

# THE CHARTER OF THE CITY OF MIDWAY, FLORIDA

## Article I - In General

### Section 1.1 - Name of City.

The inhabitants of the City of Midway, Gadsden County, Florida, within the boundaries hereinafter designated or within such boundaries as may hereinafter be established, are a body politic incorporated under the name "City of Midway, Florida", and such shall have perpetual succession, may use a city seal, may contract and be contracted with, and may sue and be sued and be impleaded in all courts of this state and in all matters whatsoever.

### Section 1.2 - Territorial Limits.

The boundaries of the City of Midway shall be as follows:

(Map Insert)

The boundaries of said municipality may be changed and enlarged or contracted under the general powers of the State of Florida from time to time for such purposes.

**State Law Reference:** F. S. 166.031(3).

### Section 1.3 - Succession of Rights and Liabilities.

The City of Midway shall succeed to own, possess and hold all property, real, personal, or mixed heretofore owned, possessed, or held and shall succeed to all uncollected taxes, dues, claims, judgements, decrees and chooses in action, held or owned by the former City of Midway, as existed from

1987 to present, and shall have all the rights and powers to annex, acquire by purchase, gift, deed or trust any lands either submerged or improved, abutting to the boundaries of said city; and shall have, exercise and enjoy all the rights, immunities, powers, benefits, privileges, and franchises now possessed, owned or held by the City of Midway, or that can be conferred by law upon municipal corporations under the laws of the State of Florida; and all rights, immunities, powers, and privileges conferred hereby are and shall be held to be conferred with like legal affect as though each right, immunity, power and privilege and the mode of exercise thereof was specifically enumerated, set forth and defined in this Charter; and said city shall be subject to all duties and obligations now pertaining to, or incumbent upon, the City of Midway as a municipal corporation.

#### **Section 1.4 - General Powers.**

The City of Midway shall have all powers possible for a municipality or city to have under the Constitution and laws of the State of Florida, as fully and completely as though specifically enumerated in this Charter, except as limited herein and as amended from time to time, including provision of such municipal services as will protect and promote the health and well-being of the city and its inhabitants, such services may include, but not be limited to, police, fire, utilities and sanitation, except that police and fire protection shall be furnished by the County until the city becomes fully operational under this Charter and until such time as the city determines it is financial feasible. The city may provide any such services by contracting or granting a franchise, as an alternative to providing the service directly.

**State Law References:** F. S. Chapter 166, Municipal Home Rule Powers Act.

#### **Section 1.5 - Construction.**

The powers of the City of Midway under this Charter shall be construed liberally in favor of the City and the specific mention hereinafter of a particular in the Charter shall not be construed as limiting in any way the general powers stated in this article.

#### **Section 1.6 - Intergovernmental Relations.**

The City of Midway may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil divisions or agencies thereof.

### **Article II - Governing Body**

#### **Section 2.1 - Form of Government.**

The form of government for the City of Midway provided for under this act shall be the "Council-Manager Plan" and the city council shall consist of seven (7) citizens who shall be residents of the City and electors eligible to vote in the City of Midway elections elected by the electors of the City.

#### **Section 2.2 - City Council Created; Qualifications; Term of Office; and Vacancies.**

(a) There is hereby created a city council with all legislative powers of the city vested herein which consists of seven councilmembers. Two members shall be elected at large and five members shall be elected from districts. The district seats shall be numbers 1, 2, 3, 4, and 5. The at large seats shall be numbered 6 and 7. Council districts shall be as nearly equal in proportion to population as possible. The city council may, from time to time, fix the boundaries of such districts to keep them as nearly equal in proportion to the population as possible, provided that such changes shall be made only in odd-numbered years.

(b) All elected officers shall be citizens, residents, and electors of the City over the age of eighteen and in addition, shall have resided within the corporate limits of the City of Midway for a period of at least one (1) year prior to last qualifying date and be a qualified elector under the laws of the State of Florida and eligible to vote within the City of Midway and shall continue to be a resident of the City during the term of office. All members of the city council shall be elected at large by all registered voters in the city, however, if a person is running for a district seat, the person must reside in the district from which they are running at the time of qualification and shall continue to reside in that district during the term of office.

(c) Term of Office. Term of office of a councilmember shall be for a period of four (4) years from the first meeting following certification of election to such office, beginning in the year 2004. Challenge and recount will be conducted in accordance with provisions of Florida Statutes. The term of office shall begin at the next regularly scheduled city council meeting on the first Thursday of May and shall end at Midnight on the first Wednesday in May prior to the end of the four year period.

Terms of Office to Conform with Charter Amendments. For the purpose of this Charter amendment, the terms of office for city council seats 1, 3, 5 and 7, elected in 2001 shall expire at Midnight on the first Wednesday of May 2004. The election for city council seats 1, 3, 5, and 7 held in April 2004 shall be for a three-year term expiring at Midnight on the first Wednesday of May 2007 and then every four years thereafter; terms of office for council seats 2, 4, and 6, elected in September 2002 shall expire at Midnight on the first Wednesday of May 2005 and then every four years thereafter.

(d) Vacancies; forfeiture of office; filling of vacancy.

(1) Vacancies. The office of a councilmember shall become vacant upon death, incapacitation due to long term illness, if such incapacitation is attested to in writing by not less than two physicians, resignation, or removal from office in a manner authorized by law, or forfeiture of office.

(2) Forfeiture of Office. A councilmember shall forfeit his/her office if he/she (a) lacks at any time during his/her term of office any qualification for the office prescribed by this Charter or by law; (b) violates any express prohibition of this Charter; (c) is convicted of a felony or misdemeanor involving moral turpitude; (d) fails to attend three regular meetings of the city council without being excused by the city council or (d) violates any standard of conduct or code of ethics established by law for public officials.

