RESOLUTION NO. 2018-01

A RESOLUTION OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA; REVISING RESOLUTION NO. 2-09, AS AMENDED; AMENDING, RESTATEING, READOPTING AND RENAMING THE UTILITIES COMMISSION RULES OF PROCEDURE; PROVIDING FINDINGS; PROVIDING DEFINITIONS; SPECIFYING OFFICERS AND THEIR DUTIES; PROVIDING RULES OF PROCEDURE FOR PUBLIC MEETINGS; PROVIDING RULES OF PROCEDURE FOR PUBLIC HEARINGS; PROVIDING RULES OF PROCEDURE FOR PUBLIC PARTICIPATION; PROVIDING RULES OF PROCEDURE FOR PUBLIC PARTICIPATION; DEFINING ALLOWABLE EXPENSES FOR REIMBURSEMENT; PROVIDING FOR DISCLOSURE OF VOTING CONFLICTS AND COMPLIANCE WITH THE CODE OF ETHICS FOR PUBLIC EMPLOYEES; PROVIDING DELEGATIONS OF AUTHORITY FROM THE UTILITIES COMMISSION; PROVIDING FOR RESCINDING CONFLICTING RESOLUTIONS OR PORTIONS THEREOF; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. SHORT TITLE. This Resolution and the rules, regulations, and policies contained herein shall hereafter be referred to and may be cited as the "Utilities Commission Rules of Procedure."

SECTION 2. FINDINGS AND INTENT. The Utilities Commission, City of New Smyrna Beach, Florida (the "Utilities Commission") makes the following findings and declares the following legislative intent:

(1) Since its inception in 1965, the Utilities Commission has adopted, maintained, and modified rules establishing its own procedures.

(2) Variously named "Rules of Procedure," "Rules and Regulations for the Conduct of Meetings and the Operation of Business," and "Rules and Regulations for the Conduct of Public Hearings," these rules have been modified fourteen (14) times since the creation of the original "Rules of Procedure" adopted September 1, 1965.

(3) The Utilities Commission now wishes to amend, restate, readopt, and rename these rules as the "Utilities Commission Rules of Procedure," which will include rules, regulations, and policies related to its officers and their duties, public meetings, public hearings, public participation, expenses, disclosure of voting conflicts, and any other matters deemed relevant by the Utilities Commission.

(4) The Utilities Commission has traditionally permitted public participation in its public meetings.
(5) Many Florida local governments allow public participation but have adopted rules to govern its conduct.

(6) Public participation in government business is the bedrock of American local government and should be protected, permitted, and not discouraged consistent with principles of common and statutory law.

(7) Since 1975, the Utilities Commission has promulgated and sustained public participation rules.

(8) Since 1984, the Utilities Commission has promulgated and sustained public hearing rules.

(9) In 2013, the Florida Legislature adopted Section 286.0114, Florida Statutes, that requires municipal boards and commissions to provide ratepayers a reasonable opportunity to be heard before official action is taken.

(10) The Utilities Commission has not updated its public participation rules since 1984.

(11) At the same time, some forms of comment that slander, defame, libel, disparage, or smear individuals through ad hominem attacks are neither germane to public business and are inappropriate to the decorum of public meetings involving the public business of a Utilities Commission.

(12) The Utilities Commission is permitted to set reasonable ground rules for public participation within its Utilities Commission meetings.

(13) It is the intent of these rules that the deliberations and actions of the Utilities Commission be conducted and taken openly in order that the ratepayers may be fully informed, it being the finding of the Utilities Commission that the ratepayers must be fully informed if they are to be intelligently advised as to the conduct of public business by the Utilities Commission.

**SECTION 3. DEFINITIONS.** For the purpose of these rules, the following definitions shall prevail:

(1) A "meeting" is a gathering of a quorum of the membership of the Utilities Commission, for the purpose of receiving information relating to public business, or for discussion of public business, or for official action upon a proposition related to public business.
A "regular meeting" is a meeting held pursuant to a schedule of such meetings as approved by the Utilities Commission to enact resolutions, conduct public hearings, or otherwise discuss or act upon matters within its authority.

