

Howey-in-the-Hills Charter Review Committee Meeting
Zoom Conference/Video Call
Meeting ID: 919 4142 5966
Passcode: 404256
August 11, at 6:30 pm

Call to order

The meeting was brought to order by Berniece Hower at 6:45pm

Committee members in attendance:

Berniece Hower
Pat Miller
Kat Ormsbee
Donna Klein
Graham Wells
Dan Powers

Approval of the Minutes of the meeting held on 7/28/20

Discussion regarding the minutes which were sent to Berniece on 7/28 and acknowledged as being delayed by Donna. The minutes will be reviewed at the next meeting.

Old Business

Berniece started with the review of the work completed last week and requested a change. The change is in Section 2 Powers of the town and outlined in red.

Kat spoke up and requested to review the possibility to add a Town Manager to The Charter. A discussion ensued and determined that when the town has funds to have a town manager, The Charter can and should be revisited and appropriate changes can be made.

The following agreed upon items were reviewed and changes made.

Graham suggested a change to **Sec. 1 The Town Council**. The change is in red and was agreed by all

Berniece requested a change to **Sec. 1 The Town Council** pertaining to paragraph referencing: Seats 1, 2, and 3. The proposed changes are in red. Not all were in agreement. Graham agreed to check into the proposed changes with authorities.

At the last meeting there was disagreement over whether the wording in the first paragraph on page two (All seats will be filled by the highest number of votes received to fill the appropriate seats) was lawful. Shown below is the response from Town attorney Tom Wilkes:

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"In your capacity as a member of the Charter Committee for the Town of Howey-in-the-Hills, you have asked whether the town charter legally may alter the terms of office and the manner of election of Town Council members. The answer is yes.

The Constitution of the State of Florida, specifically Section 2 of Article VIII, grants to all municipalities the "governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services," as well as "any power for municipal purposes except as otherwise provided by law." These broad powers are what is known as municipal "home rule."

Section 2 of Article VIII also provides that "each municipal legislative body shall be elective." Section 6 of Article VI declares that "elections in municipalities shall ... be provided by law." Finally, under Section 13 of Article III of the state constitution, a term of office for any elected public official cannot exceed four years unless the constitution itself allows a longer term.

The Florida Election Code consists of Chapters 97-106 of Florida Statutes. The code governs all elections. However, Section 100.3605 of Florida Statutes declares that the election code shall govern a municipality's election, but only "in the absence of an applicable special act, charter, or ordinance provision."

The inference is clear: municipalities are free to design their elections as they choose, subject to just a few limitations in statute and the constitution. To that point, nothing in either the state constitution or state statutes specifies or prohibits any of the following:

- how many council members there must be,
- the manner of electing city or town officers,
- the terms they are to serve (so long as they do not exceed four years),
- when elections are to be held,
- whether elections are to be partisan or nonpartisan,
- whether council members are to be elected in districts or at large,
- how the winning candidates are to be determined,
- how vacancies are to be filled, etc.

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With no statutes and constitutional provisions governing these things, a town like Howey-in-the-Hills may set out in its charter all these details of its council elections. It is part of its home-rule power. The legislature – for now – has not preempted that power.”

CHARTER OF THE TOWN OF HOWEY IN THE HILLS

ARTICLE 1. TOWN BOUNDARIES; CORPORATE AUTHORITY

Sec. 1. Town created, boundaries

The area constituting the corporate limits of the Town of Howey in the Hills is that which is described in the legal description ???????? dated ?????, as well as all subsequent annexations. A description of the Town boundaries shall be on file with the Town Clerk.

Sec. 2. Powers of the Town

The Town shall have all powers possible for a Town to have under the Constitution and laws of this State as fully and completely as though they were specifically enumerated in this charter. The change requested was from “this State” to State of Florida. Graham agreed to change.
Agreed

Sec. 3. Construction of powers

The powers of the Town under this Charter shall be construed liberally in favor of the Town, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power stated in this article.

