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Memo

To: Charter Review Board, Town of Lauderdale-By-The-Sea

From: Susan L. Trevarthen, Town Attorney

Cc: Connie Hoffmann, Town Manager

Date: October 2, 2012

Re: **Charter Review Board's August Suggested Changes to Article VII "Planning and Zoning"**

The Charter Review Board voted in August to have a revised version of the "Plain English" version of Article VII prepared and presented for discussion and for public input at the October 10, 2012 meeting. In brief, the Board voted to have the "Plain English" version, first discussed by the Board in July, serve as the base document, and have the following additional changes made for discussion and further review:

1. First floor uses: Instead of listing the uses allowed for first floors of taller buildings, allow any nonhabitable uses permitted by the applicable zoning district.
2. Redundant provisions: Remove provisions that are already true as a matter of law (e.g., the Town Commission cannot amend the Charter directly - only a vote of the people can amend the charter.)
3. Height: Develop two options for Charter height limits. Both would continue to be subject to lower height limits in the Code of Ordinances, as is the case currently.
 - Option A: apply 44 feet as the Charter height limit Townwide.
 - Option B: apply 44 feet only to the business and multifamily areas of Town, and leave the remaining single family and duplex areas at 33 feet. Describe these areas geographically, so that they will not be affected by future changes in zoning.
4. Parking: Delete parking regulations from the Charter.
5. Town Commission powers to amend Code: Develop two options for limits on the Town Commission's powers to change the Code.
 - Option A: Delete all limits.
 - Option B: Modify the current limits, so that the Town Commission would continue to not be able to change the height limits in the Code or rezone a single family or duplex property to a business zoning district, but could otherwise amend the Code without limitation.

The following documents have been provided as backup for this agenda item:

- Redlined Discussion Draft of Board's Potential Changes to Article VII, Showing Changes from the July version of the Plain English Draft in Strike Through and Underline Font.
- Clean Version of Discussion Draft of Board's Potential Changes to Article VII.
- July Chart analyzing the effect of the Plain English changes to the existing Article VII.
- Existing Article VII.
- Town zoning map.

The Board should discuss these matters, take public input, and provide direction on whether it wants to recommend that the Town Commission consider proposed changes to Article VII.

Analysis of Town of Lauderdale-By-The-Sea Charter for Charter Review Board

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>(1) No building within the jurisdictional boundaries of the Town, as they existed on March 20, 2006, 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, as defined in the Florida Building Code, or above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, whichever of those two levels is higher. The maximum height for all other buildings within the Town shall be thirty-three (33) feet</p> <p>(a) Above grade, as defined in the Florida Building Code, or</p> <p>(b) Above a horizontal plane eighteen inches above the crown if the roadway at the highest point adjoining the property on which the building is located, or</p> <p>(c) Above the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations,</p> <p>Whichever of those three levels is highest. Height shall be measured from the applicable base level specified above to the highest point on a flat roof, or to the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof. In accordance with the Florida Building Code, bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts or ventilation or air conditioning apparatus shall not be included in determining building height; all other</p>	<p>A grammatically correct reading of the first sentence of (1) would construe the date to apply to the Town boundaries and not to a building, because the clause incorporating the date uses the plural form as does the reference to boundaries. However, such an interpretation would not be meaningful. The Town boundaries have not changed since 2006; they are the current Town limits. Moreover, no annexation areas are adjacent to the Town, so it is not readily apparent how such a distinction could ever matter, unless the Town were somehow to merge with an adjacent municipality and still remain a Town. Also, such an interpretation essentially nullifies the second part of (1) referring to "all other buildings," because there are no buildings within the control of the Town's charter which are not in the Town boundaries. This violates a principle of statutory construction: that the interpretation should give effect to every part of the language if possible.</p> <p>Therefore, it appears that this section could be construed so that the first part applies to buildings in existence on March 20, 2006, and the second part applies to buildings that are constructed after that date. This interpretation is reflected in the Plain English</p>	<p>(1) <i>Limit on height and number of stories of buildings.</i></p> <p>(a) <i>Definition.</i> For purposes of this section, "roofline" is defined as follows:</p> <p>(i) the highest point on a flat roof, or</p> <p>(ii) the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof.</p> <p>(b) <i>Limits applicable to buildings constructed on or prior to March 20, 2006.</i> All buildings shall have no more than four stories and shall not exceed 44 feet. The number of stories and the height shall be measured from grade to the roofline. As used in this subsection (1)(b), "grade" is defined as the higher of the following two alternatives:</p> <p>(i) grade as defined in the Florida Building Code, or</p> <p>(ii) the level of the crown of the adjacent road plus eighteen inches.</p> <p>(c) <i>Limits applicable to buildings constructed after March 20, 2006.</i> All buildings shall not exceed 33 feet in height. The height shall be measured from the highest of the following locations to the roofline:</p> <p>(i) grade as defined in the Florida Building Code, or</p> <p>(ii) the level of the crown of the adjacent road plus eighteen inches, or</p> <p>(iii) the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations.</p> <p>(d) <i>Measurement of height of roof structures.</i> The following are</p>

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<p>roofs structures, including parapet walls, shall not exceed four feet in height above the maximum allowed building height.</p>	<p>version of this section.</p> <p>The heights in (1) are addressed further in (8)-(9). For clarity, those provisions have been added to (1), so all related matters are in the same subsection.</p> <p>Redevelopment of certain legal nonconforming structures is addressed in greater detail in subsection (3). The height limit of three stories or 33 feet was first created by the voters in 1973 and the majority of the more detailed height, use and parking restrictions were created in 1998. Further limits were added in 2006. Therefore, an individualized analysis of a particular structure would be necessary in order to determine whether it or its use are legally non-conforming, based on the date of construction, the nature of the nonconformity and whether or not it is located in the annexation area.</p> <p>The section (9) limitations on the Town Commission's powers to change these provisions are already applicable as a matter of law. Only a vote of the people can change the charter, so (f) of the Plain English version could be omitted.</p>	<p>excluded from the measurements of height under subsections (b) and (c):</p> <ul style="list-style-type: none"> (i) bulkheads and penthouses used solely to enclose stairways, (ii) tanks, (iii) elevator machinery or shafts, and (iv) ventilation or air conditioning apparatus. <p>All other roof structures, including parapet walls, are permitted to exceed the applicable height limit by up to four feet.</p> <p>(e) <i>Preservation of more restrictive Code provisions.</i> The height limits established herein supersede any existing zoning ordinance or land development regulation to the extent that it establishes any greater maximum building height limit. This section shall not be construed to affect any existing zoning ordinance or land development regulation that establishes any lower maximum building height limit.</p> <p>(f) <i>Prohibition on Town Commission granting variances or amending by ordinance.</i> The Town Commission may not increase, by ordinance or by variance, the height limits established herein.</p>
<p>(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,</p>	<p>This section refers to "any building." Below in this section it talks about "proposed buildings." A later section addresses existing nonconforming buildings that are redeveloped.</p>	<p>(2) <i>Limits on use of stories and parking for buildings over three stories or 33 feet in height.</i> Buildings over three stories or 33 feet in height are subject to the following limitations.</p> <p>(a) <i>Level of first story.</i> The first story shall be at grade. "At</p>

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<p>registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half (½) of the square footage of the first story is used for parking. Only within districts of the Town zoned for business ("B") use, the first story of buildings having more than three (3) stories above grade may also be devoted to non-residential commercial uses, provided that dedicated parking required by Town ordinance or code for the proposed buildings is provided off-street at a location on or adjacent to the property on which the buildings are situate, and designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic. 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.</p>	<p>The scope is unclear. For the Plain English version, the interpretation that this section applies to "any building" is utilized.</p> <p>This section contains details that are usually found in a Code.</p> <p>This section could be greatly simplified by stating that uses of first stories are limited to whatever non-habitable uses are allowed by the zoning district. But that clarification would broaden the scope of the listed uses for residential zoning districts.</p> <p>The section (9) limitations on the Town Commission's powers to change these provisions are already applicable as a matter of law. Only a vote of the people can change the charter, so (g) of the Plain English version could be omitted.</p>	<p>grade" means that the floor is at or below grade and the ceiling is above grade, or that the floor and ceiling are both above grade.</p> <p>(b) <i>Use in residential zoning districts.</i> At least one half of the square footage of the first story must be used for parking. The remainder of the first story may only be used for one or more of the following uses:</p> <ol style="list-style-type: none"> 1. parking, either with or without toll collection booths, 2. storage, 3. refuse, 4. security, 5. registration, 6. maintenance, 7. access, either with or without a lobby. <p>(c) <i>Use in business zoning districts.</i> The first story may be used for any of the uses listed in (b). It may also be used for commercial uses if the Code-required off-street parking is provided on or adjacent to the property.</p> <p>(d) <i>Underground stories.</i> Underground stories are allowed, but their uses are limited in accordance with the applicable zoning district, as detailed above in (b) and (c).</p> <p>(e) <i>Off-site parking.</i> If the Code required parking is not provided on the property, the building must have dedicated off-street parking adjacent to the property.</p> <p>(f) <i>Back-out parking.</i> All parking must be designed to allow parked vehicles to leave the parking space without having to back out into traffic.</p> <p>(g) <i>Prohibition on Town Commission granting variances or amending by ordinance.</i> The Town Commission may not increase, by ordinance or by variance, the use and parking requirements</p>