(3) Filling of Vacancies. If less than one year remains in the unexpired term or if there is less than one year remaining before the next regular city election for that district, the council by a majority vote of the remaining members shall choose a successor to serve the remainder of the unexpired term. If there is one year or more remaining in the unexpired term and no regular city election is scheduled within one year, the city council shall, by majority vote, fill the vacancy on an interim basis until the next regular election for that seat. The appointed member need not live in the district in order to be appointed by the remaining members of the city council to fill the remainder of the term, if the unexpired term is not an at-large district seat, however, in order to qualify to run for a successive term, and it is not an at-large district seat, the appointed member must live in the district for which he or she is qualifying to run.

(4) Notwithstanding the requirements of Article IV, Section 4.9 that a quorum consists of four members, if at any time the membership of the city council is reduced to less

than three, the remaining two members may convene under the provisions of this section to appoint additional members to raise the membership to four. If there is inability to reach agreement within ten days on the appointment of a third member, the Governor of the State of Florida shall appoint a third member. If at any time the membership of the city council is reduced to one, the Governor of the State of Florida shall appoint the second member and those two members shall convene under the provisions of this section.

(5) In the event a vacancy occurs in a manner that is not contemplated by this Charter, such vacancy shall be filled by special election to be held not sooner than sixty (60) days following the occurrence of the vacancy.

### **Section 2.3 - Districts.**

## **Article III - Elections**

### **Section 3.1 - Manner of Holding Elections.**

(a) Municipal elections in the City of Midway shall be held on the last Tuesday in April. Terms of the current city council will expire as follows: districts 1, 3, 5, and 7 will expire at Midnight on the first Wednesday of May 2004 and districts 2, 4 and 6 will expire at Midnight on the first Wednesday of May 2005 and then in accordance with Article 2, Section 2.2.

### **Section 3.2 - Nomination of the City Council.**

(a) Every person who shall desire to become a candidate for nomination under the provisions of this Charter to the office of city councilmember, prior to the date established by ordinance, shall qualify

to become such candidate by filing with the city manager or other person designated by ordinance, in accordance with Section 3.2(b), his/her application to have his/her name printed upon the ballot, as a candidate for nomination to the district for which he/she aspires. All applications shall be accompanied by an affidavit that the candidate is a qualified elector of the City of Midway, Florida, pursuant to section 2.2 of this Charter, and has been a resident of the City of Midway, Florida for one (1) year prior to the final qualifying date. With said application shall be filed a petition which shall indicate prominently the district for which the petitioner is filing for as a candidate or, if not for a district, that the petitioner is filing for an at-large seat. All members of the city council shall be elected at large by all registered voters in the city, however, if a person is running for a district seat which is not an at-large district seat, the person must reside in the district for which they are running.

(b) Method of Qualifying for Nomination to City Council. Each person seeking to qualify for nomination or election to a city council seat shall file his or her qualification papers and pay the qualifying fee, or, in lieu of qualifying fee and if approved by ordinance, an "Affidavit of Undue Burden for Municipal Candidates Election Assessment Only", (State Law Reference FS 99.093) with the city manager or other person designated by ordinance, at any time after noon of the 1st day of qualifying, which shall be the 50<sup>th</sup> (should be 43<sup>rd</sup> day) day prior to the city election, but not later than noon of the 46<sup>th</sup> (should be 39<sup>th</sup> day) day prior to the election. The city council shall, by ordinance, adopt all appropriate State Statutes with respect to the manner and method of conducting elections, including, but not limited to, naming of campaign treasurer, filing of campaign expenditure reports, establishing a canvassing board, and tabulation of votes and proclamation of results where ballots are used. (State Law Reference: FS 102.071)

(c) The city council shall, by ordinance, prescribe the manner of holding both general and special elections not inconsistent with the provisions hereof and said city council shall also by ordinance provide such polling place or places as they deem expedient. The supervisor of elections shall appoint a three member canvassing board which shall consist of the Supervisor of Elections and two City Council members who are not up for election and who are not an active participant in the campaign or candidacy of any candidate or issue on the ballot for all elections held under this Charter. The canvassing board shall meet promptly, or as soon as it is practicable to do so and without undue delay, following the certification to them of the final machine tally, or if by paper ballot, upon delivery of the ballot box or boxes which shall be sealed in accordance with Florida Statutes, by the duly appointed election officials conducting and in charge of such election or elections. At such a meeting the canvassing board shall meet for the purpose of declaring the results of said election or elections.

(d) The provisions of the general laws of the state and municipal elections relating to the qualifications of electors, registrations, manner of voting, duties of election officers, canvassing of returns and all other particulars in respect to the management of elections, except as otherwise provided in the Charter and the ordinances adopted hereunder pertaining to elections shall so far as the same may be applicable, govern all city elections.

(e) No informalities in conducting city elections shall invalidate the same, if they have been conducted fairly and in substantial conformity to the requirements of this Charter.

(f) If the candidate dies, withdraws or is removed from the ballot after final qualifying date and there is no candidate to fill the respective position, the city council may appoint a qualified elector to fill said position until a special election is held within ninety days of the regular election to fill the position in accordance with provisions of Florida statutes.

(g) Notice of elections are regulated by Florida Statutes.

(h) In the event of a tie vote for a district seat, the winner shall be determined by a coin toss. The candidate with the first alphabetical last name shall call the coin in the air.

