

## PART I

### CHARTER\*

#### Article I. Incorporation; Form of Government; Powers

- Sec. 1. Reaffirming the existing boundaries of the municipality.
- Sec. 2. Form of government.
- Sec. 3. Powers of city; general.
- Sec. 4. Present ordinances continued in force.
- Sec. 5. Sale of alcoholic beverages.
- Secs. 6—10. Reserved.

#### Article II. The City Commission

- Sec. 11. Number, selection, term, compensation.
- Sec. 12. Qualifications.
- Sec. 13. Powers of city commission.
- Sec. 14. Prohibitions.
- Sec. 15. Forfeiture of office.
- Sec. 16. Judge of forfeiture.
- Sec. 17. Vacancies in commission.
- Sec. 18. Induction of commissioners into office; meetings.
- Sec. 19. Legislative procedure.
- Sec. 20. Adoption of ordinances; procedure; effective date.
- Sec. 21. Emergency measures.
- Sec. 22. Reserved.
- Sec. 23. Repeal of ordinances.
- Sec. 24. Investigations.
- Sec. 25. Commission districts; adjustment of districts.

#### Article III. City Manager

- Sec. 26. Appointment of city manager; written contract.
- Sec. 27. Removal of city manager.
- Sec. 28. Qualifications.
- Sec. 29. Absence, disability or suspension.
- Sec. 30. Powers and duties.
- Sec. 31. Reserved.

#### Article IV. City Departments and Officers

- Sec. 32. Departmental organization.
- Sec. 33. City clerk.
- Sec. 34. City attorney.
- Sec. 35. Police department; chief of police.
- Secs. 36, 37. Reserved.

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**\*Editor's note**—Printed herein is the Charter of the City of Winter Garden, Florida, adopted by referendum on September 25, 2007 and superseded the prior charter, which was adopted by Ord. No. 852, September 25, 1975 and by referendum on November 4, 1975. See Code Comparative Table for history. Amendments to the Charter are indicated by parenthetical history notes following amended provisions. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Obvious misspellings have been corrected without notation. Additions made for clarity have been enclosed in brackets [ ].

**State law reference**—Municipal home rule, F.S. ch. 166.

## WINTER GARDEN CODE

### **Article V. Elections**

- Sec. 38. Referendum.
- Sec. 39. Conduct generally.
- Sec. 40. Party insignia on ballots; form to be as in state, county elections.
- Sec. 41. Qualification of candidates in districts; time; procedure; runoff election.
- Sec. 42. Fee; withdrawal.
- Sec. 43. General elections.
- Sec. 44. Special elections.
- Sec. 45. Write-in candidates.
- Sec. 46. Absentee voting.
- Sec. 47. Polling places.
- Sec. 48. Canvassing board.
- Secs. 49—54. Reserved.

### **Article VI. Initiative and Citizen Referendum**

- Sec. 55. Initiative and referendum.
- Sec. 56. Commencement of proceedings.
- Sec. 57. Petitions.
- Sec. 58. Procedure for filing.
- Sec. 59. Action on petitions.
- Sec. 60. Results of election.

### **Article VII. Charter Review and Amendment**

- Sec. 61. Charter review; amendment.

### **Article VIII. Fiscal Management**

- Sec. 62. Fiscal year.
- Sec. 63. Submission of budget; budget message.
- Sec. 64. Budget.
- Sec. 65. Amendments after adoption.
- Sec. 66. Capital program.
- Sec. 67. Issuance of bonds.
- Sec. 68. Independent audit.
- Sec. 69. Reserved.

### **Article IX. Miscellaneous Provisions**

- Sec. 70. Severability clause.

## **PREAMBLE**

We the people of the City of Winter Garden, Florida, under the constitutions and laws of the United States of America and the State of Florida, in order to provide the benefits of local government responsive to the will and values of our citizens, do hereby adopt this charter to define the powers and structure of our government. By this action, we secure the benefits of home rule and affirm the values of representative democracy, professional management, strong political leadership, citizen participation, and regional cooperation. We believe in an open, responsive government that abides by the highest ethical standards and operates as a careful steward of the human, fiscal, and natural resources of our city.

