



AGENDA
CITY OF LAKE WORTH BEACH
REGULAR CITY COMMISSION MEETING - ADDITIONS/DELETIONS/REORDERING
CITY HALL COMMISSION CHAMBER
TUESDAY, NOVEMBER 02, 2021 - 6:00 PM

ADDITIONS:

NEW BUSINESS:

- G.** Consideration of City Manager Agreement with Carmen Davis
- H.** Ordinance No. 2021-20 – First Reading – Ballot language for setting term limits of two consecutive terms for a given seat by referendum on March 8, 2022
- I.** Ordinance No. 2021-21 – First Reading – Ballot language to allow a candidate to concede without forcing a run-off election
- J.** Ordinance No. 2021-22 – First Reading – Ballot language for changing to single-member district voting, with the mayor remaining at-large
- K.** Ordinance No. 2021-23 – First Reading – Ballot language for changing the stipulation regarding the number of votes needed for a candidate to be duly-elected
- L.** Ordinance No. 2021-24 – First Reading – Ballot language regarding the filling of commission vacancies

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: November 2, 2021

DEPARTMENT: City Attorney

TITLE:

Consideration of City Manager Agreement with Carmen Davis

SUMMARY:

The agreement for the City Manager position with Carmen Davis will be presented.

BACKGROUND AND JUSTIFICATION:

The City Commission held final interviews for the City Manager position at a special meeting on September 24, 2021. The Commission voted unanimously to offer the City Manager position to Carmen Davis and to have the City Attorney negotiate the contract.

MOTION:

Move to approve/disapprove the City Manager Agreement with Carmen Davis.

ATTACHMENT(S):

Fiscal Impact Analysis
City Attorney Letter
Employment Agreement
Separation Agreement

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	0	0	0	0	0
Operating Expenditures	\$293,313	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
 Net Fiscal Impact	 0	 0	 0	 0	 0
 No. of Addn'l Full-Time Employee Positions	 0	 0	 0	 0	 0

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Account Number	Account Description	Project Number	FY22 Budget	Current Balance	Budget Transfer	Agenda Expenditure	Balance
001-1020-512.12-20	Salaries & Wages/Regular	N/A	\$377,798	\$377,798	0	\$200,000	\$177,798
001-1020-512.21-00	Executive / FICA Taxes	N/A	\$28,138	\$28,138	\$23,507	\$23,507	\$28,138
001-1020-512.22-20	Retirement Contributions/401A	N/A	\$17,407	\$17,407	\$20,000	\$20,000	\$17,407
001-1020-512.15-30	Special Pay/Other Pays	N/A	\$6,900	\$6,900	\$17,500	\$23,500	\$900
001-1020-512.23-00	Executive / Life & Health Insurance	N/A	\$27,626	\$27,626	\$26,306	\$26,306	\$27,626

**TORCIVIA, DONLON,
GODDEAU & RUBIN, P.A.**

701 Northpoint Parkway, Suite 209
West Palm Beach, Florida 33407-1950
561-686-8700 Telephone / 561-686-8764 Facsimile
www.torcivialaw.com

Glen J. Torcivia
Lara Donlon
Christy L. Goddeau*
Leonard G. Rubin*

Jennifer H.R. Hunecke
Susan M. Garrett
Elizabeth V. Lenihan*

*FLORIDA BAR BOARD CERTIFIED
CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

October 29, 2021

Via E-Mail Only

Mayor Resch and Commissioners
City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, FL 33460

Re: Employment Agreement with Carmen Davis

Dear Mayor Resch and Commissioners:

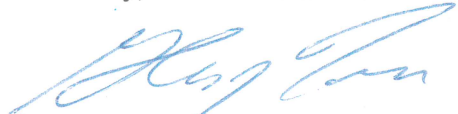
In accordance with the Commission's direction, an employment agreement has been negotiated with Carmen Davis to serve as City Manager. Some of the key provisions of the agreement are:

1. Salary - \$200,000
2. Car Allowance - \$500 per month
3. Vacation Leave - 200 hours (25 days) per year deposited into her leave bank in a lump sum upon commencement of employment and annually thereafter
4. Sick Leave – Shall be accrued the same as other city employees with the addition of an initial lump sum contribution of 25 hours (5 days) on December 6, 2021
5. Relocation Expenses –
 - a. The City will reimburse her up to \$2,500 for her and her spouse to visit Lake Worth Beach in order to obtain housing.
 - b. The City will pay Ms. Davis directly a lump sum of \$15,000 for moving expenses with one-half of this payment to be made by November 15, 2021 and the other half by December 10, 2021. In the event Ms. Davis resigns her position or her employment is terminated with cause by the City prior to December 5, 2022, she will reimburse one-half of said \$15,000 (\$7,500) to the City (or it can be deducted from her last paycheck).
6. Three Year Agreement – Agreement will automatically renew after the third year in one year increments unless either party provides the other with 45 days' notice prior to October 20th of each year.

7. Severance Pay – Severance pay of twenty (20) weeks if termination of employment is without cause (no severance pay for termination with cause or voluntary resignation)
8. Retirement - 10% of her salary to a City approved 401A retirement program.
9. Performance Evaluations - There shall be annual performance evaluations
10. Cost of Living Increase - Ms. Davis shall receive the same cost of living increase as other employees upon specific approval of the City Commission.

Should you have any questions, please feel free to contact me.

Sincerely,



Glen J. Torcivia
City Attorney

Enclosures
GJT/ar

cc: Juan Ruiz, Interim City Manager
cc: Melissa Coyne, City Clerk
cc: Bruce Miller, Finance Director
cc: Carmen Davis

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered between CARMEN Y. DAVIS ("EMPLOYEE" or "CARMEN Y. DAVIS") and the CITY OF LAKE WORTH BEACH, (hereinafter referred to as "CITY"), collectively "the PARTIES".

WHEREAS the CITY, by and through its City Commission, desires to engage the services of EMPLOYEE as City Manager;

WHEREAS the Commission approved EMPLOYEE to be appointed to the role of City Manager with full authority and responsibility and directed that an Employment Agreement be prepared;

NOW THEREFORE, for and in consideration of the mutual obligations set forth below, the EMPLOYEE and the CITY agree as follows:

I. EMPLOYMENT OF EMPLOYEE

Subject to the terms and conditions set forth in this Agreement, CITY hereby agrees to employ EMPLOYEE as its full-time, exempt City Manager and EMPLOYEE hereby accepts such employment. The PARTIES recognize and agree that this position is properly designated a mandatory testing position pursuant to the City's drug-free workplace policy.

II. DUTIES AND RESPONSIBILITIES

The EMPLOYEE shall be responsible to the five-member CITY Commission and shall perform the functions and duties of the City Manager as provided in the Job Description, the Policies and Procedures of CITY, Florida Law, the CITY's enabling legislation, the direction of the CITY Commission, and as mutually agreed to by the EMPLOYEE and CITY from time to time. The EMPLOYEE shall devote whatever time is necessary to perform the duties of the position, which often exceeds forty (40) hours per week and is a minimum of forty (40) hours per week. The EMPLOYEE shall remain in the exclusive employment of CITY until termination or expiration of this Agreement in accordance with Section III.

Because the EMPLOYEE will devote a great deal of time outside normal office hours to business of the CITY, flexibility in hours worked and work schedules benefit both the CITY and the EMPLOYEE. The EMPLOYEE has discretion as to her work schedule and hours worked, with the understanding that her compensation is based on a 40-hour work week. Work in excess of an average 40-hour work week shall be deemed part of the professional responsibility for which the EMPLOYEE shall not be paid overtime; but for which, she shall be allowed to offset, in part, by taking compensatory time off.

III. EXCLUSIVE EMPLOYMENT

EMPLOYEE shall not be employed by any other employer during the Term of this Agreement. EMPLOYEE shall devote her full time to act as the City Manager and to carry out, to the best of her abilities, all the duties imposed upon her by the Job Description, the Policies and Procedures, the direction of the CITY Commission, applicable laws, and such other duties as the CITY may assign from time to time. During the Term of this Agreement, the EMPLOYEE shall not hold office in any political party or political organization.

IV. TERM

- A. The Term of this Agreement for employment in the City Manager position shall begin on December 6, 2021 and remain in effect for approximately three (3) years through and including December 6, 2024, unless renewed as provided in Section IV, B, or unless earlier terminated as provided in Section V.

- B. In the event written notice is not given by either party to this agreement to the other party at least forty-five (45) days prior to the termination date as herein provided, this agreement shall be extended on the same terms and conditions for one-year terms. This subsection shall take full effect upon completion of the first thirty-six (36) months of employment. Renewal for the next twelve (12) months shall then occur, with annual renewals or notice as provided. Renewal shall automatically occur unless specific action to the contrary is taken or a mutually agreed upon change is made to the agreement. However, to be eligible for renewal, the City Manager must receive satisfactory performance evaluations during the Term in accordance with Paragraph VII and after a majority of the CITY Commission in attendance concurs with entering into the Subsequent Term. Any such Subsequent Term shall be based on the same terms as provided herein, unless modified by mutual agreement of the parties in the manner provided herein.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the CITY to terminate the service of EMPLOYEE at any time, subject only to the provisions set forth in Section V herein below.
- D. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the EMPLOYEE to resign at any time, subject only to the provisions set forth in Section V herein below.