ARTICLE 2. THE TOWN COUNCIL

Sec. 1 The Town Council

There shall be a Town Council of five (5) members, who shall be residents and electors of the town, elected by the qualified voters of the Town.

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

The Town Council shall consist of five (5) members who shall hold five (5) seats numbered consecutively 1 through 5 and shall be elected for a term of four (4) years. Town Council members shall hold their seats for the term of office for which they are elected. Elections shall be conducted the first Tuesday following the first Monday in November.

All persons running for the office of Council shall be at least twenty-one (21) years of age, a registered voter and a resident of the Town for at least one (1) year prior to the first day of

qualifying period. Twenty five (25) candidate nominating petitions for Town Council elections shall be filed with the Clerk no earlier than noon on the 92nd day prior to the date of the general election or special election, with the signatures to be verified by the supervisor of election not later than noon on the 81st day prior to the date of the general or special election

*for which qualifying is sought. The candidate shall also provide a statement that, if elected, he/she will serve, and if not, the council shall omit his/her name from the ballot. **Agreed***

*Seats 1, 2, and 3 shall be elected in the month of November 2018 and every four (4) years thereafter. Seats 4 and 5 shall be elected in the month of November 2020 and every four (4) years thereafter. All seats will be filled by the highest number of votes received to fill the appropriate seats. **Berniece requested the following sentence be added, (All elections to be held at the Lake County Elections.) Not all in agreement. Graham agreed to check into the proposed changes with the authorities.***

No more than one (1) family member may hold a seat on the Council. A family member includes parents, siblings, children or spouses. The newly elected Council Members shall take their oath and assume office at the next regular scheduled meeting following the certification of the ballot.

New Business

Graham provided the following for the committee members to review.

Sec.2. Disqualification for any Town office.

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Any person convicted of a felony shall be disqualified from seeking election, employment or appointment to an office, either elected or appointed, to any board, commission, committee or agency in the Town of Howey in the Hills. **Agreed**

Candidates, if having performed service in the Armed Forces of the United States, must have an honorable discharge therefrom. **Voted down**

The name of any person nominated by regularly filed petition for candidacy shall have the right to withdraw from the election and shall be omitted from the ballot if such person notifies the Town Clerk not less than twenty (20) days before the election that he/she will not accept the nomination specified in the petition of candidacy. **Do not keep in 5 to 1 vote.**

Sec 3. Vacancies; Forfeiture of Office; Filling of Vacancies.

Vacancies. A Council Members seat shall become vacant upon death, resignation, or removal from office in any manner authorized by law or forfeiture of the office, such forfeiture to be declared by the remaining members of the council.

Forfeiture of Office. The Mayor or a Council Member shall forfeit office if the member: 1) Fails to meet residency requirements; 2) Is convicted of a felony or a crime involving moral turpitude; 3) Violates the express provisions of the charter; 4) Fails to attend 3 consecutive regularly scheduled council meetings without council approval or 5) Brings any action or lawsuit against the Town, its elected officials, executive officers or employees. The Town Council, by majority vote, shall be the judge of the grounds for forfeiture of an office and may declare a seat vacant where any member has failed to meet the requirements or has violated any of the provisions stated above.

Filling Vacancies. Whenever a vacancy shall occur on the Town Council, more than 180 days preceding the next general election, by reason of death, resignation or otherwise, it shall be the duty of the Town Council to order an election to fill the vacancy, and until such election is held the Town Council shall fill such vacancy. The newly elected member shall hold the seat for the remainder of the original term.

Should such vacancy occur within 180 days of the next general election, the Mayor shall appoint an elector of the town to fill the vacancy. This appointment is subject to the approval

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by a majority of the members of the Town Council. The appointee approved in such a manner shall serve in the office until the next general town election.