A "special meeting" is any meeting other than a regular meeting held by the Utilities Commission. A "special meeting" is held for the purpose of addressing matters requiring the immediate attention of the Utilities Commission or for the purpose of addressing matters which the Utilities Commission has determined are best addressed at a special meeting. When a special meeting is called, the Chairman of the Utilities Commission shall specifically state the purpose of the meeting and the Utilities Commission shall address only those matters for which the meeting was called.

"Commissioner" shall refer to the Chairman and members of the Utilities Commission.

A "workshop meeting" is a meeting held by the Utilities Commission on such day as may be designated by the Chairman, the General Manager/CEO, or the Utilities Commission during which the Utilities Commission meets pursuant to the Sunshine Laws for the purpose of receiving staff comments and discussing amongst themselves, matters that may, at some future time, come before the Utilities Commission, or any other matter pursuant to Section 4 hereof.

SECTION 4. OFFICERS AND THEIR DUTIES.

Officers. At the first regular meeting of the Utilities Commission in September of each year, the Commissioners shall elect a Chairman, Vice-Chairman, Secretary-Treasurer, and Assistant Secretary-Treasurer from its membership.

Chairman. The Chairman shall preside at all meetings and public hearings scheduled by the Commission. The Chairman shall appoint from the Utilities Commission any committees deemed desirable to investigate and render reports to the Utilities Commission regarding matters under the cognizance of or of interest to the Utilities Commission in the proper performance of its business.

Vice-Chairman. The Vice-Chairman shall serve as Chairman in the absence of or due to disability of the Chairman. In the event of the absence, disability, resignation, removal by the City, or death of the Chairman, the Vice-Chairman shall perform the latter's duties until such time as the Commission shall elect a new Chairman.

Secretary-Treasurer. The Secretary-Treasurer shall be the custodian of all records of the proceedings and actions of the Utilities Commission and of its official seal. The Secretary-Treasurer shall keep or cause to be kept appropriate minutes of all meetings, public hearings of the Utilities Commission and record all of its proceedings and shall attest to official documents of the Utilities Commission when required.
(5) **Assistant Secretary-Treasurer:** The Assistant Secretary-Treasurer shall serve as Secretary-Treasurer and perform all the duties of the Secretary-Treasurer in the absence of or due to the disability, resignation, removal by the City, or death of the Secretary-Treasurer. In the event of any of the foregoing, the Assistant Secretary-Treasurer shall perform the latter's duties until such time as the Utilities Commission shall elect a new Secretary-Treasurer.

(6) **Additional Duties.** The Chairman, Vice-Chairman, Secretary-Treasurer and Asst. Secretary-Treasurer shall perform such other duties and functions as may from time to time be required by the Utilities Commission, its Enabling Act, or by its resolutions.

**SECTION 5. MEETINGS.** Meetings of the Utilities Commission shall be conducted as follows:

(1) **Regular Meetings.** The regular meetings of the Utilities Commission shall usually be held at 6:00 p.m. on the fourth Monday of each month at the offices of the Utilities Commission located at 200 Canal Street, New Smyrna Beach, Florida. When a regular meeting falls on, or immediately before or after, a legal holiday, the Utilities Commission may, at its discretion, reschedule such meeting to another convenient time. Also, the Commission may otherwise change the date and/or time of regular Utilities Commission meetings as it deems desirable for benefit to the public and itself.

(2) **Special Meetings.** Special meetings of the Utilities Commission shall be called by the Chairman, by the Secretary-Treasurer, or by the General Manager/CEO, or upon the written request of any three members of the Utilities Commission or by consensus of the Commissioners present at the time of scheduling of such meeting.