V. SEPARATION FROM CITY

- A. Termination by CITY Without Cause.
 - 1. CITY may terminate this Agreement and the employment of EMPLOYEE Without Cause immediately or at any time during the Term of this Agreement.
 - 2. In the event the CITY Commission determines, in its sole discretion, that EMPLOYEE'S employment shall be terminated Without Cause at any time during the Term of this Agreement, EMPLOYEE shall be eligible for Severance Pay as described in Section VIII.
 - 3. The CITY'S termination of this Agreement and the employment of EMPLOYEE Without Cause shall be final and non-appealable.
 - 4. Termination Without Cause shall require a majority vote of the CITY Commission in attendance at a public meeting.
 - 5. EMPLOYEE'S refusal to comply with a directive that clearly violates the ICMA Code of Ethics.
- B. Termination by CITY With Cause.
 - 1. CITY may terminate this Agreement and the employment of EMPLOYEE With Cause, in its sole discretion, as provided herein during the Term of this Agreement.
 - 2. "With Cause" is defined as termination based upon any of the following actions by the EMPLOYEE:
 - a. fraud;
 - b. embezzlement;
 - c. conviction of a felony relating to official duties;
 - d. negligence in the performance of official duties;
 - e. failure to return from an approved leave of absence;
 - f. violation of Florida's Code of Ethics;
 - g. violation of the CITY'S Policy Against Harassment and Discrimination or its Equal Employment Opportunity Policy;
 - h. the Florida Commission on Ethics makes a determination of probable cause, a criminal charge is filed, or a civil or administrative judgment and issued against EMPLOYEE;

- i. violation of CITY's Drug-Free Workplace Policy; or
 - j. misconduct, as defined in Fla. Stat. 443.036(29), as amended from time to time.
 3. CITY may terminate this Agreement and the employment of EMPLOYEE With Cause immediately or at any time during the Term of the Agreement, with written notice issued to EMPLOYEE describing the actions claimed by the CITY constituting such grounds and the effective date of the termination. Such notice shall be issued as soon as practicable after the vote contemplated in Section V, B, 5 below.
 4. The CITY's termination of this Agreement and the employment of EMPLOYEE With Cause shall be final and non-appealable.
 5. Termination With Cause shall require a majority vote of the CITY Commission in attendance at a public meeting.
- C. Resignation by EMPLOYEE.
 1. EMPLOYEE may voluntarily resign her employment from CITY by providing CITY forty-five (45) days written notice in advance. During the 45-day period, CITY may require EMPLOYEE to cease or limit the work performed on CITY matters, during which time EMPLOYEE is entitled to such regular compensation and benefits as is due under this Agreement until the effective date of the resignation as provided in the notice. This Agreement shall terminate on the effective date of resignation.
 2. Resignation by the Employee by giving forty-five (45) days' written notice shall be considered a termination in good standing and shall entitle the Employee to a lump sum payment equivalent to all accrued and unused Vacation Leave up to a maximum established by CITY policy, as amended to time to time.
 3. If Employee resigns following a request for resignation by a majority vote of the CITY Commission in attendance at a public meeting, such resignation shall be considered a termination without cause within the meaning of VA2.
- D. Expiration of Term or Subsequent Term.
 1. At the expiration of the Term or any Subsequent Term, this Agreement and EMPLOYEE's employment shall renew automatically, unless the parties enter into a written amendment or new agreement at least forty-five (45) days prior to the end of the Term or any Subsequent Term.
- E. Death or Disability.
 1. This Agreement, the Term, any Subsequent Term, and EMPLOYEE's employment shall terminate automatically upon the EMPLOYEE's death.
 2. This Agreement, the Term, any Subsequent Term, and EMPLOYEE's employment shall terminate automatically on the 30th day after the CITY gives written notice to the EMPLOYEE of its intent to terminate based upon "Disability" unless the EMPLOYEE is determined to be fit for duty by a physician indicating she can perform the essential functions of the position on a full-time basis and does, in fact, return to duty prior to the 30th day. "Disability" means the EMPLOYEE's inability to perform her duties, with or without reasonable accommodation, as evidenced by a certificate signed either by a physician mutually acceptable to the CITY and EMPLOYEE or, if the parties cannot agree, by a physician selected by agreement of a physician designated by the CITY and a physician designated by the EMPLOYEE. EMPLOYEE shall submit to a reasonable number of examinations by the physician making the determination of Disability, and hereby authorizes the disclosure and release of all supporting medical records to the CITY and shall execute the necessary documents required for such release.
- F. Post-Termination Name Clearing Meeting

1. EMPLOYEE may avail herself of the CITY's Post Termination Name-Clearing Meeting process in accordance with CITY policy in effect at the time of termination. However, in light of the organizational structure, EMPLOYEE must submit any request for such meeting in writing to the Mayor within 10 calendar days of the date of termination and such meeting will be scheduled to occur at a special or regular CITY Commission Meeting with the Commission presiding at such meeting or, in lieu of attending, a meeting, EMPLOYEE may choose to submit a written statement to be included in her personnel file. The meeting is not an appeal of the termination decision and the CITY Commission is not required to consider reinstatement. The process is designed to allow the EMPLOYEE to present information in the public record regarding the information forming the basis of the termination.

VI. COMPENSATION

- A. Base Salary. CITY agrees to pay EMPLOYEE for services rendered at the base annual salary of Two Hundred Thousand Dollars (\$200,000). The Base Salary shall be paid in installments at the same time as other employees of the CITY are paid.

The CITY may, at any time, increase the Base Salary to the EMPLOYEE, as it may deem desirable to do so, in its sole discretion, which shall not require a written amendment to this Agreement provided a majority of the City Commission in attendance at the meeting vote in favor of such increase. When other City employees are given a cost of living increase during the term of this agreement, the same percentage increase shall be awarded the EMPLOYEE. EMPLOYEE shall not be awarded any across-the board, cost of living, or merit increase provided to other CITY employees without specific approval of a majority of the CITY Commission in attendance at a public meeting.

Base Salary payments are not due for any periods of unpaid leave, including disciplinary suspensions, in accordance with applicable wage and hour laws.

B. Benefits.

1. Vacation Leave: EMPLOYEE shall receive 200 hours (25 days) of vacation leave into her leave bank in a lump sum upon the commencement of her employment on December 6, 2021, and on December 6th of each succeeding year. EMPLOYEE shall obtain approval for use of such leave from the Mayor in office at the time the request for use of leave is made. EMPLOYEE shall notify all CITY Commissioners of her absence.
2. Sick Leave: The EMPLOYEE shall accrue and use Sick Leave in the same manner and under the same provisions as other CITY employees as set forth in the CITY policies, as amended from time to time. In addition, the City Manager shall receive a lump sum contribution of 25 hours (5 days) of sick leave on December 6, 2021. The City Manager shall obtain approval for use of such leave from the Mayor in office at the time the request for use of leave is made. The City Manager shall notify all CITY Commissioners of the absence.
3. Insurance: The EMPLOYEE, her spouse and dependents, if any, shall be entitled to and enjoy inclusion in the CITY's Dental Insurance Program, Health Insurance Program, Vision Care Program, and other insurance benefits that may be offered in the same manner and under the same provisions and benefits as other CITY employees, as the same exists or may be amended from time to time by the CITY.
4. Retirement/Deferred Compensation: The CITY will contribute on an annual basis an amount equal to 10% of EMPLOYEE'S salary to the CITY approved 401A retirement program. The said payment shall be payable in installments at the same time as other retirement benefits

are paid to other CITY employees. The employer's 401A retirement payment will be in lieu of any payments, which the CITY would have otherwise made for the EMPLOYEE'S benefit to the employer's defined benefit retirement system. As a contractually employed city manager, EMPLOYEE shall not be entitled to participate in the employer's general defined benefit retirement plan.

The CITY'S contribution to the 401A retirement program shall not exceed the limit established by federal statutes and/or regulation.

5. Vehicle Allowance: The EMPLOYEE is expected to travel on business for the CITY on a regular and frequent basis including, but not limited to, attendance at meetings, driving the City's jurisdictional area, and site visits in the field. In lieu of an official vehicle, CITY shall provide EMPLOYEE with a monthly car allowance of Five Hundred Dollars (\$500.00) in full payment of any expenses arising from this employment. Pursuant to §112.061, Florida Statutes, such allowance may be changed by the CITY on the basis of a signed statement of the EMPLOYEE, filed before the allowance is changed, and at least annually thereafter. The statement shall show the places and distances for an average typical month's travel on official business, and the amount that would be allowed under the approved rate per mile for the travel shown in the statement, if payment had been made pursuant to the mileage reimbursement provisions of §112.061, Florida Statutes. EMPLOYEE is responsible for any income tax liability relating to such vehicle allowance. In the event of a paid or unpaid leave of absence in excess of 21 consecutive calendar days, such vehicle allowance shall be paid in accordance with a pro-rata calculation for the months during which the leave of absence occurs.

EMPLOYEE further agrees to ensure that the vehicle is properly insured for business use and provide documentation of same to the City.

6. Dues and Subscriptions: CITY shall pay reasonable and appropriate professional dues and subscriptions on behalf of the EMPLOYEE for the purpose of allowing her participation in direct job-related associations, subject to budget constraints and City Commission approval.
7. Professional Development: CITY agrees to pay the reasonable and customary travel and subsistence expenses (in accordance with applicable Florida Law and CITY policies) for EMPLOYEE'S travel to and attendance at professional association events as well as other reasonably necessary seminars and conferences customary to EMPLOYEE's position and/or necessary to meet continuing education requirements, subject to budget constraints and City Commission approval.
8. Per Diem and Subsistence Allowance: EMPLOYEE shall be reimbursed for work-related travel outside Palm Beach County based on the categories and at the standard rates provided in CITY policy, which reimbursement shall not be considered part of the EMPLOYEE'S Compensation. However, no additional reimbursement for mileage or other vehicle expenses related to the maintenance or operation of the CITY vehicle will be provided except as specified in Section VI, B, 5 of this Agreement. As an exempt employee, no additional compensation will be paid for time spent traveling on CITY business other than EMPLOYEE'S Base Salary then in effect.
9. Additional Benefits: Said further and additional benefits which are provided to other CITY employees now or in the future shall be provided to the EMPLOYEE. The CITY may, at any time, provide other additional benefits solely to the EMPLOYEE, as it may deem desirable to do so.