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<p>(3) Buildings which exceed thirty three (33) feet above grade, and which exceed thirty three (33) feet above the horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, but which are nevertheless allowed under subparagraph (1)(c) of this Section, and which do not include a non-habitable first floor with ample parking as required by Town ordinance or code, in accordance with the number and type of units in those buildings, must have dedicated off-street parking at a location on or adjacent to the property on which the buildings are situate. Parking for buildings in this category must be designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic.</p>	<p>This has been combined into (2) in the plain English version.</p> <p>As noted in (1) above, (1)(c) is part of a section that may be interpreted to apply to buildings constructed after March 20, 2006. (2) applies to any building, without a date restriction. So what buildings are not "any building" that can be affected by this sentence?</p> <p>The reference to "units" suggests that this provision is intended to apply to residential buildings, but it nowhere states this explicitly. It has been added as (2)(e) and (f) and applies to both residential and non-residential uses.</p>	<p>established herein.</p> <p>See (2)(e) above.</p>
<p>(4) All existing buildings within the Town that were legally in compliance with existing height and use restrictions on March 20, 2006, or were grandfathered on that date, but that either exceed the maximum building height limit established in paragraph (1), above, of this section of the Charter, or that fail to comply, where applicable, with the restrictions on use established in paragraph (2), above, of this section of the Charter, (hereinafter referred to as "Non-conforming Buildings") shall be considered legal, but non-conforming.</p>	<p>(4) is just a definition, and the related regulations are in the following sections. All of the related provisions of (4) and (5) have been combined into (3) of the Plain English version.</p>	<p>(3) <i>Nonconforming buildings.</i></p> <p>(a) <i>Definition.</i> For purposes of this section, nonconforming buildings means all buildings within the Town that were legally in existence on March 20, 2006, and that either:</p> <ul style="list-style-type: none"> (i) exceed the applicable height limit established in (1) or (ii) fail to comply with the use requirements of (2).
<p>(5) Notwithstanding the maximum building height limit established in paragraph (1), above, of this section of the Charter, an existing non-conforming building may be replaced by a new nonconforming building when, and only when:</p>	<p>The explicit statements about being able to build less than the maximum are not necessary because the charter provides for a maximum allowable amount, not a maximum required amount.</p>	<p>(b) <i>Limitation on replacement of nonconforming buildings.</i></p> <p>(i) <i>Definitions.</i></p> <p>A. "Habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or</p>

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<p>(a) The existing non-conforming building has:</p> <p>(i) Been destroyed by fire, natural disaster, or other act of God; and</p> <p>(ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and</p> <p>(iii) Construction of the replacement building is commenced within twelve (12) months of the date of destruction; or</p> <p>(b) The existing non-conforming building is:</p> <p>(i) Demolished as part of a Town approved redevelopment of the property; and</p> <p>(ii) Prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building; and</p> <p>(iii) Construction of the replacement building is commenced within six (6) months of the date of site plan approval.</p> <p>(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 (5)(a)(iii) and (5)(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.</p> <p>(d) All new non-conforming buildings constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall comply, where applicable, with the restrictions on use established in paragraph (2), above, and the</p>	<p>The section (9) limitations on the Town Commission's powers to change these provisions are already applicable as a matter of law. Only a vote of the people can change the charter, so those parts of (vi) and (vii) of the Plain English version could be omitted.</p> <p>The phrase "Town approved redevelopment of the property" is not defined. Standing alone, subsection (i) could indicate that basic site plan approval for redeveloping an existing non-conforming building is all that is required. However, subsection (ii) specifically addresses site plan approval. This may mean that (a) the redevelopment approval referenced in subsection (i) is in addition to site plan; or, (b) based on the phrasing, subsection (ii) may simply be intended to establish the required timing of site plan approval in order to qualify for redevelopment under this section - prior to demolition of the existing non-conforming building. The second interpretation is applied in the "Plain English" version; the reference to Town approved redevelopment of the property is construed as an application, prior to demolition of the existing structure, for a site plan to redevelop the property, and not to a different form of approval.</p> <p>Under either interpretation, if site plan approval is obtained after demolition, the site would be treated as a vacant lot required to conform to all the requirements of the code and charter.</p>	<p>temporary, by one (1) or more persons.</p> <p>B. "Habitable square feet" means any square footage that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.</p> <p>C. "Replacement building" means a new building that is allowed to be constructed without full compliance with this section, as provided herein.</p> <p>(ii) <i>Eligibility.</i> Nonconforming buildings generally must come into compliance with this section if replaced. However, a nonconforming building may be replaced with a replacement building if either:</p> <p>A. <i>Destruction.</i> The existing non-conforming building has been destroyed by fire, natural disaster, or other act of God, and construction of the replacement building is commenced within twelve (12) months of the date of destruction; or</p> <p>B. <i>Redevelopment.</i> The existing non-conforming building is demolished as part of a Town approved redevelopment of the property; and construction of the replacement building is commenced within six (6) months of the date of site plan approval.</p> <p>(iii) <i>Procedure.</i> The property owner must apply for and receive Town approval of a site plan depicting the replacement building (prior to planned demolition, if any).</p> <p>(iv) <i>Use and parking.</i> The replacement building must comply, where applicable, with the restrictions on use and parking of subsection (2).</p> <p>(v) <i>Extensions of time.</i> The applicant may seek one (1) or more six (6) month extensions to the time periods for commencement of construction of a replacement building from the Town Commission by submitting a written application to the Town Clerk prior to the expiration of the original (or extended) timeframe.</p>

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<p>provisions for parking availability established in paragraph (3), above, of this section of the Charter.</p> <p>(e) The maximum allowable height of any new non-conforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(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 section 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 section 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.</p> <p>(f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(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 section of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original non-</p>		<p>(vi) <i>Height.</i> The maximum allowable height of any replacement building 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)) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. The Town Commission may not increase, by ordinance or by variance, the height limits established herein.</p> <p>(vii) <i>Square footage.</i> The maximum allowable square footage of any replacement building 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)) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. The Town Commission may not increase, by ordinance or by variance, the square footage limits established herein.</p> <p>(viii) <i>Reductions in size.</i> A replacement building may be shorter or have fewer square feet than the original nonconforming building without coming fully into compliance with this section.</p>

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<p>conforming building. Nothing in this section of the Charter shall be construed to prevent a new nonconforming building from being constructed either with 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 section 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.</p>		
<p>(6) The maximum building height limits, the restrictions on use and the maximum allowable square footage, and the provisions governing parking established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on March 20, 2006.</p>	<p>Again, a distinction is drawn based on the Town boundaries, which have not changed. Therefore, the language applies to the entire Town ("all real property"). This section seems to support the alternative interpretation of (1), that the date applies to the boundaries and not to the buildings. However, if that interpretation applies, the 33 foot provisions are nullified.</p> <p>Because the language does not add anything to the previous sections, it is not carried over into the Plain English version.</p>	
<p>(7) Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in paragraphs (1), (2) and (5), above, of this section of the Charter, by means of a suit in equity seeking either mandamus; prohibition; 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.</p>	<p>Paragraph (2) contains several use and parking restrictions, yet this language only refers to the height and square footage limits.</p>	<p>(4) <i>Resident standing to enforce.</i> Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in this section of the Charter by bringing a lawsuit in equity seeking mandamus and prohibition. This section shall not be construed to:</p> <p>(a) create a cause of action at law for money damages, or</p> <p>(b) authorize a court of equity to award money damages as an incident to equitable relief, or</p> <p>(c) authorize an award of attorney's fees to the prevailing</p>

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		party or to any other party.
<p>(8) The maximum building height limit established in paragraph (1), above, of this section 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 section of the Charter, but nothing in this section 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 section of the Charter.</p>	<p>Because this relates to (1), it has been moved to (1).</p>	
<p>(9) The Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (5), above, of this section 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, or the provisions for parking availability established in paragraphs (2), (3) or (5), above, of this section of the Charter, nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph (5), above, of this section of the Charter. The maximum height limits established for residential zoning districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006, may be increased, or such districts re-zoned for any other use whatsoever, only by a referendum vote of the</p>	<p>The limitations on the Town Commission's power to change provisions of this charter have been placed where each of those limitations are established in the Plain English version for clarity. However, as noted above, they are not necessary because as a matter of law the Town Commission does not have this power.</p> <p>The limitations on the Town Commission's ability to change the land development regulations are quite different. The Commission does have this power, and these provisions limit that power. They are placed in section (5) of the Plain English version.</p> <p>"Rezoned for any other use whatsoever" can be interpreted in different ways. It modifies the word districts, not properties. The phrase</p>	<p>(5) <i>Limit on Town Commission power to amend land development regulations.</i></p> <p>(a) <i>Definition.</i> "Residential zoning districts" shall include but not be limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006.</p> <p>(b) <i>Referendum required.</i> A referendum vote, in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances, is required to make the following changes to the Town's land development regulations:</p> <p>(i) <i>Residential zoning district height limits.</i> The maximum height limits established for residential zoning districts may be increased only by a referendum.</p> <p>(ii) <i>Rezoning of districts to another use.</i> A property in a residential zoning district may be rezoned to a different</p>

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<p>registered voters of the Town in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances. The Town may not create new categories of zoning without approval of such categories by a similar referendum vote; and all provisions of such new categories of zoning must be submitted to the voters for approval.</p>	<p>could refer to a complete rezoning of an entire zoning district, or to a rezoning of a property or multiple properties located in one district to another district. For example, this could mean that the RM-25 district as a whole could not be changed to the B-1 district without a referendum. Or it could mean that a particular property that is shown on the zoning map as RM-25 could not be rezoned to B-1 without a referendum. For purposes of this analysis, the plain English version applies the interpretation that it restricts the rezoning of individual properties to another zoning district.</p> <p>“Rezoned for any other use whatsoever” may also be interpreted to mean any change to the text of the regulations for a zoning district which adds a use not currently listed or removes a listed use, because either type of change would result in a different set of uses being available in that zoning district. However, the language is expansive rather than restrictive -- “any other” (as in additional) use.” Therefore, the Plain English version applies the interpretation that the charter restricts the addition of uses to, but does not restrict the removal of uses from, a residential zoning district.</p> <p>“New categories of zoning” is also open to interpretation. It is not limited to the residential zoning districts, as the other phrases are. There are two kinds of zoning districts: overlay and regular. A property can only have one regular zoning district; they are</p>	<p>zoning district only by a referendum.</p> <p>(iii) <i>Creation of new categories of zoning.</i> New zoning districts, including all the regulations related to those districts, may be adopted only by a referendum.</p> <p>(iv) <i>Addition of uses to a zoning category.</i> New uses may be added to existing residential zoning districts only by a referendum.</p>