(3) **Workshop Meetings.** Workshop meetings may be scheduled by the Chairman, by the Secretary-Treasurer, or by the General Manager/CEO, or upon the request of any member of the Utilities Commission (if concurred by a majority of the Utilities Commission) for the purpose of enabling the Utilities Commission to study, investigate, receive briefings, reports, and to discuss subjects relevant to the purpose of such meeting, or other business of the Utilities Commission. In no event shall official action be taken by the Utilities Commission at any workshop meeting.

(4) **Notice of Regular, Special, or Workshop Meetings.** Notice of regular, special or workshop meetings of the Utilities Commission and the agenda for any such meeting shall be posted at least twenty-four hours prior thereto, and accessible to the public in the lobby of the Utilities Commission offices and posted on the Utilities Commission's web site. Also, notice thereof shall be furnished to the City Commission for posting in the City Commission Hall lobby. Local representatives of the news media shall be notified at least twenty-four hours prior to any such meeting.
(5) **Quorum and Procedure.** Any three members of the Utilities Commission shall constitute a quorum for the transaction of business. A majority vote of the Utilities Commissioners present shall be necessary to adopt or approve any official action of the Utilities Commission. The passage of all motions shall be taken by a voice vote and the result entered upon the minutes. In the absence of both the Chairman and Vice-Chairman, those Commissioners present constituting a quorum shall, by a majority vote, elect a presiding officer for such meeting.

(6) **Rules of Attendance.** All members of the Utilities Commission and designated employees shall attend all meetings and public hearings of the Utilities Commission unless prevented from doing so by reasonable cause. If a Commissioner is absent from three consecutive meetings (including two regular meetings) of the Utilities Commission, or misses more than four regular Commission meetings in a calendar year, the Utilities Commission shall notify the City Commission of same.

(7) **Order of Business.** The order of business at all regular meetings of the Utilities Commission shall conform to the agenda prepared by the General Manager/CEO as provided in Subsection 5(9) below.

(8) **Compliance with Sunshine Law and Public Records Law.** All meetings of the Utilities Commission shall be conducted in compliance and accordance with and subject to the provisions of § 286.011, Fla. Stat. Furthermore, the Utilities Commission shall comply fully with the Public Records Law, Chapter 119, Fla. Stat. The Utilities Commission may utilize or comply with, as appropriate, any exemptions and exceptions contained in the Sunshine Law and the Public Records Law.

(9) **Agenda.** An agenda shall be prepared by the General Manager/CEO or at his direction, listing all matters which shall be taken up by the Utilities Commission at any of its meetings. Any matter requested in writing and furnished by any Commissioner or the Utilities Commission's General Counsel to the General Manager/CEO must be placed on the agenda. The agenda for a regular meeting scheduled will usually be prepared one week before each regular scheduled meeting but in any event not less than twenty-four hours prior to the commencement of that or any other meeting. Subjects not specified on the agenda shall not be taken up at such meeting, except by consent of a majority of the members of the Utilities Commission present. The agenda for all regular Utilities Commission meetings shall conform generally to the following format, but may vary based upon the consent of a majority of the members of the Utilities Commission present:

"ROLL CALL"
1. Agenda Changes, Additions and Deletions
2. Approval of Consent Items (Minutes of previous meetings and any other business approved as recommended or accepted as appropriate without further comments. Items on the consent agenda are defined as of a routine nature that do not warrant detailed discussion or individual action by the Utilities Commission. Any member of the Utilities Commission may remove any item from the consent agenda simply by an oral request at
the meeting. Removing an item from the consent agenda does not require a motion, second, or a vote; it would simply be a unilateral request of an individual Commissioner. All items remaining on the consent agenda, after each and every Commissioner has had the opportunity to remove items from same, shall be approved and adopted by a single motion, second and vote by the Utilities Commission without further discussion.)

3. Public Participation
4. General Manager's Report (Approval of Commissioner's Expenses, if any, will be considered under this item.)
5. Utilities Commission Counsel's Report
6. Old Business
7. New Business
8. Possible Other Business - Time for Commissioners

Anyone wishing to be scheduled to appear on the agenda for any meeting must make a request in writing to the Utilities Commission and explain in reasonable detail the subject and reason for such request. The Chairman may at his discretion rearrange the agenda to permit any such scheduled appearance to take place as early in the meeting as possible. Anyone so appearing must confine his or her discussion to the subject matter stated in the written request.