VII. PERFORMANCE EVALUATION

The CITY and EMPLOYEE will work together to mutually agree upon such goals and performance objectives, generally as a result of the budget process, which they determine to be essential for the proper operation of the CITY and progress towards attaining the CITY's policy directives and shall further establish a relative priority among those various goals and objectives. All agreed-upon goals and objectives shall be realistic and have resources committed to be effectively implemented.

During the Term and any Subsequent Term, the CITY Commission will endeavor to evaluate EMPLOYEE's performance annually on or before the November regular City Commission Meeting. The PARTIES will agree upon an evaluation format in compliance with applicable Florida laws. If the EMPLOYEE's performance is determined to be at least satisfactory based on an average score of all submitted evaluations, the CITY Commission may award an increase in Base Salary as agreed by the CITY Commission in its sole discretion and subject to budget considerations. Any such increase shall not require a written amendment to this agreement provided a majority of the CITY Commissioners in attendance at a public meeting vote in favor of such increase.

In the event the CITY Commission determines that the performance of EMPLOYEE is unsatisfactory in any respect or needs significant improvement in any area, the CITY Commission shall describe these concerns in writing and in reasonable detail or with specific examples so as to be objective and positive and an adequate opportunity shall be provided for the EMPLOYEE to discuss the evaluation with the CITY Commission.

VIII. PAYMENT UPON SEPARATION; SEVERANCE PAY

A. Final Paycheck. If EMPLOYEE separates from employment for any reason under Section V, she shall be paid in full any unpaid balance of her Base Salary then earned and due through the final date of employment. EMPLOYEE shall also be paid any accrued and unused Vacation Leave up to a maximum established by CITY policy, as amended from time to time. Holidays and Sick Leave are not payable upon separation for any reason. Such payments shall be made on the next regularly scheduled pay date after separation.

B. Severance Pay.

1. Termination Without Cause. If EMPLOYEE is terminated Without Cause she shall be eligible to receive Severance Pay equal to the gross amount Base Salary in effect at the time of termination, and shall not include any Benefits or perquisites as may be permitted by §215.425, F.S. (hereafter referred to as "Severance Pay") of twenty (20) weeks' severance pay.

Severance Pay shall be made within 30 calendar days after receipt of an executed Separation Agreement and General Release, in substantially the same form as attached hereto as Exhibit "A", by EMPLOYEE in favor of CITY in a lump sum payment, less applicable withholdings and other required deductions.

2. Termination With Cause. EMPLOYEE shall not be eligible for or receive Severance Pay.
3. Resignation by EMPLOYEE. EMPLOYEE shall not be eligible for or receive Severance Pay.
4. Expiration of Term or Subsequent Term. EMPLOYEE shall not be eligible for or receive Severance Pay.

5. Death or Disability. EMPLOYEE, or his heirs or assigns, shall not be eligible for or receive Severance Pay.

IX. RELOCATION EXPENSES

- A. The CITY will reimburse EMPLOYEE up to \$2,500 for EMPLOYEE and her spouse to visit Lake Worth Beach and its surrounding area in order to obtain housing. Travel expenses that would be reimbursable for such a trip would include airfare, food, lodging, and rental car expenses for EMPLOYEE and her spouse while searching for housing. Payment of said reimbursement will be made by the CITY upon proof of submission of proper documentation by EMPLOYEE to the CITY.
- B. The CITY will pay EMPLOYEE directly a lump sum of \$15,000 for moving expenses to a residence within Palm Beach County. One-half (\$7,500) of said payment shall be made by November 15, 2021 and the other half (\$7,500) shall be made by December 10, 2021.
- C. In the event that EMPLOYEE either resigns her position with the CITY or her employment is terminated with cause by the CITY prior to December 5, 2022, the EMPLOYEE shall reimburse the CITY for 50% of the moving expenses (\$7,500) paid by the CITY. EMPLOYEE authorizes the CITY to deduct said sums from any payments due her from the CITY including, but not limited, to base salary, payment for leave balances and any other sums that may be due to the EMPLOYEE from the CITY, up to the amount to be refunded to the CITY.

X. COMMUNICATION AND OVERSIGHT

The EMPLOYEE shall regularly communicate with all CITY Commissioners.

EMPLOYEE agrees to notify the CITY Commission in writing within three (3) business days of being provided or notified of any complaint filed with the Florida Commission on Ethics, the Palm Beach County Commission on Ethics, the Palm Beach County Inspector General, any charge or subpoena from any law enforcement agency, or any other civil or administrative claim against EMPLOYEE.

XI. GENERAL PROVISIONS

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.
- C. This Agreement may not be modified or changed in any way whatsoever except by mutual written consent of both parties.
- D. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement or portion thereof shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- E. Failure of the CITY to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of CITY's right to enforce or exercise said right(s) at any time thereafter.
- F. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

- G. The Separation Agreement and General Release (for Severance Pay) referenced in this Agreement has been provided to EMPLOYEE and is attached hereto as Exhibit "A". By entering into this Agreement, EMPLOYEE acknowledges that he has been advised to consult with personal legal counsel to review such Separation Agreement and General Release and has had adequate time to consider same.
- H. All the provisions contained in this Agreement are subject to and conditioned upon compliance with all applicable laws of the State of Florida and local ordinances. Such laws shall take precedent over any part or portion of provisions as contained herein.
- I. This Agreement shall be governed exclusively by Florida law and venue of any action or proceeding relating to this Agreement shall be in Palm Beach County, Florida, exclusively, with each party to bear its own attorneys' fees and costs, up through and including any appellate action. EMPLOYEE expressly consents to the personal jurisdiction of the courts of Palm Beach County, Florida.
- J. All notices required to be given under the terms of this Agreement or which any of the parties desires to give hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

TO: Mayor Betty Resch
 CITY OF LAKE WORTH BEACH
 7 North Dixie Highway
 Lake Worth Beach, FL 33460

TO: Carmen Y. Davis

With a copy to City Attorney:

Glen J. Torcivia, Esquire
 Torcivia, Donlon, Goddeau & Rubin, P.A.
 701 Northpoint Parkway, Suite 209
 West Palm Beach, Florida 33407

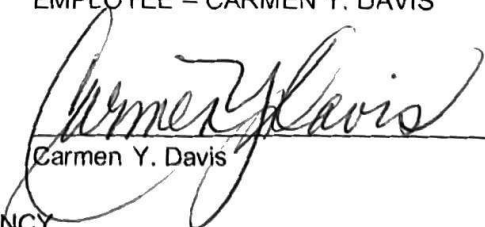
Any party may designate a change of address at any time by giving written notice thereof to the other party.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on this ____ day of _____, 2021.

CITY OF LAKE WORTH BEACH

EMPLOYEE – CARMEN Y. DAVIS

BY: _____
 Mayor Betty Resch



 Carmen Y. Davis

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

 GLEN J. TORCIVIA, CITY ATTORNEY

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (“Agreement”) is hereby made and entered into by and between CARMEN DAVIS (“Employee”) and CITY OF LAKE WORTH BEACH (hereinafter referred to as “Employer”). In exchange for the mutual promises set forth below and intending to be legally bound, the Employer and the Employee agree to the following terms and conditions:

- A. Employee was employed as a City Manager of said Employer; and
- B. Employee is separated from employment effective _____, without cause. As such, the Employer shall have no obligation to employ Employee under any circumstances in the future.
- C. Employee recognizes that her last day of work is _____. However, if Employee accepts the terms and conditions of this Agreement, Employee shall receive Severance Pay in a gross amount equivalent to 20 weeks of Base Salary and the value of Benefits as defined in VIII(B)(1) of the Employment Agreement (less required withholding for federal, state and local taxes) as set forth in Paragraph G of this Agreement.
- D. It is agreed and understood that neither the offer or acceptance of this Agreement nor the payment of any money or provision of benefits hereunder constitute or will be construed as an admission of liability or of any wrongdoing or violation of laws, rules or policies by the Employer or the Employee.
- E. Employee hereby releases and discharges the Employer (and all of its affiliates, successors, assigns, directors, officers, insurers, board members, employees, attorneys and agents) from and against any and all liability to Employee upon claims, causes of action or obligations of every nature whatsoever, whether known or unknown, arising out of or relating to Employee’s employment, separation from employment, or any other act, event, failure to act or things which have occurred or were created at any time before or upon the date on which this Agreement is signed and becomes effective. Without limiting the generality hereof, this release covers claims or causes of action based upon all torts (such as, for example, negligence, fraud, defamation, wrongful discharge, invasion of privacy); express and implied contracts (except this Agreement); federal, state or local statutes and ordinances, including those which regulate employment practices (such as, for example, the Age Discrimination in Employment Act, Family Medical Leave Act, Federal Civil Rights Acts (including but not limited to 42 U.S.C.A Sections 1981 – 1988, 2000a-6, and 2000e-17); the Americans with Disabilities Act, the National Labor Relations Act; the Older Worker Benefit Protection Act, The Florida Civil Rights Act; any state or federal Whistleblower’s Act; Public Employee Relations Act; Title VII of the Civil Rights Act; the Civil Rights Act of 1991; the Reconstruction Era Civil Rights Act of 1866; the Employee Retirement Income Security Act; the Patient Protection and Affordable Health Care Act; the Genetic Information Nondiscrimination Act; the Public Health Services Act; Sarbanes-Oxley; the Rehabilitation Act of 1973; the Health Insurance Portability and Accountability Act; the Equal Pay Act; the Worker Adjustment and Retraining Notification Act; the Occupational Safety and Health Act; the Consolidated Omnibus Budget Reconciliation Act; the Florida Civil Rights Act; the Florida Equal Pay Act; any claims under Fla. Stat. 448.08 for unpaid wages and waivable rights under the Florida Constitution; and any and all amendments to such acts); any and all claims for violation of any statutory or administrative rules, regulations or codes; any right or entitlement to any individual relief including damages, attorneys’ fees, and costs which may be available through local, state, or federal regulatory agencies such as the EEOC; expenses, costs, fees, and/or attorneys’ fees, incurred or claimed in connection with any alleged claims; and every other source of legal rights and obligations which may validly be waived or released, except rights created or preserved expressly in this Agreement.

