

Meeting Date:

October 27, 2009

Agenda Item

23

REQUESTED COMMISSION ACTION:

Consent

Ordinance

Resolution

Consideration/
Discussion

Presentation

SHORT TITLE

Proposed Charter amendment to delete Article XIII, Sections 221 through 227
thereby permitting the City Commission to provide in the Code of Ordinances for
variances and special exceptions by different and more expedited means than is
now permitted in the City Charter such as by an administrator or by a board
governed by revised rules and procedures.

Summary of Purpose and Why:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, DELETING IN ITS ENTIRETY ARTICLE XXIII, SECTIONS 221 THROUGH 227 TO CHAPTER 57-174, LAWS OF FLORIDA SPECIAL ACTS OF 1957 AS SUBSEQUENTLY AMENDED AND SUPPLEMENTED, OTHERWISE KNOWN AS THE CHARTER OF THE CITY OF POMPANO BEACH, FLORIDA, WHICH ESTABLISHED AND PROVIDED RULES AND PROCEDURES FOR THE ZONING BOARD OF APPEALS; PROVIDING THAT IF THE CHAPTER IS DELETED BY APPROVAL OF A MAJORITY OF THE VOTERS AT THE GENERAL ELECTION OF NOVEMBER 2, 2010, THEN SUCH AMENDMENT SHALL BECOME A PART OF THE CITY'S CHARTER UPON CERTIFICATION AND ACCEPTANCE OF THE ELECTION RESULTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

(1) Origin of request for this action:

(2) Primary staff contact:: Gordon B. Linn, City Attorney

Ext.

(3) Expiration of contract, if applicable:

(4) Fiscal impact and source of funding: None

DEPARTMENTAL
COORDINATION

DATE

DEPARTMENTAL
RECOMMENDATION

DEPARTMENTAL HEAD SIGNATURE

City Attorney

10/14/09

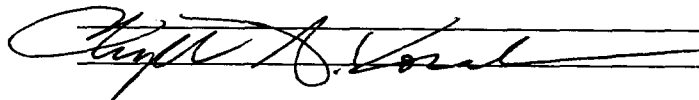
City Attorney Communication #2010-96

Advisory Board

Planning Director

Public Works Director

Interim City Manager



ACTION TAKEN BY COMMISSION:

Ordinance

Resolution

Consideration

Workshop

1st Reading

1st Reading

Results:

Results:

2nd Reading

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, DELETING IN ITS ENTIRETY ARTICLE XXIII, SECTIONS 221 THROUGH 227 TO CHAPTER 57-174, LAWS OF FLORIDA SPECIAL ACTS OF 1957 AS SUBSEQUENTLY AMENDED AND SUPPLEMENTED, OTHERWISE KNOWN AS THE CHARTER OF THE CITY OF POMPANO BEACH, FLORIDA, WHICH ESTABLISHED AND PROVIDED RULES AND PROCEDURES FOR THE ZONING BOARD OF APPEALS; PROVIDING THAT IF THE CHAPTER IS DELETED BY APPROVAL OF A MAJORITY OF THE VOTERS AT THE GENERAL ELECTION OF NOVEMBER 2, 2010, THEN SUCH AMENDMENT SHALL BECOME A PART OF THE CITY'S CHARTER UPON CERTIFICATION AND ACCEPTANCE OF THE ELECTION RESULTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission has duly considered the proposed Charter amendment which provides for the deletion of Sections 221 through 227 of the City Charter; and

WHEREAS, Section 261 of the City's Charter provides for the method of amending the City Charter; and

WHEREAS, the City Commission of the City of Pompano Beach has deemed it to be in the best interest of the citizens and residents of the City of Pompano Beach that the proposed amendment to the City Charter shall be submitted to a vote of the electors; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed Ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. The following referendum question amending Chapter 57-174, Laws of Florida Special Acts of 1957 as subsequently amended and supplemented, otherwise known as the Charter of the City of Pompano Beach, shall be presented to the electorate of the City of Pompano Beach at the November 2, 2010 General Election and if the following referendum question is approved by a majority of the electorate at said election, the said approved amendment shall be legally effective and shall become a part of the City Charter upon certification and acceptance of the election results.

PROPOSED AMENDMENT #1

REMOVAL OF ZONING BOARD OF APPEALS FROM CHARTER.

Shall Article XXIII, Sections 221 through 227 of the Charter of the City of Pompano Beach be deleted in their entirety thereby permitting the City Commission to provide in its Code of Ordinances for variances and special exceptions by different and more expedited means than is now permitted in the City Charter such as by an administrator or by a board governed by revised rules and procedures?

YES _____

NO _____

If the proposed amendment is approved, Article XXII, Sections 221 through 227 of the City Charter entitled, "Zoning Board of Appeals," will be deleted in its entirety as indicated below:

***ARTICLE XXII: ZONING
BOARD OF APPEALS***

~~Sec. 221. ESTABLISHMENT AND MEMBERSHIP.~~

~~There is hereby created and established a Zoning Board of Appeals which shall consist of five (5) members, each of whom shall be a resident of the City of~~

~~Pompano Beach, appointed by resolution of the City Commission, and each member shall be appointed for a term of three (3) years and removable for cause by the City Commission on written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Said Board, from its membership, shall elect a Chairman and Vice Chairman, and each member of said Board shall serve without compensation. The Zoning Administrator shall meet with said Board in an advisory capacity but shall have no vote. The purpose of the Board is to hear and determine appeals from refusal of building permits and to permit special exceptions and/or variances from the terms of the zoning ordinances in harmony with its general purpose and intent, and in accordance with the principles, conditions and procedures specified in the ordinances.~~