**SECTION 6. PUBLIC HEARINGS.** Public hearings shall be conducted by the Utilities Commission in accordance with the following:

(1) **Location.** All meetings of the Utilities Commission shall be held at the offices of the Commission located at 200 Canal Street, New Smyrna Beach, Florida, unless the Utilities Commission indicates another location, and shall be open to the public as required by law.

(2) **Notice of Public Hearings on Rates, Fees, and Charges.** Unless otherwise provided by law, no rates, fees, charges or improvement assessments, hereinafter referred to as rates, fees, and charges, shall be fixed until after public hearings at which the users of the facilities provided by the Utilities Commission and owners, tenants and occupants of properties served, or to be served thereby, and others interested shall have an opportunity to be heard concerning the proposed rates, fees, and charges. The proposed changes to, or the fixing of rates, fees and charges may be read by title only or in full, at the preliminary hearing and again at the final hearing. Notice of the hour, date, and place of the preliminary and the final public hearings setting forth the intent to fix the schedule of rates, fees and charges shall be given by one publication in a newspaper of general circulation in the City of New Smyrna Beach, Florida, at least ten days before the date fixed in said notice for the preliminary hearing, which said hearing may be recessed from time to time to a date and time certain. Said notice shall advise that interested parties may appear and be heard at the public hearings and when and where they may inspect the proposed rates, fees and charges. Notice of the public hearing shall also be posted in the lobby of the Utilities Commission offices and notice thereof shall be furnished to the City Commission for posting in the City Commission Hall lobby. A copy of the adopted preliminary schedule of rates,
fees and charges shall be kept on file with the recording secretary in the Utilities Commission office for inspection by interested parties. After the second public hearing, the preliminary schedule either as originally adopted or as modified or amended shall be finally adopted and put into effect and thereupon the resolution providing the rates, fees, and charges will be effective on the date specified. The Utilities Commission shall also comply with the provisions of § 180.136, Fla. Stat. “Water or sewer utilities; notice.

(3) Public Hearings on Miscellaneous Matters. Unless otherwise provided by law, the Utilities Commission may conduct public hearings pertaining to matters other than changes in rates, fees, charges or improvement assessments by a single hearing which shall be final. The requirements on publication of notice shall otherwise be the same as set forth above.

(4) Appeals and Record of Proceedings. Pursuant to § 286.0105, Fla. Stat., or as otherwise provided by law, if an individual decides to appeal any decision made by the Utilities Commission, City of New Smyrna Beach, Florida, with respect to any matter considered at a meeting or hearing, that individual will need a record of the proceedings, and will need to ensure that a verbatim record of the proceedings is made. The transcription of such a verbatim will be provided an individual at a cost to be determined by the Utilities Commission in accordance with the full cost to prepare and reproduce such transcriptions and copies.

SECTION 7. COMMISSIONERS' EXPENSES INCURRED IN CARRYING ON BUSINESS OF THE UTILITIES COMMISSION. In addition to a member's salary, a Commissioner shall be paid necessary expenses incurred in carrying on and conducting the legitimate business of the Commission subject to the concurrence of this Utilities Commission. If time does not permit approval by the Utilities Commission prior to incurring such expenses appropriate to the proper conduct of the Utilities Commission, business expense approval after the fact must be made by the Utilities Commission.