(i) No individual may qualify as a candidate for city council who holds another elective or compensated appointive office, whether state, county, or municipal, the term of which or any part thereof runs concurrently with the term of office for which he/she seeks to qualify without resigning from such office, if required by the United States Constitution or Florida State Law, not less than ten days prior to the first day of qualifying for the office he/she intends to seek. Such resignation shall be effective not later than the date upon which he/she would assume office if elected to the office for which he/she seeks to qualify, or the date at which, under law or the State Constitution, the person elected to an unexpired portion of his/her term is required to assume office, whichever occurs earlier, provided. The resignation shall be filed in the office of the city manager.

### **Section 3.3 - Judge of Qualifications.**

The City Council shall be the judge of the election and the qualifications of its members and the grounds for forfeiture of office and for that purpose shall have the power to subpoena witnesses, administer oaths and require production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand and notice of such hearing shall be published in one or more newspapers of general circulation in the City at least one week in advance of the hearing. Decisions made by the city council under this section shall be subject to review by courts of competent jurisdiction within this State.

## **Article IV - City Council**

### **Section 4.1 - General Powers.**

The City Council, City of Midway, shall have and exercise all powers conferred by general law upon municipal officers not inconsistent with the terms of this Charter. The city council may, by ordinance, delegate to the city manager the power to execute contracts, deeds and other documents approved by the council, and to represent the city in all agreements with other governmental entities or certifications to other governmental entities.

**State Law Reference:** F.S. Chapter 166.

### **Section 4.2 - Oath of Office.**

All officers of the City of Midway, before entering upon the duties of office, shall by oath or affirmation subscribe to faithfully perform the duties of office in accordance with the laws and Constitution of the State of Florida and the Constitution of the United States of America.

**State Law Reference:** Oath of Office; F.S. 876.05 et seq.

### **Section 4.3 - Compensation and Expenses.**

The city council may determine the annual compensation of the council members by ordinance as part of the budget process as required by Florida Statutes, Chapter 200, but no ordinance increasing such compensation shall become effective until the date of commencement of the terms of council members elected at the next regular election, provided that such election follows the adoption of such ordinance by at least three months. Council members shall receive their annual compensation incurred in the performance of their duties and shall account therefore in accordance with appropriate State and Federal statutes. In no event shall the compensation for the mayor-council member exceed \$300.00 per month nor shall the compensation for council members exceed \$200.00 per month and any such annual

compensation shall be based solely upon the financial status of the City. Councilmembers shall be reimbursed for expenses while traveling on or performing city business. Reimbursement shall be in accordance with Florida State Law.

**State Law Reference:** F. S. Chapter 112.

#### **Section 4.4 - Mayor-Councilmember.**

The city council shall elect, from among its members, a mayor and mayor pro-tem. Election of the mayor and mayor pro-tem shall be every two years at the first regular council meeting after the city election. The Mayor-Councilmember shall preside at all meetings of the city council and shall perform other duties consistent with the office as imposed or designated by the city council. The mayor shall have a voice and vote in the proceedings of the city council. He/She shall use the title of mayor-councilmember in the execution of any legal instruments or writing or functioning to meet other necessities arising from the general laws of Florida or from this Charter, which shall not be considered as conferring upon him/her the function of the mayor under the general laws of Florida. The mayor shall be recognized as the head of city government for all ceremonial purposes, but the Governor for purposes of military law, for service of process, execution of contracts, deeds and other documents; may take command of the police and govern the city by proclamation during the times of grave public danger or emergency, and shall have the power during such times to appoint additional temporary officers and patrolmen. The power and duties of the mayor-councilmember shall be such as they are conferred upon him/her by this Charter and no other. The mayor pro-tem shall act as mayor during the absence or disability of the mayor. Nothing contained herein shall be construed as to preclude the member succeeding himself or herself as Mayor-Councilmember.

#### **Section 4.5 - Powers of the Mayor.**

The Mayor shall:

- (a) see that all laws, provisions of this charter, and acts of the council, subject to his/her direction and supervision are faithfully executed.
- (b) submit the annual budget message.
- (c) summon the appropriate law enforcement officers to suppress civil disturbances and to keep law and order during times of emergency.
- (d) make such other reports as the council may require concerning the operations of city departments, offices, and agencies subject to his/her direction in times of emergency.
- (e) attend, preside and vote at all council meetings.
- (f) sign contracts on behalf of the city pursuant to the provisions of applicable ordinances.
- (g) be recognized as the city official designated to represent the city in all agreements with other governmental entities or certifications to other governmental entities as approved by the vote of the city council.
- (h) annually prepare a state of the city message, set forth the agenda for all meetings of the council, name committees of the council, and make recommendations of members for city boards to the city council.
- (i) perform such other duties as are specified in this charter or may be required by council.

#### **Section 4.6 - Mayor Pro-Tem.**

The mayor pro-tem shall preside over the meetings of the city council during the absence of the mayor-councilmember, and in general in the absence or the incapacity of the mayor-councilmember, he/she shall do and perform those acts and things provided in this Charter to be done by the mayor-council member. Nothing contained herein shall be construed as to preclude the member succeeding himself or herself as Mayor-Council member.

#### **Section 4.7 - Vacancy in the Office of Mayor.**

In the event the mayor dies, resigns, ceases to be qualified, is removed from office as provided by law, or becomes permanently disabled and such disability is attested to in writing by not less than two physicians, the mayor pro tem shall become the mayor for the remainder of the former mayor's unexpired term and the council shall by majority vote at the next regular meeting elect another mayor pro tem to fill that office for the unexpired portion of the term.

#### **Section 4.8 - Prohibitions.**

(a) Holding other Office. No former elected city official shall hold any compensated appointive office or position of employment with the City of Midway until one year after the expiration of the term for which he/she was elected.

(b) Appointments and Removals. Neither the city council nor any of its members shall in any manner dictate the appointment or removal of any city employee whom the city manager or any of the manager's subordinates are empowered to appoint, but the council may express its views, and fully and freely discuss with the manager anything pertaining to appointment and removal of such employee. Appointment of department heads by the city manager shall be confirmed or denied by a majority vote of the city council.