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	<p>mutually exclusive. Overlay districts, in contrast, are designed to preserve the regular underlying zoning district but modify certain aspects of it for certain properties in ways that are not suitable to the entire zoning district. For purposes of this analysis, the Plain English version applies the interpretation that a new category is a regular zoning district and not an overlay district.</p>	
<p>(10) The maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, may be increased only by an amendment to or by repeal of this section of the Charter. The restrictions on use established in paragraph (2), above, and the provisions governing parking availability established in paragraphs (2), (3) and (5), above, of this section of the Charter, may be modified, amended or repealed only by an amendment to or by repeal of this section of the Charter. The maximum allowable square footage established in paragraph (5), above, of this provision of the Charter, may be increased only by an amendment to, or by repeal of this section of the Charter. Except as expressly provided below, this section of the Charter may be amended or repealed only by means of a majority vote of the registered voters of the Town 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 general election. The amendment or repeal of this section 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 general election is expressly prohibited, except that a special election or special election by mail may be held to correct, to</p>	<p>The first three statements are true as a matter of law and need not be included.</p> <p>The limitations on how this section may be amended by the voters are meaningful, and are incorporated in the Plain English version.</p>	<p>(6) <i>Limitation on amendments to this section of the Charter by the voters.</i> This section of the Charter may be amended or repealed only by a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or a March municipal general election. If a provision of this section of the Charter is finally adjudged by a court of competent jurisdiction, after all appeals have been exhausted, to violate the State or Federal Constitution or any valid state or federal law, then a special election may be held for the sole purpose of correcting, to the minimum practicable extent, such violation. Such special election may be held on a different day, or may be conducted by mail.</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>the minimum practicable extent, a provision adjudged by a court of competent jurisdiction to violate the State or Federal Constitution or any valid state or federal law, but only after such adjudication is affirmed on appeal. Amendments approved at a special election may include no elements not directly related to such court adjudication.</p>		
<p>(11) These provisions of the Charter shall be effective immediately upon adoption by a majority of the registered voters of the Town voting in a referendum to amend the Charter so as to include these provisions. Upon adoption, the maximum building height limits, the restrictions on use, the maximum allowable square footage and the provisions governing parking availability established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall immediately apply to all real property located within the boundaries of the entire Town. Upon adoption of these provisions, and pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.</p>	<p>This language is an effective date clause from the charter amendment in which these changes were adopted. It no longer has applicability because the current charter already became effective.</p> <p>The final sentence is still meaningful because it addresses conflicting provisions of the Town Code.</p>	<p><i>(7) Preservation of stricter Code provisions.</i> Pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.</p>

**DISCUSSION DRAFT OF CHARTER REVIEW BOARD'S
POTENTIAL CHANGES TO TOWN CHARTER ARTICLE VII:
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Article VII. PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

(1) *Limit on height and number of stories of buildings.*

(a) *Definition.* For purposes of this section, the following definitions shall apply.

(i) "Roofline" is ~~defined as follows:~~

(A) the highest point on a flat roof, or

(B) the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof.

(ii) "Grade" means as the highest of the following three alternatives:

(A) grade as defined in the Florida Building Code, or

(B) the level of the crown of the adjacent road plus eighteen inches, or

(C) the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations.

(iii) "Height" shall be measured from grade to the roofline.

OPTION A HEIGHT:

(b) ~~Limits applicable to buildings constructed on or prior to March 20, 2006.~~ All buildings shall have no more than four stories and shall not exceed 44 feet.

OR

OPTION B HEIGHT:

(iv) "Business and multifamily areas" shall mean:

(A) South of Pine Avenue:

(I) the area bounded by the Atlantic Ocean on the east, Flamingo Avenue on the south, Bougainville Drive on the west, and Pine Avenue on the north, and

(II) the area bounded by Basin Drive on the south, Harbor Drive on the north, the Intracoastal Waterway on the west, and Bougainville Drive on the east, and

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(III) the area bounded by Bougainvilla Drive on the east, Hibiscus Avenue on the south, Basin Drive on the north and the Canal on the west.

(B) North of Pine Avenue: the area bounded by the Atlantic Ocean on the east, Pine Avenue on the south, A1A on the west, and the northern boundary of the Town on the north.

(v) "Single-family and duplex areas" shall mean those areas not defined as business and multifamily areas.

(b) Limits applicable to business and multi-family areas. ~~buildings constructed on or prior to March 20, 2006.~~ All buildings in business and multi-family areas shall have no more than four stories and shall not exceed 44 feet. ~~The number of stories and the height shall be measured from grade to the roofline. As used in this subsection (1)(b), "grade" is defined as the higher of the following two alternatives:~~

- ~~(i) grade as defined in the Florida Building Code, or~~
- ~~(ii) the level of the crown of the adjacent road plus eighteen inches.~~

(c) Limits applicable to single family and duplex areas ~~buildings constructed after March 20, 2006.~~ All buildings in single family and duplex areas shall not exceed 33 feet in height. ~~The height shall be measured from the highest of the following locations to the roofline:~~

- ~~(i) grade as defined in the Florida Building Code, or~~
- ~~(ii) the level of the crown of the adjacent road plus eighteen inches, or~~
- ~~(iii) the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations.~~

(d) Measurement of height of roof structures. The following are excluded from the measurements of height under subsections (b) and (c):

- (i) bulkheads and penthouses used solely to enclose stairways,
- (ii) tanks,
- (iii) elevator machinery or shafts, and
- (iv) ventilation or air conditioning apparatus.

All other roof structures, including parapet walls, are permitted to exceed the applicable height limit by up to four feet.

(e) Preservation of more restrictive Code provisions. The height limits established herein supersede any existing zoning ordinance or land development regulation to the extent that it establishes any greater maximum building height limit. This section shall not be

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construed to affect any existing zoning ordinance or land development regulation that establishes any lower maximum building height limit.

~~(f) Prohibition on Town Commission granting variances or amending by ordinance. The Town Commission may not increase, by ordinance or by variance, the height limits established herein.~~

(2) *Limits on use of stories and parking for buildings over three stories or 33 feet in height.* Buildings over three stories or 33 feet in height are subject to the following limitations.

(a) Definitions. For purposes of this section, the following definitions shall apply.

(i) "At grade" means that the floor is at or below grade and the ceiling is above grade, or that the floor and ceiling are both above grade.

(ii) "Non-habitable" means not being used as a home or place of abode.

~~(b) (a) Level of first story.~~ The first story shall be at grade. ~~"At grade" means that the floor is at or below grade and the ceiling is above grade, or that the floor and ceiling are both above grade.~~

~~(c) (b) Use in residential zoning districts.~~ At least one half of the square footage of the first story must be used for parking. The remainder of the first story may only be used for uses that are non-habitable. ~~one or more of the following uses:~~

- ~~1. parking, either with or without toll collection booths;~~
- ~~2. storage;~~
- ~~3. refuse;~~
- ~~4. security;~~
- ~~5. registration;~~
- ~~6. maintenance;~~
- ~~7. access, either with or without a lobby.~~

~~(c) Use in business zoning districts.~~ The first story may be used for any of the uses listed in (b). ~~It may also be used for commercial uses if the Code required off street parking is provided on or adjacent to the property.~~

~~(d) Underground stories.~~ Underground stories are allowed, but their uses are limited to nonhabitable uses. ~~in accordance with the applicable zoning district, as detailed above in (b) and (c).~~

~~(e) Off site parking.~~ ~~If the Code required parking is not provided on the property, the building must have dedicated off street parking adjacent to the property.~~

~~(f) Back out parking.~~ ~~All parking must be designed to allow parked vehicles to leave the parking space without having to back out into traffic.~~

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~~(g) Prohibition on Town Commission granting variances or amending by ordinance. The Town Commission may not increase, by ordinance or by variance, the use and parking requirements established herein.~~

(3) *Nonconforming buildings.*

(a) *Definition.* For purposes of this section, nonconforming buildings means all buildings within the Town that were legally in existence on March 20, 2006, and that either:

- (i) exceed the applicable height limit established in (1) or
- (ii) fail to comply with the use requirements of (2).

(b) *Limitation on replacement of nonconforming buildings.*

(i) *Definitions.*

(A) "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.

(B) "Habitable square feet" means any square footage that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

(C) "Replacement building" means a new building that is allowed to be constructed without full compliance with this section, as provided herein.

(ii) *Eligibility.* Nonconforming buildings generally must come into compliance with this section if replaced. However, a nonconforming building may be replaced with a replacement building if either:

(A) *Destruction.* The existing non-conforming building has been destroyed by fire, natural disaster, or other act of God, and construction of the replacement building is commenced within twelve (12) months of the date of destruction; or

(B) *Redevelopment.* The existing non-conforming building is demolished as part of a Town approved redevelopment of the property; and construction of the replacement building is commenced within six (6) months of the date of site plan approval.

(iii) *Procedure.* The property owner must apply for and receive Town approval of a site plan depicting the replacement building (prior to planned demolition, if any).

(iv) *Use and parking.* The replacement building must comply, where applicable, with the restrictions on use ~~and parking~~ of subsection (2).

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(v) *Extensions of time.* The applicant may seek one (1) or more six (6) month extensions to the time periods for commencement of construction of a replacement building from the Town Commission by submitting a written application to the Town Clerk prior to the expiration of the original (or extended) timeframe.

(vi) *Height.* The maximum allowable height of any replacement building 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)) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. ~~The Town Commission may not increase, by ordinance or by variance, the height limits established herein.~~

(vii) *Square footage.* The maximum allowable square footage of any replacement building 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)) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. ~~The Town Commission may not increase, by ordinance or by variance, the square footage limits established herein.~~

(viii) *Reductions in size.* A replacement building may be shorter or have fewer square feet than the original nonconforming building without coming fully into compliance with this section.

