

ORDINANCE NO. 2018 – 2

**BOROUGH OF MALVERN
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE TO INITIATE THE AMENDMENT OF SECTION 214
(MEETINGS) OF THE HOME RULE CHARTER OF THE BOROUGH OF
MALVERN PURSUANT TO THE TERMS OF THE HOME RULE CHARTER AND
THE HOME RULE CHARTER AND OPTION PLAN LAW**

WHEREAS the Borough of Malvern (“Borough”) enacted a Home Rule Charter in 2008 pursuant to the Pennsylvania Home Rule Charter and Optional Plan Law, 53 Pa.C.S.A. §§2901 *et seq.*; and

WHEREAS the Borough Code of the Commonwealth of Pennsylvania, at 8 Pa.C.S. § 1001 (c), enables Boroughs to permit participation of members of a borough’s council by means of telecommunication devices pursuant to certain provisions; and

WHEREAS the Borough Council (“Council”) has determined that it is in the interest of the Borough and its citizens to amend the terms of Section 214 of the Home Rule Charter in order to provide for remote participation by members of the Borough Council and clarify the terms of such participation; and

WHEREAS the Home Rule Charter at Article XIII requires that an amendment to the Home Rule Charter be conducted in the manner provided in the aforementioned Home Rule Charter and Optional Plan Law; and

WHEREAS The Home Rule Charter and Optional Plan Law requires that the Council, by ordinance, initiate such amendment via referendum, and to file such ordinance, together with other related materials, with the election officials of the County where the home rule municipality is located; and

WHEREAS the Pennsylvania Election Code, 25 P.S. §§ 2600 *et seq.*, prescribes the method of presenting such referendums in the form of a Ballot Question together with an explanation of such Ballot Questions in plain English;

NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED BY THE BOROUGH AS FOLLOWS:

Article I – Initiation of Amendment Process

1. Pursuant to 53 Pa.C.S.A. §2942, the Borough Council of the Borough of Malvern by these presents initiates the referendum on the question of amendment to the Home Rule Charter of the Borough of Malvern in accordance with the terms of this Ordinance; and
2. The Borough Council hereby directs the Borough Manager, Borough Secretary, and Borough Solicitor to take such steps as are necessary or advisable pursuant to the Home Rule and Optional Plan Law, 53, Pa.C.S.A. §§2901, and the Election Code, 25 P.S. §§ 2600 *et seq.*, or other applicable law in order to effect the purposes as described herein, including, without limitation, the approval of any revisions to the hereinafter described Proposed Ballot Question, Proposed Plain English Statement, or both, such as may be required by applicable law.

Article II – Statement of Purpose

The Purpose of this Ordinance, and the Amendment to the Home Rule Charter it embodies is to permit remote participation by members of the Borough Council in meetings of the Borough Council via telecommunication devices.

Article III – Text of Amendment

Section 214 of the Home Rule Charter shall be AMENDED by INSERTING the following text as a new paragraph “F.”:

- F. One or more members of the Council may participate by means of telecommunication devices such as telephones or computer terminals, which permit, at a minimum, audio communication between locations, if the following apply:
- (1) No member participating via telecommunication device shall be counted for the purposes of establishing a quorum at the convening or reconvening of any public meeting unless any member of the Borough Council is deemed, during the course of the meeting, to be ineligible to vote as a matter of law. Should any member of the Borough Council be so deemed ineligible to vote, the members of the Borough Council participating by telecommunication device shall be counted for the purposes of maintaining a quorum.
 - (2) The telecommunications device used shall permit the member or members of Council not physically present at the meeting to (i) speak and hear the comments and votes, if any, of the members of Council who are physically present, as well as other members of Council who may not be physically present and are also using a telecommunication device to participate in the meeting; and (ii) speak to and hear the comments of the public who are physically present at the meeting.
 - (3) The telecommunication device used permits the members of Council and the members of the public who are physically present at the meeting to speak and to hear the comments and the vote, if any, of the member or members of the Council who are not physically present at the meeting.
 - (4) The use of a telecommunication device to participate in any meeting by a member of the Council shall only be permitted for one or more of the following reasons: (i) illness or disability of the member of Council; (ii) care for the ill or newborn in the member’s immediate family; (iii) emergency; and (iv) family or business travel.
 - (5) The Council may, by resolution, establish reasonable rules and regulations for the use of telecommunication devices by members of Council, provided that such rules and regulations are not inconsistent with the provisions of this Home Rule Charter.