(c) Relations with Administration. Except for the purpose of inquiries and investigations, the city council or its members shall deal with the city officers and employees solely through the city manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately. Nothing in the foregoing is to be construed to prohibit individual members of the city council from closely scrutinizing by questions and personal observation, all aspects of city government operations so as to obtain independent information to assist the members in the formulation of sound policies to be considered by the council. It is the express intent of this Charter, however, that recommendations for improvement in city government operations by individual councilmembers be made to and through the city manager, so that the manager may coordinate efforts of all city departments to achieve the greatest possible savings through the most efficient and sound means available.

(d) Nepotism Prohibited. Neither the city council nor the city manager of the City of Midway shall employ or contract with any member of said city council or with the city manager or any charter officer of the City of Midway nor with any relative of any member of the city council or city manager of the City of Midway or any charter officers thereof. The foregoing contract provision shall not apply to contracts publicly advertised and competitively bid for work for the city. Nothing contained above shall limit the city council from contract with the city manager or any charter officer for the terms and conditions of their employment.

#### **Section 4.9 - Rules of Procedure; Quorum; Meetings.**

The city council shall by resolution or ordinance determine its own rules of procedure, may punish its own members for misconduct and may compel attendance. The majority of the members of the city council shall constitute a quorum to do business. A smaller number may adjourn.

#### **Section 4.10 - City Council Meetings.**

(a) The first meeting of each newly elected city council for induction into office shall be at the beginning of the first meeting which follows certification of election results.

(b) The city council shall conduct regular meetings on the first Thursday of each month. If the date and time of the regular meeting must be changed due to special circumstances, the new

date and time must be set by a majority vote of the city council at the regular meeting immediately preceding the changed meeting. Such meetings shall be public meetings within the meaning of F.S. 286.011, and shall be subject to notice and other requirements of law applicable to public meetings. Special meetings may be held as prescribed in other sections of the Charter.

(c) Any four members of the city council or the mayor may call special meetings of the city council, upon at least twenty-four hours notice to each member, served personally or left at his or her usual place of abode or business and the meeting will be limited to the special subjects, and that decisions taken shall be confirmed at the next regular meeting.

(d) The city council shall direct that minutes be kept on each meeting.

(e) Voting. All votes shall be by roll call and shall be recorded by name and vote in the minutes. All council members present shall be recorded as voting "yes" or "no" on all matters before the council except on those matter on which a councilmember announces in advance that he or she has a conflict of interest. When a councilmember announces in advance a conflict of interest, he or she shall submit a written statement concerning the conflict with forty-eight hours after the meeting at which the conflict was announced. Such statement shall contain the reason(s) for the conflict of interest.

**State Law References:** Open Meetings Law, F. S. 286.011.

#### **Section 4.11 - Investigations.**

The city council 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. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the city council shall be subject to prosecution in a court of competent jurisdiction and any violation of this section may be referred for prosecution to the appropriate authority.

#### **Section 4.12 - Independent Audit.**

Financial Audit. The city council shall provide for an independent annual audit of all city accounts and may provide for such more frequent audits as it deems necessary. The city council shall appoint a certified public accountant or a firm of such accountants upon such terms and such compensation as the city council shall fix. The certified public accountant or firm of such accountants shall have no personal interest, direct or indirect in the fiscal affairs of the city government or any of its officers. If the State of Florida makes such audit, the city council may accept it as satisfying the requirements of this Charter.

**State Law References:** Independent Audit Required, F. S. 166.241 and 218.32.

### **Article V - City Manager**

#### **Section 5.1 - Appointment; qualifications; compensation.**

The city council shall appoint a city manager to serve at the pleasure of the council and fix his or her compensation. The manager shall be appointed on the basis of his or her executive and administrative qualifications, to include a minimum of an undergraduate degree. The city manager shall be responsible to the council for the administration of all city affairs placed in the manager's charge by or under this charter. The manager need not reside in the city or state at the time of appointment nor shall the manager be required to live within the corporate boundaries of the City of Midway during his or her appointment, however, he or she shall be required to live within the State of Florida. Nothing contained herein shall prevent the city council from entering into an employment agreement with the city manager.

### **Section 5.2 - Acting City Manager.**

The city manager may designate, by letter filed with the council, subject to approval by the council, a qualified city administrative officer to exercise the powers and perform the duties of manager during the city manager's absence.

### **Section 5.3 - Removal.**

The City Council may remove the manager from office by an affirmative vote of four of its members.

### **Section 5.4 - Powers and Duties of the City Manager.**

The city manager shall be the chief administrative officer of the city. He or she shall be responsible to the city council for the administration of all city affairs placed in his or her charge by or under this Charter. He or she shall have the following powers and duties:

- (1) He or she will appoint and, when he or she deems it necessary for the good of the city, may suspend or remove for just cause, any city employee or appointive administrative officer provided for under this charter, except as otherwise provided by law, this Charter, contract or personnel rules pursuant to this Charter, and except in the case of the Chief of Police. The chief of police can be hired, fired or suspended by the city manager only with the consent of the city council. He or she may authorize any administrative or any Charter officer who is subject to his direction and supervision to exercise those powers with respect to subordinates in that officer's department, office or agency.
- (2) He or she shall attend all city council meetings and shall have the right to take part in discussions but may not vote.
- (3) He or she shall direct and supervise the Charter officers and the administration of all departments, offices and agencies of the city, except as otherwise provided in this Charter or by law.
- (4) He or she shall see that all laws, provisions of this Charter and directives of the city council, subject to enforcement by him or her or by officers subject to his or her direction and supervision are faithfully executed.
- (5) He or she shall recommend to the city council for adoption such measures as he or she may deem necessary or expedient in the interest of the city.
- (6) He or she shall prepare and submit the annual budget and capital program to the city council.
- (7) He or she shall make such other reports as the city council may require concerning the operations of the city departments, officers and agencies subject to his direction and supervision.
- (8) He or she shall keep the city council fully advised as to the financial condition and future needs of the city and make such recommendations to the city council concerning the financial affairs of the city as he or she deems necessary.