Holding Office. *Except where authorized by law, no Council Member shall hold any other elected public office during the term for which the member is elected. No Council Member shall hold any other town office or town employment during the term for which they are elected.*

Prohibitions. *Except for the purpose of enquiries and investigations, Council Members shall deal with the town officers and employees solely through the Mayor and shall not 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 Council from asking questions and seeking information to assist in the formulation of sound policies to be considered by Council.*

No former member of town council shall hold any compensated appointive office or employment with the town until one (1) year after the expiration of the term for which the member was elected to the Town Council.

Any Town official or employee, acting in his/her official capacity, is forbidden from doing business with a firm in which he/she has a material interest. The Town shall make no transactions with a firm in which a Town official or employee's spouse, parent, sibling or child has a material interest. Nor shall an official or employee acting in a private capacity transact business with the Town. Any Town official or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge, express or implied, of the person or corporation contracting with or making a sale to the Town shall render the contract or sale voidable by the Mayor or the Town council. **Graham will review for verbiage on bids as it relates to contracts w/family members of council and employees.**

Sec 4. Procedure

Meetings. *The council shall meet regularly on the second and fourth Monday in every month at such times and places as the council may prescribe by rule. Special scheduled meetings shall*

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be held on the call of the Mayor, or a majority of the Council with 72 hour notice (except in cases of extreme emergency).

Rules of Order. *The council shall determine its own rules and order of business. Roberts Rule of Order may be applicable.*

Voting. *Voting on Ordinances and Resolutions, the execution of contracts and all financial matters shall be by roll call and shall be recorded in the minutes. A majority of the council shall constitute a quorum. No action of the council shall be valid or binding unless adopted by the affirmative vote of the majority of a quorum present.*

Except as provided by law, a Council member, absent from the meeting, may enter into discussion by telephone or video conference but may not vote unless present. However, if a quorum is physically present, the participation and vote of an absent member is permissible when such absence is due to extraordinary circumstances such as illness. Such a circumstance is a determination that must be made in the good judgement of the Council.

Compensation. *The council shall determine the compensation of the Mayor and Council Members by ordinance; the ordinance increasing such compensation shall become effective October 1st of the next budget year. The Mayor and Council Members shall receive their actual and necessary expenses incurred in the performance of their duties of office.*

Sec. 5. Office of the Mayor

1. Mayor and Chief Executive Officer.

*The Mayor shall be the Chief Executive Officer of the Town. The Mayor shall be appointed by majority vote of the Town Council from its membership at the next regular scheduled meeting following the general election and certification of the ballot, and immediately following the swearing in of any new Council members. The Mayor shall be responsible to the electorate for the administration of all Town affairs placed in his or her charge by or under this Charter, the Ordinances of the Town or applicable law. **Agreed to changes in Red***

2. Qualification of Mayor.

The Mayor shall be an elector of the Town and shall be a member of the Town Council for a period of one (1) year prior to being eligible for appointment to the office. If the

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Mayor shall cease to possess any such qualifications during the Mayor's term of office, the Mayor shall automatically forfeit the office and the Town Council shall select a new Mayor to serve the unexpired portion of the then current term.

3. Term of the Mayor.

The Mayor shall be appointed for a two (2) year term and may be reelected subsequently.

4. Removal of the Mayor

The Town Council may, by supermajority vote, remove the Mayor at any regular or special Council meeting with or without cause. Upon removal of the Mayor the Town Council shall select another member of the Town Council to serve as Mayor for the unexpired portion of the then current term.

5. Powers and Duties of the Mayor

The Mayor shall have the following powers and duties:

- a. To be the head of town government for all purposes, including but not limited to martial law, civil defense, service of process, execution of contracts, deeds and other legal documents.*
- b. To be the official spokesperson for the town.*
- c. To take such action in emergency situations as the Mayor may deem necessary. The emergency powers of the Mayor shall not extend beyond the next meeting of the Town Council.*
- d. To investigate the condition of the town and the town's departments and offices.*
- e. To call special meetings of the Town Council.*
- f. To establish the agenda for Town Council meetings.*
- g. To temporarily fill vacancies occurring among the executive officers of the town.*
- h. To hire, appoint, suspend and remove all town employees, including the executive officers of the town. Any action taken by the Mayor under this subparagraph in respect to the executive officers of the town shall be subject to the approval of the Town Council.*

