

ORDINANCE NO. 2008-16

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A REFERENDUM ELECTION TO DETERMINE IF THE TOWN CHARTER, SECTION 2.07, RELATING TO THE ELECTION AND TERM OF OFFICE OF THE TOWN COUNCIL AND THE MAYOR AND SECTION 2.09 RELATING TO THE FILLING OF VACANCIES SHOULD BE AMENDED; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes, 101.161 provides for the procedures to submit a public measure to a vote of the electors of a municipality; and

WHEREAS, The Town Council has recommended that a referendum question be submitted to the electors of the Town to determine if the Town Charter should be amended as described in this ordinance.

WHEREAS, The Town Council desires to submit the said amendment to the Charter for ratification by the electors of the Town as two (2) separate ballot questions.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows:

Section 1.

If there is a need to hold an election for a council seat on the Town Council of the Town in the November, 2009 general election then a referendum election is also hereby called and scheduled to be held concurrent with the general election in November, 2009, to determine whether amendments to the Town Charter, section 2.07 relating to the Election and Term of Town Council Members and the Mayor, and section 2.09 relating to the Filling of Vacancies, as more particularly described in Exhibit A, shall be approved by a majority of the votes cast in such election in which the qualified electors residing in the Town shall participate. Such referendum election shall be held and conducted in a manner prescribed by law for all general elections. The place for voting in such referendum election shall be the usual place for voting in the Town in the general election to be held in November, 2009. However, in the event there is no need to hold an election for a council seat on the Town Council for the Town in November, 2009 general election then a referendum election is called and scheduled to be held concurrent with the general election in November, 2010, to determine whether amendments to the Town Charter, section 2.07 relating to the Election and Term of Town Council Members and the Mayor, and section 2.09 relating to the Filling of Vacancies, as more particularly described in Exhibit A, shall be approved by a majority of the votes cast in such election in which the qualified electors residing in the Town shall participate.

The polls shall be open at such voting place on the day of such referendum election during the hours specified by the general laws of the State of Florida. All duly qualified electors residing within the Town shall be entitled to participate in and vote at such referendum election.

Section 2.

The ballot to be used at such referendum election shall contain a statement of the proposed subject matter of the question and shall provide facilities for qualified electors to vote for or against such Charter Amendment in two (2) separate ballot questions. Said ballot shall be in substantially the following form:

Ballot
Town of Malabar, Florida

Question 1. Amendment to section 2.07 of the Charter relating to the election and term of office of the Town Council and the Mayor.

Proposes a Charter amendment that if a vacancy on Council or in the office of the Mayor is filled pursuant section 2.09 of the Charter then such term shall not be used as part of the calculation for term limits.

Yes
 No

Instruction to voters: If you are in favor of the adoption of the foregoing mark the space to the left of the word "YES". If you are not in favor of the adoption of the foregoing amendment, mark the space to the left of the word "NO".

Question 2. Amendment to the Charter relating to the filling of vacancies on the Town Council and in the office of the Mayor.

Shall the Charter be amended to require the council to schedule a special election to fill a vacancy on Town Council or in the office of the Mayor when one (1) year or more remains in the vacant term?

Yes
 No

Instruction to voters: If you are in favor of the adoption of the foregoing mark the space to the left of the word "YES". If you are not in favor of the adoption of the foregoing amendment, mark the space to the left of the word "NO".

Section 3.

The Town Clerk is hereby authorized and directed to instruct the Supervisor of Elections of Brevard County to include the above-described questions on the ballot for the general election to be held in November, 2009 if an election for a council seat on the Town Council is necessary. If an election for a council seat in November 2009 is not necessary then the Town Clerk is hereby authorized and directed to instruct the Supervisor of Elections of Brevard County to include the above-described questions on the ballot for the general election to be held in November, 2010.

Section 4.

Notice of the said referendum election in substantially the form showing in Exhibit B to this Ordinance shall be published two times in a newspaper of general circulation according to the laws of the State of Florida. The first publication shall be during the fifth week prior to the week in which the referendum election is to be held and the second publication shall be during the third week prior to the week in which the referendum election is to be held. A minimum of five copies of this Ordinance shall be kept on file in the office of the Town Clerk for public inspection upon demand during normal business hours.

Section 5.

If the amendments to the Town Charter described in Question No. 1 and No.2 hereinabove are approved by the electors of the Town, such amendments shall take effect with the general election of the Town at which such referendum was approved.

Section 6.

This Ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council member Vail. The motion was seconded by Council member Rivet and, upon being put to a vote, the vote was as follows:

Council Member Nancy Borton	<u>Excused</u>
Council Member Brian Vail	<u>Aye</u>
Council Member Steve Rivet	<u>Aye</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Patricia (Pat) Dezman	<u>Excused</u>

This ordinance was then declared to be duly passed and adopted this 15th day of December, 2008.

