



# AGENDA ITEM MEMORANDUM

**Town Attorney**

**Susan L. Trevarthen**

Department

Department Director

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
<input checked="" type="checkbox"/> Jan 10, 2012	Dec 30 <sup>th</sup>
<input type="checkbox"/> Jan 17, 2012 SPECIAL COMMISSION MEETING	Jan 6
<input type="checkbox"/> Jan 24, 2012	Jan 13
<input type="checkbox"/> Feb 14, 2012	Feb 3
<input type="checkbox"/> Feb 28, 2012	Feb 17

\*Subject to Change

- Presentation      Reports      Consent      Ordinance  
 Resolution      Quasi-Judicial      Old Business      New Business

**FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC**

**SUBJECT TITLE:** 2004 Referendum Ballot Question Eliminating Electoral District Residency Requirements in 2018

**EXPLANATION:** We have been asked to address the repercussions of a discrepancy in the 2004 ballot question (Question 1) which created electoral district residency requirements for Town Commissioners. We first responded to this issue in April 2011, and that memorandum is attached for reference, along with the sample ballot, the actual ballot, and the complete language of the amended Town Charter filed with the state in 2004.

On March 9, 2004, the voters approved Question 1, which approved amendments to the Town Charter creating electoral district residency requirements for Town Commissioners:

*The Charter provides for electing Commissioners without regard to where they live in the Town. Should the Charter be amended to establish four seats elected at large but from districts . . . with district residency requirements ending in 2018?*

Ballot questions are not charter amendments; by necessity, they are summaries of the complete language amending the Charter because they are limited by law to only 75 words. They are required by law to be clearly stated, and to not be misleading. While a ballot question does not need to state every nuance of an amendment, the question must give fair and actual notice of the amendment's purpose and effect. *Harris v. Moore*, 752 So. 2d 241 (Fla. 4<sup>th</sup> DCA 2000).

Question 1 stated that the electoral district residency requirements would end in 2018. However, the actual charter amendment language, which was also reviewed and approved by the Town Commission at the same time they approved the ballot question and was available for review by the voting public prior to the election, did not provide for the elimination of the residency requirement in 2018, or at all.

What is the legal effect of this discrepancy between Question 1 and the Town Charter amendments implementing Question 1? Ballot questions can be challenged as misleading. Caselaw evaluates the challenged ballot question and the degree to which it provides a clear and concise statement of the proposed amendment. If it gives incomplete or wrong information, the ballot question will be deemed "misleading" and may be struck from the ballot if challenged before the election. Alternatively, a ballot question can be challenged after an election and, if it is determined to be misleading after the voters have approved it, the change may still be struck down and removed from the Town Charter by a court.



All legal claims are subject to statutes of limitation, which place a deadline on when various types of claims must be filed. For ballot questions, the statute of limitations is four years. Therefore, challenges to the 2004 ballot questions were required to be filed by March of 2008.

If Question 1 had been challenged prior to the election or within four years after the election, a court would likely have found that it was misleading, because of the omission of the 2018 sunset of the electoral district residency requirements. However, the issue was not raised before the election, and was not timely challenged after the election and prior to March 2008.

Therefore, there is no longer any ability for anyone to challenge the language of the ballot question as misleading. The approved Town Charter language, which does not contain the 2018 sunset of the electoral district residency requirements, remains effective and in place.

**RECOMMENDATION:** In our April 2011 memo, we offered options for how to address this discrepancy. The Town decided to make this an issue for the Charter Review Committee to consider when it is convened in 2012, six years prior to the originally proposed sunset date of 2018. That Committee will recommend to the Town Commission whatever changes to the Town Charter that it deems appropriate. The Town Commission will then decide whether to place the Committee's recommended changes on the ballot, and can also decide to bring forward its own recommended changes to the Town Charter.

**EXHIBITS:** April 22, 2011 Memorandum  
 2004 Sample Ballot  
 2004 Actual Ballot  
 2004 Revisions to Town Charter filed with Florida Department of State

Reviewed by Town Attorney  
 Yes     No

Town Manager Initials CS

# Memo

To: Connie Hoffmann, Town Manager

From: Susan L. Trevarthen, Town Attorney  
Kathryn M. Mehaffey, Assistant Town Attorney

Date: April 22, 2011

Re: **Evaluation of 2004 Town Charter Ballot Question on District Residency Requirements for Town Commissioners of the Town of Lauderdale-By-The-Sea**

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**Issue:** Does the requirement for Town Commissioners to be elected from geographic districts expire in 2018?

**Short Answer:** No. Because the language of the ballot question regarding expiration in 2018 was not incorporated into the Town Charter, it cannot be given effect. Therefore, the district residency requirement will continue indefinitely, unless an election is held to amend the Charter to provide an expiration date.

**Facts:** The March 9, 2004 referendum revised the Charter by providing district residency requirements for Town Commissioners, and proposing their potential expiration in 2018. We were provided the sample ballot for the election which stated the ballot question as:

The Charter provides for electing Commissioners without regard to where they live in the Town. Should the Charter be amended to establish four seats elected at large but from districts; Seat 1 representing the northern district and Seat 2, representing the southern district, elected in 2006; and seats three, representing a northern district and seat four, representing the southern district, elected in 2008, **with district residency requirements ending in 2018?**<sup>1</sup>

The ballot question was approved and implemented. The resulting Charter amendment stated:

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<sup>1</sup> We have not received a copy of the actual ballot question for review. If the actual ballot question was revised to change the 2018 sunset language, then this analysis may change. The Town Clerk is currently researching the actual ballot language. Verification of the actual ballot language, as opposed to the sample ballot language, is recommended.

**Section 6.1 – Mayor-Commissioner and Commissioners; term of office; election; transition.**

\* \* \*

- (2) Commencing with the regular election of the Town held in March, 2006, and continuing with successive elections at intervals of four years, candidates may qualify for the offices of Town Commissioner Seat 1 and Town Commissioner Seat 2, each elected at large. Town Commission Seat 1 and Town Commission Seat 2 shall replace the two Commission seats vacated by the expiration of the term of the two Commissioners in March, 2006. The candidate for Seat 1 shall reside in the north district of the Town. The candidate for Seat 2 shall reside in the south district of the Town. The candidates receiving the most votes for each seat shall be elected, and shall serve a term of four (4) years.
- (3) Commencing with the regular election of the Town held in March, 2008, and continuing with successive elections at intervals of four years, candidates may qualify for the offices of Town Commission Seat 3 and Town Commissioner Seat 4. Town Commission Seat 3 and Town Commission Seat 4 shall replace the two Commission seats vacated by the expiration of the term of two Commissioners in March of 2008. The candidate for Seat 3 shall reside in the north district of the Town. The candidate for Seat 4 shall reside in the south district of the Town. The candidates receiving the most votes for each seat shall be elected, and shall serve a term of four years.

\* \* \*

**Applicable Caselaw:** Caselaw focuses on the evaluation of the ballot question and the degree to which it provides a clear and concise statement of the Town Charter amendment. While a ballot question does not need to state every nuance of an amendment, the question must give fair and actual notice of the amendment's purpose and effect. *Harris v. Moore*, 752 So. 2d 241 (Fla. 4<sup>th</sup> DCA 2000). A ballot question that gives incomplete or wrong information will be deemed "misleading" and may be struck from the ballot. If the determination that the question is incomplete or wrong is made after the ballot question has passed, the change may still be struck down, if the issue is timely challenged.

**Discussion:** Here, the ballot question outlines the district residency requirements, and provides that those requirements will expire in 2018. The 2018 sunset, however, was not written into the language of the Town Charter amendments. Even though the actual Charter changes were available prior to the election and a careful examination of the actual Charter changes would have provided notice to any voter of the difference in the language prior to voting, the law requires that the language of the question itself not be misleading.

