 711 or 1 8009558771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.



**CITY COUNCIL AGENDA MEMORANDUM
FEBRUARY 9, 2021 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Discussion on Charter Revisions

SYNOPSIS:

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

SUGGESTED MOTION:

ATTACHMENT: 1. Charter 2018

Revised Charter of the City of Daytona Beach Shores, Florida, of 2008

Article I. Form of Government and Powers

Section 1.01. Purpose.

We, the people of Daytona Beach Shores, do ordain and establish this amendment to the charter of the City of Daytona Beach Shores, Florida, in order to avail ourselves of all municipal home rule powers consistent with the Constitution and Laws of Florida. It is the intent of this amendment to adopt the council/manager form of government by assigning all legislative and policymaking authority to the city council and all administrative authority to the city manager, except as specifically provided by this charter amendment. This is an amendment to the whole of the existing charter of the City of Daytona Beach Shores, Florida, except the boundaries thereof. Any provision of the existing charter or special acts in conflict with this amendment are hereby repealed. This amendment shall be known as the Revised Charter of the City of Daytona Beach Shores, Florida, of 2008, and shall be the organic authority for the structure and operation of the government of Daytona Beach Shores.

Section 1.02. Body corporate.

The area within the boundaries and corporate limits of the City of Daytona Beach Shores, now existing, and the residents therein shall continue to be the body corporate and politic under the name of the City of Daytona Beach Shores and, as such, shall have perpetual succession. Existing boundaries and corporate limits may be amended from time to time as provided by law.

Section 1.03. Powers.

The City shall have all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for public purposes except when expressly prohibited by law.

Section 1.04. Construction.

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

It is the intent of this article to grant to the city full power and authority to exercise all governmental and proprietary powers necessary to provide for the health, safety, and welfare of all citizens of Daytona Beach Shores.

Section 1.05. Severability clause.

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

Article II. Legislative: City Council

Section 2.01. Composition; term limits; mayor and city council.

There shall be a city council consisting of five (5) members, one of whom shall be a mayor, all of whom shall be elected at-large for a four (4)-year term. Unless otherwise provided, reference to the office of councilmember in this charter shall also apply to the office of mayor. Each councilmember shall be prohibited from serving more than two (2) consecutive four-year terms. No person shall be elected or appointed to office as a city councilmember for more than two (2) terms. This Section applies to any councilmember including the mayor and a person shall not circumvent this rule through election or appointment to a different position. For purposes of this limitation, "term" is defined as service on the City Council for a period longer than one-half of a full term. All terms, including past and present terms, greater than one-half of a full term served by current and former city council members shall count for the purposes of applying the term limit.

Section 2.02. Eligibility and qualifications.

Members of the council shall be registered electors in the municipality and shall have resided within the City at least six (6) months prior to filing for election. The mayor-councilmember shall possess all of the qualification of other councilmembers.

Section 2.03. Reserved.

Section 2.04. Forfeiture of office.

- (a) Except as provided in Section 2.02. any member of the council who shall cease to reside within the city, or to have or to possess any of the qualifications herein imposed for members of the council, or who shall, while in office, be convicted of a felony shall forfeit his or her office, and the seat shall be deemed to be vacant immediately. Absence from three (3) consecutive regular meetings of the council shall operate to vacate the seat of a member unless a leave of absence is first granted by the council or such absence is excused by the council by motion setting forth the fact of such excuse, duly entered in the minutes.
- (b) Forfeiture of office shall also occur through malfeasance, nonfeasance, neglect of duty, incompetence, and permanent inability to perform the duties of the office of councilmember or mayor-councilmember. The council shall be the judge to determine whether sufficient grounds for removal from office shall have occurred. In discharging that responsibility the council shall have the power to subpoena witnesses, administer oaths, and require the production of evidence.