(9) He or she shall see that all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchise are faithfully kept and performed; and upon knowledge of any violation thereof, he or she shall call the same to the attention of the city attorney.

(10) He or she shall be the purchasing agent of the city, by whom all purchases of supplies shall be made. In the capacity of purchasing agent he or she shall also conduct all sales of personal property which the city council may authorize to be sold as having become unnecessary or unfit for the city's use. All purchases and sales shall conform to such regulations as the city council may, from time to time, prescribe and shall allow for competition. These restrictions, limitations or criteria on this authority shall be established by ordinance, including but not limited to bidding requirements.

(11) He or she shall perform such other duties as are specified in this Charter or may be required by the City Council.

### **Section 5.5 Emergency meetings of city council.**

The City Manager may call emergency meetings of the city council, upon at least six hours notice to each member, served personally or left at the councilmembers usual place of abode or business, and the meeting notice will be limited to the emergency subject and decisions taken shall be confirmed at the next regularly scheduled city council meeting.

## **Article VI - Charter Officers**

### **Section 6.1 City Clerk.**

There shall be appointed a city clerk who shall serve at the pleasure of the city council. The City Clerk shall serve as Clerk of the Council and shall give notice of the council meetings to its members and to the public and shall keep a journal of its proceedings, which shall be a public record.

### **Section 6.2 City Attorney.**

The city council shall appoint a city attorney, upon such terms and for such compensation as the city council shall fix. The city attorney shall act as legal advisor to and attorney for the city and all of its officers or employees in matters arising out of the performance of their official duties for the city. He or she shall prepare all instruments in writing, as assigned by the city council, in which the city is concerned and shall endorse on each his or her approval of the form and correctness thereof.

The city attorney shall prosecute and defend or assist in the prosecution and defense, for and on behalf of the city, all complaints, suits and controversies in which the city is a party, unless said function is designated by statute or otherwise to another agency, and shall perform such other professional duties as may be required of him or her by official action of the city council. He or she shall furnish the city council, the city manager, the head of any department or any officer or board, his opinion on any question of law relating to their respective duties and powers.

The city attorney shall be an attorney-at-law duly licensed to practice law in the State of Florida with at least three years of legal experience.

The city council may appoint an assistant city attorney if necessary. The council may contract with such other attorneys or firm of attorneys to preform such services on behalf of the city on specialized projects as may be deemed necessary or expedient in the discretion of the city council.

### **Section 6.3 Administrative Departments.**

(a) Creation of Departments. The city council may establish or abolish departments of the city, offices or agencies not in conflict with this Charter.

(b) Direction by manager. All departments, offices and agencies shall be under the direction and supervision of the city manager and shall be further administered by an officer appointed by and subject to the direction and supervision of the manager. With the consent of the city council, the manager may serve as the head of one or more such departments, offices or agencies or may appoint one person as the head of two or more of them.

### **Section 6.4 Personnel Systems.**

(a) Merit Principle. All appointments and promotions of city employees shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence.

(b) Personnel rules. The city manager shall prepare personnel rules. When concurred on by the city council, the city council may by ordinance adopt them with or without amendment. These rules shall include, but are not limited to:

- (1) The classification of all classified city positions, based on the duties, authority and responsibility of each position, with adequate provision for reclassification of any position whenever warranted by circumstances;
- (2) A pay plan for all classified city positions;
- (3) Methods for determining the merits and fitness of candidates for appointment or promotions;
- (4) The policies and procedures relating reduction in force, demotion, suspension, and removal of employees;
- (5) The hours of work, attendance regulation and provisions for sick and vacation leave;
- (6) Grievance procedures;
- (7) Other practices and procedures necessary to the administration of the city personnel system.

(c) Power to bargain collectively recognized. Nothing contained in this Charter shall limit the power of the city council of the City of Midway, Florida, acting through its manager, from entering into collective bargaining negotiations with any officers, employees, or group of employees for the purpose of establishing by contract conditions of employment, rules, or compensation of said officers, employees, or groups of employees. For the purposes of this Charter, Article 1, Section 6 of the Constitution of the State of Florida is specifically recognized.

## **Article VII - Ordinances and Resolutions**

### **Section 7.1 Power to Adopt.**

The City Council of the City of Midway, Florida shall have the power to make ordinances and resolutions and establish for the government of said city, such ordinances and resolutions in writing not inconsistent with the Charter, Constitution, and laws of the State of Florida, or the United States, as they may deem necessary. Said ordinances to be passed and become effective as hereinafter provided for.

### **Section 7.2 Definitions.**

(a) As used in the Charter, the following terms and words shall have the following meanings unless some other meaning is plainly indicated:

- (1) "Ordinance" means an official, legislative action of the City Council, which action is a regulation of a general and permanent nature and enforceable by local law.
- (2) "Resolution" means an expression of the City Council concerning matters of administration, expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the city council.
- (3) "Code" shall mean and include any published compilation of rules and regulations which have been prepared by various technical trade associations and shall include specifically, but shall not be limited to building codes; fire prevention codes; inflammable liquid codes; codes for the processing and sale of foodstuffs for human consumption, together with any other code which embraces rules and regulations pertinent to a subject matter which is a proper municipal legislative matter.
- (4) "Public Records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.
- (5) "Published" shall mean printed, lithographed, multigraphed, mimeographed or otherwise reproduced.

