

**Town of Lauderdale-By-The-Sea**  
**Charter Review Board Meeting**

**Agenda**

Tuesday, June 3, 2025

6:00 PM



Jarvis Hall 4505 N. Ocean Drive  
[www.Lauderdalebythesea-fl.gov](http://www.Lauderdalebythesea-fl.gov)

**LAUDERDALE-BY-THE-SEA TOWN COMMISSION**

# Charter Review Board Meeting

Tuesday, June 3, 2025, 6:00 PM  
Jarvis Hall 4505 N. Ocean Drive, 33308

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1. **CALL TO ORDER**
  2. **PLEDGE OF ALLEGIANCE TO THE FLAG**
  3. **APPROVAL OF MINUTES**
    - 3.a. Approval of Minutes for May 6, 2025.
  4. **PUBLIC COMMENTS**
  5. **NEW BUSINESS**
    - 5.a. Discussion Of Article 7
  6. **OLD BUSINESS**
    - 6.a. Review Of Charter Review Board Recommendations
  7. **UPDATES/BOARD MEMBER COMMENTS**
  8. **ADJOURNMENT**
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THE TOWN OF LAUDERDALE-BY-THE-SEA WILL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES NECESSARY TO AFFORD INDIVIDUALS AN EQUAL OPPORTUNITY TO PARTICIPATE IN MEETINGS OF THE TOWN COMMISSION. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATUTE 286.26, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING

SHOULD CONTACT THE TOWN CLERK NO LATER THAN TWO (2) DAYS PRIOR TO THE MEETING AT (954) 640-4200 FOR ASSISTANCE.

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE TOWN COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSES MAY NEED TO ENSURE THAT A VERBATIM RECORDING OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

#### **PROCEDURES FOR PUBLIC COMMENTS:**

Public Comments may address issues that are not on this meeting's agenda, but should relate to the business of the Town, and should not contain personal attacks. If your comment requires follow up, the Town Manager will have a staff person respond to your concerns, and will advise us of the outcome.

The Town Clerk will read off the names of those who have signed up to speak. When your name is called, please come to the podium, state your name for the record, and indicate whether you are a Town resident. Do not state your address. You have up to three minutes to make your comments, but there is no requirement to use the entire time. If you wish to address a particular Commissioner or member of Town Administration, please do so by use of their title.

If you wish to approach the Commission dais to hand out a document or for some other reason, please request permission and state your reason for doing so. All documents to be provided to the Commission should be handed to the Town Clerk for distribution.

These procedures have been developed to assure that the Town Commission meeting time is efficiently used, and that meetings are conducted in a polite and respectful manner. More information on the decorum rules for Town Commission meetings is available in Section 2-23 of the Town Code of Ordinances.

#### **INVOCATION:**

The Invocation before each Town Commission meeting is a voluntary service of a private citizen, offered to serve the spiritual needs of the members of the Town Commission and solemnize the meeting. It is not intended to be an opportunity to advance or disparage one faith or belief over another. The views expressed in the Invocation have not been previously reviewed by the

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Town and do not necessarily represent the beliefs of any Town employee or official. No person is required to be present at or participate in the Invocation, and the decision whether to be present or participate in the Invocation will not affect any person's right to actively participate in the official business of the Town or obtain any benefit from the Town. The Town's written Invocation policy is available on its website, and upon written request to the Town Clerk.all static



## Agenda Item No: 3.a.

### Agenda Item Report

**Meeting Date:** June 3, 2025

**Submitted By:** Katrina Adler, Town Clerk

**Submitting Department:** Administration

**Item Type:** Action Item

**Agenda Section:** APPROVAL OF MINUTES

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**Subject Title:** Approval of Minutes for May 6, 2025.

**Explanation:** Draft Minutes available for approval for May 6, 2025.

**Recommendation:**

**Exhibits:**

1. 5-6-25 Draft Minutes



**DRAFT**  
**TOWN OF LAUDERDALE-BY-THE-SEA**  
**TOWN COMMISSION**  
**Jarvis Hall**  
**4505 N. Ocean Drive**  
**CHARTER REVIEW BOARD MEETING**  
**Jarvis Hall**  
**4505 N. Ocean Drive**  
**Tuesday, May 6, 2025**  
**6:00 PM**

**1. CALL TO ORDER**

The Charter Review Board for the Town of Lauderdale-By-The-Sea was called to order at 6:10 p.m. Board members present were Vice Chair Brian Kuszmar, Jacquelyn Bonanni-Rubino, Robert Fleishman, and Kym Miranda. Also present were Town Attorney Susan L. Trevarthen and Board Clerk Megan Small.