If the ballot question had been challenged prior to, or within a reasonable time after the election, it is likely that the question would have been found to be misleading, because the district residency requirements were not actually scheduled to expire in 2018 in the Charter amendment. However, the issue was not timely challenged, and the election occurred a full seven years ago. Therefore, the statute of limitations has expired and there is no longer any ability for anyone to challenge the language of the ballot question. This leaves a situation where the Town's voters

who participated in the 2004 election believe the district residency requirements will expire in 2018, but the Town's Charter does not allow the district residency requirements to ever expire.

**Conclusion:** The Town Charter does not currently provide for the sunseting of the districted Town Commission seats by 2018, as was indicated in the 2004 ballot question. There are several potential avenues to address the issue.

- 1) Do nothing and proceed under the existing Charter, with continued district residency requirements.
- 2) Initiate a referendum for a charter amendment asking the voters whether the district residency requirements for the Town Commissioner seats should expire in 2018.
- 3) Ask the Charter Review Commission, currently scheduled to convene in 2012 to consider the issue and recommend whether to continue or discontinue the residency requirements, and proceed with a charter amendment according to their recommendation. This addresses the issue in a cost-effective manner, as part of the overall Town Charter review.

**LAUDERDALE-BY-THE-SEA  
SAMPLE BALLOT**

**OFFICIAL MUNICIPAL GENERAL ELECTION  
BROWARD COUNTY, FLORIDA  
MARCH 9, 2004**

**MAYOR  
LAUDERDALE-BY-THE-SEA  
(Vote for ONE)**

Susan Mary BEATTY  
Beverly KENNEDY  
Oliver PARKER

**TOWN COMMISSIONER  
LAUDERDALE-BY-THE-SEA  
(Vote for TWO)**

Chuck CLARK  
Cindy GEESEY  
John THOMPSON  
John YANNI

**LAUDERDALE-BY-THE-SEA – 1**  
**DESIGNATION OF TOWN COMMISSIONER SEATS ONE THROUGH FOUR BY DISTRICT**  
The Charter provides for electing Commissioners without regard to where they live in the Town. Should the Charter be amended to establish four seats elected at large but from districts; Seat 1 representing the northern district and Seat 2, representing the southern district, elected in 2006; and seats three, representing a northern district and seat four, representing the southern district, elected in 2008; with district residency requirements ending in 2018?

YES  
NO

**LAUDERDALE-BY-THE-SEA – 2**  
**INCREASE THE TERM OF OFFICE FOR MAYOR-COMMISSIONER FROM TWO YEARS TO FOUR YEARS**

The current Town Charter provides that the Mayor-commissioner serves a term of two years. Should the Town Charter be amended to provide that the Mayor-commissioner shall serve a four-year term, consistent with the four-year term of Commissioners, commencing with the General Municipal Election of 2004?

YES  
NO

**LAUDERDALE-BY-THE-SEA – 3**

**DELETE THE ESTABLISHMENT OF THE PLANNING AND ZONING BOARD FROM THE TOWN CHARTER**

The current Town Charter provides for the establishment, authority, and responsibility of the Planning and Zoning Board. The establishment of the Planning and Zoning Board is also provided for in the Town's Code of Ordinances. In order to update the Town's Charter, and to avoid any conflicting provisions, should the sections establishing the Town's Planning and Zoning Board be removed from the Town's Charter?

YES  
NO

**LAUDERDALE-BY-THE-SEA – 4**

**ADOPT REVISED CHARTER TO DELETE OBSOLETE CHARTER PROVISIONS AND PROVIDE FOR TECHNICAL CHANGES**

The current Town Charter was originally adopted in 1951. Shall the Charter be revised, renumbered, reworded, and clarified to eliminate ineffective language, clarify existing provisions, delete provisions which are superceded by state law, and reorganize the format to consolidate subject matter?

YES  
NO

**LAUDERDALE-BY-THE-SEA – 5**

**REAFFIRM AND UPDATE VOTERS' RIGHTS TO INITIATE, AMEND, AND REPEAL ORDINANCES BY INITIATIVE AND REFERENDUM**

Lauderdale-By-The-Sea voters' rights under Charter Article IV to initiate, repeal and amend municipal ordinances have become inoperable. The Town Attorney asserts those Charter provisions are "nullified" and "extinguished" pending their re-adoption by charter amendment. Should Charter Article IV be readopted and updated to streamline procedures as in Broward county's and other recently updated municipal Charters, clarify the role of the Town Attorney, and establish time limits for actions by town officials?

YES  
NO

PREVIOUS  
PAGE

Page 2 of 2  
Public Count: 0

REVIEW  
BALLOT

OFFICIAL ELECTIONS DIVISION  
BROWARD COUNTY, FLORIDA  
MARCH 9, 2004

~~MAYOR~~  
~~LAUDERDALE-BY-THE-SEA~~  
(Vote for ONE)

Susan Mary BEATTY

Beverly KENNEDY

Oliver PARKER

~~TOWN COMMISSIONER~~  
~~LAUDERDALE-BY-THE-SEA~~  
(Vote for TWO)

Chuck CLARK

Cindy GEESEY

John THOMPSON

John YANNI

~~LAUDERDALE-BY-THE-SEA~~  
~~DESIGNATION OF TOWN COMMISSIONER SEATS ONE THROUGH FOUR BY DISTRICT~~

The Charter provides for electing Commissioners without regard to where they live in the Town. Should the Charter be amended to establish four seats elected at large but from districts: Seat 1 representing the northern district and Seat 2, representing the southern district, elected in 2006; and seats three, representing a northern district and seat four, representing the southern district, elected in 2008; with district residency requirements ending in 2018?

YES

NO

~~LAUDERDALE-BY-THE-SEA~~  
~~INCREASE THE TERM OF OFFICE FOR MAYOR-COMMISSIONER FROM TWO YEARS TO FOUR YEARS~~

The current Town Charter provides that the Mayor-commissioner serves a term of two years. Should the Town Charter be amended to provide that the Mayor-commissioner shall serve a four-year term, consistent with the four-year term of Commissioners, commencing with the General Municipal Election of 2004?

YES

NO

**LAUDERDALE-BY-THE-SEA - 1**

**DELETE THE ESTABLISHMENT OF THE PLANNING AND ZONING BOARD FROM THE TOWN CHARTER**

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YES

NO

**LAUDERDALE-BY-THE-SEA - 2**

**ADOPT REVISED CHARTER TO DELETE OBSOLETE CHARTER PROVISIONS AND PROVIDE FOR TECHNICAL CHANGES**

The current Town Charter was originally adopted in 1951. Shall the Charter be revised, renumbered, reworded, and clarified to eliminate ineffective language, clarify existing provisions, delete provisions which are superceded by state law, and reorganize the format to consolidate subject matter?

YES

NO

**LAUDERDALE-BY-THE-SEA - 3**

**REAFFIRM AND UPDATE VOTERS' RIGHTS TO INITIATE, AMEND AND REPEAL ORDINANCES BY INITIATIVE AND REFERENDUM**

Lauderdale-By-The-Sea voters' rights under Charter Article IV to initiate, repeal and amend municipal ordinances have become inoperable. The Town Attorney asserts those Charter provisions are "nullified" and "extinguished" pending their re-adoption by charter amendment. Should Charter Article IV be readopted and updated to streamline procedures as in Broward County's and other recently updated municipal Charters, clarify the role of the Town Attorney, and establish time limits for actions by Town officials?

YES

NO

GOREN, CHEROF, DOODY & EZROL, P.A.

ATTORNEYS AT LAW  
SUITE 200  
3099 EAST COMMERCIAL BOULEVARD  
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STEVEN L. JOSIAS, OF COUNSEL

JULY 26, 2004

VIA FedEx 8481 5158 9970

Glenda E. Hood  
Secretary of State  
Florida Department of State  
R. A. Gray Building  
500 S. Bronough  
Tallahassee, FL 32399-0250

Re: Charter of the Town of Lauderdale-By-The-Sea

Dear Ms. Hood:

Enclosed, for filing, please find the original *Charter of the Town of Lauderdale-By-The-Sea* as approved by the Town's Electors at the March 9, 2004, municipal general election.

Should you have any questions, please contact the undersigned.