### **Section 7.3 Procedure for the Enactment of Ordinances and Resolutions.**

- (a) Each ordinance or resolution shall be introduced in writing and shall embrace but one subject and matters properly connected therewith. The subject shall be clearly stated in the title. No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a section or subsection.
- (b) A proposed ordinance may be read by title, or in full, on at least two (2) separate days and shall, at least ten days prior to adoption, be noticed once in a newspaper of general circulation in Midway, Florida. The notice of proposed enactment shall state the date, time and place of the meeting, the title or titles of proposed ordinances and the place or places within the City of Midway where such proposed ordinances may be inspected by the public. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.
- (c) The city council, subject to the provisions of 7.3(e), with a two-thirds vote may enact an emergency ordinance without complying with the requirements of paragraph (b) of this section. Every emergency ordinance shall automatically stand repealed as of the sixty-first day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. However, no emergency ordinance shall be enacted which enacts or amends any land use plan or which rezones private real property.
- (d) A proposed resolution may be read by title, or in full, at no less than one regular meeting of the city council of the City of Midway, Florida. The notice and publication requirements as set forth hereinabove as applying to ordinances shall not be required for the passage of resolutions.
- (e) The majority of the members of the city council shall constitute a quorum. The affirmative vote of the majority of the quorum shall be necessary to enact an ordinance or adopt any resolution; provided that two-thirds of the membership is required to enact an emergency ordinance. On final passage, the vote of each member of the city council voting shall be entered on the official record of the meeting.
- (f) Every ordinance or resolution shall, upon its final passage, be recorded in a book kept for that purpose, and shall be signed by the presiding officer and attested to by the city clerk.

**Section 7.4 Power to Grant a Variance to an Ordinance.**

The power to grant any variance to any ordinance shall be pursuant to Florida Statutes, Chapter 166, unless otherwise specified in an individual ordinance.

**Article VIII - Municipal Taxation**

**Section 8.1 Taxes and Charges; Authority to Levy.**

The city council of the City of Midway, Florida, may raise by taxation or licenses authorized by the Florida Constitution or Florida Statutes or by any user charges or fees authorized by ordinance, amounts of money which are necessary for the conduct of municipal government and may enforce the receipt and collection in the manner prescribed by ordinances not inconsistent with the Florida Statutes.

**Section 8.2 Ad Valorem Taxes.**

The city council shall have the right by ordinance to levy ad valorem taxes on real and tangible personal property within the municipality pursuant to Florida Statutes, Chapter 166, however, the city council shall not have the right and authority to increase ad valorem taxes on real and tangible personal property above 5 mills without approval of the registered voters of the City of Midway, Florida.

**Section 8.3 Regulatory Fees.**

The power to impose any regulatory fees shall be the power as established by Florida Statutes, Chapter 166.

**Section 8.4 Public Service Tax.**

The power to impose any public service tax shall be the power established or limited by Florida Statutes, Chapter 166.

**Section 8.5 All Taxes to Remain in Effect.**

All ad valorem taxes, regulatory fees, and public service taxes or other taxes or fees in effect on the effective date of this Charter not inconsistent with the provisions of this Charter shall remain in effect and be collectible in accordance with ordinances passed prior to the adoption of this Charter, not inconsistent with the Laws of the State of Florida.

**Section 8.6 Authorization to Levy Other Forms of Taxes or Fees.**

Nothing contained in this Charter shall be construed as a limitation upon the power of the city council of the City of Midway, Florida, to levy such other forms of taxes or fees as may, from time to time, be authorized by the general laws of the State of Florida.

**Section 8.7 Borrowing.**

Authorization to borrow money shall be as contained in Florida Statutes, Chapter 166.

## **Article IX - Financial Procedures**

### **Section 9.1 Fiscal Year.**

The fiscal year of the city shall begin on the first day of October and end on the thirtieth day of September of each year or pursuant to Florida Statutes.

State Law Reference: Fiscal Year Established, Florida Statutes, Sections 166.241 and 218.33.

### **Section 9.2 Annual Estimates.**

The city manager, ninety days before the beginning of the fiscal year, shall make his or her report covering the operation of the city, in which it shall be his or her duty to make and submit to the city council an estimate of the expenditures and revenues of the city for the next fiscal year. This estimate shall be compiled from detailed information, and in its arrangement the classification of expenditures shall be as nearly uniform as possible for the main functional divisions and departments of the city and shall give in columns the following information:

- (1) Detailed estimate of the expenses of conducting each department and division of the city, including all public utilities and enterprises conducted by the city.
- (2) Amount of supplies and materials on hand.
- (3) Expenditures for corresponding items during the two fiscal years last past.
- (4) Increase of demands compared with corresponding appropriations for the last fiscal year.
- (5) Proposed capital expenditures during the ensuing fiscal year, detailed by offices, department and agencies when practicable, and the proposed method of financing each such capital expenditure.
- (6) Such other information as required by the city council or as the city manager may deem advisable to submit.
- (7) The estimates so given, as to the amount necessary to be appropriated for the ensuing fiscal year, shall be supported with information giving the reasons therefore in such detail as may be necessary to afford the city council a comprehensive understanding of the needs and requirements of the various divisions of the city government for the ensuing period.
- (8) Sufficient copies of the report and estimates shall be prepared so that there may be copies on file in the office of the city clerk for inspection by the public.