- (c) Charges of conduct constituting grounds for removal from office shall be presented at an official meeting of the council. Upon motion duly adopted, an investigation into said charges shall be conducted by a committee of such composition as may be determined by the council. The councilmember moving for the investigation herein provided shall not be a member of the investigation committee.
- (d) Within a period of not less than ten (10) days, or more than thirty (30) days, the investigation committee shall present its findings with respect to such charges to the full council. After receipt of the investigation committee's findings, the council shall determine, by motion, whether formal charges shall be presented.
- (e) If in the event formal charges are presented, the resolution shall contain sufficient factual allegations to inform the councilmember charged of the specific conduct or circumstances for which removal is sought. The resolution shall further establish the date, time and place of the formal hearing with respect to said charges. A certified copy of said resolution shall be furnished to the charged councilmember, and the notice of the hearing set forth therein shall be published in a newspaper of general circulation within the city at least one week prior to the hearing.
- (f) At the formal hearing provided herein, the charged councilmember shall be permitted to present testimony, evidence, and argument related to, or in rebuttal of, the charges presented in said resolution. At the conclusion of the hearing the council shall, by resolution, make its determination, said determination to be effective immediately. Decisions made by the council under this section shall require the affirmative vote of at least three (3) members of the council, and shall be subject to review by the circuit court, upon appeal by the affected councilmember, for the purpose of determining whether or not substantial, competent grounds existed for the removal as provided herein.

Section 2.05. Filling of vacancies.

The unexpired term of a vacated seat of a Councilmember or the Mayor-Councilmember shall be filled at the next Municipal General Election to be held by the Volusia County Supervisor of Elections when held in odd years or the next State General Election to be held in November of even years.

For the interim period until the General Election at which a vacancy in the office of councilmember or mayor-councilmember, vacancies in the office of Councilmember or a Mayor-councilmember shall be filled within thirty (30) days by the appointment of a successor by the majority vote of the remaining members of the City Council. If the majority of the remaining members of the City Council fail to fill the vacancy within the thirty-day period, a special election to fill the vacancy shall be called and held in a manner coordinated by the City Clerk with the Supervisor of Elections and adopted by resolution of the City Council.

Should the council fail to provide for an election within the time required by the charter, such election may be ordered by any court of competent jurisdiction.

The qualifying for candidates for a special election to fill a vacancy shall be the same as provided for regular elections in this charter.

Any successor who fills a vacancy, whether by appointment or election, must have and possess all of the qualifications established by this charter for the office being filled.

Section 2.06. Extraordinary vacancies.

If at any time the membership of the city council is reduced to less than three (3), the governor shall be requested to make interim appointments to fill such vacancies, and the city council shall forthwith call a special election to be scheduled not sooner than ninety (90) days or more than one-hundred twenty (120) days following the appointments by the governor.

Section 2.07. Ineligibility for appointment.

No councilmember during the term for which he or she has been elected or appointed, or, for one year thereafter, shall hold any salaried city office.

Section 2.08. Oath of office.

All councilmembers, the mayor, and vice-mayor of the city shall before entering upon their duties, subscribe orally and in writing to an oath or affirmation pledging support to the Constitution and Laws of the United States and of Florida, faithful observance of the provisions of the Daytona Beach Shores charter and ordinances, and faithful discharge of their office. The oath or affirmation shall be substantially the form prescribed for state officers by the Constitution and Laws of Florida, and the written form shall be filed and maintained as a permanent official record to the city.

Section 2.09. Recall.

The mayor-councilmember or any other member of the city council may be recalled and removed from office as provided by general law.

Section 2.10. Compensation.

The city council may determine the compensation and benefits of the mayor-councilmember and other councilmembers, but no ordinance increasing salary amounts or expense allowances shall become effective until the date of commencement of the terms of councilmembers elected at the next regular election, provided that such election follows the adoption of the salary ordinance by at least ninety (90) days. The city council shall have the authority to establish a salary and expense allowance for the mayor-councilmember in excess of that authorized for other councilmembers, not to exceed one hundred dollars (\$100.00) per month more than the compensation received by other councilmembers.

Section 2.11. General powers and duties.

All powers of the city shall be vested in the city council except as otherwise provided by law and this charter. The city council shall be responsible for the reasonable exercise of those powers, and shall be required to provide for the performance of all duties and obligations imposed on the city by law.

Section 2.12. Duties of the mayor-councilmember.

The mayor-councilmember shall preside at all meetings of the council and shall perform such other duties consistent with his or her office as may be imposed by the council, and he or she shall have a voice and vote in the proceedings of the council, but no veto power. The mayor shall have the authority to issue proclamations, and he or she shall be considered as the official head of the city for ceremonial purposes, and shall be so recognized by the courts for the purpose of serving civil processes, and by the state and federal governments in the exercise of military law. The mayor-councilmember shall have no other powers and duties beyond those conferred by this charter or by the council in accordance with provisions of this charter.

Section 2.13. Vice-mayor.