Sincerely,



DAVID N. TOLCES  
Charter Review Board Counsel

DNT:aw

Enclosure(s)

cc: Mayor Oliver Parker  
Mayor Pro Tem Chuck Clark  
Vice Mayor Ed Kennedy  
Town Commission  
Bob Baldwin, Town Manager  
Alina Medina, Town Clerk (with diskette)

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Sec

## CHARTER OF THE TOWN OF LAUDERDALE-BY-THE-SEA

### ARTICLE I. TRANSITION FROM ABOLISHED TOWN

#### Sec. 1.1 Abolishing existing municipality.

That the existing municipal government of the Town of Lauderdale-By-The-Sea, in the County of Broward and State of Florida, be and the same is hereby abolished. All of the provisions of Chapter 14184, Laws of Florida of 1929, Chapter 24658, Laws of Florida of 1947, and all other laws pertaining to the creation of the Town of Lauderdale-By-The-Sea be and the same are hereby repealed.

#### Sec. 1.2 Title to property reserved.

That the title, rights and ownership of all property, both real and personal, uncollected taxes, dues, claims, judgments, decrees, choses in action and all property and property rights held or owned by the municipalities named "Town of Lauderdale-By-The-Sea," abolished by this act, shall pass to and be vested in the municipal corporation organized under this Charter to succeed the municipality abolished.

#### Sec. 1.3 Obligations unimpaired.

That no obligations or contracts of the said municipality hereby abolished, including bonds heretofore issued or any proceeding heretofore begun for any improvement, or for borrowing of money, or issuing of bonds, shall be impaired or avoided by this Charter, but such debts, obligations, contracts and bonds shall pass to and be binding upon the new municipality hereby created and organized, and all such proceedings heretofore begun for the construction of any improvements or for the borrowing of money or issuing of bonds may be continued and completed and binding upon the said new municipality; and likewise all debts of and claims against the abolished municipality shall be valid against the new municipality created.

#### Sec. 1.4 Officers held over.

All officers and employees heretofore elected or appointed and holding office under the said municipality hereby abolished, shall continue to hold their respective offices and discharge the respective duties thereof under the new municipality hereby created until their successors are elected and qualified under the provisions of this Charter.

#### Sec. 1.5 Ordinances not impaired.

All existing ordinances and resolutions of said abolished municipality, including the printed Code of Ordinances of the Town of Lauderdale-By-The-Sea, as amended, not in conflict with the provisions of this Charter, shall continue in effect unless repealed, amended, or modified by the municipality which is hereby organized or created.

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**Sec. 1.6 Establishment of new municipality; streets, highways, public grounds.**

The inhabitants of the Town of Lauderdale-By-The-Sea, as its boundaries are hereinafter established and designated, or as may hereinafter be established and designated shall continue to be a body politic and corporate, to be known and designated as "Town of Lauderdale-By-The-Sea," and as such shall have a perpetual succession, may use a common seal, may contract and be contracted with, and may sue and be sued in all the courts of this state and in all matters whatsoever. That all lands heretofore dedicated for the use of the public for streets, highways, parks or public grounds, and all authorized changes or amendments thereto approved by the Board of County Commissioners of Broward County, Florida, whether by plat, act, or otherwise, are hereby vested in the Town of Lauderdale-By-The-Sea, and the control and jurisdiction thereof shall hereafter be vested in the Town Commission of the Town of Lauderdale-By-The-Sea.

**Sec. 1.7 Plat approved.**

The recorded plats of the subdivision of Lauderdale-By-The-Sea, as recorded in plat book 6, page 2, and the plat of Lauderdale Surf and Yacht Estates as recorded in plat book 22, page 46 of the public records of Broward County, Florida, are hereby approved.

**ARTICLE II. CORPORATE POWERS**

**Sec. 2.1 Legal Title**

This Charter is the Charter of the Town of Lauderdale-By-The-Sea, a municipal corporation of the State of Florida.

**Sec. 2.2 Boundaries.**

The following shall be the territory, the inhabitants of which are hereby established and organized into a municipal corporation, and over which such municipal corporation shall exercise its jurisdiction and powers, as may be amended from time to time in accordance with State law, to wit:

Beginning at the intersection of the south boundary line of Section 7, Township 49 South, Range 43 East with the centerline of the Intracoastal Waterway (Florida East Coast Canal), the POINT OF BEGINNING; THENCE in a northerly direction along the centerline of the Intracoastal Waterway to the intersection of said centerline with a line located twenty-five (25) feet south of and parallel to the north line of Section 7, Township 49 South, Range 43 East; THENCE in an easterly direction along a line located twenty-five (25) feet south of and parallel to the north line of said Section 7 to the intersection of said line with the east right-of-way line of the Intracoastal Waterway; THENCE in a northerly direction along the east right-of-way line of the Intracoastal Waterway to the intersection of said east right-of way line with the southwest corner of Lot 1, Block 16 of TERRA MAR ISLAND ESTATES, SECOND ADDITION, as recorded in Plat Book 31,

Page 20 of the Public Records of Broward County, Florida; THENCE in an easterly direction along the south line of said Lot 1, Block 16 to the southeast corner of said Lot 1, Block 16; THENCE in a northerly direction along the east line of said Lot 1, Block 16 to the intersection of said east line with the westerly extension of the south line of Block 12 of said TERRA MAR ISLAND ESTATES, SECOND ADDITION; THENCE in an easterly direction along the westerly extension of the south line of said Block 12, along the south line of said Block 12 and along an easterly extension of said south line to the intersection of said extended line with the west line of Lot 1, Block 15 of said TERRA MAR ISLAND ESTATES, SECOND ADDITION; THENCE in a southerly direction along the west line of Lot 1, Block 15 and along the west line of Lot 10, Block 11 of TERRA MAR ISLAND ESTATES, FIRST ADDITION as recorded in Plat Book 31, Page 10 of the Public Records of Broward County, Florida to the southwest corner of said Lot 10, Block 11; THENCE in an easterly direction along the south line of said Lot 10, Block 11 and along an easterly extension of said south line to the intersection of said extended line with the centerline of Spanish River; THENCE in a southerly direction along the centerline of the Spanish River to a point thirteen hundred and fifty (1,350) feet south of the north line of the Southeast One-Quarter (SE 1/4) of said Section 6, Township 49 South, Range 43 East; THENCE in a southerly direction for two hundred (200) feet to a point on a line located fifteen hundred and fifty (1,550) feet south of and parallel to the north line of the Southeast One-Quarter (SE 1/4) of said Section 6, said point being eleven hundred, twenty-seven and forty-three-hundredths (1,127.43) feet east of the east right-of-way line of the Intracoastal Waterway; THENCE in an easterly direction along the line located fifteen hundred and fifty (1,550) feet south of and parallel to said north line of the Southeast One-Quarter (SE 1/4) of said Section 6 to the intersection of said line with the east right-of-way line of State Road A-1-A; THENCE in a northerly direction along the east right-of-way line of State Road A-1-A to the intersection of said east right-of-way line with a line located eight hundred and fifty (850) feet south of and parallel to the north line of the Southeast One-Quarter (SE 1/4) of said Section 6; THENCE in an easterly direction along said parallel line and an easterly extension of said line, through Government Lot 2, Section 5, Township 49 South, Range 43 East to the intersection of said extended line with the Ordinary Low Watermark of the Atlantic Ocean; THENCE, continue in an easterly direction along said parallel line a distance of 3 miles (15,840 Ft) to the intersection of said extended line with the eastern boundary of the State of Florida; THENCE in an southerly direction along said eastern boundary of the State of Florida to the intersection with a line located three hundred and eighty (380) feet north of and parallel to the south line of the Northeast One-Quarter (NE 1/4) of the Southeast One Quarter (SE 1/4) of Section 7, Township 49 South, Range 43 East; THENCE in a westerly direction along said parallel line to the intersection of said line with the west right-of-way line of State Road A-1-A; THENCE in a northerly direction along the west right-of-way line of State Road A-1-A to the intersection of said west right-of-way line with the north line of the Southeast One-Quarter (SE 1/4) of Section 7, Township 49 South, Range 43 East; THENCE in a westerly direction along the north line of the