The remainder of Section 214 shall remain intact and in full force and effect.

Article IV – Proposed Ballot Question

With the knowledge and understanding that the final Ballot Question is within the discretion of the Board of Elections pursuant to 25 P.S. § 3010, in the interest of clarity, the Borough Council hereby proposes the following text as the Ballot Question:

“Shall Section 214 of the Home Rule Charter of the Borough of Malvern be amended, effective immediately, to permit the participation of members of the Borough Council via telecommunication device?”

Article IV – Proposed Plain English Statement

Pursuant to 25 P.S. § 2621.1, the Borough Council hereby proposes the following Plain English Statement:

The ballot question, if approved by the voters, would amend Section 214 the Home Rule Charter of the Borough of Malvern. Section 214 relates to the requirements and procedures for the meetings of the Borough Council. The amendment would permit members of the Borough Council to participate remotely in meetings by telephone or video conferencing. Similar participation is permitted by law in boroughs which do not have home rule charters. Because the Borough has a Home Rule Charter, it is necessary to clarify that such remote participation is allowed.

The amendment is designed to mirror the requirements in other boroughs under the Borough Code. Specifically, remote participation would only be permitted when the member of the Borough Council can hear and speak to all of the other members of the Borough Council (including any other members of Borough Council who are participating remotely) and the public who are physically present for the meeting. Also, a member of Council who participates remotely does not count towards a quorum for the meeting – unless a member of Council is deemed ineligible to vote (for example, because of a conflict of interest), in which case, those participating remotely can be counted for a quorum in order to address the item of business and not interrupt the business of the Borough. The circumstances where a member of Council could participate remotely would be limited to illness or infant care in his or her immediate family (or his or her own illness or disability), emergencies, and family or business travel. Remote participation would also count as an “absence” for the purposes of determining whether a member of Council has forfeited his or her office.

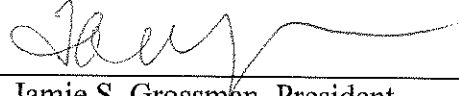
The purpose of this amendment is to assure that the Borough continues to attract the best possible candidates for positions on the Borough Council. The Borough’s Home Rule Charter was adopted in 2008. The more-recent growth of technological solutions for remote participation has caused the Commonwealth of Pennsylvania to enact legislation which enables such remote participation in other boroughs. This amendment merely assures that the Borough of Malvern remains on an equal footing with those other boroughs which do not have a Home Rule Charter.

Article V – Effective Date

This Ordinance shall become effective immediately.

Passed by Borough Council,

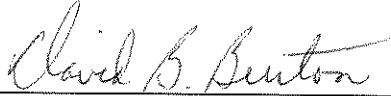
this 17 day of April, 2018.



Jamie S. Grossman, President

Approved by the Mayor,

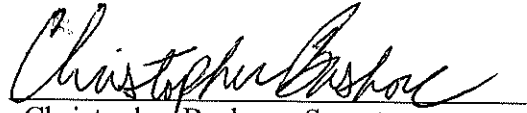
this 17 day of April, 2018.



David B. Burton, Mayor

Enacted,

this 17 day of April, 2018.