(4) *Resident standing to enforce.* Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in this section of the Charter by bringing a lawsuit in equity seeking mandamus and prohibition. This section shall not be construed to:

- (a) create a cause of action at law for money damages, or
- (b) authorize a court of equity to award money damages as an incident to equitable relief,
- or
- (c) authorize an award of attorney's fees to the prevailing party or to any other party.

OPTION A – LIMITS ON TOWN COMMISSION POWERS

(5) *Limit on Town Commission power to amend land development regulations*

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~~(a) *Definition.* "Residential zoning districts" shall include but not be limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006.~~

~~(b) *Referendum required.* A referendum vote, in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances, is required to make the following changes to the Town's land development regulations:~~

~~(i) *Residential zoning district height limits.* The maximum height limits established for residential zoning districts may be increased only by a referendum.~~

~~(ii) *Rezoning of districts to another use.* A property in a residential zoning district may be rezoned to a different zoning district only by a referendum.~~

~~(iii) *Creation of new categories of zoning.* New zoning districts, including all the regulations related to those districts, may be adopted only by a referendum.~~

~~(iv) *Addition of uses to a zoning category.* New uses may be added to existing residential zoning districts only by a referendum.~~

OR

OPTION B – LIMITS ON TOWN COMMISSION POWERS

(5) Limit on Town Commission power to amend land development regulations affecting single family and duplex areas without referendum.¹

~~(a) *Definition.* "Residential zoning districts" shall include but not be limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006.~~

~~(b) *Referendum required.* A referendum vote, in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances, is required to make the following changes to the Town's land development regulations:~~

~~(i) *Residential zoning district Height limits.* The maximum height limits established for single family and duplex areas residential zoning districts may be increased only by a referendum.~~

~~(ii) *Rezoning of property in single family and duplex areas districts to another business zoning district use.* Rezoning of a property in a single family and duplex area residential zoning district may be rezoned to a business different zoning district only by a referendum.~~

~~(iii) *Creation of new categories of zoning.* New zoning districts, including all the regulations related to those districts, may be adopted only by a referendum.~~

~~(iv) *Addition of uses to a zoning category.* New uses may be added to existing residential zoning districts only by a referendum.~~

¹ If **Option A Height** is selected, then a definition of single family and duplex areas will need to be provided here.

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(6) *Limitation on amendments to this section of the Charter by the voters.* This section of the Charter may be amended or repealed only by a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or a March municipal general election. If a provision of this section of the Charter is finally adjudged by a court of competent jurisdiction, after all appeals have been exhausted, to violate the State or Federal Constitution or any valid state or federal law, then a special election may be held for the sole purpose of correcting, to the minimum practicable extent, such violation. Such special election may be held on a different day, or may be conducted by mail.

(7) *Preservation of stricter Code provisions.* Pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.

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Article VII. PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

(1) *Limit on height and number of stories of buildings.*

(a) *Definition.* For purposes of this section, the following definitions shall apply.

(i) "Roofline" is:

- (A) the highest point on a flat roof, or
- (B) the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof.

(ii) "Grade" means as the highest of the following three alternatives:

- (A) grade as defined in the Florida Building Code, or
- (B) the level of the crown of the adjacent road plus eighteen inches, or
- (C) the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations.

(iii) "Height" shall be measured from grade to the roofline.

OPTION A HEIGHT:

(b) *Limits.* All buildings shall have no more than four stories and shall not exceed 44 feet.

OR

OPTION B HEIGHT:

(iv) "Business and multifamily areas" shall mean:

(A) South of Pine Avenue:

(I) the area bounded by the Atlantic Ocean on the east, Flamingo Avenue on the south, Bougainvilla Drive on the west, and Pine Avenue on the north, and

(II) the area bounded by Basin Drive on the south, Harbor Drive on the north, the Intracoastal Waterway on the west, and Bougainvilla Drive on the east, and

(III) the area bounded by Bougainvilla Drive on the east, Hibiscus Avenue on the south, Basin Drive on the north and the _____ Canal on the west.

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(B) North of Pine Avenue: the area bounded by the Atlantic Ocean on the east, Pine Avenue on the south, A1A on the west, and the northern boundary of the Town on the north.

(v) "Single-family and duplex areas" shall mean those areas not defined as business and multifamily areas.

(b) *Limits applicable to business and multi-family areas.* All buildings in business and multi-family areas shall have no more than four stories and shall not exceed 44 feet.

(c) *Limits applicable to single family and duplex areas.* All buildings in single family and duplex areas shall not exceed 33 feet in height.

(d) *Measurement of height of roof structures.* The following are excluded from the measurements of height under subsections (b) and (c):

- (i) bulkheads and penthouses used solely to enclose stairways,
- (ii) tanks,
- (iii) elevator machinery or shafts, and
- (iv) ventilation or air conditioning apparatus.

All other roof structures, including parapet walls, are permitted to exceed the applicable height limit by up to four feet.

(e) *Preservation of more restrictive Code provisions.* The height limits established herein supersede any existing zoning ordinance or land development regulation to the extent that it establishes any greater maximum building height limit. This section shall not be construed to affect any existing zoning ordinance or land development regulation that establishes any lower maximum building height limit.

(2) *Limits on use of stories and parking for buildings over three stories or 33 feet in height.* Buildings over three stories or 33 feet in height are subject to the following limitations.

- (a) *Definitions.* For purposes of this section, the following definitions shall apply.
- (i) "At grade" means that the floor is at or below grade and the ceiling is above grade, or that the floor and ceiling are both above grade.
 - (ii) "Non-habitable" means not being used as a home or place of abode.

(b) *Level of first story.* The first story shall be at grade.

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(c) *Use.* At least one half of the square footage of the first story must be used for parking. The remainder of the first story may only be used for uses that are non-habitable.

(d) *Underground stories.* Underground stories are allowed, but their uses are limited to nonhabitable uses.

(3) *Nonconforming buildings.*

(a) *Definition.* For purposes of this section, nonconforming buildings means all buildings within the Town that were legally in existence on March 20, 2006, and that either:

- (i) exceed the applicable height limit established in (1) or
- (ii) fail to comply with the use requirements of (2).

(b) *Limitation on replacement of nonconforming buildings.*

(i) *Definitions.*

(A) "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.

(B) "Habitable square feet" means any square footage that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

(C) "Replacement building" means a new building that is allowed to be constructed without full compliance with this section, as provided herein.

(ii) *Eligibility.* Nonconforming buildings generally must come into compliance with this section if replaced. However, a nonconforming building may be replaced with a replacement building if either:

(A) *Destruction.* The existing non-conforming building has been destroyed by fire, natural disaster, or other act of God, and construction of the replacement building is commenced within twelve (12) months of the date of destruction; or

(B) *Redevelopment.* The existing non-conforming building is demolished as part of a Town approved redevelopment of the property; and construction of the replacement building is commenced within six (6) months of the date of site plan approval.

(iii) *Procedure.* The property owner must apply for and receive Town approval of a site plan depicting the replacement building (prior to planned demolition, if any).

(iv) *Use and parking.* The replacement building must comply, where applicable, with the restrictions on use of subsection (2).

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(v) *Extensions of time.* The applicant may seek one (1) or more six (6) month extensions to the time periods for commencement of construction of a replacement building from the Town Commission by submitting a written application to the Town Clerk prior to the expiration of the original (or extended) timeframe.

(vi) *Height.* The maximum allowable height of any replacement building 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)) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building.

(vii) *Square footage.* The maximum allowable square footage of any replacement building 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)) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building.

(viii) *Reductions in size.* A replacement building may be shorter or have fewer square feet than the original nonconforming building without coming fully into compliance with this section.

(4) *Resident standing to enforce.* Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in this section of the Charter by bringing a lawsuit in equity seeking mandamus and prohibition. This section shall not be construed to:

- (a) create a cause of action at law for money damages, or
- (b) authorize a court of equity to award money damages as an incident to equitable relief, or
- (c) authorize an award of attorney's fees to the prevailing party or to any other party.

OPTION A – LIMITS ON TOWN COMMISSION POWERS

[No language is provided here, because there would no longer be any Charter language limiting the Town Commission's powers under this Option. The deleted language is shown in the strike through and underline version of this document.]

OR

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OPTION B – LIMITS ON TOWN COMMISSION POWERS

(5) *Limit on Town Commission power to amend land development regulations affecting single family and duplex areas without referendum.*¹ A referendum vote, in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances, is required to make the following changes to the Town's land development regulations:

(a) *Height limits.* The maximum height limits established for single family and duplex areas.

(b) *Rezoning of property to a business zoning district.* Rezoning of property in a single family and duplex area to a business zoning district.

(6) *Limitation on amendments to this section of the Charter by the voters.* This section of the Charter may be amended or repealed only by a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or a March municipal general election. If a provision of this section of the Charter is finally adjudged by a court of competent jurisdiction, after all appeals have been exhausted, to violate the State or Federal Constitution or any valid state or federal law, then a special election may be held for the sole purpose of correcting, to the minimum practicable extent, such violation. Such special election may be held on a different day, or may be conducted by mail.

(7) *Preservation of stricter Code provisions.* Pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.

¹ If **Option A Height** is selected, then a definition of single family and duplex areas will need to be provided here.

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

(1) No building within the jurisdictional boundaries of the Town, as they existed on March 20, 2006, 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, as defined in the Florida Building Code, or above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, whichever of those two levels is higher. The maximum height for all other buildings within the Town shall be thirty-three (33) feet

- (a) Above grade, as defined in the Florida Building Code, or
- (b) Above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, or
- (c) Above the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations,

Whichever of those three levels is highest. Height shall be measured from the applicable base level specified above to the highest point on a flat roof, or to the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof. In accordance with the Florida Building Code, bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts or ventilation or air conditioning apparatus shall not be included in determining building height; all other roofs structures, including parapet walls, shall not exceed four feet in height above the maximum allowed building height.