### **Section 9.3 Capital Program.**

- (a) Submission to the city council. The city manager shall prepare and submit to the city council a five year capital program at least ninety days prior to the beginning of the fiscal year.
- (b) Contents. The capital program shall include:
  - (1) A clear summary of its contents;
  - (2) A list of all capital improvements which are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
  - (3) Cost estimates, method of financing and recommended time schedules for such improvements;
  - (4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

**Section 9.4 Budget.**

The city council shall adopt ad valorem tax millage and a budget in accordance with Florida Statutes, Chapters 166 and 200.

**Section 9.5 Establishment of Reserves; Transfer of Funds; and Authorization for Loans; When Permitted.**

(a) Establishment of Reserves:

(1) The city council shall, by ordinance, establish and maintain a General Operating Fund Emergency/Contingency Reserve Fund, when feasible. Funds within this reserve shall be used for purposes of an emergency as declared by at least four affirmative council votes. Funds shall not be transferred or expended for nonemergencies without at least five affirmative votes of the city council.

(b) Transfer of Funds: the city council shall have the authority, whenever it is deemed necessary, to increase or decrease any particular fund contained in said budget, other than the reserve established in section 9.5(a) above.

(c) Authorization for Loans: if the city council should deem it wise and appropriate, they may authorize the city manager to effect a loan or loans from any source under such terms and provisions as the city council may authorize, pledging the credit of the city for such purpose or purposes.

**Section 9.6 Limitations of Appropriations.**

(a) At the close of each fiscal year, the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated and shall be subject to future appropriation.

(b) Any accruing revenue of the city as herein provided, and any balance at any time remaining after the purpose of the appropriation shall have been satisfied or abandoned, may from time to time, be appropriated by the city council to such use as will not conflict with any uses for which such revenue specifically accrued. No money shall be drawn from the treasure of the city nor shall any obligation for any expenditure of any money be incurred, except pursuant to the appropriations made by the city council.

**Section 9.7 Real Property Interest.**

No real property interest held by the City of Midway which provides parks, recreational lands, or administrative and support facilities for city government, shall be sold, traded, given away, vacated or alienated in any way except after referendum approval of electorate. Nothing contained herein shall in any way limit the ability of the city council to enter into leases of land with another governmental agency for the purpose of providing public facilities.

## **Article X - Local Improvements and Special Assessments**

### **Section 10.1 Authority.**

The city council has authority to provide for any municipal improvement contained in Florida Statutes Chapter 170.

### **Section 10.2 Assessment of Cost.**

In the event the city council shall deem it necessary and appropriate, the city council shall have the power to assess the cost of any of the improvements authorized in this section against the property especially benefitted thereby. Any such supplemental and alternative methods of making local municipal improvements shall be governed by Florida Statutes, Chapter 170.

## **Article XI - Creation of Boards or Commissions**

### **Section 11.1 Authorized.**

The city council may create by ordinance or resolution any and all boards or commissions deemed necessary to promote the health, safety or the general welfare of the community, and appoint the boards or commissions and set forth the duties and powers thereof. At a minimum, the city council shall appoint a planning and zoning board who shall also be the local planning agency in accordance with Florida Statutes, Chapter 163.

## **Article XII - Comprehensive Plan**

### **Section 12.1 Comprehensive Plan.**

The City shall maintain, amend, or update a comprehensive plan in accordance with Florida Statutes, Chapter 163.

### **Section 12.2 Redress to Courts.**

A person or persons, jointly or severally aggrieved by any act of the city council under the powers vested herein granted to said city council, may present to the city council a petition duly verified setting forth that such act is illegal in full or in part, particularly specifying the grounds of illegality. If the city council's action or inaction fails to correct the alleged act within 45 days of the city's receipt of the petition, the aggrieved person(s) may present such petition to a court of competent jurisdiction within thirty days of action or inaction, whichever shall first occur, or no action, suit or other proceeding in any manner questioning the legality of said act or acts shall lie for any cause whatsoever. Appeal to the city council is a precondition to suit and a mandatory administrative remedy.

### **Section 12.3 Subdivision of Plats.**

The city council shall have sole authority for approving subdivision of plats lying within the corporate boundaries of the City, in accordance with Florida Statutes, Chapter 177.

## **Article XIII - Initiative, Referendum and Recall**

### **Section 13.1 Initiative.**

The qualified voters of the city shall have the power to propose ordinances to the city council and, if the city council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, provided that such power shall not exceed to the budget or capital program or to any ordinances relating to appropriation of money, levy of taxes or salaries of city officers or employees.

### **Section 13.2 Referendum.**

The qualified voters of the city shall have power to require reconsideration by the city council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, provided that such power shall not extend to the budget or capital program or any emergency or ordinance relating to the appropriation of money, levy of taxes or salaries of city officers or employees, except as provided in Section 1.4 of this charter.

### **Section 13.3 Recall.**

The qualified voters of the city shall have the power to remove from office any elected official of the city in the manner prescribed by general law for the removal of members of the governing body.

### **Section 13.4 Commencement of Proceedings.**

Any five qualified voters may commence initiative, referendum and/or recall proceedings by filing with the city clerk or other official designated by the city council, an affidavit stating they will constitute the petitioner's committee and be responsible for circulating the petition and filing it in proper form stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered or the reasons for the official's recall. Promptly after the affidavit of the petitioners' committee is filed, the city clerk or other official designated by the city council shall at the committee's request, issue the appropriate petition blanks to the petitioners' committee at the committee's expense.

### **Section 13.5 Petition.**

(a) Number of Signatures. Initiative, referendum and recall petitions must be signed by qualified voters of the city equal in number to at least 25 percent of the total number of qualified voters registered to vote at the last regular city election.

(b) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be in ink or indelible pencil followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation, the full text of the ordinance proposed or sought to be reconsidered, of the reason for the official's recall, and the response of that official to the reason shall not be in excess of 250 words or one double-spaced typewritten page, whichever is greater. Neither the reason nor the response shall be in excess of 250 words.