SECTION 8. PUBLIC PARTICIPATION AND COMMENT; CONDUCT OF PUBLIC MEETINGS. The Utilities Commission has a long standing policy which encourages public participation of the ratepayers. In order to comply with § 286.0114, Fla. Stat., the Utilities Commission hereby continues its public participation policy applicable to its meetings to allow the ratepayers an additional opportunity to address the Utilities Commission. In addition to public hearings, a special time is hereby set aside at regular Utilities Commission meetings for the purpose of receiving comments and suggestions from the ratepayers. All comments made during any Public Comment period shall be subject to the following procedures:

(1) The Chairman or presiding officer shall preserve order and decorum at all meetings. During any Utilities Commission meeting, Commissioners shall maintain order and decorum. Utilities Commission staff and the ratepayers must be recognized by the Chairman before speaking or asking questions. The purpose of this requirement is so that
there is order and so that the recording equipment will properly record all comments made by individuals wishing to comment on a specific subject.

(2) Any person may attend Utilities Commission meetings, workshops and public hearings. In order for the Utilities Commission to conduct meetings and hearings in an orderly manner, however, normally no one will be recognized to speak before the Utilities Commission, unless authorized to speak by the Chairman, and if denied by the Chairman, any member of the Commission may insist that such person be heard. If such a challenge is made, the votes of the majority of the Commissioners present shall determine whether a person is or is not authorized to speak before the Utilities Commission.

(3) Except for those ratepayers who are unable to be physically present at a public meeting at which public comment is permitted, all comments must be made from the podium which is located at the front of the Utilities Commission Chambers or by other reasonable accommodations in any other location in which the Commission meeting is held, and shall address the subject of the agenda item. Individuals that appear before the Utilities Commission are required to state their legal name and their actual address for the public record. The purpose of this requirement is so that they are properly reflected in the minutes and are available for future reference. Notwithstanding the above, the Utilities Commission shall continue its long-standing tradition of permitting those ratepayers who cannot physically attend a meeting at which public comment is permitted to make comments by phone or in writing. Such comments shall otherwise comply with the requirements of this Resolution.

(4) Ratepayers shall be given a reasonable opportunity to be heard on a proposition before the Utilities Commission. The opportunity to be heard need not occur at the same meeting at which the Utilities Commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision making process and is within reasonable proximity in time before the meeting at which the Utilities Commission takes the official action. Reasonable time will be allowed to interested persons to speak when authorized to do so, in support of or against any relevant matter when being considered by the Utilities Commission. The Chairman may, however, fix a reasonable time or equal time limitations for supporting and opposing parties to speak in order to preclude excessive or repetitious remarks.

(5) At the discretion of the Chairman, public comments will be limited to three (3) minutes per person so that all may be heard on the matter and the Chairman, or his designee, shall in such instances monitor the timing and give the speaker a thirty (30) second notice prior to the expiration of the time allotted. The Chairman may, at his discretion, or at the direction of a majority of the Utilities Commission, extend the time allowed for an individual to speak or to allow a speaker a single opportunity to rebut comments made by another speaker. Any such rebuttal shall be limited to three (3) minutes. After receiving public comments as provided herein, the public hearing shall be
closed and all further discussion on the matter shall be limited to members of the Utilities Commission.

(6) As the Utilities Commission considers consent agenda items, emergency items, items involving official acts that involve no more than a ministerial act, approval of minutes, ceremonial proclamations and other similar items, the Chairman may, at his discretion, or at the direction of a majority of the Utilities Commission, accept comments from those in attendance.

SECTION 9. DECORUM. The Chairman shall preserve strict order and decorum at all meetings.

(1) In conducting the public’s business, the Utilities Commission is committed to the principles of civility, honor, and dignity. Individuals appearing before the Utilities Commission are requested to observe the same principles when making comments on items and issues presented to the Utilities Commission for its consideration.

(2) Staff members and ratepayers are required to use proper language when addressing the Utilities Commission or the audience. Staff members and ratepayers shall not use profanity or cursing, aggressive or threatening behavior when addressing the Commission or other participants. All comments are directed to the Chairman and not to individual members of the Utilities Commission or to the audience. No personal verbal attacks toward any individual will be allowed during the conduct of a Utilities Commission meeting. The Chairman may have individual(s) removed from the podium and/or meeting chambers if such conduct persists after a warning has been issued.