**2. PLEDGE OF ALLEGIANCE TO THE FLAG**

**3. APPROVAL OF MINUTES**

**a. Approval of Minutes for April 1, 2025.**

**Motion** made, and duly seconded, to approve the minutes as written. In a voice vote, the **motion** passed unanimously.

**4. PUBLIC COMMENTS**

At this time Vice Chair Kuszmar opened public comment, which he closed upon receiving no input.

**5. NEW BUSINESS**

**a. Discussion of Article 6**

Judelande Jeune, associate of the Town Attorney, stated that Article 6 addresses elections. For most Florida municipalities, this Article establishes qualifications and filing requirements for candidates for local office. It also describes the process for addressing election-related vacancies. Some Charters also include language stating that elections shall be non-partisan in nature, specify the durations and commencement of terms of

elected officials, and include provisions to ensure compliance with applicable state election laws and procedures.

Section 6.1 establishes that the Mayor/Commissioner is elected for a two-year term and that voting is conducted at large based on the Town's northern and southern districts. Section 6.2 states that by the Commission shall designate a Vice Mayor, who will serve if the Mayor is not available.

Section 6.3 includes qualifications for Commissioners, which include the requirement that the candidate must be a Town citizen. While the current language refers to a six-month residency requirement, the Charter Review Board (CRB) has previously voted to change this requirement to one year. A candidate must be a registered voter under Florida law.

Section 6.3 also clarifies that Commissioners may not run for or be appointed to the same Commission seat if they have already served in both of the two prior consecutive four-year terms for that seat, unless they take a two-year break from holding office.

Section 6.4 includes qualifications for candidates including the requirement to take an oath and pay a qualification fee in accordance with state law. This language is included in most charters throughout the state of Florida.

Sections 6.5 through 6.10 include provisions addressing vacancy procedures. Section 6.5 defines that vacancies may occur due to death, resignation, lawful removal, or forfeiture. Forfeiture must be declared by the remaining Commission members. Section 6.6 outlines grounds for forfeiture, which include loss of qualifications, ethical violations, felony convictions, missing four consecutive meetings without excuse, or being unable to perform duties for more than three months.

Section 6.7 provides the process for public hearing of a forfeiture case. The Commissioner may challenge the forfeiture, and a unanimous vote of the Commission is required in order for forfeiture to take place.

Section 6.8 details how vacancies are filled, depending upon the remaining duration of the term. Section 6.9 outlines the scenario for extraordinary vacancies, in which case Florida's Governor may appoint an interim Commission if all members are removed. Section 6.10 addresses candidacies for elected office, specifying that if a candidate withdraws, dies, or is removed post-qualification and fewer than two candidates remain, the remaining candidate is automatically elected.

Attorney Jeune recalled that topics previously requested by the CRB for discussion include the removal of residential district requirements and changing the Mayor's term of office from two to four years.

At this time Vice Chair Kuszmar opened public comment, which he closed upon receiving no input.

Vice Chair Kuszmar commented that when the Town's districts were originally established, the Town had recently annexed a section of condominiums near Sea Ranch Lakes. He pointed out, however, that this was a long time ago, and he no longer saw a need for establishing districts. The Vice Chair suggested that if the districts remain, they should be more closely defined.

Town Attorney Susan Trevarthen advised that the Board members should discuss the residential districts to determine whether or not there is consensus to remove this concept. Should they decide to eliminate districts, the Commission seats would remain but would be described differently. This could also mean that all five Commissioners could live within the same area of the community. She recommended considering the implications of removing the residential districts.

Should the Board decide to retain the districts, Town Attorney Trevarthen also recommended that they review the Charter's standard for where the district lines are drawn.

Attorney Jeune noted that the Board members received a memorandum from Staff presenting potential pros and cons of an at-large system. The majority of Broward County municipalities operate at-large districts, and some include a combination of at-large and district systems.

Vice Chair Kuszmar observed that larger municipalities are likely to have a need for different districts and areas; however, as Lauderdale-By-The-Sea is a small town, he was in favor of the cohesive nature of at-large voting. He requested input from the other Board members.

Ms. Miranda advised that while she had previously expressed interest in eliminating the Town's districts, upon further consideration she had determined that there are different needs for residents of the north, south, and central portions of the Town. She was currently in favor of retaining representation that is familiar with these needs.