- F. The Employee makes the following representations to the Employer, each of which is necessary before the Employer will pay Severance Pay to the Employee under this Agreement:
- (1) that the payments and other benefits which the Employer has agreed to provide, as stated below, are payments and benefits to which she would not be entitled if it were not for this Agreement;
 - (2) that no consideration, promises, agreements or representations have been made to her to encourage her to sign this Agreement, except those that are contained in this Agreement;
 - (3) that she has read and understands each and every provision of this Agreement and any waiver pursuant to this Agreement is knowing and voluntary;
 - (4) that she has been advised by the Employer that she has seven (7) days from the date she signs this Agreement to rescind her acceptance of this Agreement in writing by delivering such written rescission to the Mayor within the 7-day period;
 - (5) that she has been advised by the Employer that she should consult an attorney of her own choosing before signing this Agreement;
 - (6) that she has had an adequate and reasonable period of time (at least 21 calendar days) to decide whether or not to sign this Agreement. Accordingly, failure to sign and deliver the Agreement to the City Attorney on or before **5:00 p.m. on the 25th day following the date of termination**, shall be deemed a rejection of the Agreement and she shall not be entitled to the benefits outlined herein to which she would not otherwise be entitled. Material or immaterial changes to this Agreement do not restart the running of the 21-day period.
 - (7) that she has not filed any complaints or initiated any other legal proceedings against the Employer before the date of signing this Agreement.
 - (8) that she has not assigned, transferred or purported to assign or transfer any claims released in this Agreement to any person, association or entity.
 - (9) that she has accurately reported all hours worked and has been paid in full for all time worked in accordance with the law and is owed no wages, whether in the form of straight time, overtime, or liquidated damages.
 - (10) that she has not suffered an occupational disease or disability or any on-the-job-related accident or injury of the type that might have entitled her to file a Workers' Compensation claim, whether temporary, permanent, partial or total.
 - (11) that she was provided and received all paid and unpaid leaves of absence to which she was entitled.
 - (12) that she assumes the risk for any mistake of fact now known or unknown and that she understands the significance of this Agreement.
 - (13) that she has the mental capacity to enter into this Agreement.

- G. In exchange for the general release and other promises and acknowledgments made by Employee in this Agreement, the Employer agrees to pay Employee Severance Pay equal to 20 weeks of Base Salary and the value of Benefits as defined in VIII(B)(1) of the Employment Agreement (less required withholding for federal, state and local taxes).
- H. Employee agrees (unless otherwise required by law) not to:
- (1) discuss the existence of the terms of this Agreement, subject to Section F(5);
 - (2) disclose to any third party any confidential information of the Employer;
 - (3) make any statements, whether verbal or written, that disparages or defames the Employer;
or
 - (4) file any claims waived by this Agreement.
- I. Employee agrees to indemnify, defend and hold Employer harmless from and against any cost or expense including, but not limited to, attorney's fees and costs at any level of trial and appeal, incurred by Employer with respect to its enforcement of the terms of this Agreement by any legal or equitable means. However, this provision does not apply to any claims made under the ADEA.
- J. This Agreement shall inure to the benefit of and be binding upon the Employer and Employee and each of their successors, assigns, affiliates, devisees, heirs, administrators and representatives.
- K. This Agreement constitutes the entire agreement by and among the parties hereto and there are no agreements or commitments by or among the parties, either verbal or written, except as expressly set forth herein.
- L. Should any part, term, or provision of this Agreement be declared or be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term, or provision shall be deemed not a part of this Agreement.
- M. The Agreement shall be governed exclusively by Florida Law and venue for any action herein shall be in the courts of Palm Beach County.
- N. This Agreement and General Release shall not be construed against the party who drafted same.
- O. The rights, responsibilities, and duties of the parties, and the agreements herein, shall continue to bind the parties in full force and effect until each and every obligation has been fully performed.
- P. Employee will separately receive information regarding his eligibility to continue any medical insurance under COBRA at his sole cost and expense.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written below.

CITY MANAGER

CARMEN DAVIS

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 202_ by **Carmen Davis**, who is personally known to me, or has produced _____ as identification and did/did not take an oath.

Notary Public
Signature and Seal

My commission expires:

ATTEST

CITY OF LAKE WORTH BEACH, FLORIDA

BY: _____
Melissa Ann Coyne, City Clerk

BY: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
Glen J. Torcivia, City Attorney

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: November 2, 2021

DEPARTMENT: City Commission

TITLE:

Ordinance No. 2021-20 – First Reading – Ballot language for setting term limits of two consecutive terms for a given seat by referendum on March 8, 2022

SUMMARY:

The ordinance provides a referendum question for the March 8, 2022, General Election to set term limits of two consecutive terms for a given seat.

BACKGROUND AND JUSTIFICATION:

The Charter Review Committee submitted recommendations to the City Commission regarding changes to the City's Charter at the October 5, 2021 regular meeting. The first recommendation was to have term limits of two consecutive terms for a given seat (terms are three years). Should the referendum pass, a Commissioner or the Mayor could only serve for six years and would not be able run again for the same seat in the next election. However, a Commissioner or Mayor could run for a different seat or run again for the same seat after a break.

The Commission gave consensus to move forward with a ballot question regarding term limits at the October 19, 2021 regular meeting. Term limits are not currently addressed in the Charter.

MOTION:

Move to approve/disapprove Ordinance 2021-20 on first reading and set the second reading and public hearing for November 16, 2021.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Ordinance 2021-20

ORDINANCE NO. 2021-20 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, CALLING FOR A REFERENDUM OF THE QUALIFIED ELECTORS OF THE CITY OF LAKE WORTH BEACH TO BE HELD ON MARCH 8, 2022, AS TO WHETHER SECTION 2 OF ARTICLE III OF THE CITY OF LAKE WORTH BEACH CHARTER SHALL BE AMENDED TO PROVIDE TERM LIMITS FOR THE POSITIONS OF MAYOR AND COMMISSIONER; PROVIDING FOR NOTICE AND ADVERTISING OF THE REFERENDUM; PROVIDING FOR REFERENDUM CANVASSING; PROVIDING FOR SEVERABILITY, CODIFICATION, REPEAL OF ALL CONFLICTING LAWS AND AN EFFECTIVE DATE

WHEREAS, a Charter for the City of Lake Worth Beach, Florida (the "City") was created and adopted pursuant to the Constitution and applicable laws of the State of Florida; and

WHEREAS, pursuant to section 166.021, Florida Statutes, the City has the governmental, corporate and proprietary powers to enable it to conduct municipal government; and

WHEREAS, pursuant to section 166.021(4), Florida Statutes, the City Charter may be amended through the City's exercise of its authority, including the amendment of those portions of its Charter which require a referendum, provided that a majority of the electors in a referendum affirmatively vote to amend the Charter; and

WHEREAS, section 166.031, Florida Statutes, authorizes the governing body of a municipality to submit proposed amendments to the Charter of the municipality in the form of an ordinance to the electors of the municipality; and

WHEREAS, currently the City's elected officials (i.e., mayor and commissioners) may serve an unlimited number of terms; and

WHEREAS, the City desires to provide for term limits for its elected officials which includes a limit of two (2) consecutive terms for the position of mayor and commissioner; and

WHEREAS, the offices of mayor and commissioner would be considered separate offices for the purpose of such consecutive term limits so that, for instance, an individual could serve two (2) consecutive terms as mayor and then two (2) consecutive terms as commissioner; and

WHEREAS, the City Commission deems it to be in the best interests of the City and serving a valid public purpose to conduct a referendum (the "Referendum") on the question of whether Article III, Section 2 of the Charter of the City of Lake Worth Beach be amended to provide that no person may serve more than two (2) consecutive terms as mayor and no person may serve more than two (2) consecutive terms as commissioner wherein the offices of mayor and commissioners will be considered separate offices for the purpose of such consecutive term limits.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF LAKE WORTH BEACH, FLORIDA:

Section 1. Findings adopted. The findings of the Commission set forth in the foregoing recitals are hereby adopted as true and correct statements and specifically made a part of this Ordinance.

Section 2. Referendum declared. A referendum is hereby called for and shall be held in the City on the 8th day of March, 2022, to determine whether or not a majority of the electors voting in the Referendum support the proposed amendment to the City Charter, as shown in Sections 6 and 7 of this Ordinance.

Section 3. Ballot title. The ballot title which is the subject of this Referendum, and by which the proposed Charter Amendment is to be commonly referred to or spoken of, shall be captioned as “**Term Limits for Mayor and Commissioners.**”

Section 4. Conduct of Referendum. The City shall determine the polling locations or places in coordination with the Palm Beach County Supervisor of Elections, and all qualified electors of the City of Lake Worth Beach, Florida who vote in the Referendum shall vote at those designated polling places. The polls shall be opened on the date of the Referendum on the proposed City of Lake Worth Beach, Florida Charter Amendment from 7:00 a.m. until 7:00 p.m. on the same day. Only the duly qualified electors of the City of Lake Worth Beach, Florida shall be permitted to vote on this Referendum question.

Section 5. Notice and advertising of the Referendum. The City Clerk shall prepare and give notice of the proposed Charter Amendment by causing appropriate notice to be published in accordance with the provisions of Section 100.342, Florida Statutes, which provides for at least one publication each week during the third and fifth weeks preceding the week in which the Referendum to consider the proposed Charter Amendment is to be held. The publications shall be placed in a newspaper of general circulation in the City. The City Clerk shall secure from the publisher of the newspaper, an appropriate affidavit of proof that the statutorily required Referendum notices have been duly published, as herein set forth and these two affidavits shall be part of the record of the City Commission.