(3) All members of the Utilities Commission shall accord the utmost courtesy to each other, employees and the public members appearing before the Utilities Commission and shall refrain at all times from rude and derogatory remarks, reflections as to integrity, abusive comments and statements as to motives and personalities. During Utilities Commission meetings, cell phones are to be turned off or silenced. Use of cell phones by Utilities Commission members and staff for talking, texting, emailing or otherwise will not be allowed during meetings while at the dais, except for emergency communications, research, or during breaks.

(4) In the case that any person is declared out of order by the chairman and ordered expelled, and does not immediately leave the meeting chambers, the following steps shall be taken:

(i) The chairman shall declare a recess.

(ii) The person shall be advised that they have been ordered expelled.
(iii) In case the person does not remove himself from the area he may be placed under arrest for violation of § 871.01, Fla. Stat., should the person continue to willfully interrupt or disturb the meeting.

(iv) In the event any person who is ordered expelled leaves the meeting chambers voluntarily and then returns to the same meeting, they are subject to arrest for violation of § 871.01, Fla. Stat., should the person continue to willfully interrupt or disturb the meeting.

SECTION 10. DISCLOSURE OF VOTING CONFLICT; COMPLIANCE WITH STATE ETHICS CODE FOR PUBLIC OFFICERS. Commissioners voting upon any measure in which they are aware of a personal, private, or professional interest to themselves, or which inures to their special private gain or the special private gain of any principal by whom the Commissioner is retained, shall announce prior to the vote that he or she has a voting conflict and shall within fifteen days after the vote occurs disclose the nature of his or her interest as a public record in a memorandum filed with the Utilities Commission recording secretary who shall incorporate the memorandum in the minutes of the meeting in which the vote was taken. Members of the Utilities Commission shall also comply with the provisions of the Code of Ethics for Public Officers as set forth in Chapter 112, Fla. Stat.

SECTION 11. DELEGATIONS OF AUTHORITY BY THE UTILITIES COMMISSION. The Utilities Commission hereby delegates to the General Manager/Chief Executive Officer the following:

(1) The General Manager/CEO or other designated employee, shall be empowered to sign, on behalf of the Commission, routine and recurring reports and documents requested and/or required by various governmental agencies.

(2) The General Manager/CEO shall perform such other duties or tasks as may have been previously delegated by the Commission which have not been previously repealed, consistent with these Rules of Procedure.

SECTION 12. WAIVER OF RULES. The Utilities Commission may, at any time, waive all or a portion of these rules of procedure during the course of a meeting. Provided, however, that any such waiver shall only be done upon a motion and majority approval of the waiver by members of the Utilities Commission present and voting. Such waivers shall only be granted to insure the protection of the right of ratepayers to be given a reasonable opportunity to be heard before the Commission takes official action on a proposition.

SECTION 13. SEVERABILITY. If any provision or portion of this Resolution is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Resolution shall remain in full force and effect.
SECTION 14. REPEAL OF INCONSISTENT RESOLUTIONS. All resolutions and portions of resolutions in conflict herewith are hereby repealed, including but not limited to Resolution Nos. 9-65, 35-75, 3-83, 1-84, 4-89, 2-94, 3-96, 27-96, 42-96, 8-03, 15-04, 16-04, 8-05, and 2-09.

SECTION 15. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage by the Utilities Commission.

THIS RESOLUTION was introduced at a regular meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held this 23rd day of March, 2018, by Commissioner Holcomb who moved for its adoption, which motion was seconded by Commissioner Griffith, and upon roll call vote of the Commission was DULY ADOPTED as follows:

CHAIRMAN
VICE CHAIRMAN
SECY.-TREAS.
ASST. SECY.-TREAS.
COMMISSIONER

APPROVED:
William E. Biedenbach, Chairman

ATTEST:
Bernadette Britz-Parker, Secretary-Treasurer

APPROVED AS TO FORM & LEGALITY:
Thomas A. Cloud, Interim General Counsel