(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 ($\frac{1}{2}$) of the square footage of the first story is used for parking. Only within districts of the Town zoned for business ("B") use, the first story of buildings having more than three (3) stories above grade may also be devoted to non-residential commercial uses, provided that dedicated parking required by Town ordinance or code for the proposed buildings is provided off-street at a location on or adjacent to the property on which the buildings are situate, and designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic. 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) Buildings which exceed thirty three (33) feet above grade, and which exceed thirty three (33) feet above the horizontal plane eighteen inches above the crown of the roadway at the

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

highest point adjoining the property on which the building is located, but which are nevertheless allowed under subparagraph (1)(c) of this Section, and which do not include a non-habitable first floor with ample parking as required by Town ordinance or code, in accordance with the number and type of units in those buildings, must have dedicated off-street parking at a location on or adjacent to the property on which the buildings are situate. Parking for buildings in this category must be designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic.

(4) All existing buildings within the Town that were legally in compliance with existing height and use restrictions on March 20, 2006, or were grandfathered on that date, but that either exceed the maximum building height limit established in paragraph (1), above, of this section of the Charter, or that fail to comply, where applicable, with the restrictions on use established in paragraph (2), above, of this section of the Charter, (hereinafter referred to as "Non-conforming Buildings") shall be considered legal, but non-conforming.

(5) Notwithstanding the maximum building height limit established in paragraph (1), above, of this section 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 (6) 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 (5)(a)(iii) and (5)(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 (5)(a) or (5)(b), above, shall comply, where applicable, with the restrictions on

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

use established in paragraph (2), above, and the provisions for parking availability established in paragraph (3), above, of this section of the Charter.

(e) The maximum allowable height of any new non-conforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(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 section 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 section 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 (5)(a) or (5)(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 section 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 section of the Charter shall be construed to prevent a new nonconforming building from being constructed either with 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 section 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.

(6) The maximum building height limits, the restrictions on use and the maximum allowable square footage, and the provisions governing parking established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on March 20, 2006.

(7) Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in paragraphs (1), (2) and (5), above, of this section of the Charter, by means of a suit in equity seeking either mandamus; prohibition; 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.

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

(8) The maximum building height limit established in paragraph (1), above, of this section 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 section of the Charter, but nothing in this section 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 section of the Charter.

(9) The Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (5), above, of this section 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, or the provisions for parking availability established in paragraphs (2), (3) or (5), above, of this section of the Charter, nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph (5), above, of this section of the Charter. The maximum height limits established for residential zoning districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006, may be increased, or such districts re-zoned for any other use whatsoever, only by a referendum vote of the registered voters of the Town in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances. The Town may not create new categories of zoning without approval of such categories by a similar referendum vote; and all provisions of such new categories of zoning must be submitted to the voters for approval.

(10) The maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, may be increased only by an amendment to or by repeal of this section of the Charter. The restrictions on use established in paragraph (2), above, and the provisions governing parking availability established in paragraphs (2), (3) and (5), above, of this section of the Charter, may be modified, amended or repealed only by an amendment to or by repeal of this section of the Charter. The maximum allowable square footage established in paragraph (5), above, of this provision of the Charter, may be increased only by an amendment to, or by repeal of this section of the Charter. Except as expressly provided below, this section of the Charter may be amended or repealed only by means of a majority vote of the registered voters of the Town 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 general election. The amendment or repeal of this section 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 general election is expressly prohibited, except that a special election or special election by mail may be held to correct, to the minimum practicable extent, a provision adjudged by a court of competent jurisdiction to violate the State or Federal Constitution or any valid state or federal law, but only after such adjudication is affirmed on appeal. Amendments approved at a special election may include no elements not directly related to such court adjudication.

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

(11) These provisions of the Charter shall be effective immediately upon adoption by a majority of the registered voters of the Town voting in a referendum to amend the Charter so as to include these provisions. Upon adoption, the maximum building height limits, the restrictions on use, the maximum allowable square footage and the provisions governing parking availability established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall immediately apply to all real property located within the boundaries of the entire Town. Upon adoption of these provisions, and pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.

Town of Lauderdale By The Sea

ZONING MAP

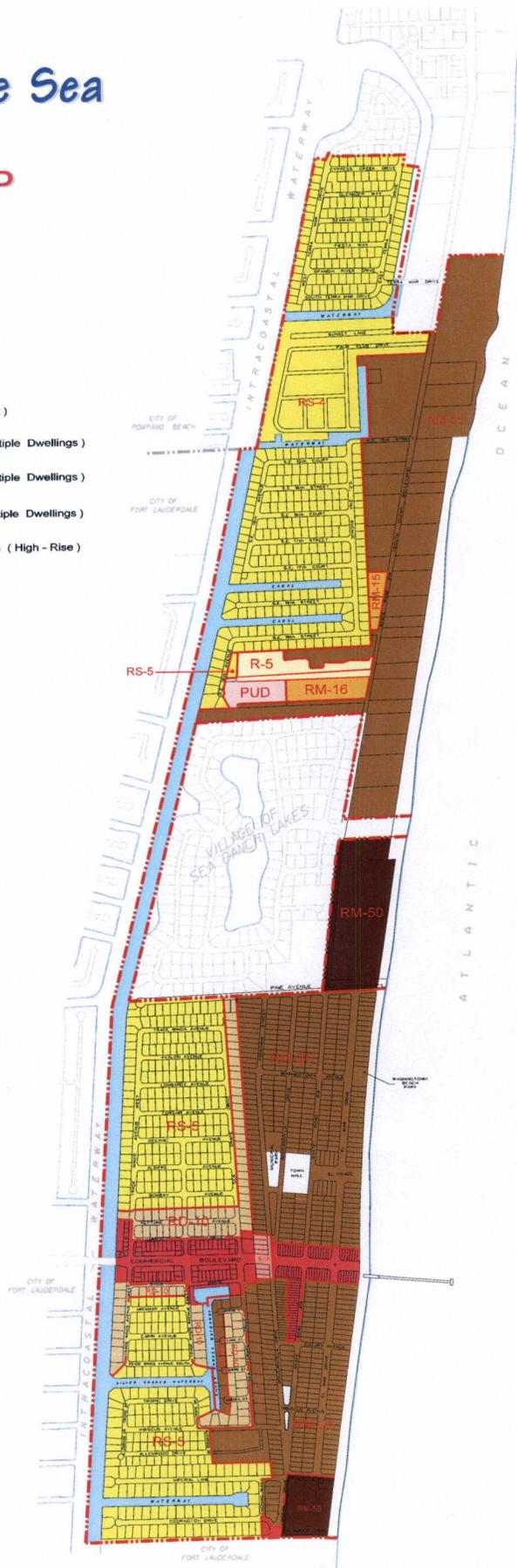
LEGEND

-  Town Boundary
-  Zoning District Line

Town Zoning Districts

-  **RS - 4** Residence, Single - Family Dwelling (4 Dwelling Units / Net Acre)
-  **RS - 5** Residence, Single - Family Dwelling (5 Dwelling Units / Net Acre)
-  **RD - 10** Residence, Two - Family Dwelling (Duplex) (10 Dwelling Units / Net Acre)
-  **RM - 15** Residence, Apartments, Hotels, etc. (Multiple Dwellings) (15 Dwelling Units / Net Acre)
-  **RM - 16** Residence, Apartments, Hotels, etc. (Multiple Dwellings) (16 Dwelling Units / Net Acre)
-  **RM - 25** Residence, Apartments, Hotels, etc. (Multiple Dwellings) (25 Dwelling Units / Net Acre)
-  **RM - 50** Hotel, Motel, Apartment Hotel, Apartments (High - Rise) (50 Dwelling Units / Net Acre)
-  **R - 5** Motel District
-  **PUD** Planned Unit Development District
-  **B - 1A** Business, Retail Business
-  **B - 1** Business, Retail Business
-  **WATER** Unzoned Area

No.	Revisions	Date
1	SILVER SHORES BLK 28, LOT 25 FROM RS-4 TO RD-10	5/03
2	UNIFIED LAND DEVELOPMENT CODE	8/02
3	REPEALED OVERLAY DISTRICTS	3/08



north



Graphic Scale

Map Update: May 2011



Walter H. Keller, Inc.
Consulting Engineers and Planners
CORP. OFFICES - SEWELL'S POINT
15041750-3822 FAX 15041750-3824

Memo

To: Charter Review Board, Town of Lauderdale-By-The-Sea

From: Susan L. Trevarthen, Town Attorney

Cc: Connie Hoffmann, Town Manager

Date: October 2, 2012

Re: **Charter Review Board's August Suggested Changes to Article VI "Elections"**

The Charter Review Board voted in August to have a revised version of Article VI "Elections" prepared and presented for discussion and for public input at the October 10, 2012 meeting. In brief, the Board voted to have the following changes made for discussion and further review:

1. Length of Mayoral term: Extend the term to four years, and leave the details of when to make the change, whether to change the term limit of three terms, and how to transition to the discretion of the Town Commission.
2. Residential electoral districts: Remove them and all related provisions. Leave details as to transition and implementation to the discretion of the Town Commission. If the Commission decides to keep the districts, remove the requirement of a study and modify the standard for the districts to require that they be comparable in population, compact, proportional, and logically related to Town neighborhood boundaries.
3. Selection of Vice Mayor: The selection would be required to be made no later than the second regularly scheduled meeting to occur following the election, rather than on second Tuesday following the election.
4. Vacancy in candidacy: Adopt a procedure for how to handle vacancies in candidacy, as provided by state law.
5. Consider changes to forfeiture of office provision: The Charter provides for forfeiture of office for several things, including for violating a standard of conduct or ethics requirement. The new County ethics code creates violations for minimal acts, and the Commission asked the Board to consider whether automatic forfeiture was a disproportionate penalty for such minimal violations. The Board wanted to further discuss this issue in light of the penalties for violation of the County ethics code, which were provided following the August meeting.

The following documents have been provided as backup for this agenda item:

- Redlined Discussion Draft of Board's Potential Changes to Article VI, Showing Changes from the Current Charter in Strike Through and Underline Font.
- Clean Version of Discussion Draft of Board's Potential Changes to Article VI.
- Article XII County Charter: Inspector General Provisions re Ethics Penalties.

