



Meeting Name: Town Council Meeting
Meeting Date: November 15, 2023
Prepared By: L. Rubin, Town Attorney
Item Title: Charter Amendment Ordinances – Second Reading (Ordinance No. 773-777)

DISCUSSION: At its September 13, 2023 meeting, the Town Council reviewed the Charter Review Committee’s proposed amendments to the Town Charter and directed Staff to move forward with preparing the necessary Ordinances submitting the proposed amendments to referendum. At its October 25, 2023 meeting, the Town Council adopted each of the Ordinances on first reading, with minor changes to Ordinances No. 776 and 777 (changes are highlighted below).

Ordinance No. 773 (Fiduciary Responsibilities):

This Ordinance amends Section 1 of Article III of the Town Charter to add a new subsection (c) to read as follows:

- (c) The town council adopts policies and appropriates town funds through its budgetary responsibilities, and its members have fiduciary responsibilities as trustees of public funds.

As set forth in the Ordinance, the title of the ballot and the explanatory statement read as follows:

**AN AMENDMENT TO ARTICLE III OF THE TOWN CHARTER
RELATING TO THE TOWN COUNCIL’S FIDUCIARY RESPONSIBILITIES**

THIS AMENDMENT ADDS NEW LANGUAGE TO ARTICLE III OF THE TOWN CHARTER TO SPECIFICALLY RECOGNIZE THAT THE TOWN COUNCIL HAS FIDUCIARY RESPONSIBILITIES AS TRUSTEES OF PUBLIC FUNDS APPROPRIATED THROUGH THE BUDGETARY PROCESS.

SHALL THE ABOVE-DESCRIBED AMENDMENT BE ADOPTED?

YES _____

NO _____

Ordinance No. 774 (Land Development Regulations):

This Ordinance amends Section 7 of Article III of the Town Charter to add a new subsection (f) to read as follows:

(f) Land development regulations. Any amendment to the town’s land development regulations that increases the permitted height or density within any zoning district shall require an affirmative vote of all five (5) councilmembers.

As set forth in the Ordinance, the title of the ballot and the explanatory statement read as follows:

**AN AMENDMENT TO ARTICLE III OF THE TOWN CHARTER
RELATING TO LAND DEVELOPMENT REGULATIONS**

THIS AMENDMENT REQUIRES A UNANIMOUS VOTE OF ALL FIVE MEMBERS OF THE TOWN COUNCIL TO AMEND THE TOWN’S LAND DEVELOPMENT REGULATIONS TO INCREASE THE PERMITTED HEIGHT OR DENSITY WITHIN ANY ZONING DISTRICT.

SHALL THE ABOVE-DESCRIBED AMENDMENT BE ADOPTED?

YES _____ NO _____

Ordinance No. 775 (Variances):

This Ordinance amends Section 7 of Article III of the Town Charter to add a new subsection (g) to read as follows:

(g) Variances. Commencing on the date of the expiration of the limitations on the adoption of more restrictive or burdensome procedures concerning the review or approval of development permits set forth in section 14 of Chapter 2023-304, Laws of Florida, any order granting a variance to the permitted height within any zoning district shall require an affirmative vote of all five (5) councilmembers.

As set forth in the Ordinance, the title of the ballot and the explanatory statement read as follows:

**AN AMENDMENT TO ARTICLE III OF THE TOWN CHARTER
RELATING TO HEIGHT VARIANCES**

THIS AMENDMENT REQUIRES A UNANIMOUS VOTE OF ALL FIVE MEMBERS OF THE TOWN COUNCIL SITTING AS THE ZONING BOARD OF ADJUSTMENT AND APPEALS TO GRANT A VARIANCE TO THE PERMITTED HEIGHT WITHIN ANY ZONING DISTRICT UPON THE EXPIRATION OF THE LIMITATIONS ON ADOPTING MORE RESTRICTIVE OR BURDENSOME PROCEDURES CONCERNING THE APPROVAL OF DEVELOPMENT PERMITS SET FORTH IN SECTION 14 OF CHAPTER 2023-304, LAWS OF FLORIDA.