Section 6. Ballot summary. The ballot summary of the proposed Charter amendment shall be:

SHALL THE CITY OF LAKE WORTH BEACH AMEND ITS CHARTER AT ARTICLE III, SECTION 2 TO PROVIDE THAT NO PERSON MAY SERVE MORE THAN TWO CONSECUTIVE FULL TERMS AS MAYOR AND NO PERSON MAY SERVE MORE THAN TWO CONSECUTIVE FULL TERMS AS COMMISSIONER WHEREIN THE OFFICES OF MAYOR AND COMMISSIONER WILL BE CONSIDERED SEPARATE OFFICES FOR THE PURPOSE OF SUCH CONSECUTIVE TERM LIMITS?

YES _____

NO _____

Section 7. Charter amendment. In the event that the majority of electors of the City voting in the Referendum vote affirmatively to amend Article III, Section 2 of the City Charter, then said Article and Section shall be amended to read as follows:

ARTICLE III. LEGISLATIVE

* * *

Sec. 2. – Election and terms.

On the second Tuesday in March a general election shall be held to elect members of the city commission every three years for Mayor and Commissioners from Districts 1 and 3 beginning in March 2018 and every three years for Commissioners from Districts 2 and 4 beginning in March 2019. The election of members of the city commission, except the mayor, shall be by districts to be known as Districts 1, 2, 3 and 4. The commissioners from Districts 2 and 4 shall be elected to three-year terms. Commissioners from Districts 1 and 3 shall be elected to three-year terms. The mayor shall be elected to a three-year term. No person may serve as mayor for more than two consecutive full terms and no person may serve as commissioner for more than two consecutive full terms. The offices of mayor and commissioner will be considered separate offices for the purpose of such consecutive term limits. The mayor and each commissioner shall serve until a successor has been duly qualified, elected and the election results certified by resolution of the city commission, or upon appointment, by resolution of the city commission. Such resolution shall be considered at the special meeting called to canvass the ballots, and shall be the order of business next following the canvass of ballots. Such special meeting shall be held no later than forty-eight hours after election results are furnished in writing to the city clerk by the supervisor of elections. No meeting shall be called, or business conducted by the city commission, except for emergency matters, after the polls close, until such time as the results of such election are canvassed.

Section 8. Canvassing. The election returns of the Referendum shall be canvassed in the manner provided by law, and the returns shall be certified to the City Commission, which shall declare the result thereof. Upon canvassing the returns of the Referendum, the result of the Referendum shall be recorded in the minutes of the City Commission in the manner prescribed by law.

Section 9. Severability. If any section or portion of this Ordinance, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 10. Codification. The provision of this Ordinance, as set out in Section 7 of this Ordinance, shall become and be made part of the Charter of the City of Lake Worth Beach, Florida.

Section 11. Repeal of laws in conflict. All ordinances or parts of ordinances and resolutions or parts of resolutions of the City of Lake Worth Beach, Florida, that are in conflict with any provisions of this Ordinance are hereby repealed to the extent of such

conflict.

Section 12. Effective date. This Ordinance shall become effective ten (10) days after passage.

The passage of this ordinance on first reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Herman Robinson
- Commissioner Sarah Malega
- Commissioner Christopher McVoy
- Commissioner Kim Stokes

The Mayor thereupon declared this ordinance duly passed on first reading on the _____ day of _____, 2021.

The passage of this ordinance on second reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Herman Robinson
- Commissioner Sarah Malega
- Commissioner Christopher McVoy
- Commissioner Kim Stokes

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2021.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: November 2, 2021

DEPARTMENT: City Commission

TITLE:

Ordinance No. 2021-21 – First Reading – Ballot language to allow a candidate to concede without forcing a run-off election

SUMMARY:

The ordinance provides a referendum question for the March 8, 2022, General Election to allow a candidate to concede after the General Election without forcing a run-off.

BACKGROUND AND JUSTIFICATION:

The Charter Review Committee submitted recommendations to the City Commission regarding changes to the City's Charter at the October 5, 2021 regular meeting. This recommendation is that a candidate may concede within 48 hours of the certification of the election results thereby doing away with the need for a run-off election and allowing the remaining candidate to be duly elected

In March 2019, four candidates ran for the District 4 Commission seat resulting in a run-off being necessary as no candidate received a majority of the vote. The candidate who had the second greatest number of votes conceded, but because the issue of concession was not addressed in the Charter, the City held the run-off election. Adding an allowance for a concession would prevent a run-off if a candidate conceded, avoiding the time and expense of an election.

The Commission gave consensus to move forward with a ballot question regarding candidate concession at the October 19, 2021 regular meeting.

MOTION:

Move to approve/disapprove Ordinance 2021-21 on first reading and set the second reading and public hearing for November 16, 2021.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Ordinance 2021-21

ORDINANCE NO. 2021-21 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, CALLING FOR A REFERENDUM OF THE QUALIFIED ELECTORS OF THE CITY OF LAKE WORTH BEACH TO BE HELD ON MARCH 8, 2022, AS TO WHETHER SECTION 4 OF ARTICLE V OF THE CITY OF LAKE WORTH BEACH CHARTER SHALL BE AMENDED TO PROVIDE A CANDIDATE WHO QUALIFIES FOR A RUN-OFF ELECTION THE OPTION OF CONCEDED THE RUN-OFF ELECTION WITHIN A TIME CERTAIN; PROVIDING FOR NOTICE AND ADVERTISING OF THE REFERENDUM; PROVIDING FOR REFERENDUM CANVASSING; PROVIDING FOR SEVERABILITY, CODIFICATION, REPEAL OF ALL CONFLICTING LAWS AND AN EFFECTIVE DATE

WHEREAS, a Charter for the City of Lake Worth Beach, Florida (the "City") was created and adopted pursuant to the Constitution and applicable laws of the State of Florida; and

WHEREAS, pursuant to section 166.021, Florida Statutes, the City has the governmental, corporate and proprietary powers to enable it to conduct municipal government; and

WHEREAS, pursuant to section 166.021(4), Florida Statutes, the City Charter may be amended through the City's exercise of its authority, including the amendment of those portions of its Charter which require a referendum, provided that a majority of the electors in a referendum affirmatively vote to amend the Charter; and

WHEREAS, section 166.031, Florida Statutes, authorizes the governing body of a municipality to submit proposed amendments to the Charter of the municipality in the form of an ordinance to the electors of the municipality; and

WHEREAS, Article V, Section 4 of the City's Charter currently provides for run-off elections between the candidates who received the greatest number of votes in the election for such office when no candidate receives the majority of the votes cast; and

WHEREAS, the City desires to provide candidates who qualify for a run-off election the option to concede the run-off election within 48 hours of the certification of the election results thereby doing away with the need for a run-off election and allowing the remaining candidate to be duly elected; and

WHEREAS, the City Commission deems it to be in the best interests of the City and serving a valid public purpose to conduct a referendum (the "Referendum") on the question of whether Article V, Section 4 of the Charter of the City of Lake Worth Beach be amended to provide that a candidate who qualifies for a run-off election is authorized to concede the run-off election within 48 hours of the certification of the election results thereby doing away with the need for a run-off election and allowing the remaining candidate to be duly elected.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF LAKE WORTH BEACH, FLORIDA:

Section 1. Findings adopted. The findings of the Commission set forth in the foregoing recitals are hereby adopted as true and correct statements and specifically made a part of this Ordinance.

Section 2. Referendum declared. A referendum is hereby called for and shall be held in the City on the 8th day of March, 2022, to determine whether or not a majority of the electors voting in the Referendum support the proposed amendment to the City Charter, as shown in Sections 6 and 7 of this Ordinance.

Section 3. Ballot title. The ballot title which is the subject of this Referendum, and by which the proposed Charter Amendment is to be commonly referred to or spoken of, shall be captioned as “**Option of Candidate to Concede Run-Off Election.**”

Section 4. Conduct of Referendum. The City shall determine the polling locations or places in coordination with the Palm Beach County Supervisor of Elections, and all qualified electors of the City of Lake Worth Beach, Florida who vote in the Referendum shall vote at those designated polling places. The polls shall be opened on the date of the Referendum on the proposed City of Lake Worth Beach, Florida Charter Amendment from 7:00 a.m. until 7:00 p.m. on the same day. Only the duly qualified electors of the City of Lake Worth Beach, Florida shall be permitted to vote on this Referendum question.

Section 5. Notice and advertising of the Referendum. The City Clerk shall prepare and give notice of the proposed Charter Amendment by causing appropriate notice to be published in accordance with the provisions of Section 100.342, Florida Statutes, which provides for at least one publication each week during the third and fifth weeks preceding the week in which the Referendum to consider the proposed Charter Amendment is to be held. The publications shall be placed in a newspaper of general circulation in the City. The City Clerk shall secure from the publisher of the newspaper, an appropriate affidavit of proof that the statutorily required Referendum notices have been duly published, as herein set forth and these two affidavits shall be part of the record of the City Commission.

Section 6. Ballot summary. The ballot summary of the proposed Charter amendment shall be:

SHALL THE CITY OF LAKE WORTH BEACH AMEND ITS CHARTER AT ARTICLE V, SECTION 4 TO PROVIDE THAT A CANDIDATE WHO QUALIFIES FOR A RUN-OFF ELECTION IS AUTHORIZED TO CONCEDE THE RUN-OFF ELECTION WITHIN 48 HOURS OF THE CERTIFICATION OF THE ELECTION RESULTS THEREBY DOING AWAY WITH THE NEED FOR A RUN-OFF ELECTION AND ALLOWING THE REMAINING CANDIDATE TO BE DULY ELECTED?