Ms. Bonanni-Rubino agreed that there may be different concerns for residents in the Town's different districts, which could lead to dissatisfaction among those residents. Mr. Fleishman also agreed, pointing out that the needs of the northern district may be different from the needs of the southern district. He was also in favor of retaining the districts so the Commissioners that represent them can advocate for those residents' concerns.

Vice Chair Kuszmar advised that he had proposed elimination of the districts due to the small size of the community, as the districts could limit individuals' abilities to run for local office. He also expressed confidence that no Commissioners would take action that is contrary to the needs of residents in the district they do not represent. Mr. Fleishman reiterated that the districts allow for better understanding of the Town's neighborhoods.

Town Attorney Trevarthen stated that a motion and vote are not necessary if there is Board consensus, although the Board may wish to formalize some decisions with a vote. It was determined that they would proceed at this time with consensus to retain the Town's districts.

Town Attorney Trevarthen referred the Board members to a note in their backup materials addressing Section 6.1, explaining that the Charter currently requires the Town to hire an entity to perform a study that would develop and revalidate the districts' boundaries over time. The principles established in this Section indicate that the districts should seek to reflect equal population, that their boundaries should be compact and logical, and that they generally avoid discrimination and problems with the policy of "one person, one vote."

Town Attorney Trevarthen continued that in a previous incarnation, the CRB reached out to a representative of Florida Atlantic University (FAU) to review the Town's district boundaries. The representative determined that it was not possible to adjust the boundaries in a manner that would reflect the principles mentioned above. The Sea Ranch Lakes condominium complex is located in the center of the Town, which means a great many votes are located there. Allocating the complex to one district or the other would create a significant imbalance in population, and dividing the complex residents' votes would be contrary to the principles involved in districting, as all the residents of the complex clearly have a community interest.

Once this dilemma became clear, the Commission at that time determined that a redistricting study would not be necessary. Town Attorney Trevarthen concluded that there is now an appropriate moment for the CRB to consider whether or not to retain the paragraph addressing district boundaries, or to substitute language clarifying those boundaries.

Town Attorney Trevarthen explained that if the Town wished to retain its districts, this can be done two different ways:

- Drawing a boundary line for the districts
- Retaining current language which the Town is aware it cannot satisfy

Town Attorney Trevarthen continued that if the Board wishes to draw a boundary line, Staff can bring back additional information so the appropriate language may be refined. She pointed out that the existing boundary has been in place for many years.

Mr. Fleishman commented that many residents of the condominium complex's buildings are not registered voters within the Town, as they reside elsewhere for a portion of the year. He estimated there are approximately 250 to 300 votes in the buildings. He also pointed out that not all of the residents within the condominium complex exercise their right to vote. He concluded that it was unlikely the condominium residents' votes could control an election. Vice Chair Kuszmar added, however, that the condominium's demographics may be subject to change.

Town Attorney Trevarthen reiterated that if the Board wishes to explore a process not reflected in the current Charter language, which is difficult to satisfy, Staff can bring additional information, including a map of the district boundary as well as voting data. She also noted that a bloc of 250 votes is a significant number in the Town, as there are few communities with a similar population. In addition, if the districts are redrawn, they would not be based upon the number of residents who vote in an election, but by the number of eligible and registered voters.

Vice Chair Kuszmar observed that demographic and other changes to a community in either district could have an effect on Town policies. He explained that he had been in favor of eliminating districts because the individual Town Commissioners are not working solely for their own districts, although they may have expertise on concerns and conditions in those districts.

Ms. Miranda requested that this Item be continued at a subsequent meeting so Staff can provide additional language and review of geographical areas to consider. Town

Attorney Trevarthen confirmed that the Board members provided consensus to retain the districts, which would be helpful in further discussion, and were also open to reconsidering how those districts are drawn.

Town Attorney Trevarthen continued that at the April 2025 meeting, Board Chair Chris Vincent had requested discussion of possibly lengthening the mayoral term. At present, the Town provides for three two-year terms. Chair Vincent had suggested a maximum of two four-year terms for a Mayor, which would be the same as the Commissioners' terms. The only practical difference would be that in one election cycle there would be two offices on the ballot, while in the alternating cycle there would be three offices, including that of Mayor. Ms. Jeune further clarified that this proposal would also extend the 14 years' cycle to 16 years, which would require an accompanying revision of language.

Mr. Fleishman commented that the reason behind the three two-year terms was that the Town had previously had a Mayor who had not wished to leave office after a lengthy period of service. When a new Mayor and Commission were elected, they implemented term limits for the office of Mayor.