Southeast One-Quarter (SE 1/4) and the Southwest One-Quarter (SW 1/4) of Section 7, Township 49 South, Range 43 East to the intersection of said north line with the east right-of-way line of the Intracoastal Waterway; THENCE in a southerly direction along the east right-of-way line of the Intracoastal Waterway to the intersection of said east right-of-way line with the south line of Section 7, Township 49 South, Range 43 East; THENCE in an easterly direction along the south line of Section 7, Township 49 South, Range 43 East to the intersection of said south line with the west line of the right-of-way of State Road A-1-A; THENCE in a northerly direction along the west line of the right-of-way of SR A-1-A to the intersection of said west line with a line located one hundred eighty (180) feet north of and parallel to the south line of the North One-Half (N 1/2) of the Southeast One-Quarter (SE 1/4) of Section 7, Township 49 South, Range 43 East; THENCE in an easterly direction along a line located one hundred eighty (180) feet north of and parallel to the south line of the North One-Half (N 1/2) of the Southeast One-Quarter (SE 1/4) of Section 7, Township 49 South, Range 43 East to the intersection of said parallel line with the Ordinary Low Watermark of the Atlantic Ocean; THENCE continue in an easterly direction along said line located one hundred eighty (180) feet north of and parallel to the south line of the North One Half (N1/2) of the Southeast One Quarter (SE 1/4) of Section 7, Township 49 South, Range 43 East for a distance of 3 miles (15,840 ft) to the intersection of said parallel line with the eastern boundary of the State of Florida; THENCE in a southerly direction along the said eastern boundary of the State of Florida to the intersection with the extension of south boundary line of Section 18, Township 49 South, Range 43 East; THENCE in a westerly direction along the extension of the south boundary line of Section 18, Township 49 South, Range 43 East to the intersection of said south boundary line with the centerline of the right-of-way of the Intracoastal Waterway; THENCE in a northerly direction along the centerline of the right-of-way of the Intracoastal Waterway to the intersection of said centerline with the north boundary line of Section 18, Township 49 South, Range 43 East, the POINT OF BEGINNING.

### Sec. 2.3 Definitions

As used in this Charter, the following words shall have the following meanings:

- (1) The words "abolished municipality" shall mean the municipality formerly existing under the provisions of Chapter 14184, Laws of Florida of 1929, and Chapter 24658, Laws of Florida of 1947.
- (2) The words "new municipality" shall mean the municipality established and created by this act, as may be amended from time to time.
- (3) The masculine pronoun shall designate and include the feminine, and the neuter, where the meaning so permits.

- (4) The word "person" used herein in the masculine gender, shall mean a male or female person, or legal corporate entity.
- (5) The word "municipality" herein shall refer to the municipality of the Town of Lauderdale-By-The-Sea, unless otherwise indicated.
- (6) The words "Town Commission" shall refer to the Town Commission of the Town of Lauderdale-By-The-Sea, Florida.

**Sec. 2.4 Seal.**

The official seal of the Town of Lauderdale-By-The-Sea hereby established shall bear the legend "Town of Lauderdale-By-The-Sea, Broward County, Florida, Seal, 1947."

**Sec. 2.5 Jurisdiction.**

The jurisdiction and powers of the Town of Lauderdale-By-The-Sea shall extend over all streets, alleys, sewers, parks, and all lands within said area, whether platted or unplatted, and the air above same; and to and over all waters, waterways, streams, bays, bayous, submerged lands, water bottoms and wharves; and to and over all persons, firms, and corporations, property and property rights, occupations, businesses and professions whatsoever within said boundaries.

The title to and jurisdiction over all streets, thoroughfares, parks, alleys, public lots, sewers, within the Town, and all other property and municipal plants of the Town now owned, possessed or operated by it, and all property of every kind and character which the Town may hereafter acquire within or outside the Town, or which may vest in it, or be dedicated to it, for its use or for the public use, shall be vested in the Town of Lauderdale-By-The-Sea, as created under this Charter.

**Sec. 2.6 General Powers**

The Town of Lauderdale-By-The-Sea is hereby created, established and organized, and shall have full power and authority to exercise all of the powers of local self-government and to do whatever may be deemed necessary or proper for the safety, health, convenience or general welfare of the inhabitants of said Town; to exercise full police powers; to do and perform all acts and things permitted by the laws of the State of Florida, and comprehend as duties in the performance of anything recognized as a "municipal purpose," whether now existing and recognized, or hereafter recognized as a municipal purpose by statute law or court decision. The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated herein, implied thereby, or appropriate to the exercise thereof, the Town of Lauderdale-By-The-Sea shall have and may exercise all other powers under the Constitution and Laws of Florida.

In addition, the Town has the authority to codify its ordinances into a Code of Ordinances of the Town of Lauderdale-By-The-Sea, and by a single ordinance to adopt such "Code of Ordinances of the Town of Lauderdale-By-The-Sea" as a complete revision of all existing and

applicable ordinances on the date of such adoption; to adopt a decimal system similar to that used in Florida Statutes of 1941, and to amend such Code, once adopted, by reference to any section or sections. The "Code of Ordinances of the Town of Lauderdale-By-The-Sea" of 1940, as amended from time to time, except as modified by this Charter, is declared to be the existing Codified Ordinances of the Town of Lauderdale-By-The-Sea; and such Code of Ordinances may be amended from time to time by reference to any section or sections, and as many sections as desired may be amended by one (1) ordinance. Such "Code of Ordinances of the Town of Lauderdale-By-The-Sea," as amended from time to time, may be revised and codified or recodified, and such revised Code may be adopted by a single ordinance, and upon such revision shall be in full force and effect. The Town Attorney of the Town of Lauderdale-By-The-Sea shall have power and authority to codify any duly adopted ordinance of the Town of Lauderdale-By-The-Sea and assign proper section numbers and headings to various parts of such ordinances, and thereafter such section shall be cited in referring to such ordinances.

**Sec. 2.7 Review of Charter Provisions**

As often as the Town Commission may deem necessary, but in any event, not less frequently than every twelve (12) years, the terms and provisions of this Charter shall be reviewed.

**ARTICLE III. ADMINISTRATION AND LEGISLATION**

**Sec. 3.1 Commission-manager form of government.**

The form of government of the Town of Lauderdale-By-The-Sea, provided for under this Charter, shall be known as the "commission-manager" form of government.

**Sec. 3.2 Creation of Town Commission**

There is hereby created a Town Commission consisting of five (5) Commissioners, each of whom shall be elected at-large in the manner provided in this Charter. The Mayor-Commissioner and each Town Commissioner shall take and hold office for the term(s) provided in this Town Charter.

**Sec. 3.3 Qualifications of Members**

Only qualified electors who have resided in the Town of Lauderdale-By-The-Sea for at least six (6) months immediately prior to qualifying for office and who shall have attained the age of eighteen (18) years of age on or before the date the candidate files and qualifies in accordance with this Charter as a candidate for office, shall be eligible to hold the office of Commissioner.

Each Commissioner and candidate for Commissioner shall be elected from the election district in which he or she is domiciled for at least six (6) months immediately prior to qualifying for such office by the greatest number of votes of all registered electors residing within the Town. Once elected, a Commissioner from an election district shall remain a domiciliary of the election district during his or her term of office. Any Commissioner who shall cease to possess the

qualifications required herein shall forthwith forfeit his or her office, except a Commissioner holding office will not have his/her term cut short by the establishment of or subsequent change of district boundary lines.

**Sec. 3.4 Standards of conduct; code of ethics.**

In addition to the ethical standards of conduct established by general law for elected officials, appointed officials, and employees, the Town Commission may, by ordinance, establish ethical conduct standards for elected officials, appointed officials, and employees of the Town.