YES _____

NO _____

Section 7. Charter amendment. In the event that the majority of electors of the City voting in the Referendum vote affirmatively to amend Article V, Section 4 of the City Charter, then said Article and Section shall be amended to read as follows:

ARTICLE V. QUALIFICATIONS AND ELECTIONS

* * *

Sec. 4. – General, special and run-off elections.

Whenever a general or a special election is held to fill any elective office in the city, the candidate receiving a majority of the votes cast at such election to fill such office shall be declared to be duly elected; provided that in the event no candidate for a particular elective office shall receive a majority of the votes cast at such election to fill such office, then a run-off election shall be held two (2) weeks after the original election to elect a candidate to fill such office; provided further that in such event only the names of the two (2) candidates having received the greatest number of votes in the election for such office shall be submitted to the electors and the one receiving the majority number of votes in such run-off election shall be declared to be duly elected to such office; provided further, that should two (2) or more candidates receive an equal number of votes to any such office, so that it cannot be determined which two (2) had received the greatest and the next greatest number of votes, then the names of all such candidates shall be submitted at the run-off election and the candidate receiving the greatest number of votes at such election shall be declared elected to such office, regardless of whether such candidate received a majority of the votes cast to fill such office at such run-off election. A candidate who qualifies for a run-off election is authorized to concede the run-off election within forty-eight (48) hours of the certification of the election results. If only two candidates qualify for a run-off election and one of the candidates timely concedes the run-off election, such run-off election will be cancelled and the remaining candidate will be declared to be duly elected.

Section 8. Canvassing. The election returns of the Referendum shall be canvassed in the manner provided by law, and the returns shall be certified to the City Commission, which shall declare the result thereof. Upon canvassing the returns of the Referendum, the result of the Referendum shall be recorded in the minutes of the City Commission in the manner prescribed by law.

Section 9. Severability. If any section or portion of this Ordinance, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 10. Codification. The provision of this Ordinance, as set out in Section 7 of this Ordinance, shall become and be made part of the Charter of the City of Lake Worth Beach, Florida.

Section 11. Repeal of laws in conflict. All ordinances or parts of ordinances and resolutions or parts of resolutions of the City of Lake Worth Beach, Florida, that are in

conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 12. Effective date. This Ordinance shall become effective ten (10) days after passage.

The passage of this ordinance on first reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Herman Robinson
- Commissioner Sarah Malega
- Commissioner Christopher McVoy
- Commissioner Kim Stokes

The Mayor thereupon declared this ordinance duly passed on first reading on the _____ day of _____, 2021.

The passage of this ordinance on second reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Herman Robinson
- Commissioner Sarah Malega
- Commissioner Christopher McVoy
- Commissioner Kim Stokes

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2021.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: November 2, 2021

DEPARTMENT: City Commission

TITLE:

Ordinance No. 2021-22 – First Reading – Ballot language for changing to single-member district voting, with the mayor remaining at-large

SUMMARY:

The ordinance provides a referendum question for the March 8, 2022, General Election to change to single-member voting by district with the mayor remaining at-large.

BACKGROUND AND JUSTIFICATION:

The Charter Review Committee submitted recommendations to the City Commission regarding possible ballot questions at the October 5, 2021 regular meeting. The committee members recommended changing the voting from at-large for all commission seats to single-member voting so that voters would only cast a ballot for the commissioner in their district. Voting for the mayor would remain at large with all voters voting for the mayor and the commissioners would continue to represent and act for the benefit of all residents.

According to Article III – Legislative, Section 1 – City commission; powers and composition of the Charter, the five (5) commission members shall be elected by the electors of the city-at-large. The Charter Review Committee members felt that changing to single-member voting by district would encourage more voters to turn out to vote for the representative for their district; currently the districts with larger voter turn out impact who is elected in other districts.

The Commission gave consensus to move forward with a ballot question regarding single-member district voting at the October 19, 2021 regular meeting.

MOTION:

Move to approve/disapprove Ordinance 2021-22 on first reading and set the second reading and public hearing for November 16, 2021.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Ordinance 2021-22

ORDINANCE NO. 2021-22 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, CALLING FOR A REFERENDUM OF THE QUALIFIED ELECTORS OF THE CITY OF LAKE WORTH BEACH TO BE HELD ON MARCH 8, 2022, AS TO WHETHER SECTION 1 OF ARTICLE III OF THE CITY OF LAKE WORTH BEACH CHARTER SHALL BE AMENDED TO PROVIDE FOR SINGLE-MEMBER DISTRICT VOTING WHEREIN EACH COMMISSIONER SHALL BE ELECTED BY THE ELECTORS RESIDING IN HIS OR HER OWN DISTRICT AND WITH THE MAYOR CONTINUING TO BE ELECTED BY THE ELECTORS OF THE CITY-AT-LARGE; PROVIDING FOR NOTICE AND ADVERTISING OF THE REFERENDUM; PROVIDING FOR REFERENDUM CANVASSING; PROVIDING FOR SEVERABILITY, CODIFICATION, REPEAL OF ALL CONFLICTING LAWS AND AN EFFECTIVE DATE

WHEREAS, a Charter for the City of Lake Worth Beach, Florida (the "City") was created and adopted pursuant to the Constitution and applicable laws of the State of Florida; and

WHEREAS, pursuant to section 166.021, Florida Statutes, the City has the governmental, corporate and proprietary powers to enable it to conduct municipal government; and

WHEREAS, pursuant to section 166.021(4), Florida Statutes, the City Charter may be amended through the City's exercise of its authority, including the amendment of those portions of its Charter which require a referendum, provided that a majority of the electors in a referendum affirmatively vote to amend the Charter; and

WHEREAS, section 166.031, Florida Statutes, authorizes the governing body of a municipality to submit proposed amendments to the Charter of the municipality in the form of an ordinance to the electors of the municipality; and

WHEREAS, Article III, Section 1 of the City's Charter currently provides that each district of the city will be represented by one city commissioner who resides within such district and that all city commissioners and the mayor will be elected by the electors of the city-at-large; and

WHEREAS, the City desires to institute single-member district voting wherein each city commissioner will be elected by the electors of the district in which each commissioner resides instead of being elected by the electors of the city-at-large; and

WHEREAS, the City Commission deems it to be in the best interests of the City and serving a valid public purpose to conduct a referendum (the "Referendum") on the question of whether Article III, Section 1 of the Charter of the City of Lake Worth Beach

be amended to provide for single-member district voting wherein each commissioner shall be elected by the electors residing in his or her own district and with the mayor continuing to be elected by the electors of the city-at-large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF LAKE WORTH BEACH, FLORIDA:

Section 1. Findings adopted. The findings of the Commission set forth in the foregoing recitals are hereby adopted as true and correct statements and specifically made a part of this Ordinance.

Section 2. Referendum declared. A referendum is hereby called for and shall be held in the City on the 8th day of March, 2022, to determine whether or not a majority of the electors voting in the Referendum support the proposed amendment to the City Charter, as shown in Sections 6 and 7 of this Ordinance.

Section 3. Ballot title. The ballot title which is the subject of this Referendum, and by which the proposed Charter Amendment is to be commonly referred to or spoken of, shall be captioned as “**Single-Member District Voting for City Commissioners.**”

Section 4. Conduct of Referendum. The City shall determine the polling locations or places in coordination with the Palm Beach County Supervisor of Elections, and all qualified electors of the City of Lake Worth Beach, Florida who vote in the Referendum shall vote at those designated polling places. The polls shall be opened on the date of the Referendum on the proposed City of Lake Worth Beach, Florida Charter Amendment from 7:00 a.m. until 7:00 p.m. on the same day. Only the duly qualified electors of the City of Lake Worth Beach, Florida shall be permitted to vote on this Referendum question.

Section 5. Notice and advertising of the Referendum. The City Clerk shall prepare and give notice of the proposed Charter Amendment by causing appropriate notice to be published in accordance with the provisions of Section 100.342, Florida Statutes, which provides for at least one publication each week during the third and fifth weeks preceding the week in which the Referendum to consider the proposed Charter Amendment is to be held. The publications shall be placed in a newspaper of general circulation in the City. The City Clerk shall secure from the publisher of the newspaper, an appropriate affidavit of proof that the statutorily required Referendum notices have been duly published, as herein set forth and these two affidavits shall be part of the record of the City Commission.

Section 6. Ballot summary. The ballot summary of the proposed Charter amendment shall be:

SHALL THE CITY OF LAKE WORTH BEACH AMEND ITS CHARTER AT ARTICLE III, SECTION 1 TO PROVIDE FOR SINGLE-MEMBER DISTRICT VOTING WHEREIN EACH COMMISSIONER SHALL BE ELECTED BY THE ELECTORS RESIDING IN HIS OR HER OWN DISTRICT AND WITH THE MAYOR CONTINUING TO BE ELECTED BY

THE ELECTORS OF THE CITY-AT-LARGE?

YES _____

NO _____

Section 7. Charter amendment. In the event that the majority of electors of the City voting in the Referendum vote affirmatively to amend Article III, Section 1 of the City Charter, then said Article and Section shall be amended to read as follows:

ARTICLE III. LEGISLATIVE

* * *

Sec. 1. – City commission; powers and composition.

There shall be a city commission, with all legislative powers of the city vested therein, consisting of five (5) members who shall be electors of the city, ~~and who shall be elected by the electors of the city-at-large.~~ Each commissioner shall reside in one of the single-member districts established, and only one commissioner may reside in each district, except for the mayor who shall reside within the city. Candidates of the commission shall reside in the district from which they seek to be elected. Members of the commission shall reside in the district from which they were elected. Each commissioner shall be elected by the electors of the single-member district in which the commissioner resides. The mayor shall be elected by the electors of the city-at-large.

Section 8. Canvassing. The election returns of the Referendum shall be canvassed in the manner provided by law, and the returns shall be certified to the City Commission, which shall declare the result thereof. Upon canvassing the returns of the Referendum, the result of the Referendum shall be recorded in the minutes of the City Commission in the manner prescribed by law.