Mr. Fleishman continued that another consideration was to allow the Mayor the same amount of time as the Commissioners so they would not have to run for office every two years, which can be costly and time-consuming. He concluded that he was in favor of ensuring the Mayor has the same amount of time as the Commissioners.

Ms. Miranda agreed that this change would provide greater consistency and lessen the burden on both mayoral candidates and their constituents. Ms. Bonanni-Rubino agreed as well.

The Board members agreed by unanimous consensus to propose a four-year mayoral term, with a maximum of two terms.

Town Attorney Trevarthen asked if this proposal would be included in the full slate of CRB recommendations. The Board members also agreed to this by consensus.

Mr. Fleishman asked if this would mean a Mayor who has served three two-year terms would be allowed a fourth two-year term. Town Attorney Trevarthen replied that the Board's goal is to prepare potential questions that would be included on the November 2026 general election ballot. If this plan is followed, the current Mayor, for example, would be eligible to run for another term in 2026, as he would have just finished his first

two-year term in that office. Because the office of Mayor would be on the same ballot as the question regarding mayoral terms, the winner of that election would either get a two-year or four-year term, depending upon the outcome of the Charter question.

Town Attorney Trevarthen added that the ballot question could be written in a manner clarifying that, should the current Mayor run for reelection, his first two-year term would not prevent him from serving a second term of four years.

Attorney Jeune advised that there are two additional items for consideration under Article 6. One of these addresses language in Florida Statutes Chapter 50, which allows for legal advertisement and public notice to be published on a publicly accessible website. Section 6.7 of the Town's Charter currently requires that forfeiture hearings be published in a newspaper of general circulation. The Town has adopted an Ordinance which provides for notice on publicly accessible websites, but has not yet amended the Charter, as the CRB was not convened at that time. Lauderdale-By-The-Sea does not have a newspaper of general circulation.

Town Attorney Trevarthen clarified that the Town may continue to provide newspaper notice; however, it is presently mandated by the Charter. The suggestion is to consider removing the mandate.

Vice Chair Kuszmar requested clarification of the purpose of posting notice in a newspaper. Town Attorney Trevarthen explained that the question is specific to forfeiture of office by a Commissioner or Mayor. The written procedure documented in the Charter provides for these notices to ensure the general population is aware of the forfeiture hearing.

The Board members agreed by consensus to amend the Charter's language to remove the requirement for newspaper notice.

Attorney Jeune continued that Staff also recommends amending the Charter to explicitly include state law to govern municipal elections. This provides extra protections for Town personnel as well as how elections are conducted.

Town Attorney Trevarthen added that because there has been contention in other local governments regarding language which clarifies that state law governs local elections, her recommendation was to include this language in the Charter to ensure clarity. The Board members also agreed to this change by consensus.

## **6. OLD BUSINESS**

### **a. Review of Board Recommendations**

Town Attorney Trevarthen reviewed a list of all the items recommended by the Board thus far across multiple meetings:

- Section 3.3 and Article 6: change from a six-month to a 12-month residency requirement
- Lengthen the deadline for the Town's audit to nine months in compliance with Florida Statutes
- Address scriveners' errors regarding time frames in relation to initiatives and referenda
- Retain the Town's residential districts
- At the June 2025 meeting, review a map of the current district boundary and related information so the Board can fully understand what it would mean to adopt the existing boundary going forward
- Recommend two four-year terms for the Mayor and draft language so any prior service of a two-year term would not count against a Mayor's ability to serve two four-year terms
- Recommend more generic language regarding public notice of forfeiture hearings
- Recommend addition of a statement indicating that state election law governs local elections

Town Attorney Trevarthen confirmed that information on the district boundary would be provided at the June 2025 meeting, followed by discussion of Article 7. She noted that Article 7 includes three separate dimensions: land use, address and protections of the El Prado property, and advisory bodies.

## **7. UPDATES / BOARD MEMBER COMMENTS**

None.

## **8. ADJOURNMENT**

The meeting was adjourned at 6:58 p.m.