**Sec. 3.5 Legislative powers.**

The legislative powers of the Town shall be vested in and exercised by the Town Commission, consistent with the provisions of the Constitution of the United States of America, the Constitution and statutes of the State of Florida, this Charter, and the laws and ordinances of the Town of Lauderdale-By-The-Sea. Except as otherwise provided in Article IV or elsewhere in this Charter, or by the Constitution or statutes of the State of Florida, the Town Commission may by ordinance or resolution prescribe the manner in which any powers of the said Town shall be exercised.

**Sec. 3.6 Non-Interference in Town Administration.**

The Town Commission or its members shall not give orders to any Town officer or employee who are subject to the direction and supervision of the Town Manager, either publicly or privately. Nothing in the foregoing is to be construed to prohibit individual members of the Town Commission from examining by question and personal observation all aspects of Town government operations so as to obtain independent information to assist the members in the formulation of policies to be considered by the Commission and assure the implementation of such policies as have been adopted. It is the express intent of this provision, however, that such inquiry shall not interfere directly with the regular municipal operations of the Town and that recommendations for change or improvements in Town government operations be made to and through the Town Manager.

**ARTICLE IV. INITIATIVE AND REFERENDUM**

**Sec. 4.1 Power to initiate and reconsider ordinances.**

(1) **Initiated ordinances.** The registered voters of the Town 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 by a referendum vote at a Town election.

(2) **Repeal and amendment of adopted ordinances.** The registered voters of the Town shall have power to require reconsideration by the Commission of any adopted ordinance and, if the Commission fails to repeal or amend as proposed in the initiative petition an ordinance so reconsidered, to amend or repeal it by a referendum vote at a Town election.

**Sec. 4.2 Commencement of initiative.**

(1) Filing with Town Clerk. A minimum of ten registered electors (voters) of the Town may commence initiative, repeal or amendment proceedings by filing with the Town Clerk an affidavit stating that they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses, specifying the address to which all notices to the petitioners' committee are to be sent, and setting out in full the proposed initiated ordinance or citing the ordinance sought to be reconsidered. Promptly after the affidavit of a petitioners' committee is filed, the Town Clerk may, at the committee's request and at their expense, issue the appropriate petition blanks to the petitioners' committee.

(2) Review by the Town Attorney. Prior to circulation, a petition and the proposed ordinance, if any, shall be reviewed as to legal form by the Town Attorney. The Town Attorney's review of a petition package shall not extend to review of the substance of a proposed ordinance, or an ordinance proposed for repeal or amendment, but shall be strictly limited to a review as to legal form. No later than fourteen (14) calendar days from filing date of a petition with the Town Clerk, the Town Attorney shall, by hand delivery or registered mail, inform the petitioners' committee and Town Clerk either that the petition and ordinance, if any, are in proper legal form or, if not, then specifically what measures are required to render them in proper form. Upon request by the petitioners' committee, the Town Attorney will assist the committee to render documents in proper legal form for consideration by the Town Commission, but will not offer legal counsel or opinions to the petitioners' committee or its representative. Failure by the Town Attorney to inform the petitioners' committee and Town Clerk of his or her determination as to form within fourteen (14) calendar days after the petitioner files a petition and proposed ordinance, or petition for reconsideration of an ordinance, with the Town Clerk shall be deemed a determination that the document(s) is/are in proper legal form.

**Sec. 4.3 Execution of petitions: requirements.**

(1) Number of signatures. Initiative and referendum petitions must be signed by registered voters of the Town equal in number to at least ten (10) percent of the total number of those registered to vote in the Town at the last general municipal election.

(2) Form and content. All papers of a petition shall be assembled as one instrument of filing. Each signature shall be executed in ink and shall be followed by the printed name and address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or required to be reconsidered.

(3) Affidavit of circulator. Each paper of a petition shall have attached to it when filed an affidavit by the circulator thereof 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 required to be reconsidered.

(4) Filing deadline. All initiative and referendum petitions must be filed with 60 days of the date on which proceedings with respect to such initiatives are commenced.

**Sec. 4.4 Filing procedure.**

(1) Certificate of Clerk; amendment. Within 20 days after an initiative petition is filed or within five days after a petition for repeal or amendment of an ordinance is filed, the Clerk shall complete a certificate as to its sufficiency (the "Certificate"). Grounds for insufficiency are only those specified in Sec. 4.3 of this Article. If insufficient, the Certificate shall specify the particulars of the deficiency. A copy of the Certificate shall be promptly sent to the petitioners' committee by hand delivery or registered 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 business days after receiving the copy of the Certificate and files a supplementary petition upon additional papers within fourteen (14) calendar days after receiving the copy of the Certificate. Such supplementary petition shall comply with the requirements of Sec. 4.3 of this Article. Within five business days after a supplementary petition is filed, the Clerk shall complete a Certificate as to the sufficiency of the petition, as amended, and shall promptly send a copy of such Certificate to the petitioners' committee by registered mail or hand delivery 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 4.4 within the time required, the Clerk shall promptly present the Certificate to the Commission and such Certificate shall then be a final determination as to the sufficiency of the petition.

(2) Commission review as to sufficiency. 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 business days after receiving the copy of such Certificate, file a request that it be reviewed by the Commission. The Commission shall then 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.

**Sec. 4.5 Action on Petitions.**

(1) Action by Town Commission. When an initiative petition or a petition for the repeal or amendment of an existing ordinance has been finally determined to be sufficient, the Town Commission shall promptly consider or reconsider the ordinance. Whether or not the Commission approves at first reading an initiated ordinance, or the repeal or amendment, as proposed, of a referred ordinance, the Commission shall proceed to a second reading at its next scheduled meeting, and shall otherwise comply with all requirements under Sec. 166.041 F. S. for public notice and public hearings prior to the adoption of an ordinance. If the Commission fails to adopt a proposed initiative ordinance without any change in substance within forty-five (45) calendar days, or fails to repeal or amend a referred ordinance in accordance with the initiative petition within thirty (30) calendar days, it shall submit the proposed or referred ordinance to the registered voters of the Town by referendum vote at an election. The

referendum vote by registered Town voters shall constitute an "additional requirement for the enactment of ordinances" as specified in paragraph (6) of Section 166.041 F.S., in lieu of and as a greater, increased requirement than the affirmative majority vote of the governing body referred to in paragraph (4) of Sec. 166.041 F. S. If the Commission fails to act on a proposed initiative ordinance or a referred ordinance within the time period specified in this paragraph, the Commission shall be deemed to have failed to adopt the proposed initiative ordinance or failed to repeal or amend the referred ordinance on the last day that the Commission was authorized to act on such matter. In that event, the Commission shall nevertheless comply with the public notice and public hearing requirements of Sec. 166.04 F.S. relative to the ordinance in question.

(2) Submission to voters. The vote of the Town on a proposed referred ordinance shall be held not less than ninety (90) days nor more than one hundred twenty (120) days from the date of Commission acted or was deemed to have acted pursuant to paragraph (1) of this section. If no regular election is to be held within the period described in this paragraph, the Commission shall provide for a special election, except that the Commission 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.

(3) Withdrawal of petitions. An initiative or referendum petition may be withdrawn at any time prior to the fifteenth (15<sup>th</sup>) day preceding the day scheduled for a vote of the Town by filing with the Town Clerk a request for withdrawal signed by at least eight-tenths of the 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.

#### Sec. 4.6 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. If conflicting ordinances are approved at the same election, the one receiving the greater or greatest number of affirmative votes shall prevail to the extent of such conflict.

(2) Repeal and amendment of referred ordinances. If a majority of the registered voters voting on a referred ordinance vote for repeal or for amendment, it shall be considered repealed or amended, as appropriate, upon certification of the election results.

#### Sec. 4.7 Ordinances affecting initiated ordinances; procedure for adoption.

An ordinance passed as a result of a vote of the registered voters of the Town, whether prior or subsequent to the effective date of this Article, may be repealed or amended only by a similar vote of the registered voters of the Town. The Town Commission may, by resolution, submit to the registered voters of the Town at any regular or special election for a referendum vote, a proposed ordinance to repeal or amend any such ordinance. Notice of the Town Commission's intention to submit such a proposed ordinance to the registered voters shall be published by the Town Commission no less than ninety (90) days nor more than one hundred twenty (120) days prior to such election, in the manner required for the publication of initiated ordinances. If an amendment is so proposed, such notice shall contain the proposed amendment

in full. The Town Commission's submittal of such an ordinance shall be in the same manner, and the vote shall have the same effect as in cases of ordinances submitted to a vote of the registered voters of the Town by popular petition.

## ARTICLE V. TOWN OFFICERS AND EMPLOYEES

### Sec. 5.1 Vesting of administrative and executive powers.

The executive and administrative powers of the Town, not herein otherwise provided for, shall be vested in and exercised by the following officers:

- (1) Mayor-Commissioner;
- (2) Town Manager;
- (3) Town Attorney;

The Town Manager and Town Attorney shall be appointed by the Town Commission. The Town Commission may by ordinance create, change and abolish offices, department or agencies other than the offices, departments or agencies established by this Charter.

### Sec. 5.2 Functions and duties of Mayor-Commissioner.

The Mayor-Commissioner or, in his/her absence or disqualification, the Vice-Mayor or Mayor Pro Tem shall perform the following functions:

- (1) The Mayor-Commissioner shall preside at all meetings of the Town Commission and perform all duties consistent with his/her office, and shall have a voice and vote in the proceedings of the Town Commission, but no veto power. The Mayor-Commissioner shall vote last upon the roll call of Commissioners.
- (2) The Mayor-Commissioner shall use the title of Mayor in any case in which the execution of legal instruments, writings, or other papers so require; but this shall not be considered as conferring upon the Mayor-Commissioner any of the administrative or judicial functions of a Mayor under the general laws of the state, except as herein provided.
- (3) The Mayor-Commissioner shall be recognized as the official head of the Town by the courts for the purposes of serving civil processes; by the government in the exercise of military law; and by the public in general for all ceremonial purposes.
- (4) The Mayor-Commissioner may govern the Town by proclamation, under the direction of the Town Commission, during times of grave public danger or emergency, and the Town Commission shall be judge of what constitutes such public danger or emergency.

- (5) The Mayor-Commissioner shall exercise all the powers and duties of the Mayor-Commissioner as provided in the Charter, as well as all those powers and duties that may be conferred upon the Mayor-Commissioner by the Town Commission in pursuance of the provisions of this Charter.

**Sec. 5.3 Town Manager - Appointment, qualifications and compensation.**

The Town Commission shall appoint a Town Manager who shall be the administrative head of the municipal government under the direction and supervision of the Town Commission. The Town Manager shall hold office at the pleasure of the Town Commission. The Town Manager shall receive such compensation as determined by the Town Commission through the adoption of an appropriate resolution. The Town Manager shall be appointed by resolution approving an employment contract between the Town and the Town Manager. The Town Manager shall be appointed solely on the basis of education and experience in the accepted competencies and practices of local public management including, a graduate degree with a concentration in public administration, public affairs, public policy, or public finance and two (2) years' experience as an appointed city manager or county manager, or four (4) years' experience as an assistant or deputy city manager or assistant or deputy county manager.

**Sec. 5.4 Town Manager - Absence or disability; removal**

During the absence or disability of the Town Manager, the Town Commission may by resolution designate some properly qualified person to temporarily execute the functions of the Town Manager. The person thus designated shall have the same powers and duties as the Town Manager, and shall be known while so serving as "Acting Town Manager." The Town Manager or Acting Town Manager may be removed by the Town Commission at any time.

**Sec. 5.5 Town Manager - Powers and duties.**

The Town Manager shall be responsible to the Town Commission for the proper administration of all affairs of the Town coming under the Town Manager's jurisdiction, and the Town Manager's powers are and they shall be:

- (1) To see that the laws and ordinances of the Town are enforced.
- (2) To appoint or remove all subordinate officers and employees.
- (3) To exercise, control and direct supervision over all departments and divisions of the municipal government under the classified service, except where otherwise provided.
- (4) To see that all terms and conditions imposed in favor of the Town 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 Town Attorney, whose duty it is hereby made to take such legal steps as may be necessary to enforce the same.

- (5) To attend all meetings of the Town Commission, with right to take part in the discussions, but without having a vote.
- (6) To recommend to the Town Commission for adoption such measures as the Town Manager may deem necessary or expedient in the interest of the Town.
- (7) To keep the Town Commission fully advised as to the financial conditions and needs of the Town, and at the proper time to submit to the Town Commission for its consideration an annual budget.
- (8) To advise and consult with all officers and official heads of the several departments of the Town relative to the affairs of such department, and to make recommendations to the Town Commission respecting such departments as the Town Manager may see fit.
- (9) To perform such other duties as may be prescribed under this Charter, or may be required of the Town Manager by motion, direction, ordinance or resolution of the Town Commission.
- (10) To prepare and submit to the Town Commission an annual financial audit of its accounts and records, completed no later than six (6) months after the end of its fiscal year by an independent certified public accountant retained by the Town Commission and paid from its public funds.
- (11) To sign all checks, warrants, bonds and agreements issued by the Town of Lauderdale-By-The-Sea.
- (12) To assist the Town Commission to develop long-term goals for the Town and strategies to implement these goals.
- (13) To encourage and provide staff support for regional and intergovernmental cooperation.
- (14) To promote partnerships among the Town Commission, staff, and citizens in developing public policy and building a sense of community.

## ARTICLE VI. ELECTIONS

### Sec. 6.1 Mayor-Commissioner and Commissioners; term of office; election; transition

- (1) Beginning with the regular election to be held on the second Tuesday in the month of March, 2004, and every four (4) years thereafter, a Mayor-Commissioner shall be elected for a term of four (4) years until his successor is elected and qualifies.

- (2) Commencing with the regular election of the Town held in March, 2006, and continuing with successive elections at intervals of four years, candidates may qualify for the offices of Town Commissioner Seat 1 and Town Commissioner Seat 2, each elected at large. Town Commission Seat 1 and Town Commission Seat 2 shall replace the two Commission seats vacated by the expiration of the term of the two Commissioners in March, 2006. The candidate for Seat 1 shall reside in the north district of the Town. The candidate for Seat 2 shall reside in the south district of the Town. The candidates receiving the most votes for each seat shall be elected, and shall serve a term of four (4) years.
- (3) Commencing with the regular election of the Town held in March, 2008, and continuing with successive elections at intervals of four years, candidates may qualify for the offices of Town Commission Seat 3 and Town Commissioner Seat 4. Town Commission Seat 3 and Town Commission Seat 4 shall replace the two Commission seats vacated by the expiration of the term of two Commissioners in March of 2008. The candidate for Seat 3 shall reside in the north district of the Town. The candidate for Seat 4 shall reside in the south district of the Town. The candidates receiving the most votes for each seat shall be elected, and shall serve a term of four years.
- (4) All elections for the position of Town Commissioner or Mayor-Commissioner shall be held on the second Tuesday of March of each even-numbered year, or as provided for by law.
- (5) The geographic boundary for the northern and southern districts shall be designated, prepared and identified no later than the first of September, 2004, and again in 2012 through a contract entered into by the Town with an accredited four (4) year college or university located within the state of Florida for the purpose of identifying and designating the northern and southern election districts within the Town. The Town Commission district boundaries shall be of equal population, compact, proportional, and logically related to the natural internal boundaries of the neighborhoods within the Town. The principal of nondiscrimination and one person/one vote shall be adhered to strictly.
- (6) In the event no candidate qualifies for election for any designated Town Commission seat within the first ten (10) calendar days of the qualifying period, then any qualified person who resides anywhere in the Town may qualify for such seat. Thereafter, if no person qualifies for such seat, a vacancy shall be declared and filled in accordance with this Charter.
- (7) The Town Commission shall adopt by Ordinance the creation and establishment of the boundaries of the initial northern and southern Town Commission seat districts no later than January 1, 2005. The

Ordinance shall provide for the implementation of said election districts to be effective for the elections to be held in the Town commencing in March, 2006.

**Sec. 6.2 Vice-Mayor and acting Mayor Pro-Tem.**

On the second Tuesday following each regular election, one (1) member of the Town Commission may be designated, by resolution, as Vice-Mayor to preside in the absence of the Mayor-Commissioner. In the event that the designated Mayor-Commissioner and the Vice-Mayor are absent at any meeting of the Town Commission, any member of the Town Commission may be designated by the Town Commission to act as Mayor Pro-Tem for such meeting.

**Sec. 6.3 Qualifications of members of Town Commission.**

To be eligible to hold the office of Mayor-Commissioner or Commissioner of the Town of Lauderdale-By-The-Sea, or to qualify for candidacy for Mayor-Commissioner or Commissioner, the individual shall be a bona fide resident and citizen of the Town of Lauderdale-By-The-Sea, shall have resided in the said town for the six (6) months immediately preceding the date of election, shall be a registered voter pursuant to Florida law, and shall be otherwise qualified as provided for in the Charter.

**Sec. 6.4 Qualifications of candidates; notice of candidacy; payment of fee.**

Any individual who possesses the qualifications as provided in this Charter, may be a candidate for the office of Mayor-Commissioner or Commissioner by filing a verified notice of candidacy for Town Commission with the Town Clerk. Such notice shall be in the following form:

**NOTICE OF CANDIDACY FOR  
TOWN COMMISSIONER OR MAYOR-COMMISSIONER**

I, \_\_\_\_\_(Name of Candidate)\_\_\_\_\_, residing at \_\_\_\_\_(Residence Address of Candidate)\_\_\_\_\_, Lauderdale-By-The-Sea, Broward County, Florida, do hereby give notice of my candidacy for the office of Town Commissioner/Mayor-Commissioner of the Town of Lauderdale-By-The-Sea, Florida, in the forthcoming election to be held in said Town on \_\_\_\_\_(Date of Primary)\_\_\_\_\_. I do further state that I am a citizen of the United States of America, and a resident of the Town of Lauderdale-By-The-Sea; that I have resided in the Town of Lauderdale-By-The-Sea for the six (6) months immediately preceding the date of the election to be held; and that I have fully satisfied all conditions precedent to such candidacy, pursuant to the provisions of the laws of the State of Florida and the Town Charter.

\_\_\_\_\_  
(Candidate's Signature)

STATE OF FLORIDA  
COUNTY OF BROWARD

Before me, the undersigned authority, this day personally appeared \_\_\_\_\_ (Name of Candidate) \_\_\_\_\_ who, upon being duly sworn, deposed and said: that he/she is the candidate referred to in the foregoing Notice; that he/she is familiar with the contents of said Notice, and that the facts and matters therein stated are true; and that he/she did sign said Notice for the purpose therein specified.

\_\_\_\_\_  
(Candidate)

Sworn to and subscribed before me, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires: \_\_\_\_\_

The individual who files the notice as prescribed, and who pays the qualifying fee as prescribed, if otherwise found to be qualified, shall be entitled to have his/her name printed upon the official ballot at such town election.

**Sec. 6.5 Vacancies.**

The office of a Commissioner, or the office of the Mayor-Commissioner, shall become vacant upon the person's death, resignation, removal from office in any manner authorized by law, or forfeiture of the office, such forfeiture to be declared by the remaining members of the Town Commission.

**Sec. 6.6 Forfeiture of office.**

A Commission member, or the Mayor-Commissioner, shall forfeit the office if the person:

- (1) Lacks, at any time during a term of office, any qualification for the office prescribed by this Charter or general law;
- (2) Violates any standard of conduct or code of ethics established by law for public officials;
- (3) Is convicted of a felony while in office;

- (4) Fails to attend four (4) consecutive regular meetings of the Town Commission without being excused by the Town Commission by formal action entered upon the minutes; or
- (5) Becomes incapable of performing the duties of the office for a period of more than three (3) months.

In all circumstances arising under this section, the Town Commission shall be the judge of its own membership.

**Sec. 6.7 Forfeiture hearing and process.**

A member of the Town Commission charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the Town at least thirty days before the scheduled hearing. The Town Commission shall be the sole judge of the qualifications of its members and shall hear all questions relating to forfeiture of a Commissioner's or Mayor-Commissioner's office, including whether or not good cause for absence has been, or may be, established. The Commissioner in question shall have the burden of establishing good cause for absence; provided, however, that any Commissioner may at any time during any duly held meeting move to establish good cause for his or her absence or the absence of any other Commissioner, from any past, present, or future meeting(s), which motion, if carried, shall be conclusive. A Commissioner whose qualifications are in question, or who is otherwise subject to forfeiture of his/her office, shall not vote on any such matters. Any final determination by the Town Commission that a Commissioner or the Mayor-Commissioner has forfeited his or her office shall be made by resolution approved by a unanimous vote of the remaining members of the Town Commission. All votes and other acts of the Commissioner in question prior to the effective date of such resolution shall be valid regardless of the grounds of forfeiture.

**Sec. 6.8 Filling of vacancies.**

A vacancy on the Town Commission, including the office of Mayor-Commissioner, shall be filled in the following manner:

- (1) If there are less than one hundred eighty (180) days remaining in the unexpired term, or if there are less than one hundred eighty (180) days before the next federal, state, county or Town election, the remaining Commissioners, including the Mayor-Commissioner, shall, by majority vote, appoint a successor within thirty (30) days of the occurrence of the vacancy from among all qualified applicants. The person or persons so appointed must possess all of the required qualifications to be a member of the Town Commission. The Commissioner or Mayor-Commissioner appointed by the Town Commission to fill the vacancy as specified herein shall serve only until the next federal, state, county, or Town election. Further, the Commissioner or Mayor-Commissioner elected at such

election shall serve only the unexpired term of the Commissioner or Mayor-Commissioner whose position became vacant.

- (2) If there are more than one hundred eighty (180) days remaining on an unexpired term, or if there are more than one hundred eighty (180) days before the next federal, state, county, or Town election, the Town Commission shall schedule a special election to be held no sooner than ninety (90) days nor more than one hundred twenty (120) days following the occurrence of the vacancy. The Commissioner or Mayor-Commissioner elected to fill the vacancy at any special election shall serve only the unexpired term of the Commissioner or Mayor-Commissioner whose position became vacant.
- (3) In the event of the death, resignation, or removal of the Mayor-Commissioner, the Vice-Mayor shall forthwith commence to serve as interim Mayor-Commissioner until the position of Mayor-Commissioner is filled by election or appointment. When the Vice-Mayor becomes interim Mayor-Commissioner, the Town Commission, by majority vote shall appoint one of the remaining Commissioners to become interim Vice-Mayor. The Commissioner serving as Mayor-Commissioner, or the Vice-Mayor, shall serve as Commission-Mayor, or Vice-Mayor, until the newly elected or appointed Commissioner-Mayor, or Vice-Mayor, is sworn into office. The interim Mayor-Commissioner, and interim Vice-Mayor shall then return to the positions of Vice-Mayor and Commissioner which he/she previously held to serve the remainder of his or her unexpired term.
- (4) In the event of the death, resignation, or removal of the Vice-Mayor, the Town Commission shall, by majority vote, elect one of the Commissioners to serve as Vice-Mayor.

**Sec. 6.9 Extraordinary vacancies.**

In the event that all members of the Town Commission are removed by death, disability, or forfeiture of office, the Governor of the State of Florida shall appoint an interim Town Commission that shall call a special election as provided above to fill the vacancies.

**ARTICLE VII. PLANNING AND ZONING**

**Sec. 7.1 Maximum height for buildings established.**

- (1) No building within the Town shall have more than four (4) stories above grade, and the maximum height of buildings within the Town that have four (4) stories above grade shall be forty-four (44) feet above grade, excluding elevator shafts and/or stairways. The maximum height for all other buildings within the Town shall be thirty-three (33) feet above grade, excluding elevator shafts and/or stairways. For the purposes of this provision of the Charter, a story is above grade if its ceiling is above grade.