Section 9. Severability. If any section or portion of this Ordinance, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 10. Codification. The provision of this Ordinance, as set out in Section 7 of this Ordinance, shall become and be made part of the Charter of the City of Lake Worth Beach, Florida.

Section 11. Repeal of laws in conflict. All ordinances or parts of ordinances and resolutions or parts of resolutions of the City of Lake Worth Beach, Florida, that are in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 12. Effective date. This Ordinance shall become effective ten (10) days after passage.

The passage of this ordinance on first reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Herman Robinson
- Commissioner Sarah Malega
- Commissioner Christopher McVoy
- Commissioner Kim Stokes

The Mayor thereupon declared this ordinance duly passed on first reading on the _____ day of _____, 2021.

The passage of this ordinance on second reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Herman Robinson
- Commissioner Sarah Malega
- Commissioner Christopher McVoy
- Commissioner Kim Stokes

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2021.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: November 2, 2021

DEPARTMENT: City Commission

TITLE:

Ordinance No. 2021-23 – First Reading – Ballot language for changing the stipulation regarding the number of votes needed for a candidate to be duly-elected

SUMMARY:

The ordinance provides a referendum question for the March 8, 2022, General Election to change from requiring a candidate to receive a majority of votes cast in order to be elected to allowing a candidate who receives at least 40% plus 1 of the votes cast to be elected.

BACKGROUND AND JUSTIFICATION:

At the October 5, 2021 regular City Commission meeting, the Charter Review Committee presented recommendations regarding potential ballot questions. In order to reduce the number of run-off elections in the city, the committee members recommended changing the number of votes needed for a candidate to be elected.

According to the Charter's Article V – Qualifications and Elections, Section 4 – General, special and run-off elections, the candidate receiving a majority (50% plus 1) of the votes cast at such election to fill such office shall be declared to be duly elected; provided that in the event no candidate for a particular elective office shall receive a majority of the votes cast at such election to fill such office, then a run-off election shall be held two (2) weeks after the original election to elect a candidate to fill such office. The Charter Review Committee members suggested changing the Charter from 50% plus 1 to 40% plus 1 which would still indicate strong support of a candidate, but could eliminate some of the City's costly run-off elections.

The Commission gave consensus to move forward with a ballot question regarding changing the election criteria to 40% plus 1 at the October 19, 2021 regular meeting.

MOTION:

Move to approve/disapprove Ordinance 2021-23 on first reading and set the second reading and public hearing for November 16, 2021.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Ordinance 2021-23

ORDINANCE NO. 2021-23 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, CALLING FOR A REFERENDUM OF THE QUALIFIED ELECTORS OF THE CITY OF LAKE WORTH BEACH TO BE HELD ON MARCH 8, 2022, AS TO WHETHER SECTION 4 OF ARTICLE V OF THE CITY OF LAKE WORTH BEACH CHARTER SHALL BE AMENDED TO PROVIDE THAT THE CANDIDATE WHO RECEIVES A PLURALITY OF THE VOTES CAST AT AN ELECTION, EQUALING 40% OF THE VOTES CAST PLUS ONE VOTE OR MORE, WILL BE DECLARED TO BE DULY ELECTED; PROVIDING FOR NOTICE AND ADVERTISING OF THE REFERENDUM; PROVIDING FOR REFERENDUM CANVASSING; PROVIDING FOR SEVERABILITY, CODIFICATION, REPEAL OF ALL CONFLICTING LAWS AND AN EFFECTIVE DATE.

WHEREAS, a Charter for the City of Lake Worth Beach, Florida (the "City") was created and adopted pursuant to the Constitution and applicable laws of the State of Florida; and

WHEREAS, pursuant to section 166.021, Florida Statutes, the City has the governmental, corporate and proprietary powers to enable it to conduct municipal government; and

WHEREAS, pursuant to section 166.021(4), Florida Statutes, the City Charter may be amended through the City's exercise of its authority, including the amendment of those portions of its Charter which require a referendum, provided that a majority of the electors in a referendum affirmatively vote to amend the Charter; and

WHEREAS, section 166.031, Florida Statutes, authorizes the governing body of a municipality to submit proposed amendments to the Charter of the municipality in the form of an ordinance to the electors of the municipality; and

WHEREAS, Article V, Section 4 of the City's Charter currently provides that in an election, the candidate receiving a majority (50% plus 1 vote) of the votes cast at such election to fill such office will be declared to be duly elected, provided that in the event no candidate receives a majority of the votes, then a run-off election will be held; and

WHEREAS, with the risk of more elections resulting in costly run-off elections, the City desires to amend the Charter to allow for the candidate receiving a plurality of the votes cast to be declared duly elected as long as the plurality of the votes equals or exceeds 40% of the votes cast plus one (1) vote; and

WHEREAS, the City Commission deems it to be in the best interests of the City and serving a valid public purpose to conduct a referendum (the "Referendum") on the question of whether Article V, Section 4 of the Charter of the City of Lake Worth Beach be amended to provide that the candidate who receives a plurality of the votes cast at an election, which equals or exceeds forty percent (40%) of the votes cast plus one (1) vote, will be declared to be duly elected.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF LAKE WORTH BEACH, FLORIDA:

Section 1. Findings adopted. The findings of the Commission set forth in the foregoing recitals are hereby adopted as true and correct statements and specifically made a part of this Ordinance.

Section 2. Referendum declared. A referendum is hereby called for and shall be held in the City on the 8th day of March, 2022, to determine whether or not a majority of the electors voting in the Referendum support the proposed amendment to the City Charter, as shown in Sections 6 and 7 of this Ordinance.

Section 3. Ballot title. The ballot title which is the subject of this Referendum, and by which the proposed Charter Amendment is to be commonly referred to or spoken of, shall be captioned as “**Plurality of Votes Required for Election of Candidate for Commission.**”

Section 4. Conduct of Referendum. The City shall determine the polling locations or places in coordination with the Palm Beach County Supervisor of Elections, and all qualified electors of the City of Lake Worth Beach, Florida who vote in the Referendum shall vote at those designated polling places. The polls shall be opened on the date of the Referendum on the proposed City of Lake Worth Beach, Florida Charter Amendment from 7:00 a.m. until 7:00 p.m. on the same day. Only the duly qualified electors of the City of Lake Worth Beach, Florida shall be permitted to vote on this Referendum question.

Section 5. Notice and advertising of the Referendum. The City Clerk shall prepare and give notice of the proposed Charter Amendment by causing appropriate notice to be published in accordance with the provisions of Section 100.342, Florida Statutes, which provides for at least one publication each week during the third and fifth weeks preceding the week in which the Referendum to consider the proposed Charter Amendment is to be held. The publications shall be placed in a newspaper of general circulation in the City. The City Clerk shall secure from the publisher of the newspaper, an appropriate affidavit of proof that the statutorily required Referendum notices have been duly published, as herein set forth and these two affidavits shall be part of the record of the City Commission.

Section 6. Ballot summary. The ballot summary of the proposed Charter amendment shall be:

SHALL THE CITY OF LAKE WORTH BEACH AMEND ITS CHARTER AT ARTICLE V, SECTION 4 TO PROVIDE THAT THE CANDIDATE WHO RECEIVES A PLURALITY OF THE VOTES CAST AT AN ELECTION, WHICH EQUALS OR EXCEEDS 40% OF THE VOTES CAST PLUS ONE (1) VOTE, WILL BE DECLARED TO BE DULY ELECTED?

YES _____

NO _____

Section 7. Charter amendment. In the event that the majority of electors of the City voting in the Referendum vote affirmatively to amend Article V, Section 4 of the City Charter, then said Article and Section shall be amended to read as follows:

ARTICLE V. QUALIFICATIONS AND ELECTIONS

* * *

Sec. 4. – General, special and run-off elections.

Whenever a general or a special election is held to fill any elective office in the city, the candidate receiving a ~~majority~~plurality of the votes cast at such election to fill such office shall be declared to be duly elected provided that the plurality of votes equals or exceeds forty percent (40%) of the votes cast plus one (1) vote.; ~~provided that if~~ in the event no candidate for a particular elective office shall receive a ~~majority~~ plurality of the votes, as described above, ~~cast at such election~~ to fill such office, then a run-off election shall be held two (2) weeks after the original election to elect a candidate to fill such office; provided further that in such event only the names of the two (2) candidates having received the greatest number of votes in the election for such office shall be submitted to the electors and the one receiving the majority number of votes in such run-off election shall be declared to be duly elected to such office; provided further, that should two (2) or more candidates receive an equal number of votes to any such office, so that it cannot be determined which two (2) had received the greatest and the next greatest number of votes, then the names of all such candidates shall be submitted at the run-off election and the candidate receiving the greatest number of votes at such election shall be declared elected to such office, regardless of whether such candidate received a majority of the votes cast to fill such office at such run-off election.

Section 8. Canvassing. The election returns of the Referendum shall be canvassed in the manner provided by law, and the returns shall be certified to the City Commission, which shall declare the result thereof. Upon canvassing the returns of the Referendum, the result of the Referendum shall be recorded in the minutes of the City Commission in the manner prescribed by law.

Section 9. Severability. If any section or portion of this Ordinance, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 10. Codification. The provision of this Ordinance, as set out in Section 7 of this Ordinance, shall become and be made part of the Charter of the City of Lake Worth Beach, Florida.

Section 11. Repeal of laws in conflict. All ordinances or parts of ordinances and resolutions or parts of resolutions of the City of Lake Worth Beach, Florida, that are in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 12. Effective date. This Ordinance shall become effective ten (10) days after passage.

The passage of this ordinance on first reading was moved by _____, seconded by _____, and upon

being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Herman Robinson
Commissioner Sarah Malega
Commissioner Christopher McVoy
Commissioner Kim Stokes

The Mayor thereupon declared this ordinance duly passed on first reading on the _____ day of _____, 2021.