## Agenda Item Report

**Meeting Date:** June 3, 2025

**Submitted By:** Judelande Jeune, Town Attorney

**Submitting Department:** Legal

**Item Type:** Action Item

**Agenda Section:** NEW BUSINESS

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**Subject Title:** Discussion Of Article 7

### Explanation:

#### ARTICLE VII. – PLANNING AND ZONING

- **Introduction:** Many municipal charters do not have an article for planning and zoning. When there is one, such an article typically outlines the framework and authority for land use regulation within a city or town. While the specific content can vary depending on the municipality, such an article may supplement the statutory and constitutional home rule authority to adopt and amend a comprehensive plan and power to create and enforce zoning regulations. It may also address specific kinds of regulations, such as height, density or use, or create use/transfer limitations specifically applicable to municipally owned properties or buildings. Collectively, these provisions are intended to ensure that growth and development occur in an orderly, lawful, and community-guided manner.
- **Assessment** – Article VII of the Lauderdale-By-The-Sea Charter in its current form was approved by the voters in 2006. Section 7.1 modifies the maximum building heights for residential districts (originally created by the voters in 1973 and extensively modified in the 1990s) and continues to require voter approval for any height increases. Section 7.2 sets restrictions on the vacating, abandonment, lease, sale, or transfer of the El Prado Property, which is comprised of the parking lot and oceanfront park directly east of Town Hall. Finally, Section 7.3 provides for the Town Commission to appoint residents to advisory boards.
  - **Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits. (Sec. 7.1)**
    - Section 7.1 of the Charter establishes building height and use limitations for all properties. Additionally, it requires that, for buildings exceeding three stories or 33 feet, the first story must be primarily dedicated to parking or limited uses permitted within designated business zones. The section also addresses the status of legally non-conforming structures and the conditions under which they may be repaired or replaced. Finally, it requires that any modification to the height restrictions, permitted uses or residential zoning districts, or allowable square footage within the scope of this section may only be made with voter approval. Changes to Section 7.1 may only be considered during a regularly scheduled November general or municipal election; special elections for this purpose are expressly prohibited.

- Due to the complexity and length of Section 7.1, the Town requested that a “Plain English” version of Section 7.1 be prepared during the last charter review process in 2012. It is included as Exhibit 1, along with a chart that provides commentary and demonstrates how it relates to the existing Section 7.1. While the last Charter Review Board recommended that the “Plain English” version be placed on the 2014 ballot, the Town Commission declined to do so in 2013. They noted the high priority Town residents placed on preserving these requirements, and public comment expressed concern that this change would somehow undermine Section 7.1. The Plain English version is provided here for a clearer understanding of this history, as well as of the requirements and implications of Section 7.1. The summary above is intended to provide a high-level overview, while the Plain English version offers a more accessible point of reference for the full text.
  - As the Board evaluates Section 7.1, it should also take into account the potential impact of Section 28 of Senate Bill 180 (SB 180), which has been adopted by the 2025 Florida Legislature and has not yet been sent to the Governor. If it becomes law, Section 28 of SB 180 retroactively invalidates all local government-initiated ordinances that impose more “restrictive” or “burdensome” comprehensive plan amendments, land development regulations, or procedures concerning the review, approval, or issuance of site plans, development permits, or development orders that were enacted on or after August 1, 2024, and prospectively bans such changes until October 1, 2027. This legislation will have significant implications for any future changes to the Charter’s (and Code’s) land use and development provisions that arguably are more “restrictive” or “burdensome.”
- **Restrictions on the vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property. (Sec. 7.2)**
  - Section 7.2 prohibits the Town from vacating, abandoning, leasing, selling, or otherwise transferring possession or ownership of the El Prado Property without prior voter approval. The “El Prado Property” is defined in detail and includes two specific tracts of oceanfront land situated between State Road A1A and the Atlantic Ocean, as recorded in the Plat of the Lauderdale-By-The-Sea Subdivision.
  - Any such action regarding the property must first be authorized by a majority vote of the Town’s electors through a referendum held specifically for that purpose. This referendum may only be considered during a regularly scheduled November general election or a regularly scheduled municipal election; special elections for this purpose are expressly prohibited.
  - Additionally, all Town residents have standing to enforce these restrictions through equitable legal actions such as mandamus, prohibition, or injunction. However, this provision does not create a right to monetary damages or authorize the award of attorney’s fees in connection with such legal actions.
- **Advisory boards; how constituted. (Sec. 7.3)**
  - Section 7.3 authorizes the Town Commission to establish advisory boards by resolution at any time. These boards must be composed of residents of the Town of Lauderdale-By-The-Sea who are qualified to serve in an advisory capacity to the Town Commission, the Town Manager, or any Town department. Members serve without compensation and at the discretion of the Commission. Their responsibilities include consulting with municipal officials and providing written recommendations, which are to be included in the official records of the Town.