In the absence of the mayor, the vice-mayor shall perform the duties of the mayor. In case of a vacancy in the office of mayor-councilmember, the vice-mayor shall serve as mayor until the vacancy has been filled as provided in Section 2.05. The vice-mayor shall be elected by the council for a two-year term at the organizational meeting of the city council from the membership of the council, other than the mayor-councilmember.

In the absence or disability of both mayor and the vice-mayor, the city council shall designate one of their number to act temporarily in the capacity of the mayor.

Section 2.14. Meetings of the city council.

The organizational meeting of the city council shall be held at 7:00 p.m. at council chambers or as otherwise designated by motion of the city council at the first regularly scheduled city council meeting after the municipal election. The first order of business shall be the administering of the oath of office to the newly-elected members of the city council and the mayor-councilmember, if applicable, followed by the election of the vice-mayor. Thereafter the city council shall meet at such times as may be prescribed by resolution, except that it shall meet regularly no less than once each month. Special meetings may be called by the mayor or any three councilmembers who are present in a regular or special meeting upon at least forty-eight (48) hours' notice to each member, served personally, or left at his or her usual place of residence with some member of his or her family over the age of fifteen (15). This time requirement may be waived only by the consent of all councilmembers.

The city council shall take all reasonable steps to ensure timely notice to the public of such special meetings which, at least, shall include notification of the local press and posting notice of the meeting in a central location designated by the council for that purpose. Any regular or special meeting, on motion adopted by the city council, may be adjourned and continued to a time certain provided there is compliance with the requirement or public notice.

All regular and special meetings of the city council, other than the specific exceptions provided by general law, shall be open to the public. All regular meetings shall be held at council chambers or as otherwise designated by motion of the City Council, but special meetings may be scheduled at any location.

Section 2.15. Minutes and records.

The city council shall keep minutes of its proceedings and shall arrange for the electronic recording of those proceedings. Any person shall have access to the minutes at all reasonable times. The city shall set forth detailed policy and procedures, by ordinance, for ensuring the maintenance of a permanent record of all council meetings and actions in such a form that they are readily accessible and easily understood by the public.

Section 2.16. Rules.

The city council shall determine its own rules and order of business. In the absence of a rule, however, “Robert’s Rules of Order” (latest edition) shall govern.

Section 2.17. Quorum and voting.

Three (3) members of the city council shall constitute a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members in such a manner and under such penalties as may be prescribed by ordinance. The affirmative vote of three (3) members of the city council shall be necessary to adopt any ordinance. The affirmative vote of a majority of the quorum present at a meeting shall be necessary to approve any motion or resolution.

All members in attendance, including the presiding officer, shall vote for or against the motion on all council actions. When there is, or appears to be, a possible conflict of interest as defined under general law with respect to a particular councilmember, the action prescribed by general law shall govern. Final action on motions, resolutions and ordinances shall be taken by roll call and listed in the minutes.

Section 2.18. Ordinances, resolutions, and motions.

- (a) The city council shall act only by ordinance, resolution or motion. Except as otherwise provided by this charter, the procedures and requirements of general law for the enactment of ordinances or resolutions shall govern. It is the purpose of this section, however, to implement the home-rule powers of general law which permit this charter to specify

additional requirements for the enactment of ordinances or resolutions and to define procedures in greater detail beyond the minimum standards set by general law.

- (b) All ordinances and resolutions shall embrace but one subject and the matter properly connected therewith. The subject shall be clearly stated in the title, but no ordinance or resolution shall be held invalid because of a defective title.
- (c) The enacting clause of all ordinances shall be: "Be [it] enacted by the City Council of the City of Daytona Beach Shores, Florida."
- (d) In addition to acts required by law or by specific provision of this charter to be done by ordinance, the following actions of the city council shall be by ordinance:
 - (1) To adopt or amend an administrative code or establish, alter or abolish any city department or administrative entity;
 - (2) To establish a rule or regulation, the violation of which carries a penalty;
 - (3) To grant, renew or extend a franchise;
 - (4) To set service or user charges for municipal services or grant administrative authority for such charges;
 - (5) To authorize the borrowing of money, consistent with the limitations imposed by the Constitution and general law of Florida;
 - (6) To convey or lease lands of the city;
 - (7) To amend or repeal an ordinance previously adopted, except as otherwise provided herein; or
- (e) To meet a public emergency affecting the life, health, property or the public peace and safety, the city council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise; set service or user charges for any municipal services; authorize the borrowing of money except as an emergency appropriation; or enact or amend a land use plan or rezone private real property. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendments or rejected at the meeting at which it is introduced, but the affirmative vote of at least four (4) members of the city council shall be required for adoption. After its adoption, the ordinance shall be printed and published as prescribed for other adopted ordinances. It shall become effective upon enactment by the council or at such time as specified in the ordinance, and shall expire as provided therein, but not to exceed sixty (60)

days after the passage. This shall not prevent reenactment of the ordinance under regular or emergency procedures, as the situation may warrant.

- (f) Except as provided in paragraph (e), a proposed ordinance shall be advertised and read by title, or in full, in accordance with the provisions set forth within Section 166.041 Florida Statutes, as may be amended. The proposed ordinance shall, prior to adoption, be certified by the city attorney as meeting the requirements of law and form. The council, prior to taking final action, shall provide the opportunity for all persons present to be heard on the proposed ordinance. Nothing herein contained shall limit the right of the council to amend such proposed ordinance prior to adoption, consistent with the general law.
- (g) All ordinances passed by the city council shall become effective upon final adoption, unless otherwise provided therein, with the stipulation that prior to becoming effective, the ordinance shall be posted at city hall and a certified copy shall be deposited in the U.S. Mail for filing with the State of Florida as provided by law.

Section 2.19. Authentication, codification and publication of ordinances and resolutions.

The mayor, city manager, city attorney and the city clerk shall authenticate by their signatures all ordinances and resolutions adopted by the city council and the city clerk shall record in full in a properly indexed book kept for that purpose all such ordinances and resolutions.

Section 2.20. Motions.

All actions of the city council which are not required to be by ordinance, and which are not taken by resolution, shall be taken by motion.

Section 2.21. Elections.

(a). All City elections shall be held in conformity with procedures and processes set forth in the provisions of the laws of the State of Florida, the provisions of the *City of Daytona Beach Shores City Charter* and in conformity with any procedures and processes that may be adopted pursuant to interlocal agreement between the City and the Volusia County Supervisor of Elections.

(b). The City Council shall establish election precincts, polling places and designate the number, boundaries and locations of same relative to the holding of any municipal election. Such election precincts and polling places shall be designated from time-to-time by the adoption of a resolution by the City Council. The City Council may take other actions in accordance with

its powers under the provisions of the *City of Daytona Beach Shores City Charter* and the *Code of Ordinances of the City of Daytona Beach Shores* to implement and regulate the election processes relating to City elections.

(c). The City Clerk shall make all necessary administrative arrangements and take all administrative actions necessary for holding all City elections and shall report such actions to the City Council.

(d). Unless provided otherwise by State law or an interlocal agreement between the City and the Volusia County Supervisor of Elections, the results of the voting at each polling place shall be certified by the Supervisor of Elections and transmitted to the City Clerk.

(e). During the day of the City election the City Canvassing Board shall meet and perform the same duties as the County Canvassing Board is assigned under Section 102.141, *Florida Statutes*, with regard to the City election, unless the canvass of the votes for the City election otherwise occurs in accordance with State law or an interlocal agreement between the City and the Volusia County Supervisor of Elections otherwise provides for the canvassing of votes.

(f). Ballots for City elections shall conform as nearly as practicable to the form of ballots prescribed by State law.

(g). The City Canvassing Board shall report its findings as to each election by adopting a resolution in substantially the following form:

***A RESOLUTION BY THE CANVASSING BOARD OF THE CITY
OF DAYTONA BEACH SHORES, FLORIDA PROVIDING FOR
THE ANNOUNCEMENT OF THE _____, _____ CITY
ELECTION.***

WHEREAS, the City of Daytona Beach Shores held a regular City election on _____, _____ and the City of Daytona Beach Shores Canvassing Board was established for the said election to canvass the vote counts provided to the City by the Volusia County Supervisor of Elections; and

WHEREAS, the City of Daytona Beach Shores Canvassing Board canvassed the votes for the City's regular election which occurred on _____, _____ as counted by the Volusia County Supervisor of Elections.

***NOW, THEREFORE, BE IT RESOLVED BY THE CANVASSING BOARD
OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA AS FOLLOWS:***

(1). As to the election for the position of Mayor of the City of Daytona Beach Shores, the votes cast by the electors of the City of Daytona Beach Shores voting at the election were as follows:

Name: _____ votes.

Name: _____ votes.

(2). As to the election for the position of Member of the City Council, the votes cast by the electors of the City of Daytona Beach Shores voting at the election were as follows:

Name: _____ votes.

Name: _____ votes.

PASSED AND ADOPTED by the Canvassing Board of the City of Daytona Beach Shores, this ____ day of _____, ____.

_____,
CHAIR

ATTEST:

_____, City Clerk

Article III. Administrative Offices and Departments

Section 3.01. Establishment of the office of city manager.

There shall be a city manager who shall be the chief administrative officer of the city. The manager shall be responsible to the city council for the administration of all affairs of the city.

Section 3.02. Appointment and removal of the city manager.

The city manager shall be chosen on the basis of professional training, executive and administrative experience, and other qualifications. The city manager shall be appointed by a vote of four-fifths of the full council for an indefinite term, and may be removed at any time by four-fifths vote of the full council, subject to contract provisions. Action by the council to remove the city manager shall be considered final, and the manager shall have no vested rights in his or her office other than those specifically provided in this charter. Notwithstanding the action taken by the council to remove the manager, the council shall hold a public hearing if so requested in writing by the manager.

Section 3.03. Compensation and annual evaluation of manager.

The city council shall establish the salary and other benefits of the city manager, and shall at least annually review the salary. On the occasion of the annual salary review the council shall make a systematic evaluation of the performance of the manager which shall be made a matter of public record.

Section 3.04. Acting city manager.

The city manager shall designate in writing, and provide notice to the city council members identifying a qualified city administrative officer or employee to exercise the powers and perform the duties of city manager during his or her temporary absence or disability. During such absence or disability, the council may revoke such designation at any time and appoint another officer or employee of the city to serve until the city manager shall return or his or her disability shall cease.

Section 3.05. Powers and duties of city manager.

The city manager shall have the power and shall be required to:

- (1) See that all laws, provisions of this charter, and acts of the council subject to enforcement by him or her, or by officers and employees subject to his or her direction and supervision, are faithfully executed.
- (2) Direct and supervise the administration of all departments, offices and agencies of the city, except as provided in Article IV of this charter.
- (3) Appoint all officers and employees of the city and, when necessary for the good of the city, remove all officers and employees of the city, except as otherwise provided by this charter and the rules and regulations promulgated by the personnel ordinance adopted pursuant to this charter which may permit the manager to delegate to an administrative officer the exercise of these powers with respect to subordinates in that officer's administrative unit. The city clerk shall be an officer of the city, shall be the custodian of the records and the seal of the municipality.
- (4) Plan and prepare the budget annually for action by the city council and submit to the council a budget message and capital program in a format to be prescribed by ordinance; and to be responsible for the administration of the budget once it is officially adopted.
- (5) Prepare and submit monthly to the city council and the public a complete report on finances and administrative activities of the city during the previous month.
- (6) Keep the city council and public advised of the financial condition of the city, and to make such recommendations to meet future needs as he or she may deem advisable for consideration by the council.
- (7) Prepare the agenda and attend all meetings of the Council with the right to take part in the discussion but without having a vote.
- (8) Review, approve and sign, together with the mayor-councilmember and the city attorney, contracts on behalf of the city pursuant to the provisions of the appropriate ordinances.

- (9) Perform such other duties as are mandated by this charter or required by the city council, provided, however, the council shall not direct the manager to take any action contrary to the provision of this charter.

Section 3.06. Noninterference by city council.

Except for purposes of investigation, inquiry and information, the council and committees or individual members thereof shall deal with the city officers and employees of the city solely through the manager, and neither the council nor its members shall give orders to such officer or employee, either publicly or privately. Any such action shall constitute malfeasance within the meaning of Article IV, Section 7 (a) of the Florida Constitution. This prohibition shall in no way restrict the right of individual councilmembers, to observe personally and scrutinize closely all aspects of city government in order to obtain independent information for use by the council in discharging its responsibility to formulate sound policies, to hold the administration accountable to the people, and to increase the efficiency and economy of city government, wherever possible.

Section 3.07. Departments of the city.

The city shall have an executive department, community services department, finance department, and a public safety department. However, the city council may by a vote of four-fifths of the full council establish, reorganize, abolish or provide for the transfer of responsibilities between departments. The city manager shall have the authority, with Council approval, to create other executive offices or positions or, except as otherwise provided in this charter, to reorganize, consolidate, or abolish existing executive offices or positions.

Section 3.08. Department heads.

Department heads shall be appointed or removed by the city manager. Removal of a department head, however, shall be for just cause, and after the department head has been provided with both notice and an opportunity to be heard with respect to the grounds for removal. Removal of a department head hereunder shall be subject to review by the circuit court, upon appeal by the affected department head, for the purpose of determining whether or not substantial, competent evidence existed for the removal. The city council by ordinance shall set the procedures for appointments, promotions, and removal of department heads, which procedures shall govern.

Section 3.09. Administrative code.

The city manager shall propose and the city council shall amend and adopt, by a vote of four-fifths of the full council an administrative code which shall set forth the departmental organization for the city government, including charts showing the chain of command and the allocation of responsibilities and duties, definitions of the nature and

scope of each department, and all required rules and procedures for operating said departments.

Article IV. City Attorney

Section 4.01. Duties and responsibilities.

The city council shall appoint a city attorney who shall act as the legal adviser to, and attorney and counselor for the city and all of its elected and appointed officers, all departments and divisions of the city government, and all regulatory and advisory boards in all legal matters relating to their official duties. The city attorney shall prepare and/or review all contracts, bonds and other instruments in which the municipality is concerned, and shall endorse on each his or her approval of the form and correctness thereof.

Section 4.02. Assistant city attorneys and city prosecutor.

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, subject to the approval of the terms of the contract by the council as to compensation and the services to be rendered.

Section 4.03. Qualification and appointment of city attorney.

The city attorney and any assistant city attorney shall be licensed to practice law in the State of Florida, and shall be a member of the Volusia County Bar Association in good standing. He or she shall not be required to be a registered elector residing in the municipality. He or she shall be appointed by the city council for an indefinite term by a four-fifths vote of the council; shall serve at the pleasure of the city council and shall be compensated as determined by the council. In addition to the specific duties imposed under this article, the city council may assign additional professional duties to the city attorney so long as they are not inconsistent with general law or this charter. The City Attorney may be removed at any time by four-fifths vote of the full council.

Article V. Civil Service

Reserved

Article VI. Nominations and Elections

Section 6.01 State election law applicable.

All general laws of Florida relating to elections and the registration of persons qualified to vote therein which are not in conflict with this charter shall be the same for the City of Daytona Beach Shores, [and] are hereby adopted as parts hereof.

Section 6.02. General election.

There shall be a general municipal election in November 2010, and every two years thereafter. The general elections shall be established by the Florida Election Code as it may be amended from time to time. The candidate receiving the plurality of votes cast in the general election shall be declared elected.

Section 6.03. Nonpartisan elections.

All qualifications and elections for the office of mayor-councilmember or councilmember shall be conducted on a nonpartisan basis without regard for or designation of political party affiliations of any nominee on the ballot. Reference in general law to political parties and party primaries shall not be applicable in the elections of the mayor and members of the city council.

Section 6.04. Procedure for filing as a candidate for mayor-councilmember and councilmember.

- (a) A person meeting the qualifications of office provided in Section 2.02 of this charter and seeking to become a candidate for the office of mayor-councilmember or councilmember may do so by filing a sworn qualification statement with the city clerk which shall state the following:
 - (1) The name and occupation of the person whose name is presented for a place on the election ballot; and the address of his or her place of residence in the city;
 - (2) That he or she is a candidate for the office of councilmember, designating the seat number of the position being sought, or that he or she is a candidate for the office of mayor-councilmember for the city;
 - (3) That he or she is a qualified elector of the City of Daytona Beach Shores; and
 - (4) That he or she shall be willing to serve if elected.
- (b) Such qualification statement shall be filed with the City Clerk during the qualification period as defined by the charter in a form prescribed by the City Clerk.
- (c) No person shall be a candidate for mayor-councilmember and councilmember at the same time, and no person shall occupy both offices at the same time.

Section 6.05. Uniform filing and election dates.

- (a) Any election relating to a municipal office shall be held in each even-numbered year as established by the Florida Election Code as stated in Section 6.02.

(1) Any other required or permitted municipal election shall be scheduled in accordance with law. However, the Supervisor of Elections, after consultation with the affected municipalities, may change any election date in order to avoid a conflict with a religious holiday.

(b) Candidates shall file such papers and pay such fees as may be required by law with the city clerk during normal business hours.

Section 6.06. Canvassing Board.

The City Council shall certify election results.

Article VII. Miscellaneous

Section 7.01. Charter amendment.

This charter may be amended in two (2) ways:

- (a) *Initiation by ordinance.* The council may propose, by ordinance, amendments to any part or all of this charter, except those prohibited by the Constitution and Laws of Florida; and upon passage of the initiating ordinance council shall submit the proposed amendment to a vote of the electors at the next general election held within the city or at a special election called for that purpose. Amendment of boundaries resulting from annexation done in accordance with general law shall be by ordinance and shall not be subject to a vote of the electors except as provided by general law.
- (b) *Initiation by petition.* The electors of the city may propose amendments to this charter by petition signed by at least ten (10) per cent of the registered electors and submitted to a vote of the electorate in a special election to be called within sixty (60) days following the certification of the initiative petition or at any general election scheduled with ninety (90) days.

Section 7.02. Investigations by council.

The council shall have power to inquire into the conduct of any office, department, agency or officer of the city and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. Failure to obey such subpoena or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute a misdemeanor.

Section 7.03. Bonds of officers and employees.

All such officers and employees of the city as determined by the council shall give bond in such amount and with such surety as may be approved by the council. The premiums on such bonds shall be paid by the city.

Section 7.04. Political activities of municipal officers and employees.

No officer or employees of the city shall:

- (a) Use his or her official authority or influence for the purpose of interfering with an election, or a nomination for office, or affecting the results thereof; or
- (b) Directly or indirectly coerce or attempt to coerce or command any other officer or employee to pay, lend, or contribute any part of his or her salary or anything else of value to any party, committee, organization, agency, or perform for political purposes; or
- (c) Directly or indirectly coerce or attempt to coerce or commend [command] any such officer or employee as to where he or she might purchase a commodity or to interfere in any other way with the personal life of said officer or employee.

The provisions of this section shall not be construed so as to prevent any person from becoming a candidate for and actively campaigning during private off-duty hours for any elective office in this state. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. No employee of the city may coerce or intimidate any candidate for the office of mayor-councilmember or councilmember.

Section 7.05. Acceptance of dedicated streets.

No street, alleys, parks or other areas hereafter dedicated to public use by the owner of land in the city shall be deemed a public street, alley or other area, or under the care and control of the city, unless the dedication be accepted and confirmed by ordinance passed for such purpose, or as otherwise required by the provisions of this charter or city ordinance relating to subdivision.

Section 7.06. Resolving conflicts within charter.

Should there be a conflict or apparent conflict in the provisions of any one section of this charter, or between two (2) or more sections thereof, then the city attorney upon request by the council shall resolve such conflict or apparent conflict by a written ruling which shall be legal and binding unless invalidated by a court of competent jurisdiction.

Section 7.07 Notice of Claim.

No suit shall be maintained against the City of Daytona Beach Shores for damages arising out of any tort, trespass to realty, death by wrongful act, or any accident contributable [attributable] to negligence on the part of the city, its officers and employees, unless written notice of such damage was within sixty (60) days after receiving the injury alleged. This limitation shall prevail regardless of any and all other limitations with reference to actions against municipalities.

Section 7.08. Bids, Contracts and expenditures.

Upon approval of the city council, the following expenditures may be made without competitive bidding;

- (a) All expenditures, including expenditures for real or personal property acquisition, not exceeding twenty-five thousand dollars (\$25,000.00);
- (b) Expenditures for salaries and contracted, professional or personal services;
- (c) Expenditures for work done in the operation of any city department;
- (d) Expenditures for parts, supplies and materials necessary to make emergency repairs, to protect property or preserve the peace in the event of an emergency such as a storm, riot or conflagration.

All other expenditures shall be authorized and directed by the city council only upon contract to the lowest responsible responsive bidder, and after publication in a newspaper of general circulation one time of a notice calling for such bids, said publication to be not less than ten (10) days before the date of receiving such bids. The council shall reserve the right to reject any and all bids submitted pursuant to this section.

All municipal general obligation debt issues shall require the approval of the voters in the form of a referendum held for that purpose, except refunding bond issues that generate an overall savings to the city.

Article VIII. Effective Date of This Charter

Section 8.01. Effective date.

This charter amendment shall become effective upon adoption by a vote of the electors of the City of Daytona Beach Shores and the filing of a certified copy of this charter amendment with the Florida Department of State.