## **ARTICLE I. INCORPORATION; FORM OF GOVERNMENT; POWERS**

### **Sec. 1. Reaffirming the existing boundaries of the municipality.**

The inhabitants of the City of Winter Garden, Florida, within the corporate limits as now established, or as hereafter established in the manner provided by law, shall continue to be a municipal corporation in perpetuity, under the name of the "City of Winter Garden, Florida." The corporate limits as now established are on file in the city clerk's office.

That said corporate limits may be extended from time to time as provided for in the Florida Statutes, without further amendment of this section, such up-to-date boundaries of the corporate limits shall be maintained in the office of the city clerk and are hereby adopted and incorporated as fully as if set out in length herein.

### **Sec. 2. Form of government.**

The form of government of the City of Winter Garden provided for under this charter shall continue as a "commissioner-manager plan," and the commission shall consist of five (5) citizens, who shall be elected in the manner hereinafter provided. The commission shall constitute the

governing body with powers as hereinafter provided to pass ordinances, adopt regulations and appoint a chief administrative officer to be known as the "city manager," and to exercise all other powers hereinafter provided.

### **Sec. 3. Powers of city; general.**

The City of Winter Garden hereby created, established and organized, shall have all governmental, corporate, and proprietary powers and authority to enable it to conduct municipal government; perform municipal functions; and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. The powers of the City of Winter Garden shall be construed liberally in favor of the municipality, limited only by the Constitution, general law, and specific limitations contained herein. The specific mention of particular powers in the charter shall not be construed as limiting in any way the general power granted in this section.

### **Sec. 4. Present ordinances continued in force.**

All ordinances and parts of ordinances now in force in said municipality, which are not in conflict with the provisions of this charter, or with the Constitution and laws of the State of Florida, shall be and remain in full force and effect until repealed by law or ordinance.

### **Sec. 5. Sale of alcoholic beverages.**

All regulations affecting the location of any establishment selling intoxicating liquor, wine, or beer for consumption on the premises shall be subject to a referendum of the voters; and except for restaurants that derive more than fifty-one (51) percent of their annual revenue from the sales of food and nonalcoholic beverages served for consumption on the premises, any establishment selling intoxicating liquors, wine, or beer, for consumption on the premises, shall not be located less than one thousand two hundred (1,200) feet from a school or an established church within the corporate limits of the city.

**Secs. 6—10. Reserved.****ARTICLE II. THE CITY COMMISSION****Sec. 11. Number, selection, term, compensation.**

(1) There shall be a city commission consisting of a mayor-commissioner who shall represent the entire city and be elected at large by the voters of the city, and four (4) commissioners each of whom shall represent a single member district and be elected by the voters in the district they represent. The mayor-commissioner and commissioners shall be qualified as hereinafter prescribed, and their term of office shall begin on the first regular meeting of the city commission after their election. The term of office of the mayor-commissioner and the commissioners elected in 2023 and subsequent elections shall be four (4) years.

(2) The present members of the city commission shall hold their seats for the term of office for which they were respectively elected, or until their successors have been elected and take office.

(3) The mayor-commissioner shall preside as chairperson of meetings of the commission, represent the city in intergovernmental relationships, present an annual state of the city message, and perform other duties as specified by the commission. The mayor-commissioner shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties. The mayor-commissioner as a city commission member shall have a voice and a vote in the proceedings of the commission; but no veto power.

(4) At the first regular commission meeting after an election, including any runoffs and swearing in of commissioner(s), the commission shall elect from among its members a mayor pro-tem, who shall serve until a successor is elected. The mayor pro-tem shall act as mayor during the absence or disability of the mayor.

(5) The commission may determine the annual salary of the mayor-commissioner and the commissioners by ordinance, but no ordinance increasing such salary shall become effective until the date of commencement of the terms of the mayor-commissioner and/or commissioners elected at the next regular election, provided that such election follows the adoption of such ordinance by at least six (6) months. The mayor-commissioner and the commissioners shall receive their actual and necessary expenses incurred in the performance of their duties of office.