SHALL THE ABOVE-DESCRIBED AMENDMENT BE ADOPTED?

YES _____ NO _____

Ordinance No. 776 (Initiative and Referendum):

This Ordinance amends Section 1 of Article VI of the Town Charter to revise the language as follows:

- (a) *General provisions.*
 - (1) *Initiative.* Electors of the town shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a town election, provided that such power shall not extend to the budget or capital improvements program or any ordinance relating to appropriation of money, levy of taxes, salaries of town officers or employees, annexation of property, the rezoning of property, or the town's adopted comprehensive plan.
 - (2) *Referendum.* Electors of the town shall have power to require reconsideration by the council of any adopted ordinance and if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a town election, provided that such power shall not extend to the budget or capital improvements program or any emergency ordinance or ordinance relating to the appropriation of money, levy of taxes, salaries of town officers or employees, annexation of property, the rezoning of property, or the town's adopted comprehensive plan.
- (b) *Commencement of proceedings.* Any five (5) electors of the town may commence initiative or referendum proceedings by filing with the town clerk an affidavit stating they will constitute the petitioners 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.

Promptly after the affidavit of the petitioners committee is filed, the town clerk shall, at the committee's request, issue the appropriate petition blanks to the petitioners committee at the committee's expense.

- (c) *Petitions.*
 - (1) *Number of signatures.* Initiative and referendum petitions must be signed by electors of the town equal in number to at least fifteen (15) percent of the total number of electors registered to vote at the last regular town election.
 - (2) *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 executed in ink or indelible pencil and shall be 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.

- (3) *Affidavit of circulator.* Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that ~~he~~ the circulator personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in ~~his~~ the circulator's presence, and that ~~he~~ the circulator believes them to be the genuine signature of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
 - (3) ~~Time for filing referendum petitions~~ *Time for filing referendum petitions.* Referendum petitions must be filed within thirty (30) days after adoption by the council of the ordinance sought to be reconsidered.
- (d) *Procedure for filing.*
- (1) *Certificate of clerk; amendment.* Within twenty (20) days after the initiative or referendum petition is filed the town clerk shall complete a certificate as to its sufficiency, specify 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 subsection (c). If the petitioners committee does not request council review under subsection (2) of this section within the time required, the clerk's certificate shall be a final determination as to the sufficiency of the petition.
 - (2) *Council review.* If a petition has been certified insufficient the committee may, within two (2) days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate within thirty (30) days of the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition.
- (e) *Referendum petitions.* When a referendum petition is filed with the town clerk the ordinance sought to be reconsidered shall remain in effect until:
- (1) The council repeals the ordinance, or;
 - (2) A vote of the town's qualified electors repealing the ordinance has been certified.
- (f) *Action on petitions.*
- (1) *Action by council.* When an initiative or referendum petition has finally been determined sufficient, the council shall consider the proposed initiative ordinance or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiative ordinance without any change in substance or fails to repeal the referred ordinance within sixty (60) days, a vote of the town's qualified electors on a proposed or referred ordinance shall be held.

- (2) *Submission to voters.* The election shall be held not less than ninety (90) days and not later than one hundred twenty (120) days from the date that the petition was determined sufficient. If no regular town election is scheduled to be held within the period described in this subsection, the council shall provide for a special election, within the described period. Copies of the proposed or referred ordinance shall be made available at the polls.
- (3) *Withdrawals of petitions.* An initiative or referendum petition may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for a vote of the town by filing with the town clerk or other official designated by the 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 effect and all proceedings thereon shall be terminated.
- (g) *Results of election.*
- (1) *Initiative.* If a majority of the 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 council; provided, however that the council may amend or repeal an ordinance enacted by initiative only upon the affirmative vote of at least four (4) councilmembers.
- 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 conflict.
- (2) *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.