**Recommendation:**

1. With respect to Section 7.1, staff originally recommended and the Town Commission accepted the proposal for this Charter Review Board to once again consider adopting the “Plain English” version of Section 7.1. However, circumstances have changed since that decision was made. No action is recommended at this time on Section 7.1 due to the pending status of Senate Bill 180. Section 28 of the Bill, if signed into law, will ban local government-initiated ordinances or charter provisions adopted on or after August 1, 2024, through October 1, 2027, that impose more restrictive or burdensome land use regulations. While the “Plain English” version is intended to preserve existing requirements and not create more “restrictive” or “burdensome” regulations, those terms are undefined in the law. Changing Section 7.1 during the prohibited timeframe might spur a challenge. Given this potential, it is advisable to defer any changes to Section 7.1 until it is clear whether SB 180 becomes law and, if it does become law, until after October 1, 2027.
2. No changes are recommended to Sections 7.2 or 7.3.

**Exhibits:**

1. ARTICLE\_VII.\_\_\_PLANNING\_AND\_ZONING
2. Plain english version 2013
3. Exh 3 arrows boxes version chart re plain English Section 7.1 5.30.13
4. Senate Bill 180 - Ssection 28

## 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 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

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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 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.

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- (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.
- (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 [50] 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

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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 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 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.

- (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.

(Ord. No. 2024-05, § 2, 6-6-2024)

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

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

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

and

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

- (2) The Town may not vacate, abandon, lease, sell, transfer possession or transfer ownership of the El Prado Property without first obtaining a majority vote of the Town's electors at a referendum election held for the specific purpose of authorizing said vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property.
- (3) Any referendum election called for the purpose of authorizing the vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property shall be held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled municipal election. The holding of a referendum election called for the purpose of authorizing said vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property on a day

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(Supp. No. 49)

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other than a regularly scheduled November general election or on a day other than a regularly scheduled municipal election is expressly prohibited.

- (4) Every resident of the Town shall have standing to enforce the restrictions on the vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property established in paragraphs (2) and (3), above, of this provision of the Charter, by means of a suit in equity seeking either mandamus, prohibition, or injunction, or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.

(Ord. No. 2024-05, § 2, 6-6-2024)

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

The Town Commission may at any time by resolution appoint advisory boards, composed of residents of the Town of Lauderdale-By-The-Sea, qualified to act in an advisory capacity to the Town Commission, the Town Manager, or to any department of the Town. The members of such boards shall serve without compensation at the pleasure of the Commission, and their duties shall be to consult and advise with such municipal officers and make written recommendations which shall become part of the records of the Town.

**PLAIN ENGLISH VERSION OF TOWN CHARTER  
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, “roofline” is defined as follows:

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

(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. 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 buildings constructed after March 20, 2006.* All buildings 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 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) *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.

(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 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 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.

(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).

(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.

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

(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.

(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.

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) <b>No building within the jurisdictional boundaries of the Town, as they existed on March 20, 2006</b>, 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 <b>higher</b>. The maximum height for <b>all other buildings</b> 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 <b>highest</b>. 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.</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 version of this</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> <ul style="list-style-type: none"> <li>(i) the highest point on a flat roof, or</li> <li>(ii) the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof.</li> </ul> <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 <b>higher</b> of the following two alternatives:</p> <ul style="list-style-type: none"> <li>(i) grade as defined in the Florida Building Code, or</li> <li>(ii) the level of the crown of the adjacent road plus eighteen inches.</li> </ul> <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 <b>highest</b> of the following locations to the roofline:</p> <ul style="list-style-type: none"> <li>(i) grade as defined in the Florida Building Code, or</li> <li>(ii) the level of the crown of the adjacent road plus eighteen inches, or</li> <li>(iii) the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state</li> </ul>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>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.</p> <p>* * * *</p> <p>(8) The <b>maximum building height limit established in paragraph (1)</b>, 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>(9) <b>The Town Commission may not</b> increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (5), . . .</p>	<p>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>regulations.</p> <p>(d) <i>Measurement of height of roof structures.</i> The following are excluded from the measurements of height under subsections (b) and (c):</p> <ul style="list-style-type: none"> <li>(i) bulkheads and penthouses used solely to enclose stairways,</li> <li>(ii) tanks,</li> <li>(iii) elevator machinery or shafts, and</li> <li>(iv) ventilation or air conditioning apparatus.</li> </ul> <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>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>(2) In <b>any building</b> 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 (½) of the square footage of the first story is used for parking. Only within <del>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 <b>proposed buildings</b> 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</del></p> <p>uly 5, 2012 Draft</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. 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>(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 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><del>(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 one or more of the following uses:</del></p> <ol style="list-style-type: none"> <li>1. parking, either with or without toll collection booths,</li> <li>2. storage,</li> <li>3. refuse,</li> <li>4. security,</li> <li>5. registration,</li> <li>6. maintenance,</li> <li>7. access, either with or without a lobby.</li> </ol> <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</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>established in this paragraph for the first story.</p> <p>(9) <b>The Town Commission may not</b> increase, by ordinance or by variance, the maximum building <b>height limits</b> 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 <b>restrictions on use</b> 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,</p>		<p>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 established herein.</p>
<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 <b>subparagraph (1)(c)</b> 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>See (2)(e) above.</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<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"> <li>(i) exceed the applicable height limit established in (1) or</li> <li>(ii) fail to comply with the use requirements of (2).</li> </ul>
<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>(a) The existing non-conforming building has:</p> <ul style="list-style-type: none"> <li>(i) Been destroyed by fire, natural disaster, or other act of God; and</li> <li>(ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and</li> <li>(iii) Construction of the replacement building is</li> </ul>	<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>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</p>	<p>(b) <i>Limitation on replacement of nonconforming buildings.</i></p> <p>(i) <i>Definitions.</i></p> <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>C. "Replacement building" means a new building that is allowed to be constructed without full compliance with this</li> </ul>