(Ord. No. 19-56, § 2(Amd. 1), 11-14-19, elec. of 3-17-20)

**Sec. 12. Qualifications.**

(1) *Candidates.* Candidates for the city commission shall have been residents of the city and of the district in which they run for one (1) year immediately prior to the end of the qualifying period for the office and shall be registered voters in their district for said period, and shall maintain residency and voter registration in such district. Notwithstanding the foregoing, in the event a qualified candidate for commissioner fails to meet the residency and voter registration requirements for holding office solely as the result of a redistricting that occurs after the qualifying period for the election of such office, such qualified candidate for commissioner may continue to run for the office which he/she qualified and if elected, serve without forfeiture under section 15 for the remainder of his/her term provided the qualified candidate maintains his/her residency and voter registration existing at the time of redistricting while running for office and, if elected, while serving as commissioner.

(2) *Members.* Members of the city commission must maintain the foregoing qualifications in subsection (1) during their term of office. In the event a commissioner fails to meet the residency and voter registration requirements for holding office solely as the result of a redistricting or charter revision that occurs during the term of office, such commissioner shall not be deemed to have forfeited such office and may continue to serve in office for the remainder of the commis-

sioner's term provided the commissioner maintains his/her residency and voter registration existing at the time of redistricting.

### **Sec. 13. Powers of city commission.**

All powers of the city shall be vested in the city commission, except as otherwise provided by law or this charter and the commission shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law.

### **Sec. 14. Prohibitions.**

(1) *Appointments and Removals.* Neither the city commission nor any of its members shall control, demand, direct or request the appointment or removal of any city administrative officer or employee whom the city manager or any of the city manager's subordinates is empowered to appoint or hire.

(2) *Interference with Administration.* Except for the purpose of an investigation pursuant to this charter, the city commission and its members shall deal with the city administrative officers and employees solely through the city manager, and neither the city commission nor any members thereof shall give orders to any subordinates of the city manager, either publicly or privately.

(3) *Holding other Office.* Except where authorized by law, members of the city commission shall not hold any other public office. No commission member shall hold any employment with the city during the commission member's term of office. No former commission member shall hold any compensated appointed office or employment with the city until one (1) year after the end of such member's last term of office. Nothing in this section shall be construed to prohibit the commission from selecting any current or former commission member to represent the city on the governing board of any regional or other intergovernmental agency, or from selecting any current commissioner to serve on a municipal board as an ex officio member.

### **Sec. 15. Forfeiture of office.**

A city commission member shall forfeit his/her office if during the term of office such commissioner:

- (a) Fails to maintain residency and voter registration requirements of section 12 of this charter;
- (b) Violates any express prohibition of this charter;
- (c) Is convicted of a crime involving moral turpitude; or
- (d) Fails to physically attend three (3) regular, consecutive commission meetings without being excused by the city commission.

### **Sec. 16. Judge of forfeiture.**

The city commission shall be the judge of the grounds for forfeiture of office for its members. In order to exercise these powers, the commission shall have the power to subpoena witnesses, administer oaths, and require the production of evidence. Upon a majority vote of the members of the city commission eligible to vote on such matter, a hearing to consider forfeiture shall be scheduled no sooner than fourteen (14) days from the date said vote is taken. Written notice of the hearing to consider forfeiture shall be mailed to any commissioner who is the subject of such forfeiture hearing at least ten days prior to the date of the forfeiture hearing. Notice of such public hearing shall also be published in a newspaper of general circulation in the city at least one (1) week in advance of the hearing. At the forfeiture hearing, the city commission shall receive sworn testimony and evidence. Formal rules of evidence shall not apply but fundamental due process shall be observed and shall govern the proceedings. No city commissioner's office shall be deemed forfeited unless at least three (3) members of the commission vote in favor of a motion to declare the office forfeited.

(Ord. No. 19-56, § 2(Amd. 2), 11-14-19, elec. of 3-17-20)

### **Sec. 17. Vacancies in commission.**

(1) The office of mayor-commissioner or commissioner shall become vacant upon the death, resignation, forfeiture or removal from office in any manner prescribed by law or this charter.