~~Sec. 222. SUBSTITUTE MEMBERS.~~

~~The City Commission shall by resolution appoint three (3) alternate members of the Zoning Board of Appeals, to be designated as Alternate 1, Alternate 2, and Alternate 3. Each alternate member shall be appointed for a term of three (3) years, said terms to run concurrently, and shall be subject to removal for cause by the City Commission on written charges and after public hearing. Vacancies shall be filled for the unexpired term of any alternate member whose term becomes vacant. In case of temporary absence or disqualification of any member of the Zoning Board of Appeals, the Chairman of the Board shall have the right and authority to designate one of such alternate members to serve as a substitute on the Zoning Board of Appeals during the continuance of such absence or disqualification. The Chairman shall rotate such assignments among the three (3) alternate members, unless unavailability of an alternate or alternates makes such rotation impossible. No substitute shall serve in such capacity for a longer period than three (3) months, nor shall more than two (2) substitutes serve on the Board of Appeals at any time. In cases where substitutes are designated to serve for such limited periods, such facts shall be recorded in the official minutes of the Zoning Board of Appeals before such substitute shall act in any matter presented to the Board and, while serving, substitutes shall have the same powers as regular members.~~

~~Sec. 223. RULES, REGULATIONS AND PROCEDURE.~~

~~The City Commission may by ordinance fix and determine procedure for the Zoning Board of Appeals and such Board shall adopt reasonable rules and regulations consistent with the provisions of such ordinance for the presentation of matters before such Board, for notifying interested parties, for charging and collecting an application fee, for conducting and holding hearings, and for calling in advisors or assistants from time to time. The city shall furnish to the Board stenographers, typists and clerical help and pay miscellaneous expenses from time to time. No member of the Board shall draw any compensation for his services. All meetings of the Board shall be open to the public, and the Board shall keep~~

~~minutes of its proceedings showing the vote of each member upon each question submitted to it, or, if a member is absent or fails to vote, such fact shall appear upon its minutes. Copies of its minutes shall be immediately filed with the Clerk and the city and shall become a public record.~~

Sec. 225. POWERS.

~~The Zoning Board of Appeals shall have the following powers:~~

~~(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance;~~

~~(2) To hear and decide special exceptions to the terms of any zoning ordinance upon which such Board is required to pass under such zoning ordinance;~~

~~(3) To authorize upon appeal in specific cases such variance from the terms of any zoning ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship, and so justice done.~~

~~In exercising the above powers and duties, the Board shall not grant a variance unless and until:~~

~~(1) It shall be demonstrated that special and peculiar conditions and circumstances affect the land, building or structure concerning which variance is sought, which conditions and circumstances do not apply generally to neighboring lands, buildings and structures in the same district.~~

~~(2) It shall be demonstrated that the existing conditions and circumstances are not the result of the actions of the applicant or his agents.~~

~~(3) It shall be demonstrated that the existing conditions and circumstances are such that strict application of the provisions of the ordinance would deprive the applicant of reasonable use of said land, building or structure, equivalent to the use made in neighboring lands, buildings or structures in the same district and permitted by the terms of this provision provided, however, that no nonconforming use of neighboring lands, buildings or structures, legal or illegal, in the same district and not permitted use of lands, buildings or structures in adjacent areas shall be considered grounds for issuance of a variance permitting similar uses.~~

~~(4) The Zoning Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of the zoning ordinance, and that the variance proposed to be granted is the minimum variance that will make possible the reasonable use of the land, building or structure. The~~

~~Zoning Board of appeals shall not be empowered or authorized to issue variances or exceptions to permit a use in a district in which such use is prohibited by the zoning ordinance unless such variance falls under the preceding conditions.~~

~~Sec. 226. DECISION OF BOARD.~~

~~In exercising the foregoing powers mentioned herein, such Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, or may make such order, requirement, decision or determination as ought to be made, and to that end, shall have all the powers of the officer from whom the appeal is taken. Each decision of the Board shall set out with sufficient clarity and succinctness the exact and particular decision made by such Board, and all such decisions shall be on an appropriate form. One copy of the decision shall be kept by the Board of Appeals, one copy shall be forwarded to the City Clerk and shall become a public record, and at least one copy shall be forwarded to the applicant. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative officer, or decide in favor of the applicant on any matter upon which it is required to pass under any zoning ordinance, or to effect any variance in such zoning ordinance.~~

~~Sec. 226.1. REVERSAL OR MODIFICATION BY CITY COMMISSION.~~

~~All final decisions of the Zoning Board of Appeals granting appeals, special exceptions and/or variances, may be appealed to the City Commission which shall be empowered to affirm, reverse or modify such decision under the same criteria the Board is required by law to follow. Such appeal may be instituted by a City Commissioner, the City Manager or any individual entitled to notice of the original proceeding before the Zoning Board of Appeals. Procedures for the filing of decisions of the Board and taking appeals therefrom shall be established by ordinance.~~

~~Sec. 227. APPEAL TO COURT.~~

~~Any person or persons, jointly or severally, aggrieved by any decision of the Zoning Board of Appeals, may petition the circuit court for issuance of a writ of certiorari, appealing such decision, in whole or in part, and specifying the grounds for the appeal in the manner and within the time provided by the Florida Appellate Rules.~~

CODING: Words in ~~struck through~~ type are deletions from existing law;
Words in underscored type are additions.

SECTION 2. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2009.

PASSED SECOND READING this _____ day of _____, 2009.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
10/5/09
l:ord/charter/2009-288