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<p>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 <b>Town approved redevelopment</b> 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 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</p>	<p>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>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>(ii) <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 <del>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.</del></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</p>

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<p>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. <b>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.</b> 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-conforming building. <b>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</b></p>	<p>Comments re Bolded Language in Current Text</p>	<p>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>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 <b>within the boundaries of the Town as the boundaries exist on March 20, 2006.</b></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 <b>height limits</b> and the maximum allowable <b>square footage</b> 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> <ul style="list-style-type: none"> <li>(a) create a cause of action at law for money damages, or</li> <li>(b) authorize a court of equity to award money damages as an incident to equitable relief, or</li> <li>(c) authorize an award of attorney's fees to the prevailing party or to any other party.</li> </ul>

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<p>(8) The <b>maximum building height limit established in paragraph (1)</b>, 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) <b>The Town Commission may not</b> increase, by ordinance or by variance, the maximum building <b>height limits</b> 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 <b>restrictions on use</b> 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 <b>square footage</b> established in paragraph (5), above, of this section of the Charter. The <b>maximum height limits established for residential zoning districts</b> 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, <b>or such districts rezoned for any other use whatsoever</b>, only by a referendum vote of the registered voters of the Town in</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</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</p>

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<p>the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances. The Town may not <b>create new categories of zoning</b> without approval of such categories by a similar referendum vote; and <b>all provisions</b> of such new categories of zoning must be submitted to the voters for approval.</p>	<p>word districts, not properties. The phrase 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:</p>	<p>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 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>overlay and regular. A property can only have one regular zoning district; they are 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</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><i>(6) 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>

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<p>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.</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>



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1306 structure. However, if the alteration is a result of a natural  
1307 disaster that is the subject of a declaration of a state of  
1308 emergency by the Governor, the estimated cost of renovation must  
1309 exceed 75 percent of the fair market value of the building  
1310 before the natural disaster.

1311 Section 27. The Division of Emergency Management shall  
1312 consult with local governments, the Department of Business and  
1313 Professional Regulation, the Department of Environmental  
1314 Protection, and any other appropriate agencies to develop  
1315 recommendations for statutory changes necessary to streamline  
1316 the permitting process for repairing and rebuilding structures  
1317 damaged during natural emergencies. By July 1, 2026, the  
1318 division shall provide a report containing such recommendations  
1319 to the President of the Senate and the Speaker of the House of  
1320 Representatives.

1321 **Section 28.** (1) Each county listed in the Federal Disaster  
1322 Declaration for Hurricane Debby (DR-4806), Hurricane Helene (DR-  
1323 4828), or Hurricane Milton (DR-4834), and each municipality  
1324 within one of those counties, may not propose or adopt any  
1325 moratorium on construction, reconstruction, or redevelopment of  
1326 any property damaged by such hurricanes; propose or adopt more  
1327 restrictive or burdensome amendments to its comprehensive plan  
1328 or land development regulations; or propose or adopt more  
1329 restrictive or burdensome procedures concerning review,  
1330 approval, or issuance of a site plan, development permit, or  
1331 development order, to the extent that those terms are defined by  
1332 s. 163.3164, Florida Statutes, before October 1, 2027, and any  
1333 such moratorium or restrictive or burdensome comprehensive plan  
1334 amendment, land development regulation, or procedure shall be

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1335 null and void ab initio. This subsection applies retroactively  
1336 to August 1, 2024.