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- i. *To direct and supervise the administration of all departments, offices and agencies of the town.*
- j. *To attend and preside at all meetings of the Town Council and the Mayor shall be a voting member of the Town Council.*
- k. *To submit to the Town Council and make available to the public a complete report on the finances and administrative activities of the town by December 1st of the same year. The Mayor shall provide other reports requested by the Town Council concerning the operations of the town departments, offices and agencies subject to the Mayor's direction and supervision.*
- l. *To keep the Town Council fully advised as to the financial condition and future needs of the town and make such recommendations to the Town Council concerning the affairs of the Town.*
- m. *To perform such other duties as are specified in this Charter or as may be required by the Town Council.*

6. Mayor Pro Tempore; vacancies in office of Mayor.

The Town Council shall appoint from among its members a Mayor Pro Tempore. Appointment of the Mayor Pro Tempore shall be done at the Town Council's next regular scheduled meeting following a general election and certification of the ballot, and immediately following the swearing in of any new Council members and the appointment of the Mayor. The Mayor Pro Tempore shall preside at meetings of the Town Council in the absence or temporary disability of the Mayor and shall have no administrative duties except as required to carry out the responsibilities therein.

*In the event that the Mayor dies, resigns becomes permanently disabled, ceases to be qualified or is removed from office, as provided by law, the Mayor Pro Tempore shall become interim Mayor with the full powers and duties of the Mayor as provided by this Charter or other law until the Town Council selects a new Mayor. **Agreed to changes in Red***

Sec. 6. Borrowing.

Bond Issues. *The Town shall have the power to issue negotiable bonds for the purpose of capital acquisitions and for other purposes for the common good. The bonds may*

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have a call provision, and term of any length not to exceed 30 years. The bonds may be general obligation or revenue types. Provided however, the issuance of general

obligation bonds shall first be approved by a majority of the votes cast in a referendum on the proposed bond issue.

Other Borrowing. *Borrowing through other arrangements, such as lines of credit, may be used as necessary in the judgment of the Council. All borrowing whether from bonds, lines of credit, or other sources shall, in the aggregate, not at any time exceed an amount equal to 10 percent of the assessed valuation of the real and personal property within the corporate limits of the Town.*

Sec. 7. Financial Procedures.

Fiscal year. *The fiscal year of the Town shall begin on October 1 of each year and end on September 30 of the following year.*

Budget. *The budget shall be adopted by resolution and shall provide a complete financial plan of all town funds and activities for the ensuing fiscal year and, except as required by law or the Charter, shall be in such a form as the Town Clerk/Finance Director deems appropriate or the Mayor may require. In organizing the budget, the Town Clerk/Finance Director shall receive from each department their budget request by July 1st, with the first budget meeting being held within 15 days. **Agreed to changes in Red***

It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures for the preceding fiscal year.

Supplemental appropriations. *If, during the fiscal year, the Town Clerk/Finance Director certifies that there are available for appropriation, revenues in excess of those estimated in the budget, the council by resolution may make supplemental appropriations for the year up to the amount of such excess. **Agreed to changes in Red***

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Reduction of appropriations. *If at any time during the fiscal year it appears probable to the Town Clerk that the revenues available will be insufficient to meet the amount*

*appropriated, the Town Clerk/Finance Director shall report to the Mayor and/or Council immediately, indicating the estimated amount of the deficit, any remedial action taken by the Town Clerk and recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may, by resolution, reduce one (1) or more appropriations. **Agreed to changes in Red***

Transfer of Appropriations. *Upon written request by the Town Clerk/Finance Director or by action of the Town Council, the Town Council may, by resolution transfer part or all of any unencumbered appropriation balance among programs within a department, office, or agency or to another department, office or agency. **Agreed to changes in Red***

Sec. 8. Administrative.