(2) Unless otherwise prescribed by general law, a vacancy on the commission shall be filled in the following manner:

- (a) If there are six (6) months or less remaining in the unexpired term of the vacant office, within thirty (30) days of the occurrence of the vacancy, the commission by majority vote of its remaining members shall appoint a qualified person to fill the vacant office to serve the remainder of the term. Within fifteen (15) days of the occurrence of the vacancy, those persons interested in qualifying for appointment to the vacant office shall submit to the city clerk their name and other such information showing that they meet the qualifications for holding office pursuant to Section 12 of this charter. After the fifteen (15) day qualifying period, but before the expiration of thirty (30) days after the occurrence of the vacancy, the commission shall hold a special meeting for the purpose of filling the vacancy and at such meeting allow public comment on the matter. If the commission does not appoint a qualified person by the expiration of thirty (30) days after the occurrence of the vacancy, the vacant office shall be filled by drawing lots among the qualified persons receiving at least two (2) votes from the remaining commission members.
- (b) If there are more than six (6) months remaining in the unexpired term of the vacant office, the commission shall schedule a special election to fill the vacancy and such election shall be held not sooner than forty-five (45) days and not later than sixty (60) days following the occurrence of the vacancy.

#### **Sec. 18. Induction of commissioners into office; meetings.**

(1) All meetings of the city commission and of the committees thereof shall be public, and any citizen shall have access to the minutes and records thereof at all reasonable times. The

commission shall determine its own rules and order of business and shall keep minutes of its proceedings.

(2) The first meeting of newly elected mayor-commissioner and/or commissioners for induction into office, shall be held at the first regular meeting following their election, after which the commission shall meet regularly at such times as may be prescribed by its rules, but not less frequently than once each month.

(3) The mayor-commissioner or any two (2) members of the commission may call special meetings of the city commission through the city clerk's office, upon no less than twelve (12) hours' notice to each commissioner delivered in a reasonable manner.

(4) The mayor-commissioner or any two (2) members of the commission may convene an emergency commission meeting upon reasonable notice of such meeting given to each commission member. The first order of business at an emergency commission meeting shall be the determination, by affirmative vote of at least three (3) members of the commission that an emergency situation involving health, safety, or public welfare warranting commission action exists. Only matters relating to the emergency may be considered at the emergency meeting and any action taken at such meeting must be approved by at least three (3) members of the commission, except for emergency ordinances which shall be adopted in accordance with this charter.

#### **Sec. 19. Legislative procedure.**

A majority of all members elected to the city commission shall constitute a quorum, but a less number may adjourn from day to day and compel the attendance of absent members in such a manner and under such penalty as may be prescribed by ordinance. The affirmative vote of three (3) members shall be necessary to adopt any ordinance or resolution.

#### **Sec. 20. Adoption of ordinances; procedure; effective date.**

(1) All action by the city commission of a legislative character shall be by ordinance. Every proposed ordinance shall be introduced in writ-

ten or printed form, and shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title; but general appropriation ordinances may contain the various subjects and accounts for which moneys are to be appropriated. The enacting clause of all ordinances shall be, "Be it Enacted by the City of Winter Garden."

(2) A proposed ordinance may be read by title, or in full, on at least two (2) separate days and shall be advertised in accordance with applicable state law.

(3) After such hearing, the commission may finally pass such ordinance with or without amendment. The second passage of any ordinance shall be final and no further passage shall be required. All adopted ordinances shall become effective ten (10) days after adoption unless otherwise specified therein.

(4) If a proposed ordinance is defeated either on the first or second reading, the same cannot be again reconsidered for a period of ninety (90) days.

(Ord. No. 19-56, § 2(Amd. 4), 11-14-19, elec. of 3-17-20)

#### **Sec. 21. Emergency measures.**

The city commission by affirmative two-thirds ( $\frac{2}{3}$ ) vote of the total members of the city commission may enact ordinances dealing with emergencies at the meeting at which they are introduced. A member of the city commission shall be allowed to vote by telephone or other audio/visual means on any emergency measure provided that such commissioner can hear all speakers and can be heard by the city commission and the public during deliberations on the measure. Any new and unexpected condition or occurrence of a nonrecurring nature that constitutes an immediate and serious menace to the public welfare of the city, shall be deemed an emergency. When no expenditure of city funds is entailed, emergency ordinances may be temporarily effective for a period of not more than fifteen (15) days from the date of their passage; but such ordinances shall be subject to all other provisions of this charter governing the enactment of ordinances, and if not finally adopted in the manner herein provided

shall expire at the end of the time for which they are temporarily effective. An emergency ordinance authorizing the expending of funds by the city for other than a regular or recurring requirement, may be effective upon any date fixed in the ordinance by the city commission. Every emergency ordinance shall set forth specifically the conditions or occurrences that create the emergency, and shall be printed in full in the first issue of any newspaper thereafter published and of general circulation in the City of Winter Garden, in addition to the other publications herein, and shall be captioned as an emergency ordinance.