1337 (2) Notwithstanding subsection (1), any comprehensive plan  
1338 amendment, land development regulation amendment, site plan,  
1339 development permit, or development order approved or adopted by  
1340 a county or municipality before or after the effective date of  
1341 this act may be enforced if:

1342 (a) The associated application is initiated by a private  
1343 party other than the county or municipality.

1344 (b) The property that is the subject of the application is  
1345 owned by the initiating private party.

1346 (3) (a) A resident of or the owner of a business in a county  
1347 or municipality may bring a civil action for declaratory and  
1348 injunctive relief against the county or municipality for a  
1349 violation of this section. Pending adjudication of the action  
1350 and upon filing of a complaint showing a violation of this  
1351 section, the resident or business owner is entitled to a  
1352 preliminary injunction against the county or municipality  
1353 preventing implementation of the moratorium or the comprehensive  
1354 plan amendment, land development regulation, or procedure. If  
1355 such civil action is successful, the resident or business owner  
1356 is entitled to reasonable attorney fees and costs.

1357 (b) Attorney fees and costs and damages may not be awarded  
1358 pursuant to this subsection if:

1359 1. The resident or business owner provides the governing  
1360 body of the county or municipality written notice that a  
1361 proposed or enacted moratorium, comprehensive plan amendment,  
1362 land development regulation, or procedure is in violation of  
1363 this section; and

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1364           2. The governing body of the county or municipality  
1365 withdraws the proposed moratorium, comprehensive plan amendment,  
1366 land development regulation, or procedure within 14 days; or, in  
1367 the case of an adopted moratorium, comprehensive plan amendment,  
1368 land development regulation, or procedure, the governing body of  
1369 a county or municipality notices an intent to repeal within 14  
1370 days after receipt of the notice and repeals the moratorium,  
1371 comprehensive plan amendment, land development regulation, or  
1372 procedure within 14 days thereafter.

1373           (4) This section expires June 30, 2028.

1374           Section 29. The Division of Law Revision is directed to  
1375 replace the phrase "the effective date of this act" wherever it  
1376 occurs in this act with the date this act becomes a law.

1377           Section 30. Except as otherwise provided in this act, this  
1378 act shall take effect upon becoming a law.



## Agenda Item No: 6.a.

### Agenda Item Report

**Meeting Date:** June 3, 2025

**Submitted By:**

**Submitting Department:** Legal

**Item Type:** Presentation

**Agenda Section:** OLD BUSINESS

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**Subject Title:** Review Of Charter Review Board Recommendations

#### **Explanation:**

Thus far, the Charter Review Board has considered and put forward the following recommendations for the Town Commission's review and consideration.

#### **Recommendation 1:**

- Amend Section 3.3 of the Town Charter to extend the residency requirement for candidates seeking the office of Mayor-Commissioner or Commissioner from six months to twelve months prior to the election date.
- This change will be reflected throughout the entire Charter, including Article 6.

#### **Recommendation 2:**

- Amend Section 5.5(10) of the Town Charter to extend the audit completion deadline from six (6) months to nine (9) months after the end of the fiscal year, to align with the timeline established in Section 218.32(d), Florida Statutes.

#### **Recommendation 3:**

- Amend the Town Charter in its entirety to correct scrivener's errors, address any need to adjust timelines related to referenda/initiative or other election-related procedures, and update any references to state statutes that are outdated or no longer applicable due to legislative changes.

#### **Recommendation 4:**

- Amend the Town Charter to provide for two four-year terms for the Mayor.

#### **Recommendation 5:**

- Amend the Town Charter to remove all references requiring publication in a newspaper of general circulation. This revision reflects recent amendments to Chapter 50, Florida Statutes, which now permit legal advertisements and public notices to be published on publicly accessible websites

under certain conditions. The change will ensure consistency throughout the Charter and provide greater flexibility in meeting notice requirements.

**Recommendation 6:**

- Amend the Town Charter to explicitly incorporate applicable state law governing municipal elections. This change clarifies that municipal elections will be conducted in accordance with the general election laws of the State of Florida, including the candidate qualifying process.

**Recommendation:**

**Exhibits:** None