The Board should discuss these matters, take public input, and provide direction on whether it wants to recommend that the Town Commission consider proposed changes to Article VI.

ARTICLE VI. - ELECTIONS

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

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

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

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

Sec. 6.5. - Vacancies.

Sec. 6.6. - Forfeiture of office.

Sec. 6.7. - Forfeiture hearing and process.

Sec. 6.8. - Filling of vacancies.

Sec. 6.9. - Extraordinary vacancies.

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, 2008, and every two (2) years thereafter, a Mayor-Commissioner shall be elected for a term of two (2) 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

PART I - CHARTER
ARTICLE VI. - ELECTIONS

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.

(1) 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.

(2) No person may be a candidate for Commissioner, nor may be appointed to fill a vacancy as a Commissioner, if that person has served during both of the two preceding consecutive Commission terms for that seat as a Commissioner or a Mayor-Commissioner or both, without a two year break in service.

(3) No person may be a candidate for Mayor-Commissioner, nor may be appointed to fill a vacancy as the Mayor-Commissioner, if that person has served during each of the three preceding consecutive Mayor-Commissioner terms as a Mayor-Commissioner.

(4) Service of one year or less of a term by a person who had not previously served as either a Commissioner or Mayor-Commissioner shall not be considered for purposes of term limits.

(5) Service for purposes of term limits shall be determined as of the time the person would take office.

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

PART I - CHARTER
ARTICLE VI. - ELECTIONS

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

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ARTICLE VI. - ELECTIONS

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 VI. – ELECTIONS
CHARTER REVIEW BOARD’S AUGUST PROPOSED CHANGES
CLEAN VERSION

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, 2014, and every four (4)¹ years thereafter, a Mayor-Commissioner shall be elected at large 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, 2006.² 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 Commissioner Seat 3 and Town Commissioner Seat 4, each elected at large.³ 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 candidates receiving the most votes for each seat shall be elected, and shall serve a term of four (4) 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.⁴
- (5) In the event no candidate qualifies for election for any designated Town Commission seat within the first seven (7)⁵ calendar days of the qualifying period, then a vacancy shall be declared and filled in accordance with this Charter.

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

No later than the second regularly scheduled Town Commission meeting to occur following each regular election, one (1) member of the Town Commission may be designated, by resolution, as Vice Mayor to

¹ The Charter Review Board recommended that the Town Commission should determine matters of transition and applicability related to the change of the length of the mayoral term, and decide whether to change the maximum number of terms from three to two.

² The Charter Review Board deleted language creating the residential electoral districts. Leaving in this language preserves distinct electoral seats, rather than creating a situation where all candidates run in a group and the top two vote getters are selected. The Board recommended that the Town Commission should determine matters of transition and applicability related to the deletion of the residential electoral district requirement, so no language is included addressing those issues. If the Town Commission decides to move forward with this proposal, and the voters approve it, the ordinance creating the districts should be repealed.

³ Added language mirrors that in Section (2), and appears to be an inadvertent omission.

⁴ If the residential electoral districts are not eliminated, the Board alternatively recommended that the current section (5) (deleted from this version) be revised to (a) remove the requirement for a study, and (b) adopt a standard that the districts be of comparable population, compact, proportional, and logically related to the natural internal boundaries of the neighborhoods within the Town.

⁵ Pursuant to state law, the qualifying period is seven days, not ten days. See Chapter 2012-253, Laws of Florida.

ARTICLE VI. – ELECTIONS
CHARTER REVIEW BOARD’S AUGUST PROPOSED CHANGES
CLEAN VERSION

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.

- (1) 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.
- (2) No person may be a candidate for Commissioner, nor may be appointed to fill a vacancy as a Commissioner, if that person has served during both of the two preceding consecutive Commission terms for that seat as a Commissioner or a Mayor-Commissioner or both, without a two year break in service.
- (3) No person may be a candidate for Mayor-Commissioner, nor may be appointed to fill a vacancy as the Mayor-Commissioner, if that person has served during each of the three preceding consecutive Mayor-Commissioner terms as a Mayor-Commissioner.
- (4) Service of one year or less of a term by a person who had not previously served as either a Commissioner or Mayor-Commissioner shall not be considered for purposes of term limits.
- (5) Service for purposes of term limits shall be determined as of the time the person would take office.

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 _____. 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.

ARTICLE VI. – ELECTIONS
CHARTER REVIEW BOARD’S AUGUST PROPOSED CHANGES
CLEAN VERSION

(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;⁶
- (3) Is convicted of a felony while in office;

⁶ The Board decided to discuss this part of the Charter further at the October meeting, after reviewing the potential penalties provided by state law and County code for such offenses. Those penalties were separately provided. For your information, there is a question on the November 2012 ballot for Miami-Dade County changing a similar provision of that County's charter, to remove the penalty of forfeiture of office for a violation of that County Charter's Citizen's Bill of Rights, which contains ethics regulations.

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- (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.

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The Commissioner or Mayor-Commissioner elected to fill the vacancy at any special election shall serve only the unexpired term of the Commissioner of 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.

Sec. 6.10. - Vacancy in candidacy for Mayor-Commissioner or Commissioner.⁷

(a) Withdrawal. A candidate for Mayor-Commissioner or Commissioner may withdraw at any time prior to the election by filing a sworn, executed statement of withdrawal with the Town Clerk.

(b) Effect of death, withdrawal or removal where candidate remains on the ballot.

(1) Supplemental qualifying period.

(i) If the death, withdrawal or removal from the ballot of a qualified candidate or candidates for office following the end of the qualifying period leaves less than two candidates for that office, and at least twenty-five (25) days remain before the election, the qualifying period for that office shall be reopened for five (5) days. The supplemental qualifying period shall begin on the day following the day that the vacancy occurs. Notice of the supplemental qualifying period shall be posted by the Town Clerk.

(ii) If fewer than twenty-five (25) days remain before the election, no supplemental qualifying period shall be provided. The remaining candidate shall be declared elected

⁷ Section 166.031(6), Florida Statutes, requires that municipalities create a procedure for this situation. All other aspects of this process are in the Town Charter, and so a procedure should be added here. This language is based on a review of other Broward County charters. The major distinction is the treatment of a late vacancy: this language deems the remaining candidate elected, while some provisions trigger a special election to fill a late vacancy. The time frames also vary.

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and no election shall be held for that office.⁸

(2) Changes in ballot. The name of any qualified candidate who has withdrawn, died or been removed from the ballot shall not be printed on the ballot. If the ballot cannot be changed, any votes for that candidate shall be null and void. All candidates qualified during a supplemental qualifying period shall be placed on the ballot along with the remaining candidate, if possible.

(3) Treatment of any remaining candidate. Where a single candidate remains for an office, the remaining candidate for that office shall not be required to re-qualify for election or pay a second qualifying fee. The remaining candidate shall not be declared an unopposed candidate by the Town Clerk unless no additional candidate qualifies for election during the supplemental qualifying period. If declared unopposed, the remaining candidate shall be declared elected.

(c) Effect of death, withdrawal or removal where no candidate remains on the ballot. Should a vacancy in candidacy leave no candidate remaining for an office after the conclusion of the qualifying period and any supplemental qualifying period but before the election, the resulting vacancy shall be handled as provided in Section 6.8 of the Charter.

⁸ If the Board decides to proceed with these changes, we need to coordinate this language with the Supervisor of Elections. The dates in other codes and charters vary greatly.

ARTICLE XII. - BROWARD COUNTY OFFICE OF INSPECTOR GENERAL

Sec. 12.01. - Broward County Office of Inspector General.

Sec. 12.01. - Broward County Office of Inspector General.

A. Created and Established.

- (1) The Broward County Office of Inspector General (the "Office") is created to investigate misconduct and gross mismanagement.
- (2) For purposes of this Charter provision, misconduct is defined as any violation of the state or federal constitution, any state or federal statute or code, any county or municipal ordinance or code; or conduct involving fraud, corruption, or abuse.
- (3) For purposes of this Charter provision, gross mismanagement is defined as the material waste or significant mismanagement of public resources.
- (4) The Office shall be headed by an Inspector General. The organization and administration of the Office shall be independent to assure that no interference or influence external to the Office affects the objectivity of the Office.
- (5) Consistent with its approved budget, the Inspector General shall have the power to employ personnel as deemed necessary for the efficient and effective administration of the Office.

B. Functions, Authority, and Powers.

- (1) The authority of the Inspector General shall extend only over the following:
 - (a) All elected and appointed officials ("Officials") and employees ("Employees") of the Charter Government of Broward County ("County") and of all municipalities, including any city, town, or village duly incorporated under the laws of the state within Broward County ("Municipalities"); and
 - (b) All entities and persons (other than employees of the County or any Municipality) that provide goods or services to the County or any Municipality under contract for compensation ("Providers"), but solely with respect to the provision of such goods or services.
- (2) The Inspector General shall commence an investigation if good cause exists that any Official, Employee, or Provider has engaged in misconduct or gross mismanagement.
- (3) The Inspector General may find good cause on his or her own initiative or based on a signed, verified complaint (as described below) stating allegations that, if true, would constitute misconduct or gross mismanagement.
- (4) In addition to meeting the requirements of paragraph (3) above, a complaint may only serve

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as a basis for a good cause finding if it is signed by an identified person who verifies the contents of the complaint by including the following statement: "Under penalties of perjury, I declare that I have read the foregoing complaint and that based on my personal knowledge the facts stated in it are true." The Inspector General shall develop a complaint form consistent with the requirements of this paragraph.

(5) Any complaint received by the Office that is made against a candidate for elected office, and received within sixty (60) days of the date of the election, shall be held in abeyance until the election is determined, or, if the complaint is made within sixty (60) days of a primary election, until the general election is determined if the individual against whom the complaint was filed remains a candidate in the general election.

(6) In connection with an investigation, the Inspector General shall have the power to subpoena witnesses, administer oaths, and require (through subpoena or otherwise) the production of documents and records.