TOWN OF MALABAR

BY: Thomas Eschenberg
Mayor Tom Eschenberg, Chairperson

First Reading: 11/17/08

Second Reading: 12/15/08

ATTEST: Debby Franklin
Debby Franklin
Town Clerk/Treasurer

Approved as to form and content:

Karl Bohne
Karl W. Bohne, Jr., Town Attorney

EXHIBIT A**Town of Malabar Language of Proposed Charter Changes**

(In all cases, words crossed out with ~~strike through~~ are to be deleted and words underlined are to be added.)

REFERENDUM QUESTION 1.

1. Shall Section 2.07 of the Town Charter be amended as follows:

Sec. 2.07. Election and Terms.

The regular election of the Town Council members, including the Mayor, shall be held on the Tuesday after the first Monday of November each year to fill the expired terms as presently established and shall be for two (2) year terms. Two (2) council seats shall be elected in odd years and the remaining three (3) council seats in even years. The Mayor shall be elected to no more than two consecutive four-year terms. If only one (1) candidate qualified for any one of the council seats or the office of mayor, the name shall not appear on the ballot, and the candidate is automatically elected. In any election, the person having the highest number of votes in the election shall be elected. In the event of a tie, the winner shall be selected by draw. Beginning with the terms commencing with November 1986 election and thereafter, an elected official shall not serve more than three (3) consecutive terms in any capacity, ~~even if~~ unless one of those terms was as an interim or appointed official in that case such interim or appointed term shall not be used in calculating the three (3) consecutive term limit imposed by this section.

2. Shall Section 2.09 of the Town Charter be amended as follows:

Sec. 2.09. Filling of Vacancies.

If a vacancy occurs on the council or in the office of mayor and there is less than one (1) year remaining in that person's term, the council, by a majority vote of the remaining full council shall choose a successor to serve until the election is held to fill the vacancy for the unexpired term. The successor must have all qualifications as described in Section 2.03. If ~~more than~~ one (1) year or more remains in that person's term that seat or office of mayor shall be filled by special election for the remainder of the unexpired term. The council shall schedule a special election to be held not sooner than sixty (60) days nor more than ninety (90) days, following the occurrence of the vacancy. Notwithstanding any quorum requirements established herein, if at any time the membership of the council is reduced to less than a quorum, the remaining members may, by majority vote appoint additional members until the vacancies are filled as provided herein.

**EXHIBIT B
NOTICE OF REFERENDUM ELECTION
TOWN OF MALABAR, FLORIDA**

Public notice is hereby given that on November ____, 20__; the issue of whether the Town shall adopt amendments to the Town charter will be submitted to the qualified electors of the Town of Malabar and will appear on the same election ballot as a referendum on that date as two separate ballot questions.

The Town Council of the Town of Malabar has adopted an ordinance calling the said election on the following questions:

AS TO QUESTION 1.

Proposes a Charter amendment that if a vacancy on Council or in the office of the Mayor is filled pursuant section 2.09 of the Charter then such term shall not be used as part of the calculation for term limits.

AS TO QUESTION 2.

Shall the Charter be amended to require the council to schedule a special election to fill a vacancy on Town Council or in the office of the Mayor when one (1) year or more remains in the vacant term?

The places of voting shall be the usual places of voting in the Town of Malabar during the general election scheduled on November ____, 20__ and the polls shall be open from 7:00 a.m. to 7:00 p.m. on the said date. All duly qualified electors residing within the Town of Malabar shall be entitled to participate and vote in said referendum election.

The ballot containing the questions to be so submitted to the electors shall be in substantially the following form:

**Ballot
Town of Malabar, Florida**

Question 1. Amendment to the Charter relating to the Election and Term of office of the Town Council and the Mayor.

Proposes a Charter amendment that if a vacancy on Council or in the office of the Mayor is filled pursuant section 2.09 of the Charter then such term shall not be used as part of the calculation for term limits.

___ Yes
___ No

Instruction to voters: If you are in favor of the adoption of the foregoing mark the space to the left of the word "YES". If you are not in favor of the adoption of the foregoing amendment, mark the space to the left of the word "NO".

For further information regarding this referendum election, contact the Town Clerk of the Town of Malabar. A minimum of five copies of this Ordinance are on file at the office of the said Town Clerk at Town Hall, 2725 Malabar Road, Malabar, Florida, 32950, and are available for inspection upon request during normal business hours.

Question 2. Amendment to the Charter relating to the filling of vacancies on the Town Council and in the office of the Mayor.

Shall the Charter be amended to require the council to schedule a special election to fill a vacancy on Town Council or in the office of the Mayor when one (1) year or more remains in the vacant term?

Yes
 No

Instruction to voters: If you are in favor of the adoption of the foregoing mark the space to the left of the word "YES". If you are not in favor of the adoption of the foregoing amendment, mark the space to the left of the word "NO".

For further information regarding this referendum election, contact the Town Clerk of the Town of Malabar. A minimum of five copies of this Ordinance are on file at the office of the said Town Clerk at Town Hall, 2725 Malabar Road, Malabar, Florida, 32950, and are available for inspection upon request during normal business hours.