

ORDINANCE NO. 2011-42

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A REFERENDUM ELECTION TO DETERMINE IF THE TOWN CHARTER, SECTION 2.03 RELATING TO QUALIFICATION FOR COUNCIL SEAT, SECTION 2.04 (b), RELATING TO THE QUALIFICATIONS AND DUTIES OF THE MAYOR , 2.11 (d) RELATING TO TOWN COUNCIL VOTING ON RESOLUTIONS AND SECTION 4.01 RELATING TO PUBLIC MONIES 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 four (4) 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, 2011 general election then a referendum election is also hereby called and scheduled to be held concurrent with the general election in November, 2011, to determine whether amendments to the Town Charter, section 2.03 relating to Qualification for Council Seat, section 2.04 (b) relating to the Qualifications and Duties of the Mayor, 2.11 (d) relating to Town Council voting on resolutions, and section 4.01 relating to Public Monies, 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, 2011. 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, 2011 general election then a referendum election is called and scheduled to be held concurrent with the general election in November, 2012, to determine whether amendments to the Town Charter, section 2.03 relating to Qualification for Council Seat, section 2.04 (b) relating to the Qualifications and Duties of the Mayor, 2.11 (d) relating to Town Council voting on resolutions, and section 4.01 relating to the Public Monies, 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 four (4) separate ballot questions. Said ballot shall be in substantially the following form:

**Ballot
Town of Malabar, Florida**

Question 1. Amendment to section 2.03 of the Charter relating to the Qualification for Council Seat.

Shall section 2.03 of the Charter be amended to require petitions authorized by section 2.03 of the Charter be signed by qualified electors of the Town?

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 section 2.04 (b) of the Charter relating to the Qualifications and Duties the Mayor.

Shall section 2.04 (b) of the Charter be amended to authorize a candidate for the office of Mayor to qualify for office by use of a petition signed by qualified electors of the Town?

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 3. Amendment to section 2.11 (d) of the Charter removing the requirement for a roll call vote for voting on resolutions.

Shall section 2.11 (d) of the Charter be amended to remove the requirement of a roll call vote for voting on Resolutions?

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 4. Amendment to section 4.01 the Charter authorizing the use of electronic payments or direct deposit for the disbursement of public monies.

Shall section 4.01 of the Charter be amended to allow the use of electronic payments or direct deposit as an alternative for the disbursement of public monies?

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, 2011 if an election for a council seat on the Town Council is necessary. If an election for a council seat in November 2011 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, 2012.

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 any of the amendments to the Town Charter described in Question No. 1, No. 2, No. 3 and No. 4 hereinabove are approved by the electors of the Town, then such amendment(s) 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 Rivet . The motion was seconded by Council member Acquaviva and, upon being put to a vote, the vote was as follows:

Council Member Carl Beatty	Nay
Council Member David White	Aye
Council Member Steve Rivet	Aye
Council Member Jeffrey (Jeff) McKnight	Aye
Council Member Marisa Acquaviva	Aye

This ordinance was then declared to be duly passed and adopted this 1 day of August , 2011.

TOWN OF MALABAR

BY: Thomas M. Eschenberg

Mayor Thomas M. Eschenberg, Chairperson

First Reading: 7/7/2011

Second Reading: 8/1/2011

ATTEST: Debby K. Franklin
Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

Approved as to form and content:

Karl W. 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 QUESTIONS:

1. Shall Section 2.03 of the Town Charter be amended as follows:

“Sec. 2.03. - Qualification for Council Seat.

Any qualified elector of the town who has been a resident of the town for at least six (6) months prior to the date of qualification for office may qualify for the council seat by presenting to the town clerk a petition signed by ~~residents~~ qualified electors of the candidate's district. The petition must be signed by fifteen (15) valid signatures of the district and by paying a filing fee if required, not less than sixty-seven (67) days and not more than eighty-one (81) days prior to the date of such election. The candidates shall submit with the petition a sworn statement containing the candidate's name, address, occupation and willingness to serve if elected. The candidate must have resided in the district for which he/she is qualifying for at least six (6) months.”

2. Shall Section 2.04 (b) of the Town Charter be amended as follows:

“Sec. 2.04. - Qualifications and Duties of the Mayor.

(b) The Mayor shall be at least thirty (30) years of age, an qualified elector of the Town and shall have resided in the Town for at least one (1) year prior to the date on which the candidate qualified to run for the office of Mayor. If the Mayor shall cease to possess any such qualifications during the term of office, the Mayor shall forfeit the office pursuant to the procedure herein. The Mayor shall be elected to a four-year (4) term. A candidate for the office of Mayor may qualify for the council seat by presenting to the town clerk a petition signed by qualified electors of the Town. The petition must be signed by fifteen (15) valid signatures of qualified electors of the Town and by paying a filing fee if required, not less than sixty-seven (67) days and not more than eighty-one (81) days prior to the date of such election. The candidate for office of the Mayor shall submit with the petition a sworn statement containing the candidate's name, address, occupation and willingness to serve if elected.”

3. Shall section 2.11 (d) of the Town Charter be amended as follows:

“Sec. 2.11. - Meetings.

(d) Voting on ordinances ~~and resolutions~~ shall be by roll call and shall be recorded in the minutes. Three members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members. No action of the council except as otherwise provided herein shall be valid or binding unless adopted by the affirmative vote of the majority of a quorum present.”

4. Shall section 4.01 of the Town Charter be amended as follows:

“Sec. 4.01. - Public Monies.

All public monies shall be deposited in the name of the Town of Malabar in banks designated by the council. All public monies shall be disbursed ~~only~~ either by check to be signed by two (2) of four (4) authorized signatures or electronic payments or direct deposit. The town clerk administrator, the mayor and a delegated council member shall be authorized to sign checks.”

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.

Shall section 2.03 of the Charter be amended to require petitions authorized by section 2.03 of the Charter be signed by qualified electors of the Town?

AS TO QUESTION 2.

Shall section 2.04 (b) of the Charter be amended to authorize a candidate for the office of Mayor to qualify for office by use of a petition signed by qualified electors of the Town?

AS TO QUESTION 3.

Shall section 2.11 (d) of the Charter be amended to remove the requirement of a roll call vote for voting on Resolutions?

AS TO QUESTION 4.

Shall section 4.01 of the Charter be amended to allow the use of electronic payments or direct deposit as an alternative for the disbursement of public monies?

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 section 2.03 of the Charter relating to the Qualification for Council Seat.

Shall section 2.03 of the Charter be amended to require petitions authorized by section 2.03 of the Charter be signed by qualified electors of the Town?

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 section 2.04 (b) of the Charter relating to the Qualifications and Duties the Mayor.

Shall section 2.04 (b) of the Charter be amended to authorize a candidate for the office of Mayor to qualify for office by use of a petition signed by qualified electors of the Town?

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 3. Amendment to section 2.11 (d) of the Charter removing the requirement for a roll call vote for voting on resolutions.

Shall section 2.11 (d) of the Charter be amended to remove the requirement of a roll call vote for voting on Resolutions?

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 4. Amendment to section 4.01 the Charter authorizing the use of electronic payments or direct deposit for the disbursement of public monies.

Shall section 4.01 of the Charter be amended to allow the use of electronic payments or direct deposit as an alternative for the disbursement of public monies?

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".