(7) As part of any investigation, the Inspector General may audit any program, contract, or the operations of any division, department, or office of the County and Municipalities. The Inspector General may also audit the operations or performance of any Provider relating to the Provider's contract for compensation with the County or any Municipality.

(8) The auditing referenced in paragraph (7) above shall be performed with the cooperation of the County Auditor. When conducting audits, the Inspector General shall have free and unrestricted access to Employees, Officials, records, and reports, and to the records and employees of Providers with respect to any Provider's contract for compensation with the County or any Municipality. The Inspector General may require Officials, Employees, and Providers to provide oral and written reports and to produce documents, files, and other records.

(9) All Officials, Employees, and Providers shall fully cooperate with investigations conducted by the Inspector General.

(10) As part of an investigation, the Inspector General shall interview all persons implicated by a complaint, and all persons implicated during the Inspector General's investigation.

(11) As part of an investigation, the Inspector General (or his or her designee) may attend all duly-noticed local government meetings relating to the procurement of goods or services, and may pose questions and raise concerns consistent with the functions, authority, and powers of the Inspector General.

(12) To the full extent provided under applicable law, including under Subsection 112.3188(2), Florida Statutes, as amended, the Inspector General's records related to active investigations shall be confidential and exempt from disclosure.

(13) In any case in which the Inspector General determines that a person has filed a complaint with a malicious intent to injure an Official's, Employee's, or Provider's reputation with baseless, spurious, or false accusations, or with a reckless disregard for the truth of the allegations, the complainant shall be liable for all costs incurred by the Inspector General in the investigation of the complaint. Upon such a determination, the Inspector General shall issue a demand letter for reimbursement of such costs, which shall be sent to the complainant by certified mail and presumed received three (3) days after mailing. If the complainant objects in writing to the demand for reimbursement of costs within thirty (30) days of receipt of the demand, the matter shall be

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referred by the Inspector General to a Hearing Officer (as provided below) for adjudication, including a determination of whether the criteria for the imposition of such costs have been met. If there is no timely objection, the Inspector General's determination shall be deemed to be final, conclusive, and binding. Once final, the determination for reimbursement of costs may be enforced by the Inspector General by filing an appropriate action in a court of competent jurisdiction.

(14) An Official or Employee who prevails in full in any administrative hearing in connection with a complaint filed with the Office of Inspector General shall be entitled to reimbursement of all reasonable attorney's fees and costs incurred in the defense against such complaint to the full extent the Official or Employee would be entitled to reimbursement in connection with a complaint filed under the Florida Code of Ethics for Public Officers and Employees.

C. Referral and Prosecution of Misconduct.

(1) After completing his or her investigation and determining that there is probable cause to believe misconduct has occurred, the Inspector General shall notify the appropriate civil, criminal, or administrative agencies charged with enforcement related to the alleged misconduct. If no civil, criminal, or administrative agency has jurisdiction over the alleged misconduct, the matter shall be referred to a Hearing Officer (as provided below) for quasi-judicial enforcement proceedings.

(a) The Inspector General shall refer findings of alleged criminal offenses to the Office of the State Attorney and/or the Office of the United States Attorney.

(b) The Inspector General shall refer findings of alleged civil offenses involving a violation of Chapter 112, Part III, Florida Statutes, to the Florida Commission on Ethics.

(c) The Inspector General shall refer findings of alleged violations of The Florida Election Code, Chapters 97 through 106, Florida Statutes, to the Florida Elections Commission (except as to alleged violations that may be criminal in nature, which shall be referred to the Office of the State Attorney).

(d) The Inspector General shall refer other alleged offenses to the appropriate civil, criminal, or administrative agency that would have jurisdiction over the matter.

(2) Any civil infraction not covered by paragraphs (a) through (d) above shall be stated in a complaint brought in the name of the Inspector General. The Inspector General may retain legal counsel not employed by the County to represent the Inspector General in prosecuting a complaint. The Inspector General shall serve the complaint on the Official, Employee, or Provider accused of misconduct in any manner deemed proper service under the Florida Rules of Civil Procedure. Concurrently with such service, the Inspector General shall refer the complaint to a Hearing Officer randomly chosen from the panel of Hearing Officers selected by the Selection-Oversight Committee (as described below). The accused person or entity shall file a response to the complaint within thirty (30) days after service.

(3) Except to any extent inconsistent with any provision of this section, the Florida Rules of Civil Procedure and Florida Evidence Code, as amended, shall apply to all matters referred to a Hearing Officer under paragraph (2) above.

(4) In addition to all other authority granted in this Section, the Hearing Officer shall have the authority to:

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- (a) Issue scheduling orders, case-management orders, and briefing schedules;
- (b) Issue notices of hearings;
- (c) Hold hearings on any procedural or substantive matters related to the complaint;
- (d) Administer oaths and affirmations;
- (e) Issue subpoenas authorized by law, including those requiring the attendance of witnesses and the production of documents and other items which may be used as evidence;
- (f) Rule upon motions presented and offers of proof and receive relevant evidence;
- (g) Issue appropriate orders to effectuate discovery;
- (h) Regulate the course of the hearing;
- (i) Dispose of procedural requests or similar matters; and
- (j) Enter any order, consistent with his or her authority, to carry out the purposes of this Charter provision.

(5) Within thirty (30) days after completion of the hearing process, the Hearing Officer shall issue a final order determining whether the Inspector General has proved the allegations of the complaint by a preponderance of the evidence. The final order shall contain detailed findings of fact and conclusions of law. If the Hearing Officer determines that misconduct has occurred, the final order shall specify the sanction(s) imposed, if any. The Hearing Officer may impose any of the following sanctions:

- (a) Fines.
 - 1. An Official, Employee, or Provider determined to have committed misconduct shall be assessed a monetary fine of between two hundred and fifty dollars (\$250.00) and five thousand dollars (\$5,000.00) per violation.
 - 2. In determining the amount of the fine, the Hearing Officer shall consider:
 - a) The gravity of the violation;
 - b) Whether it was intentional; and
 - c) Whether it is a repeat offense.
 - 3. The Hearing Officer may determine that no fine shall be imposed upon making an affirmative, express finding that the violation was unintentional and de minimis.
 - 4. In addition to a fine, the Hearing Officer may order the Official, Employee, or Provider to pay restitution or to disgorge any sums wrongfully received (directly or indirectly) by that person or entity (or any related person or entity).
- (b) Public Reprimand/Censure. An Official or Employee who is found to have violated any provision of this Code may be subject to public reprimand or censure.

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(6) All orders issued by the Hearing Officer, when final, are subject to judicial review as provided by applicable law.

D. Reports and Recommendations.

(1) The Inspector General shall issue reports, including recommendations, in the following circumstances:

(a) At the conclusion of an investigation involving allegations of gross mismanagement; and

(b) At the conclusion of an investigation involving allegations of misconduct, if the Inspector General determines that a report will assist the County or any Municipality in preventing similar future misconduct. However, no report shall be issued if the Inspector General, in conjunction with the State Attorney or United States Attorney, determines that the issuance of such report may jeopardize a pending criminal investigation.

(2) The Inspector General shall issue all reports as follows:

(a) Upon conclusion of an investigation described in paragraph (1) above, the Inspector General shall issue a preliminary report containing findings and recommendations to the County or Municipality and to the Officials, Employees, or Providers implicated in the report. The recipients of the preliminary report shall have thirty (30) days to respond to the preliminary report's findings and recommendations. The time to respond to a preliminary report may be extended by the Inspector General.

(b) Within thirty (30) days after the response deadline, the Inspector General shall issue a final report containing findings and recommendations to the County or Municipality and to the Officials, Employees, and Providers implicated in the report. All responses to the Inspector General's preliminary report shall be considered in preparing the final report, and shall be appended to the final report.

(3) The Inspector General may follow up on any recommendations he or she makes to determine whether such recommendations have been implemented.

(4) The Inspector General shall establish policies and procedures to monitor the costs of investigations undertaken.

E. Minimum Qualifications, Selection, and Term of Office.

(1) Minimum qualifications. The Inspector General shall be a person who:

(a) Has at least ten (10) years of experience in any one or a combination of the following fields:

(i) as a federal, state, or local law enforcement officer or official;

(ii) as a federal or state court judge;

(iii) as a federal, state, or local government attorney with expertise in investigating fraud, mismanagement, and corruption;

(iv) as an inspector general, certified public accountant, or internal auditor;

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- (v) as a person with progressive supervisory experience in an investigative public agency similar to an inspector general's office;
 - (vi) as a person who has managed and completed complex investigations involving allegations of fraud, theft, deception, or conspiracy; or
 - (vii) as a person who has demonstrated an ability to work with local, state, and federal law enforcement agencies and the judiciary.
- (b) Has, at a minimum, a four-year degree from an accredited institution of higher learning.
 - (c) Has experience in the management of a private or public entity.
 - (d) Has not been employed by the County or any Municipality during the two (2) year period immediately prior to selection.
 - (e) Has not been found guilty of or entered a plea of nolo contendere to any felony, or any misdemeanor involving a breach of public trust.
- (2) Selection.
- (a) Responsibility for selecting the Inspector General shall be vested solely with the Inspector General Selection-Oversight Committee ("Selection-Oversight Committee").
 - (b) The Selection-Oversight Committee shall be comprised of the following five (5) individuals, none of whom shall be an elected official:
 - (i) One person appointed by the Broward League of Cities;
 - (ii) One person appointed by the State Attorney for the Seventeenth Judicial Circuit ex officio, or by his or her designee if the State Attorney is unable or unwilling to appoint;
 - (iii) One person appointed by the Public Defender for the Seventeenth Judicial Circuit ex officio, or by his or her designee if the Public Defender is unable or unwilling to appoint;
 - (iv) The United States Attorney for the Southern District of Florida, or his or her designee if the United States Attorney is unwilling or unable to serve; and
 - (v) One person selected by affirmative vote of at least three (3) members of the Selection- Oversight Committee referenced above.
 - (c) The appointments to the Selection-Oversight Committee under (b)(i), (ii), and (iii) above, and the United States Attorney's agreement to serve or his or her designation under (b)(iv), shall be made within sixty (60) days of the effective date of this Charter provision.
 - (d) The selection under (b)(v) shall be made within fifteen (15) days thereafter.
 - (e) If, for any reason, a timely appointment, agreement to serve, or designation under (b)(i), (ii), (iii), or (iv) does not occur, the members of the Selection-Oversight Committee shall fill the vacant position by affirmative vote of at least three (3) members.
 - (f) Any appointee or designee may be removed and replaced at any time by the appointing

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or designating authority.