Christopher Bashore, Secretary

ADVERTISEMENT TEXT

NOTICE OF PROPOSED ENACTMENT OF ORDINANCE. NOTICE IS HEREBY GIVEN that the Borough Council of the Borough of Malvern, during their regular meeting on April 17, 2018 at 7:30 p.m. at Malvern Borough Hall, 1 East First Avenue, Malvern, PA 19355, will consider the enactment of AN ORDINANCE TO INITIATE THE AMENDMENT OF SECTION 214 (MEETINGS) OF THE HOME RULE CHARTER OF THE BOROUGH OF MALVERN PURSUANT TO THE TERMS OF THE HOME RULE CHARTER AND THE HOME RULE CHARTER AND OPTION PLAN LAW. In summary, the proposed Ordinance would initiate the referendum process necessary to amend the Borough's Home Rule Charter to authorize the remote participation of members of the Borough Council in the meetings of the Borough Council under and subject to certain conditions which are similar to those imposed under the Borough Code for non-Home Rule Charter boroughs throughout Pennsylvania. Any person with a disability who requires an auxiliary aid, service or other accommodation to participate in the proceedings should contact the Borough at 610-644-2602 three days prior to the meeting. Complete copies of the ordinance described above are available for public inspection at the Borough of Malvern Borough Hall, 1 East First Avenue, Malvern, PA 19355, during normal business hours, Monday through Friday. The full text of the proposed ordinance, including the statement of purpose, proposed ballot question text, and proposed plain English explanation of the amendment are available online at www.Malvern.org.

BALLOT REFERENDUM ADVERTISEMENT TEXT

NOTICE: The Electors of the Borough of Malvern will please take notice that, in accordance with the provisions in 53 Pa.C.S.A. Section 2952, entitled "Notice of Election," notice is hereby given that the below referendum question will appear on the Ballot at the General Election to be held on Tuesday, November 6, 2018:

"Shall Section 214 of the Home Rule Charter of the Borough of Malvern be amended, effective immediately, to permit the participation of members of the Borough Council via telecommunication device?"

YES or NO

The text of such proposed amendment is set forth below in its entirety:

Section 214 of the Home Rule Charter shall be AMENDED by INSERTING the following text as a new paragraph "F.":

- F. One or more members of the Council may participate by means of telecommunication devices such as telephones or computer terminals, which permit, at a minimum, audio communication between locations, if the following apply:*
- (1) No member participating via telecommunication device shall be counted for the purposes of establishing a quorum at the convening or reconvening of any public meeting unless any member of the Borough Council is deemed, during the course of the meeting, to be ineligible to vote as a matter of law. Should any member of the Borough Council be so deemed ineligible to vote, the members of the Borough Council participating by telecommunication device shall be counted for the purposes of maintaining a quorum.*
 - (2) The telecommunications device used shall permit the member or members of Council not physically present at the meeting to (i) speak and hear the comments and votes, if any, of the members of Council who are physically present, as well as other members of Council who may not be physically present and are also using a telecommunication device to participate in the meeting; and (ii) speak to and hear the comments of the public who are physically present at the meeting.*
 - (3) The telecommunication device used permits the members of Council and the members of the public who are physically present at the meeting to speak and to hear the comments and the vote, if any, of the member or members of the Council who are not physically present at the meeting.*
 - (4) The use of a telecommunication device to participate in any meeting by a member of the Council shall only be permitted for one or more of the following reasons: (i) illness or disability of the member of Council; (ii) care for the ill or newborn in the member's immediate family; (iii) emergency; and (iv) family or business travel.*

- (5) *Participation via telecommunication device in any meeting shall be deemed an absence from the meeting for the purposes of determining whether the member of the Council has forfeited his or her office pursuant to Section 211 A. (4) of this Home Rule Charter.*
- (6) *The Council may, by resolution, establish reasonable rules and regulations for the use of telecommunication devices by members of Council, provided that such rules and regulations are not inconsistent with the provisions of this Home Rule Charter.*

The remainder of Section 214 shall remain intact and in full force and effect.

Christopher Bashore
Borough Manager &
Borough Secretary
Borough of Malvern