(Ord. No. 19-56, § 2(Amd. 5), 11-14-19, elec. of 3-17-20)

#### **Sec. 22. Reserved.**

**Editor's note**—Ord. No. 19-56, § 2(Amd. 6), adopted Nov. 14, 2019, and approved by the voters from an election held March 17, 2020, repealed § 22. Former § 22 pertained to revision of ordinances and derived from the Charter adopted at referendum Sept. 25, 2007.

#### **Sec. 23. Repeal of ordinances.**

The repeal of any ordinance shall not revive any ordinance which was repealed thereby.

(Ord. No. 19-56, § 2(Amd. 6), 11-14-19, elec. of 3-17-20)

#### **Sec. 24. Investigations.**

The city commission may make investigations into the affairs of the city and the conduct of any city department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence.

#### **Sec. 25. Commission districts; adjustment of districts.**

(1) There shall be four (4) city commission districts. Each district shall be formed of compact, contiguous territory, and its boundary lines shall follow the center lines of streets whenever possible. The aggregate length of all district boundaries shall be as short as possible. The districts shall be approximately equal in population based upon the principal of equal and effective representation as required by the federal and

state constitutions. Deviation in the population of a district when formed may not exceed five (5) percent of the average population for all commission districts.

(2) A five (5) member districting commission shall be created to study and propose the readjustment of district boundaries when required herein. The five (5) member districting commission shall be appointed in the following manner. The mayor-commissioner shall appoint one (1) elector who resides in the city and each of the four (4) commissioners shall appoint one (1) elector who resides in their respective district. Residency of the districting commission members is to be determined from the most current voter registration rolls. Each appointment to the districting commission shall be confirmed by a majority vote of the city commission. Electors chosen shall not be employed by the city.

(3) A districting commission shall be created upon the following circumstances:

- (a) Within forty-five (45) days following official certification of the decennial census of the state; or
- (b) Commencing on April 30, 2008, if the population of any district in the city becomes fifty (50) percent greater than the population of the smallest district prior to the decennial census of the state, unless such occurs within one (1) year of the decennial census. The city shall annually review the estimated population of each district.

(4) Within one hundred and twenty (120) days of being created, the districting commission shall file with the official designated by the city commission, a report containing a recommended plan for adjustment of the commission district boundaries. The report shall include a map and description of the proposed districts and shall be drafted in the form of a proposed ordinance and upon filing shall be treated as an ordinance introduced by a commissioner.

(5) It shall be the responsibility of the city manager to provide staff assistance and technical data to the districting commission.

(6) The procedure for the city commission's consideration of the report shall be the same as for other ordinances, provided that if a summary of the ordinance is published pursuant to this charter and general law, it must include both the map and a description of the recommended districts.

(7) The commission shall adopt a redistricting ordinance at least ninety (90) days before the next regular city election, however if the commission fails to do so, the report of the districting commission shall go into effect at that time and have the effect of an ordinance.

### **ARTICLE III. CITY MANAGER**

#### **Sec. 26. Appointment of city manager; written contract.**

The city commission shall appoint a city manager, who shall have the powers and perform the duties provided in this Charter. No city commissioner shall be appointed city manager during the term for which the commissioner was elected, nor within one (1) year after the expiration of the commissioner's term. The city manager will be hired by the city under a written employment contract, the terms of which must be approved by an affirmative vote of at least three (3) commissioners before said contract can be effective. In no event shall the city manager be hired pursuant to a written employment contract for a term of employment in excess of four (4) years. At the expiration of such contract, the city commission must decide by an affirmative vote of at least three (3) commissioners either to retain the city manager pursuant to a written employment contract or terminate the city manager.

#### **Sec. 27. Removal of city manager.**

Prior to the end of the city manager's contract, the city commission may remove the city manager by an affirmative vote of at least three (3) of its members. At least thirty (30) days before such removal shall become effective, the commission shall by an affirmative vote of at least three (3) of its members adopt a preliminary resolution stating the reasons for the city manager's removal.