- (2) In any building within the Town that has more than three (3) stories above grade, the first story shall be at grade level and shall be used for parking, either with or without toll collection booths. The first story may also be used for storage, refuse, security, registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half (1/2) of the square footage of the first story is used for parking. In any building within the Town that has more than three (3) stories above grade, the first story shall be restricted to the above enumerated uses, and may be used for no other purpose whatsoever. For the purposes of this provision of the Charter, a story is at grade level if its floor is at or below grade and its ceiling is above grade; a story that is at grade level is also above grade. Nothing in this paragraph shall be construed so as to prohibit any building within the Town that has more than three (3) stories above grade from also having one (1) or more subterranean stories below grade, provided, however, that in any building within the Town that has more than three (3) stories above grade, all subterranean stories shall be subject to the same restrictions on use as are established in this paragraph for the first story.
- (3) All existing buildings within the Town that either exceed the maximum building height limit established in paragraph (1), above, of this provision of the Charter, or that fail to comply with the restrictions on use established in paragraph (2), above, of this provision of the Charter, on the effective date of this Charter amendment (hereinafter referred to as "Non-conforming Buildings") shall be considered legal, but non-conforming.
- (4) Notwithstanding the maximum building height limit established in paragraph (1), above, of this provision of the Charter, an existing non-conforming building may be replaced by a new nonconforming building when, and only when:
- (a) The existing non-conforming building has:
    - (i) Been destroyed by fire, natural disaster, or other act of God; and
    - (ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and
    - (iii) Construction of the replacement building is commenced within twelve (12) months of the date of destruction; or
  - (b) The existing non-conforming building is:
    - (i) Demolished as part of a Town approved redevelopment of the property; and
    - (ii) Prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building; and

- (iii) Construction of the replacement building is commenced within six (5) months of the date of site plan approval.
- (c) The Town Commission may grant one (1) or more six (6) month extensions to the time periods for commencement of construction established in paragraphs (4)(a)(iii) and (4)(b)(iii), above, provided a written request for extension is filed with the Town Clerk prior to (in the case of a first request for extension) the expiration of the initial applicable time period for commencement of construction or prior to (in the case of a subsequent request for extension) the expiration of the most recent extension of the applicable time period for commencement of construction.
- (d) All new non-conforming buildings constructed pursuant to the provisions of either paragraph (4)(a) or (4)(b), above, shall comply with the restrictions on use established in paragraph (2), above, of this provision of the Charter.
- (e) The maximum allowable height of any new a non-conforming building constructed pursuant to the provisions of either paragraph (4)(a) or (4)(b), above, shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this provision of the charter) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. Nothing in this provision of the Charter shall be construed to prevent a new non-conforming building from being constructed to a lesser height or from containing fewer habitable stories than that of the original non-conforming building which it replaces. For the purposes of this provision of the Charter, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.
- (f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (4)(a) or (4)(b), above, shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this provision of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. Nothing in this provision of the Charter shall be construed to prevent a new nonconforming building from being constructed with either less total square footage or with less habitable square footage than that of

the original non-conforming building which it replaces. For the purposes of this provision of the Charter, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

- (5) The maximum building height limits, the restrictions on use and the maximum allowable square footage established in paragraphs (1), (2) and (4), above, of this provision of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on March 10, 1998. However, the maximum building height limits, the restrictions on use and the maximum allowable square footage established in paragraphs (1), (2) and (4), above, of this provision of the Charter, shall not be applicable to any real property annexed into the Town after March 10, 1998.
- (6) Every resident of the Town shall have standing to enforce the maximum building height limits the restrictions on use and the maximum allowable square footage established in paragraphs (1), (2) and (4), above, of this provision of the Charter, by means of a suit in equity seeking either mandamus; prohibition; or injunction, or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.
- (7) The maximum building height limit established in paragraph (1), above, of this provision of the Charter, supersedes any existing zoning ordinance or land development regulation to the extent that said zoning ordinance or land development regulation establishes anywhere within the Town a maximum building height limit greater than that established in paragraph (1), above, of this provision of the Charter, but nothing in this provision of the Charter shall be construed to supersede, modify or repeal any existing zoning ordinance or land development regulation that establishes anywhere within the Town a maximum building height limit lower than that established in paragraph (1), above, of this provision of the Charter.
- (8) Nothing in this provision of the charter shall be construed to limit the power of the Town Commission (and the Town Commission is hereby specifically authorized) to amend the Town's existing zoning ordinances and/or land development regulations to establish anywhere within the Town maximum building height limits equal to or lower than that established in paragraph (1), above, of this provision of the Charter. However, the Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (4), above, of this provision of the Charter, nor may the Town Commission modify, amend or repeal, by ordinance or by variance, the restrictions on use established in paragraph (2), above, of this

provision of the Charter; nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph (4), above, of this provision of the Charter.

- (9) The maximum building height limits established in paragraphs (1) and (4), above, of this provision of the Charter, may only be increased by an amendment or repeal of this provision of the Charter. The restrictions on use established in paragraph (2); above, of this provision of the Charter, may only be modified, amended or repealed by an amendment or repeal of this provision of the Charter. The maximum allowable square footage established in paragraph (4), above, of this provision of the Charter, may only be increased by an amendment or repeal of this provision of the Charter. This provision of the Charter may only be amended or repealed by means of a majority vote of the Town's electors at a referendum election held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal election. The amendment or repeal of this provision of the Charter at a special election held on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal election is expressly prohibited.
- (10) This provision of the Charter shall be effective immediately upon adoption by a majority of the electors voting in a referendum to amend the Charter so as to include this provision. Upon adoption, the maximum building height limits, the restrictions on use and the maximum allowable square footage established in paragraphs (1), (2) and (4), above, of this provision of the Charter, shall immediately apply to all real property located within the boundaries of the town as those boundaries exist on March 10, 1998.

**Sec. 7.2 Restrictions on the vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property.**

- (1) As used in this section of the Charter, the term "the El Prado Property" shall refer to the following described real property situate, lying and being in the Town of Lauderdale-By-The-Sea, Florida:

The real property bounded on the west by the eastern boundary line of the Ocean Drive (also known as State Road A1A right-of-way, bounded on the east by the western boundary line of the El Mar Drive right-of-way, bounded on the north by the south boundary line of Lots 1, 2, 3, 4 and 5 of Block 11, and bounded on the south by the north boundary line of Lots 11, 12, 13, 14 and 15 of Block 12, all said Lots, Blocks and rights-of-way as set forth in the Plat of the Lauderdale-By-The-Sea Subdivision as recorded in Plat Book 6, at Page 2 of the Public Records of Broward County, Florida;

and

The real property bounded on the west by the eastern boundary line of the El Mar Drive right-of-way, bounded on the east by the western shore of the Atlantic Ocean, bounded on the north by the southern boundary line of Lot 1, Block 8, and bounded on the south by the north boundary line of Lot 13, Block 7, all said Lots, Blocks and rights-of-way as set forth in the Plat of the Lauderdale By-The-Sea Subdivision as recorded in Plat Book 6, at Page 2 of the Public Records of Broward County, Florida.

- (2) The Town may not vacate, abandon, lease, sell, transfer possession or transfer ownership of the El Prado Property without first obtaining a majority vote of the Town's electors at a referendum election held for the specific purpose of authorizing said vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property.
- (3) Any referendum election called for the purpose of authorizing the vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property shall be held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal election. The holding of a referendum election called for the purpose of authorizing said vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal election is expressly prohibited.
- (4) Every resident of the Town shall have standing to enforce the restrictions on the vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property established in paragraphs (2) and (3), above, of this provision of the Charter, by means of a suit in equity seeking either mandamus, prohibition, or injunction, or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.

**Sec. 7.3      Advisory boards; how constituted.**

The Town Commission may at any time by resolution appoint advisory boards, composed of residents of the Town of Lauderdale-By-The-Sea, qualified to act in an advisory capacity to the Town Commission, the Town Manager, or to any department of the Town. The members of such boards shall serve without compensation at the pleasure of the 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 Town.