(c) Affidavit of Character. Each person circulating a copy of the petition shall attach it to a sworn affidavit stating the number of signers, that all signers were advised they must be residents and electors of the city in order to sign and that each signer had an opportunity

before signing, to read the full text of the ordinance proposed or sought to be reconsidered or the reason for the official recall and the response to the reason.

(d) Time for Filing Referendum Petitions. Referendum petitions may be filed any time after adoption by the city council of the ordinance sought to be reconsidered or repealed.

### **Section 13.6 Procedure for Filing.**

Certificate of Clerk: Amendment. Within twenty days after the petition is filed (five days for a referendum), the city clerk or other official designated by the city council shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. Grounds for insufficiency are only those specified in Section 13.5. If the number of signatures is insufficient or the petition is deficient as to form or compliance with this section, the city council shall notify the committee filing the petition and allow thirty days for filing or additional petition papers, at the end of which time the sufficiency or insufficiency shall be finally determined.

### **Section 13.7 Referendum Petitions; Suspension of Effect of Ordinance.**

When a referendum petition is filed with the city clerk or other official designated by the city council, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (a) There is a final determination of insufficiency of the petition, or
- (b) The petitioners' committee withdraws the petition, or
- (c) The city council repeals the ordinance, or
- (d) After a vote of the city on the ordinance has been certified.

### **Section 13.8 Action on Petitions.**

(a) Action by City Council. When an initiative, referendum or recall petition has been determined sufficient, the city council shall promptly consider the proposed initiative ordinance in the manner provided for in this Charter or reconsider the referred ordinance by voting its repeal, or the official named in the recall petition may resign. If the council fails to adopt a proposed initiative ordinance without any change in substance within sixty days or fails to repeal the referred ordinance within thirty days, or the official named in the recall petition fails to resign within fifteen days after the date the petition was finally determined sufficient, the city council shall submit the proposed or referred ordinance or the question or recall of an elected official to the voters of the city.

(b) Submission to Voters. The vote of the election on a proposed or referred ordinance shall be held not less than thirty days and not later than 60 days from the date that the city council rejected the proposed ordinance or refused to reconsider the referred ordinance. The vote of the electors on a recall petition shall be held not less than thirty days and not later than sixty days from the date that the subject official declined to resign. Passage of the times provided in Section 13.8(a) without action by the city council, or by the official, shall be considered rejection, refusal or declination. If no regular city election is to be held within the period prescribed in this subsection, the city council shall provide for a special election. The vote shall be held at the same time as such regular election, except that the city council may, in its discretion, provide for a special election at an earlier date within the prescribed period. Copies of the

proposed or referred ordinance or the recall charges and response shall be made available at the polls.

(c) **Withdrawal of Petitions.** An initiative, referendum, or recall petition may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for a vote of the city by filing with the city clerk or other official designated by the city council, a request for withdrawal signed by at least four members of the petitioners' committee. Upon the filing of such request, the petition shall have no further force or affect and all proceedings thereon shall be terminated.

### **Section 13.9 Results of Election.**

(a) **Initiative.** If a majority of qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the city council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflicts.

(b) **Referendum.** If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

(c) **Recall.** If a majority of the qualified electors voting on a recall of an elected city official vote for the recall, that official shall be removed from office upon certification of the election results but such removal shall not constitute a disqualification to run for the same or any other city office at some future time.

## **Article XIV - General Provisions**

### **Section 14.1 Personal Financial Interest.**

Any member of the city council, city officer or employee who has a financial interest, direct or indirect or by reason of being an officer, director or five percent shareholder in any corporation, in any contract with the city or in the sale of any land, material, supplies or services to the city or to a contractor supplying the city shall make known that interest and shall refrain from voting upon or otherwise participating in his or her capacity as a member of the city council, city officer or employee in the making of such sale or in the making or performance of such contract. Any member of the city council, city officer or employee who willfully conceals such financial interest or willfully violates the requirements of this section, shall be guilty of malfeasance in office or position and shall forfeit his or her office or position. Violation of this section with the knowledge expressed or implied of the person or corporation contracting with or making a sale to the city shall render such contract voidable by the manager or city council. In the alternative, the city council may in its discretion, by resolution, prohibit the city from contracting with an organization when it is aware that a member of the city council, city officer or employee has a substantial interest in the organization with which the contract is proposed.

State Law Reference: Code of Ethics, FS 112.311 et seq.

### **Section 14.2 Charter Amendment.**

The Charter of the City of Midway may be amended in strict adherence with the provisions of the General Laws of the State of Florida, specifically, F.S. Chapter 166.

State Law Reference: Charter amendment procedure, F. S. 166.031.

**Section 14.3 Separability.**

If any article, section or subsection, sentence, clause or provision of this Charter is held invalid, the remainder of the Charter shall not be affected.

**Article XV - Transitional Provisions**

**Section 15.1 Elected Officials and City Employees; Rights and Privileges Preserved.**

Nothing in this Charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are elected officials or employees of the city at the time of its adoption.

**Section 15.2 Pending Matters.**

All rights, claims, actions, contracts and legal or administrative proceedings shall continue except as modified pursuant to the provisions of this Charter and in each case shall be maintained, carried on or dealt with by the city department, office, or agency appropriate under this Charter.

**Section 15.3 State and Municipal Laws.**

All city ordinances, resolutions, orders and regulations which are in force when this Charter becomes fully effective and which do not conflict herewith shall remain in full force and effect until otherwise changed in accordance with this Charter.

**Section 15.4 Effective Date.**

This Charter shall take effect immediately upon adoption by the voters.