All departments and offices under the direction and supervision of the Mayor shall be administered by an executive officer, appointed by the Mayor, with the approval of the Council and subject to the direction and supervision of the Mayor. Executive Officers of the Town shall include, but not be limited to, Town Clerk / Finance Director, Director of Public Works and Chief of Police.

Temporary Absence

The Mayor shall appoint a temporary replacement to exercise the powers and perform the duties of any town administrative office during a temporary absence or disability.

During such absence or disability, the Mayor with the approval of Council may revoke such designation at any time and appoint another individual to serve until the employee returns to active employment.

Town Clerk/Finance Director

The Town Clerk/Finance Director shall be responsible to the Council for the proper administration of the Town as stated by the Town Council and ~~to the end~~ shall be required to:

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- a. *Attend all Council meetings and shall have the right to take part in discussion but may not vote.*
- b. *See that all laws, provisions of this Charter and acts of the Council are faithfully executed.*
- c. *Keep an accurate account of all moneys received and disbursed; and prepare on a monthly basis, a financial report detailing all receipts and disbursements. The report shall be submitted to the Town Council at its next regularly scheduled meeting following the month for which the report has been prepared.*
- d. *Keep the financial records of the town in a manner recommended by the town accountant and approved by the Town Council* **Agreed**
- e. ~~*Perform such other duties as are specified in this Charter or maybe be required by the Mayor or Council.*~~ **Agreed**
- f. *Prepare the budget annually and submit it to the Town Council and be responsible for its administration after adoption, subject to guidelines established by the Mayor or Town Council.*
- g. ~~*Submit to the Council and make available to the public a complete report on the finances and administrative activities of the Town as of the end of each fiscal year.*~~ **Agreed**
- h. *Keep the Mayor and Council fully advised as to the financial condition and future needs of the Town and make such recommendations to the council concerning the affairs of the Town as may be deemed appropriate or necessary.*
- i. ~~*Sign contracts on behalf of the Town pursuant to the provisions of appropriations, ordinances and guidelines established by Council.*~~ **Agreed**
- j. *Be the Elections Officer for the town and conduct all Town elections.* **Agreed**
- k. *Be the custodian of the Town seal.* **Agreed**
- l. *Be the custodian of records for the town.* **Agreed**
- m. *Perform such other duties as are specified in this Charter, or by the Mayor, or Council or in the Policy and Procedure manual.* **Agreed**

Public Works Director

The Public Works Director shall be responsible for the management and operation of the public works department as set forth by the policy and procedure manual. The duties of the Public Works Director shall include but are not limited to construction improvements, repair and maintenance of town facilities (including parks, playgrounds,

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cemetery and public facilities). The Public Works Director shall report directly to the Mayor. **Add “and oversees the code enforcement”**

Police Department

The Town shall have a police department. One officer will have the title of Chief of Police. The Chief will report directly to the Mayor and shall be responsible for the administrative responsibilities of the Police Department as well as the conduct and performance of subordinate officers. **Agreed**

Requirement for a Town Attorney.

The Town Council shall contract with an Attorney in good standing with the Florida Bar to provide legal services to the Town. The Attorney shall be a licensed, practicing Attorney. The Attorney shall serve as legal advisor to the Town in all its legal matters, and when such advice is desired, the Mayor will make request for the same, and said advice shall be submitted by the Town Attorney in writing to the Mayor and Town Council. **Change to “When advice is required, the mayor will make a request and this advice shall be submitted by the Town Attorney in writing to the Mayor and Town Council.”** It shall be the Attorney’s duty to prepare, draft and review Ordinances, Resolutions, Contracts and Agreements, legal papers pertaining to bonding issues, and other matters for the municipal government. **Agreed**

Requirement for a Town Auditor.