(g) Except as referenced in (e) above, any vacancy on the Selection-Oversight Committee shall be filled by the appointing or designating authority within thirty (30) days.

(h) The members of the Selection-Oversight Committee shall elect a chairperson who shall preside over the actions of the Committee. The Selection-Oversight Committee shall establish its own rules of procedure.

(i) The Human Resources Division of Broward County shall provide staffing to the Selection- Oversight Committee for the purpose of filling the position of Inspector General.

(j) Within thirty (30) days after the effective date of this Charter provision, the Human Resources Division of Broward County shall solicit qualified candidates for the position of Inspector General. Within one hundred and twenty (120) days after the effective date of this Charter provision, the Selection-Oversight Committee shall select an Inspector General.

(k) In addition to its other responsibilities, the Selection-Oversight Committee shall select qualified Hearing Officers to preside over hearings in connection with those matters referred to Hearing Officers as provided above.

(l) In selecting the Inspector General and qualified Hearing Officers, the Selection-Oversight Committee shall take into consideration the rich diversity of the County's residents.

(3) Term. The Inspector General shall be appointed for a term of four (4) years, commencing from the time the Inspector General and the County enter into a contract. The Selection-Oversight Committee shall convene at least six (6) months prior to the end of the four-year contract term to determine whether to renew the contract of the Inspector General or to solicit new candidates.

(4) Contract. Once the Selection-Oversight Committee selects an Inspector General, the Committee shall notify the Broward County Administrator and County Attorney. The Director of the Broward County Human Resources Division, with the assistance of the Office of the County Attorney, shall promptly negotiate a contract of employment with the Inspector General substantially consistent with the terms included in contracts of other contractual employees of Broward County.

(5) Removal. The Inspector General may be removed based on specified charges of the following: neglect of duty, abuse of power or authority, discrimination, or ethical misconduct. Removal shall be considered at a duly-noticed public hearing of the Selection-Oversight Committee. The Inspector General shall be provided sufficient advance notice of the reasons for the possible removal, and shall be given an opportunity to be heard on the charges.

(6) Vacancy. In the event of a vacancy in the position of Inspector General, the Chairperson of the Selection- Oversight Committee shall appoint an interim Inspector General until such time as a successor Inspector General is selected and assumes office. The Interim Inspector General shall meet all qualifications provided herein for the Inspector General.

F. Annual Report.

(1) The Inspector General shall annually publish a written report to the County and the Municipalities detailing the activities of the Office of Inspector General. The annual report of the

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Inspector General shall, promptly after it is completed, be posted on a website established by the Inspector General, and shall be presented to the Selection-Oversight Committee.

(2) The Selection-Oversight Committee shall convene within sixty (60) days of its receipt of the annual report to consider the report and the performance of the Inspector General. Other meetings of the Committee may be set upon the request of any member of the Committee or at the request of the Inspector General.

G. Financial Support and Budgeting.

(1) The Inspector General's budget is subject to approval of the County Commission.

(2) Within sixty (60) days of selection, the Inspector General shall submit a proposed budget to the County Commission covering the remainder of the County's fiscal year in which the Inspector General is selected. In each subsequent County fiscal year, the Inspector General shall submit a proposed budget to the County Commission in accordance with the County's regular budget process.

(3) Each proposed budget shall include a reasonable estimate of operating and capital expenditures of the Office of Inspector General, funds to enable Hearing Officers to be retained, and funds to enable the Inspector General to retain outside counsel to represent the Inspector General in connection with complaints referred to a Hearing Officer.

(4) The County Commission shall provide sufficient funds for the Inspector General to carry out his or her duties in an efficient manner.

(5) In order to fund the Office of Inspector General, the County may impose a fee of one quarter of one percent (0.25%) on the total value of each County contract entered into after the effective date of this Charter amendment.

(6) In the event funds raised from such contract fees in any County fiscal year are insufficient to fund the Office of Inspector General, the County Commission may supplement such funding from the County's general revenue fund.

H. Conflict. Any County or Municipal ordinance or resolution that creates or has created an Office of Inspector General, or an officer, employees, or agents that function substantially the same as the Office of Inspector General as provided herein, shall be deemed inconsistent with and preempted by this Charter provision.

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IN STRIKE-THROUGH AND UNDERLINE FONT

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, 2008~~14~~, and every four (4)¹ ~~two (2)~~ years thereafter, a Mayor-Commissioner shall be elected at large for a term of four (4) ~~two (2)~~ 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, 2006.² ~~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 Commissioner Seat 3 and Town Commissioner Seat 4, each elected at large³. [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 (4) 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~~

¹ The Charter Review Board recommended that the Town Commission should determine matters of transition and applicability related to the change of the length of the mayoral term, and decide whether to change the maximum number of terms from three to two.

² Leaving in this language preserves distinct electoral seats, rather than creating a situation where all candidates run in a group and the top two vote getters are selected. The Charter Review Board indicated that the Town Commission should determine matters of transition and applicability related to the deletion of the residential electoral district requirement, so no language is included addressing those issues.

³ Added language mirrors that in Section (2), and appears to be an inadvertent omission.

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strictly.⁴

~~(6)~~ (5) In the event no candidate qualifies for election for any designated Town Commission seat within the first seven ~~(7) ten~~ ~~(10)~~⁵ 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.~~⁶

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

No later than ~~On~~ the second regularly scheduled Town Commission meeting to occur 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.

(1) 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.

(2) No person may be a candidate for Commissioner, nor may be appointed to fill a vacancy as a Commissioner, if that person has served during both of the two preceding consecutive Commission terms for that seat as a Commissioner or a Mayor-Commissioner or both, without a two year break in service.

(3) No person may be a candidate for Mayor-Commissioner, nor may be appointed to fill a vacancy as the Mayor-Commissioner, if that person has served during each of the three preceding consecutive Mayor-Commissioner terms as a Mayor-Commissioner.

(4) Service of one year or less of a term by a person who had not previously served as either a Commissioner or Mayor-Commissioner shall not be considered for purposes of term limits.

⁴ If the residential electoral districts are not eliminated, the Board alternatively recommended that section (5) be revised to (a) remove the requirement for a study, and (b) adopt a standard that the districts be of comparable population, compact, proportional, and logically related to the natural internal boundaries of the neighborhoods within the Town.

⁵ Pursuant to state law, the qualifying period is seven days, not ten days. See Chapter 2012-253, Laws of Florida.

⁶ If the Town Commission decides to move forward with this proposal, and the voters approve it, the ordinance creating the districts should be repealed.

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(5) Service for purposes of term limits shall be determined as of the time the person would take office.

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

⁷ The extra lines appear to be a typographical error.

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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;**⁸
- (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

⁸ The Board decided to discuss this part of the Charter further at the October meeting, after reviewing the potential penalties provided by state law and County code for such offenses. Those penalties were separately provided. For your information, there is a question on the November 2012 ballot for Miami-Dade County changing a similar provision of that County's charter, to remove the penalty of forfeiture of office for a violation of that County Charter's Citizen's Bill of Rights, which contains ethics regulations.

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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 of 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

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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.

Sec. 6.10. - Vacancy in candidacy for Mayor-Commissioner or Commissioner.⁹

(a) Withdrawal. A candidate for Mayor-Commissioner or Commissioner may withdraw at any time prior to the election by filing a sworn, executed statement of withdrawal with the Town Clerk.

(b) Effect of death, withdrawal or removal where candidate remains on the ballot.

(1) Supplemental qualifying period.

(i) If the death, withdrawal or removal from the ballot of a qualified candidate or candidates for office following the end of the qualifying period leaves less than two candidates for that office, and at least twenty-five (25) days remain before the election, the qualifying period for that office shall be reopened for five (5) days. The supplemental qualifying period shall begin on the day following the day that the vacancy occurs. Notice of the supplemental qualifying period shall be posted by the Town Clerk.

(ii) If fewer than twenty-five (25) days remain before the election, no supplemental qualifying period shall be provided. The remaining candidate shall be declared elected and no election shall be held for that office.¹⁰

(2) Changes in ballot. The name of any qualified candidate who has withdrawn, died or been removed from the ballot shall not be printed on the ballot. If the ballot cannot be changed, any votes for that candidate shall be null and void. All candidates qualified during a supplemental qualifying period shall be placed on the ballot along with the remaining candidate, if possible.

(3) Treatment of any remaining candidate. Where a single candidate remains for an office, the remaining candidate for that office shall not be required to re-qualify for election or pay a second qualifying fee. The remaining candidate shall not be declared an unopposed candidate by the Town Clerk unless no additional candidate qualifies for election during the supplemental qualifying period. If declared unopposed, the remaining candidate shall be declared elected by operation of law.

⁹ Section 166.031(6), Florida Statutes, requires that municipalities create a procedure for this situation. All other aspects of this process are in the Town Charter, and so a procedure should be added here. This language is based on a review of other Broward County charters. The major distinction is the treatment of a late vacancy: this language deems the remaining candidate elected, while some provisions trigger a special election to fill a late vacancy. The time frames also vary.

¹⁰ If the Board decides to proceed with these changes, we need to coordinate this language with the Supervisor of Elections. The dates in other codes and charters vary greatly.

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(c) Effect of death, withdrawal or removal where no candidate remains on the ballot. Should a vacancy in candidacy leave no candidate remaining for an office after the conclusion of the qualifying period and any supplemental qualifying period but before the election, the resulting vacancy shall be handled as provided in Section 6.8 of the Charter.