As set forth in the Ordinance, the title of the ballot and the explanatory statement read as follows (the word "AND" was inadvertently omitted on first reading):

**AN AMENDMENT TO ARTICLE VI OF THE TOWN CHARTER
RELATING TO INITIATIVE AND REFERENDUM PROCEDURES**

THIS AMENDMENT AMENDS EXISTING LANGUAGE TO CLARIFY THAT ANY VOTE ON A REFERENDUM OR INITIATIVE PROCEDURE SHALL BE SUBMITTED TO A VOTE OF THE TOWN'S QUALIFIED ELECTORS IN LIEU OF "A VOTE OF THE TOWN" TO MAINTAIN CONSISTENCY WITH THE REMAINDER OF THE ARTICLE AND REMOVES GENDER-SPECIFIC PRONOUNS.

SHALL THE ABOVE-DESCRIBED AMENDMENT BE ADOPTED?

YES _____

NO _____

Ordinance No. 777 (Residency, Qualification and Removal of Mayor and Councilmembers):

This Ordinance amends Section 1 and Section 6 of Article III of the Town Charter to read as follows (the requirements for residency have been amended as highlighted below):

Sec. 1. Form of government; town council; power and composition; qualification; residency.

(b) Only electors of the town who have been continuous residents for at least one (1) year immediately preceding the date of filing of their notice of candidacy shall be eligible to hold the office of mayor or councilmember. All candidates for mayor or councilmember shall submit an affidavit prior to qualification for office demonstrating that they meet the residency requirement. As used in this section and for the purpose of completing the affidavit, "residency" shall require: ~~(1) a place of abode within the town where the prospective candidate actually lives; and (2) the intent of making that place of abode the person's permanent home.~~ Additionally, the affidavit shall state that the candidate is registered to vote at the candidate's place of abode at the time of qualification. No elector shall qualify for the office of mayor or councilmember if he or she has been convicted or pled nolo contendere to any felony or has been convicted or pled nolo contendere to any crime of fraud or dishonesty including, by way of example, larceny, theft, burglary, forgery, perjury, or embezzlement.

* * *

Sec. 6. Vacancies; forfeiture of office; filling of vacancies.

(a) *Vacancies.* The office of mayor or of a councilmember shall become vacant upon death, resignation, or removal from office in any manner authorized by law of such mayor or councilmember or if such mayor or councilmember ceases to be an elector of the town or ceases to meet the requirements for candidacy set forth in section 1(b) of this article as determined by the remaining members of the council.

As set forth in the Ordinance, the title of the ballot and the explanatory statement read as follows:

**AN AMENDMENT TO ARTICLE III OF THE TOWN CHARTER
RELATING TO CANDIDATE QUALIFYING AND REMOVAL FROM OFFICE**

THIS AMENDMENT REVISES SECTION 1 AND SECTION 6 OF ARTICLE III OF THE TOWN CHARTER TO CLARIFY THE CANDIDATE RESIDENCY REQUIREMENT **TO ENSURE THE CANDIDATE HAS A PLACE OF ABODE IN THE TOWN WHERE THE CANDIDATE ACTUALLY LIVES**, PROHIBIT A CANDIDATE WHO HAS BEEN CONVICTED OF OR PLEAD NOLO CONTENDERE TO A FELONY OR CRIME OF DISHONESTY FROM QUALIFYING FOR OFFICE, AND PROVIDE FOR REMOVAL OF THE MAYOR OR A COUNCILMEMBER WHO CEASES TO MEET THE CANDIDACY REQUIREMENTS.

SHALL THE ABOVE-DESCRIBED AMENDMENT BE ADOPTED?

YES _____

NO _____

Each of the questions shall be presented to the Town's electors at the March 19, 2024 election and only those questions that receive a majority of the votes in favor shall become effective. Any question that does not receive a majority vote in favor is automatically repealed.

RECOMMENDATION:

Staff recommends that the Town Council consider adoption of each of the proposed Ordinances on second and final reading.