The Town Council shall provide for an independent annual audit of all town accounts and may provide for such more frequent audits as it deems necessary. Such audits shall be made by a certified public accounting firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the town government or any of its officers. The Town Council may, without requiring competitive bids, designate such accounting firm annually or for such longer period as the Town Council deems appropriate. The Town Council may designate such accounting firm to serve on a

continuing contract basis for a period not exceeding three years and which may be terminated at the pleasure of the Town Council. **Agreed**

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ARTICLE 3 PLANNING AND ZONING

Sec. 1 - Town Policies

The Council shall adopt, and may from time to time, modify policies to govern the physical development of the Town. Any changes or modifications shall be presented by the Council at public hearings prior to its adoption, with proper notification to citizens as prescribed in the Town's Land Development Regulations. **Agreed**

Sec. 2. Land Use and Development

The Council shall by ordinance adopt regulations for the use and development of all areas within the Town including but not limited to those for the preservation of health, ecological, aesthetic, and historic values; to prevent accidents and fires; to minimize potential wind and storm damage; to control the circulation, storage and parking of motor vehicles, and for other reasons which contribute to the well-being of residents. **Agreed**

Sec. 3. Planning and Zoning Board

A Planning and Zoning Board shall be provided by Ordinance. **Agreed**

Unless otherwise required by law; all boards, commissions, committees and agencies provided for in the administrative code shall be appointed by the council. **Agreed**

ARTICLE 4 MISCELLANEOUS PROVISIONS

Sec. 1. Qualified Voters

For Town elections, any person eighteen (18) years or older, who is a registered voter, registered at least 3-days prior to the election (**Strike "registered at least 3 days prior to the elections"**), residing in the Town of Howey in the Hills limits at the time of a municipal election shall be deemed a qualified elector authorized to vote in such municipal elections. **Agreed**

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Sec. 2. Charter Amendments and Revisions

This Charter may be amended in accordance with Florida Statute 166.031 or its successor which provides for Amendment of Municipal Charters. **Agreed**

Sec. 3. Conflicting Laws

All municipal laws or parts thereof, ordinances or regulations insofar as they conflict with or are inconsistent with the provisions of this Charter shall be and the same are hereby repealed. **Agreed**

Sec. 4. Severability

If any article, section, or portion of article or section of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Charter nor the context in which such article, section or portion of any article or section so held invalid may appear, except to the extent that an entire article or part of a section may be inseparably connecting (connected) in meaning and effect with that portion of this Charter to which the holding shall directly apply. **Agreed**

Sec. 5. Legality

Any section of any article in this Charter that is invalid or is otherwise prohibited by Federal or State Statutes is automatically repealed. When it appears that a decision of a court of last resort invalidates an equivalent provision of this Charter, such statute or decision shall automatically repeal such individual provision without the necessity of amending this Charter, unless such amendment is otherwise deemed necessary and advisable. **Agreed**

Sec. 6. Ordinances Remain In Force

All ordinances of the Town now in force and which are not in conflict with the provisions of this Charter, the Constitution and Laws of the United States and the State of Florida shall be and remain Ordinances of the Town, until altered, amended, modified or repealed by the Town Council. **Agreed**

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Sec 7. Prohibition

The Town of Howey in the Hills prohibits discrimination in all its programs and activities on the basis of race, color, natural origin, gender, religion, age, disability, sexual orientation and marital or family status. **All Agreed**

Graham advised that the town legal description is not correct and has brought this to the attention of the Mayor. We will leave this open until further direction is provided.

A discussion on the date of the next meeting was had. Agreed to September 1st, 2020 at 6:30.

Pat requested that Donna send the minutes to everyone for review for revisions instead of sending to Berniece first. All were in agreement.

Graham reminded Berniece to provide the agenda to Town Hall/Mayor 72 hours prior to the meetings.

Kat motioned to adjourn; Donna seconded the motion.

Berniece brought the meeting to an end.

Minutes submitted by: Donna Klein

Minutes approved by: Berniece Hower

(Chairperson, Berniece Hower)