

ORDINANCE NO. 2018-3

**BOROUGH OF MALVERN
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE TO INITIATE THE AMENDMENT OF SECTION 211
(FORFEITURE OF OFFICE) 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 Council (“Council”) has determined that it is in the interest of the Borough and its citizens to amend the terms of Section 211 A. of the Home Rule Charter insofar as the same section relates to the forfeiture of the office of a Member of Council due to consecutive absences from the meetings of the Council; 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 cause a Member of Council's absence from all meetings of the Borough Council, for a period of three consecutive months, to be the basis upon which such Member of Council forfeits his or her office, for cause; and, separately, to retain the existing criteria that a Member of Council forfeits his or her office if he or she fails to attend 40%, or more, of the meetings of the Borough Council in any twelve (12) month period.

The amendment also addresses the potential remote participation by Members of Borough Council, as may otherwise be provided for elsewhere in the Home Rule Charter, in that it permits a Member of Council to participate remotely in two meetings during any twelve (12) month period without such participation counting as a failure to attend those two meetings. Any subsequent remote participation by a Member of Council (i.e. the third time or more) during that twelve (12) month period would be permitted in that the Member could remotely participate in the meeting, but would be deemed a failure to attend for the purposes of determining whether a Member has forfeited his or her office under Section 211 A.(4) of the Home Rule Charter.

Article III – Text of Amendment

The text of Subsection 211 A. (4) of the Home Rule Charter shall be DELETED in its entirety and REPLACED with the following text:

“Fails to attend all meetings of the Council for a period of three (3) consecutive months; or fails to attend forty percent (40%), or more, of all meetings of the Council in a twelve (12) month period. Remote participation by a Member of Council pursuant to this Home Rule Charter shall not be deemed a failure to attend a meeting for the first two (2) instances in a twelve (12) month period.”

The remainder of Section 211 A. 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 the Home Rule Charter of the Borough of Malvern be amended, such that a Councilor forfeits their office if they fail to attend all meetings of Borough Council for a period of three consecutive months, or forty percent of all meetings in a twelve month period, provided that a Councilor may remotely participate in two meetings per twelve month period without such participation being deemed a failure to attend.?”

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 211 A. (4). the Home Rule Charter of the Borough of Malvern. Section 211 A. relates to procedure for the grounds for the forfeiture of office by a member of the Borough Council. Subsection (4) describes the criteria for the forfeiture of office, for cause, due to absences from Regular Meetings of the Borough Council.

There are two criteria for forfeiture of office under the current language of Section 211 A. (4). One of the criteria is that a member forfeits his or her office if that member fails to attend 40% of the Borough Council's Regular Meetings in any twelve (12) months period. This criteria would remain unchanged by the proposed amendment except that the criteria would now apply to all meetings of Borough Council and not merely "Regular Meetings."

The other criteria under the current language of the Home Rule Charter says that a member of Borough Council forfeits his or her office is that member fails to attend three (3) consecutive Regular Meetings of the Borough Council. This provision made sense when the Home Rule Charter was adopted because, until recently, the Borough Council only had Regular Meetings once per month. So, if a member missed three consecutive Regular Meetings, he or she would have failed to participate for three straight months' of the Borough's business.

In 2017, the Borough Council decided to have two Regular Meetings per month in order to address all of the business that the Borough had to conduct. This change in the way the Borough Council conducted business had an unintended consequence of cutting the threshold for forfeiture of office in half. Now, a Member of Council might simply be unavailable for as little as six weeks and he or she would forfeit his or her office. This standard of attendance was not intended in the Home Rule Charter. It is unreasonably burdensome on Members of Borough Council who, due to health reasons, family commitments, or business travel, or some combination of all three, may happen to have scheduling conflicts. And, it also limits the Borough's ability to attract and retain highly-qualified candidates for leadership positions on the Borough Council.

The proposed amendment to the Home Rule Charter mirrors the original intent by linking the forfeiture of office to absence over a three-month time period and not to a specific number of meetings missed. The proposed amendment would also keep the original intent in place should Borough Council ever decide, in the future, to return to holding just one Regular Meeting per month.

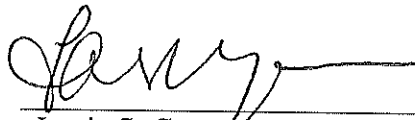
Finally, the proposed amendment would address how remote participation by a Member of Council (if permitted under the Home Rule Charter) would be treated with respect to attendance at meetings. A Member of Council could participate remotely in meetings of the Borough Council up to two times during any twelve (12) month period. Additional remote participation would be permitted (i.e. a Member could still vote), but would count as failing to attend the meeting for the purposes of determining whether the Member of Council had forfeited his or her office.

Article V – Effective Date

This Ordinance shall become effective immediately.

Passed by Borough Council,

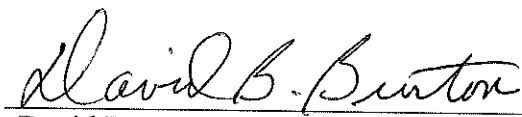
this 15 day of May, 2018.



Jamie S. Grossman, President

Approved by the Mayor,


this 15 day of May, 2018.



David B. Burton, Mayor

Enacted,

this 15 day of May, 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 _____, 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 211 (FORFEITURE OF OFFICE) 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 change the criteria for forfeiture of the office of a Member of Council from three (3) consecutive Regular Meetings to all meetings for a period of three (3) consecutive months. The existing provision alternatively causing a Member of Council to forfeit his or her office due to absences from forty percent (40%) of all Regular Meetings during any twelve (12) months period would also be revised to apply the same 40% threshold to all meetings of Borough Council. The Amendment would also permit a Member of Council to remotely participate in meetings (if otherwise permitted by the Home Rule Charter) up to two times during any twelve month period without such remote participation counting as a failure to attend the meeting. 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 the Home Rule Charter of the Borough of Malvern be amended, such that a Councilor forfeits his office if he fails to attend all meetings of the Borough Council for a period of three consecutive months, or forty percent of all such meetings in a twelve months period, provided that he may remotely participate in two such meetings per twelve month period without such participation being deemed a failure to attend?"

YES or NO

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

The text of Subsection 211 A. (4) of the Home Rule Charter shall be DELETED in its entirety and REPLACED with the following text:

"Fails to attend all meetings of the Council for a period of three (3) consecutive months; or fails to attend forty percent (40%), or more, of all meetings of the Council in a twelve (12) month period. Remote participation by a Member of Council pursuant to this Home Rule Charter shall not be deemed a failure to attend a meeting for the first two (2) instances in a twelve (12) month period."

The remainder of Section 211 A. shall remain intact and in full force and effect.

Christopher Bashore
Borough Manager &
Borough Secretary
Borough of Malvern