The passage of this ordinance on second reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Herman Robinson
Commissioner Sarah Malega
Commissioner Christopher McVoy
Commissioner Kim Stokes

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2021.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: November 2, 2021

DEPARTMENT: City Commission

TITLE:

Ordinance No. 2021-24 – First Reading – Ballot language regarding the filling of commission vacancies

SUMMARY:

The ordinance provides a referendum question for the March 8, 2022, General Election specifying a time line to fill a commission vacancy that occurs less than six (6) months before the next General Election.

BACKGROUND AND JUSTIFICATION:

The City Commission discussed possible changes to the City's Charter at the October 5, 2021 regular meeting and gave consensus to move forward with a ballot question regarding the filling of candidate vacancies at the October 19, 2021 regular meeting.

According to Article III – Legislative, Section 5 – Vacancies; forfeiture of office; filling of vacancies – (c) (1) Filling of vacancies in the City's Charter, a commission vacancy occurring less than six (6) months before the next regular city election shall be filled by the commissioner or mayor being chosen and appointed by a majority vote of the remaining members to serve until a newly elected commissioner or mayor is qualified. The City Commission proposed setting the timing to fill such a vacancy occur no later than 24 hours prior to the beginning of the City's qualifying period.

MOTION:

Move to approve/disapprove Ordinance 2021-24 on first reading and set the second reading and public hearing for November 16, 2021.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Ordinance 2021-24

ORDINANCE NO. 2021-24 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, CALLING FOR A REFERENDUM OF THE QUALIFIED ELECTORS OF THE CITY OF LAKE WORTH BEACH TO BE HELD ON MARCH 8, 2022, AS TO WHETHER SECTION 5 OF ARTICLE III OF THE CITY OF LAKE WORTH BEACH CHARTER SHALL BE AMENDED TO PROVIDE THAT A VACANCY ON THE CITY COMMISSION, WHEN THERE ARE LESS THAN SIX MONTHS REMAINING IN THE UNEXPIRED TERM OR LESS THAN SIX MONTHS BEFORE THE NEXT REGULAR CITY ELECTION, SHALL BE FILLED BY THE REMAINING MEMBERS NO LATER THAN 24 HOURS PRIOR TO THE OPENING OF THE QUALIFYING PERIOD; PROVIDING FOR NOTICE AND ADVERTISING OF THE REFERENDUM; PROVIDING FOR REFERENDUM CANVASSING; PROVIDING FOR SEVERABILITY, CODIFICATION, REPEAL OF ALL CONFLICTING LAWS AND AN EFFECTIVE DATE

WHEREAS, a Charter for the City of Lake Worth Beach, Florida (the "City") was created and adopted pursuant to the Constitution and applicable laws of the State of Florida; and

WHEREAS, pursuant to section 166.021, Florida Statutes, the City has the governmental, corporate and proprietary powers to enable it to conduct municipal government; and

WHEREAS, pursuant to section 166.021(4), Florida Statutes, the City Charter may be amended through the City's exercise of its authority, including the amendment of those portions of its Charter which require a referendum, provided that a majority of the electors in a referendum affirmatively vote to amend the Charter; and

WHEREAS, section 166.031, Florida Statutes, authorizes the governing body of a municipality to submit proposed amendments to the Charter of the municipality in the form of an ordinance to the electors of the municipality; and

WHEREAS, Article III, Section 5 of the City's Charter currently provides that when there is a vacancy on the city commission and there is less than six (6) months remaining in the unexpired term or when there are less than six (6) months before the next regular city election, the city commission, by a majority vote of the remaining members, are required to appoint a successor to serve until a newly elected commissioner or mayor is qualified; and

WHEREAS, there is no time limitation on when this appointment should be made by the remaining members of the commission; and

WHEREAS, the City Commission wishes to include a deadline on the appointment of successors to fill a vacancy on the commission under these particular circumstances; and

WHEREAS, the City Commission deems it to be in the best interests of the City and serving a valid public purpose to conduct a referendum (the "Referendum") on the question of whether Article III, Section 5 of the Charter of the City of Lake Worth Beach be amended to provide that a vacancy on the city commission, when there are less than six (6) months remaining in the unexpired term or less than six (6) months before the next regular city election, shall be filled by the remaining members of the commission no later than twenty-four (24) hours prior to the opening of the qualifying period for the next city election.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF LAKE WORTH BEACH, FLORIDA:

Section 1. Findings adopted. The findings of the Commission set forth in the foregoing recitals are hereby adopted as true and correct statements and specifically made a part of this Ordinance.

Section 2. Referendum declared. A referendum is hereby called for and shall be held in the City on the 8th day of March, 2022, to determine whether or not a majority of the electors voting in the Referendum support the proposed amendment to the City Charter, as shown in Sections 6 and 7 of this Ordinance.

Section 3. Ballot title. The ballot title which is the subject of this Referendum, and by which the proposed Charter Amendment is to be commonly referred to or spoken of, shall be captioned as "**Deadline for Appointment of Successor to Fill Vacancy on City Commission.**"

Section 4. Conduct of Referendum. The City shall determine the polling locations or places in coordination with the Palm Beach County Supervisor of Elections, and all qualified electors of the City of Lake Worth Beach, Florida who vote in the Referendum shall vote at those designated polling places. The polls shall be opened on the date of the Referendum on the proposed City of Lake Worth Beach, Florida Charter Amendment from 7:00 a.m. until 7:00 p.m. on the same day. Only the duly qualified electors of the City of Lake Worth Beach, Florida shall be permitted to vote on this Referendum question.

Section 5. Notice and advertising of the Referendum. The City Clerk shall prepare and give notice of the proposed Charter Amendment by causing appropriate notice to be published in accordance with the provisions of Section 100.342, Florida Statutes, which provides for at least one publication each week during the third and fifth weeks preceding the week in which the Referendum to consider the proposed Charter Amendment is to be held. The publications shall be placed in a newspaper of general circulation in the City. The City Clerk shall secure from the publisher of the newspaper, an appropriate affidavit of proof that the statutorily required Referendum notices have been duly published, as herein set forth and these two affidavits shall be part of the record of the City Commission.

Section 6. Ballot summary. The ballot summary of the proposed Charter amendment shall be:

SHALL THE CITY OF LAKE WORTH BEACH AMEND ITS CHARTER AT

ARTICLE III, SECTION 5 TO PROVIDE THAT WHEN THE CITY COMMISSION IS REQUIRED TO FILL A VACANCY ON THE COMMISSION BY APPOINTMENT, SUCH APPOINTMENT SHALL BE MADE BY THE REMAINING MEMBERS OF THE COMMISSION NO LATER THAN 24 HOURS PRIOR TO THE OPENING OF THE QUALIFYING PERIOD FOR THE NEXT CITY ELECTION?

YES _____

NO _____

Section 7. Charter amendment. In the event that the majority of electors of the City voting in the Referendum vote affirmatively to amend Article III, Section 5 of the City Charter, then said Article and Section shall be amended to read as follows:

ARTICLE III. LEGISLATIVE

* * *

Sec. 5. – Vacancies; forfeiture of office; filling of vacancies.

(a) *Vacancies.* The office of the mayor or of a commissioner shall become vacant upon the death, resignation, removal from office in any manner authorized by law, or forfeiture of such office by a member; such vacancy to be declared by the remaining members of the commission.

(b) *Forfeiture of office or candidacy.* The mayor or a commissioner shall forfeit such office or candidacy if lacking at any time during a term of office or candidacy any qualification for the office prescribed by this charter or by law.

(c) *Filling of vacancies.* A vacancy of the city commission shall be filled in one of the following ways:

(1) If there are less than six (6) months remaining in the unexpired term or if there are less than six (6) months before the next regular city election, the city commission by a majority vote of the remaining members shall choose and appoint a successor to serve until a newly elected commissioner or mayor is qualified. Such appointment shall be made no later than twenty-four (24) hours prior to the opening of the qualifying period for the next city election. If a vacancy occurs after the opening of the qualifying period for the next city election, then this deadline will not apply.

(2) If there are more than six (6) months remaining in the unexpired term and no general city election is scheduled within six (6) months, the city commission shall fill the vacancy by a special election to be held no more than sixty (60) days following the occurrence of the vacancy. If a run-off election is necessary, it shall be scheduled two (2) weeks after the special election.

(d) *Extraordinary vacancies.* In the event that three (3) or more members of the city commission are removed by death, disability, the law, or forfeiture of office, the governor

shall appoint an interim commission that shall call a special election as provided in (c)(2) above and such election shall be held in the same manner as the first election under this charter.

Section 8. Canvassing. The election returns of the Referendum shall be canvassed in the manner provided by law, and the returns shall be certified to the City Commission, which shall declare the result thereof. Upon canvassing the returns of the Referendum, the result of the Referendum shall be recorded in the minutes of the City Commission in the manner prescribed by law.

Section 9. Severability. If any section or portion of this Ordinance, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 10. Codification. The provision of this Ordinance, as set out in Section 7 of this Ordinance, shall become and be made part of the Charter of the City of Lake Worth Beach, Florida.

Section 11. Repeal of laws in conflict. All ordinances or parts of ordinances and resolutions or parts of resolutions of the City of Lake Worth Beach, Florida, that are in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 12. Effective date. This Ordinance shall become effective ten (10) days after passage.

The passage of this ordinance on first reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Herman Robinson
Commissioner Sarah Malega
Commissioner Christopher McVoy
Commissioner Kim Stokes

The Mayor thereupon declared this ordinance duly passed on first reading on the _____ day of _____, 2021.

The passage of this ordinance on second reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Herman Robinson
Commissioner Sarah Malega
Commissioner Christopher McVoy
Commissioner Kim Stokes

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2021.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk