

Town of Melbourne Beach

CHARTER REVIEW COMMITTEE MONDAY, MARCH 31, 2025, 7:00 P.M. COMMUNITY CENTER – 509 OCEAN AVENUE

MINUTES

Board Members:

Chairman James Simmons
Vice Chairman Bruce Larson
Member Kathy Ivers-Osthus
Member Charles Leps Jr
Member Jessica Martinez

Staff Members:

Town Manager Elizabeth Mascaro
Town Clerk Amber Brown
Town Attorney Ryan Knight

1. Call to Order

Town Attorney Ryan Knight called the meeting to order at 7:14 p.m.

2. Roll Call with Determination of Quorum

Town Clerk Amber Brown conducted roll call

Board Members Present

Chairman James Simmons
Vice Chairman Bruce Larson
Member Kathy Ivers-Osthus
Member Charles Leps Jr
Member Jessica Martinez

Staff Members Present

Town Attorney Ryan Knight
Town Clerk Amber Brown

3. Approval of minutes

A. March 24, 2025 minutes

March 24, 2025 minutes were tabled until the next meeting.

4. Public Comment

None

5. New Business

A. Charter review starting at Article VI Initiative, Referendum, Recall

Section 3.11 Code of Ethics

Chairman James Simmons spoke about a couple of outstanding items which are changing the hes and hims throughout the document and Section 3.11(d) on page 17.

Town Attorney Ryan Knight said he was still working on changing some he's and him's. Recommends getting rid of the word valuable because it is open to interpretation. Said you would not need to reference the Florida Statute because it is encompassed in Subsection I.

The Board agreed to amend Section 3.11 Code of Ethics (d) to replace the word valuable with unacceptable, and replace the word thing with item whether tangible or intangible.

(d) Accept any ~~valuable~~ unacceptable gift as defined in Sections 112.313(2) and 112.313(4), Florida Statutes, whether in the form of service, loan, ~~thing~~ item, whether tangible or intangible, or promise, from any person, firm, or corporation which to his knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the governmental body by which he is employed; provided, however, that any such officer or employee who is a candidate for public office may accept campaign contributions and services in connection with any such campaign;

Article VI Initiative, Referendum, Recall Section 6.01, 6.02, 6.03, 6.04, 6.05 – No changes

Section 6.06 Rezoning Approval – No changes

Chairman James Simmons asked if the State preempted Section 6.06 Rezoning Approval. - 9:50

Town Attorney Ryan Knight said that in 2023 DeSantis signed Senate Bill 718 which inserted a provision saying you cannot do that. Said you can keep that section in there, but it is prohibited by Florida Law.

The Board agreed to leave it as is.

Section 6.07 Height Limits - No changes

Article 7 Bonds – No changes

Article 8 Section 8.01 Fiscal Year and 8.02 Preparation of Budget – No changes

Section 8.03 Public Hearing on the Budget and 8.04 Adoption of the Budget – No changes

Vice Chairman Bruce Larson asked if there was any history on Section 8.03 Public Hearings, to which no one had any information.

Section 8.05 Effect of Final Budget and Effective Date – No changes

Vice Chairman Bruce Larson asked about Section 8.05 and the specific timeline for the budget.

Chairman James Simmons said they have to establish the proposed millage, send it in and then do a final millage vote at the final budget.

Town Clerk Amber Brown said the timeline is set by the state.

Section 8.06 Tax Authority and 8.07 Tax Assessment and Collection – No changes

Member Charles Leps Jr asked about Section 8.06 and the term privileges.

Town Attorney Ryan Knight said it could refer to the privilege to do business in Town.

Section 8.08 Special Assessments – No changes

Vice Chairman Bruce Larson spoke about Section 8.08 Special Assessments and asked if it was part of the budget process.

Town Attorney Ryan Knight gave an example where an area has septic tanks that residents have to connect to, they allocate \$2,500 as a cost for that. The special assessment would be \$2,500 for each property.

Member Jessica Martinez asked about Section 8.08. What happens if someone concretes their whole property without a permit, and now all the water is displaced on the neighbors, and what can be done? - 20:30

Chairman James Simmons spoke about how any concrete, pavers, pool, or buildings need a permit, so it would be handled during the permitting process. If they do not get a permit, prior to the work being completed, contact the Building Department.

Town Attorney Ryan Knight spoke about building without a permit could go through the Code Enforcement process and Special Magistrate.

Section 8.09 Public Monies – No changes

Section 8.10 Franchises – No changes

Section 9.01 Actions Against the Town - No changes

Chairman James Simmons asked about Section 9.01 Actions Against the Town, what the courts decide and about giving the Town written notice.

Town Attorney Ryan Knight said this clarified that you cannot just sue the Town for no reason.

Section 9.02 Extension of Territorial Limits – No changes

Town Attorney Ryan Knight spoke about how there is Florida Statute that governs annexation, and the specific procedures to do that.

Section 9.03 Planning and Zoning Board – No changes

Section 9.04 Board of Adjustment – No changes

Chairman James Simmons clarified that the decisions made by the Board of Adjustment are final, they do not have to go to the Town Commission.

Section 9.05 Charter Amendments and Revisions – No changes

Section 9.06 Conflicting Laws – No changes

Town Attorney Ryan Knight explained that this is a catch all statement saying if there is a conflict in an ordinance, then the Charter would govern and the ordinance would be appealed.

Section 9.07 Severability – No changes

Section 9.08 Effective Date – No changes

Chairman James Simmons asked if anyone had any sections they would like to revisit. - 31:30

Section 3.11 Code of Ethics

Member Jessica Martinez spoke about Section 3.11 Code of Ethics (e) is there a way to add malfeasance and misfeasance. Wants to make it more clear.

Town Attorney Ryan Knight spoke about the Code of Ethics Section is typically broad in order to cover all code of ethics violations. Just because malfeasance and misfeasance is not in this particular section does not mean it does not apply.

Member Charles Leps Jr said that this section does not necessarily have any teeth such as removal from office.

Town Attorney Ryan Knight spoke about Section (i) Code of Ethics for Public Officers, if you violated this section, it could lead to an investigation being opened.

Member Jessica Martinez asked what the Board thinks about adding State Statute 112.313(6) verbiage to the Charter. Residents lose faith and trust in the Town Government when someone is part of the Commission and is also suing the Town.

Chairman James Simmons proposed adding a subparagraph to 3.11 Code of Ethics (e) use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with

104.31. Then add another subparagraph for nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

Vice Chairman Bruce Larson spoke about the Code of Ethics is already included in the Charter.

Member Charles Leps Jr said this has stood for 50 years and would not want to modify it based on a current situation. - 45:42

Member Jessica Martinez spoke about how people are not going to go to the Florida Statute to read it, but if it is referenced in the Charter, it will be easy to find. Could the Statutes be cited?

Town Attorney Ryan Knight spoke about referencing Chapter 12 Part 3 of the Florida Statute.

Chairman James Simmons spoke about changing language to say, against the Town of Melbourne Beach and stop there, which brought up the issue of people recusing themselves.

Town Attorney Ryan Knight said you cannot prohibit someone from suing the Town.

Member Jessica Martinez verified there is no way to stop someone from running for office who is suing the town.

Chairman James Simmons spoke about adding a reference in the Charter to the State Statute.

Town Attorney Ryan Knight spoke about adding references to the applicable State Statutes.

The Board agreed to add the applicable State Statutes to the Code of Ethics section of the Charter.

(i) Violate the Code of Ethics for Public Officers and Employees as provided for in Sections 112.311 through 112.3261, as may be amended or the Florida Election Code , as set forth in Florida Statutes, and implementing rules thereof, and if a Town officer or employee has been found to have violated the Code of Ethics for Public Officers and Employees by the Florida Commission on Ethics or the Florida Election Code by the Florida Elections Commission, or implementing rules thereof, he or she may be censured by the Town Commission.

Chairman James Simmons asked if anyone had anything else for the Town Attorney. - 58:22

Town Attorney Ryan Knight said at the next meeting he would go through all of the changes again and rank them, then do a rough draft report.

Member Charles Leps Jr asked if it would be beneficial to get the red lines over to the Town Commission first.

Town Attorney Ryan Knight spoke about how the report goes to the Town Commission when it is complete and will include the language for the ballot.

The Board will meet next week to go over the proposed changes and narrow it down.

Member Charles Leps Jr asked about how many questions typically go on the ballot.

Town Attorney Ryan Knight said typically there are 4-5.

Member Charles Leps Jr verified that you cannot combine different sections together.

6. Adjournment

Member Charles Leps Jr made a motion to adjourn; Member Kathy Ivers-Osthus seconded; Motion carried 5-0.

Meeting adjourned at 8:20 pm.



James Simmons
Chairman

ATTEST:



Rachel Pembrook (Apr 25, 2025 18:45 EDT)
Rachel Pembrook
Transcriptionist

