



THE MAILBOAT



VOLUME 9 NO. 3 4th QUARTER 2003

The Town of Malabar got its 1st official Post Office and name on December 24, 1883 when R.A. Ward was named Postmaster by President Chester A. Arthur. Two times a week, the boat that travelled down the intracoastal waterway from Jacksonville, would deliver the mail to the palmetto shack post office along the river bank at Malabar. The mail was dumped on the counter for the population of 25 to shuffle through. With the coming of the railroad, in 1893, the mail boat was no longer needed.

SPECIAL EDITION CHARTER REFERENDUMS EXPLAINED

What is a Charter?

Where did it begin?

The origins of American municipal government lie in English history. As England emerged from the non-urbanized medieval period and began to develop urban centers, citizens with vested interests in the development of their communities as trade centers sought authority from the Crown to exercise some control over local affairs. The king (or queen) would respond to these requests by granting "charters" to these groups whereby they were empowered to promote local improvements and to regulate certain aspects of community life.

Significance of the Charter

The municipal charter is vital to the democratic and effective functioning of a municipal government. It must contain basic provisions for the organization of municipal government. A good charter is one which presents a concise and workable legal framework for the government of the municipality. In addition, says the National Civic League, a good charter is one which "sets before the citizens a clear picture of their own powers and responsibilities and before the officials and employees a statement of their duties and mutual interrelations."

Contents of a Charter

A charter should contain details which are of such impor-

tance that they should not be subject to change simply by ordinance, without a public referendum. By including certain provisions in the town charter the citizens ensure that their provisions cannot be changed hastily and without popular consent. On the other hand, subjects of less importance should not be in the charter because it should be easier to make necessary changes affecting them.

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Town of Malabar Language of Proposed Charter Changes

Over the past year the Town Council, along with two citizens chosen by each Council Member, comprised the Malabar Charter Review Committee. The Committee made recommendations for updating the Charter and, with Council approval, those recommendations comprise the proposed charter changes contained herein. The Council is referred to in the comments section under each ballot question as the final authority of proposed changes.

(In all cases, words crossed out with — — are to be deleted and words underlined are to be added)

BALLOT QUESTION 1.

Question 1. Amendment to the Town Charter authorizing the creation of a Town Police Department

Shall the Town of Malabar adopt an amendment to its Charter providing for the authority to create a Town Police Department; providing for the make up of the Police Department?

_____ Yes _____ No

Instructions to voters: If you are in favor of the adoption of the foregoing amendment to the Charter mark the space to the left of the word "Yes". If you are not in favor of the adoption of the foregoing amendment to the Charter mark the space to the left of the word "No".

(The instructions to voters will appear on the ballot after every ballot question.)

Proposed Charter change:

I. Referendum Question No. 1.

1. A new Section 3.08 is proposed to be added to Article III as follows:

_____ Section 3.08 Police Department

_____ (a) The Town Council may by Ordinance create a Town Police Department.

_____ (b) The Police Department which shall consist of a Chief of Police and such personnel as may be determined by the Town Council. The Chief of Police shall be the head of the Police Department and shall be appointed and reviewed by majority vote by the Town Council.

_____ (c) The Chief of Police and his designees shall aid in the enforcement of order and enforce the Town's Ordinances; shall execute all papers and processes of the Town or its authorities, and shall perform such other duties as may be lawfully required of him.

Comments:

This proposed change will allow for the creation of a police department in Malabar. There was information in the last newsletter regarding the status of police protection in Malabar and, at least for now, there is no other choice but to join the County's MSTU. Therefore, it is not Council's intention to create a police department at this time, they only want to allow for the creation of such for future purposes.

BALLOT QUESTION 2.

Question 2. Amendment to the Town Charter creating the Office of the Town Administrator by Charter.

Shall the Town of Malabar adopt an amendment to its Charter providing for the creation of the Office of Town Administrator?

_____ Yes _____ No

Proposed Charter change:

II. Referendum Question No. 2.

1. A new Section 2.15 is proposed to be added to Article II of the Town Charter as follows:

_____ Section 2.15 Council to Appoint Town Administrator

_____ The Town Administrator shall be appointed by a vote of the Town Council.

2. New Section 3.03 is proposed to be added to Article III of the Town Charter as follows:

_____ Section 3.03 Office of Town Administrator

_____ (a) The Town Council, by majority vote, shall appoint a Town Administrator for an indefinite term and shall establish his or her compensation of employment. The Town Administrator must be a resident of Brevard County.

_____ (b) The Town Administrator shall serve at the pleasure of the council and may be removed by the affirmative vote of a majority of council.

_____ (c) The Town Administrator, subject to prior approval by the town council, shall designate by letter filed with the town clerk, an acting Town Administrator to perform his duties during any temporary absence or disability. If the administrator fails to make such a designation, the council may appoint the acting Town Administrator. The acting Town Administrator shall be selected from among regular Town employees.

_____ (d) The Town Administrator shall be responsible to the council for all the administration of town affairs placed in his charge by this Charter. The Town Administrator shall have the following powers and duties:

_____ (i) To hire, and when he deems it necessary for good of the city, suspend or remove any city employees or officers, except those appointed by the council. He may authorize the head of any department under his direction or supervision to exercise such powers within the department, office or agency.

_____ (ii) Fix the compensation of Town Officers and employees within the pay schedules established by the Town Council.

_____ (iii) Direct and supervise the administration of all town departments, offices, and agencies, except as otherwise provided by this Charter, or by law.

_____ (iv) Attend meetings of Town Council and participate in discussions, but with no right to vote.

_____ (v) See that all laws, provisions of this Charter, and acts of the council subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed.

_____ (vi) Prepare and submit the annual budget, budget message, and capital program to the council, together with such other reports concerning town operations as the council may require; and administer the adopted budget, review of work programs and allotments, make requests for appropriation transfer. He shall also perform all functions as purchasing agent or appoint such agent.

_____ (vii) Submit complete reports on the finances and administrative activities of the town.

_____ (viii) Keep the council fully advised of the financial condition and future needs of the town and make such recommendations to the council concerning the affairs of the town as he deems desirable.

_____ (ix) Execute contracts on behalf of the town unless the council or Charter provide otherwise.

_____ (x) Perform such other duties as are specified in the Charter or as may be required by the council or as may be required by the town's employee manual.

The Town Council shall have the power to review any action of the Town Administrator, and may direct the Town Administrator in any of his actions.

Comments:

This change adds the position of Town Administrator to the charter. Ten years ago Malabar did not have an administrator, therefore the position was never added to the charter. We have had the position of Administrator filled for the past nine years and Council believes that as we grow the need for an administrator to run the day-to-day operation of the Town will continue.

BALLOT QUESTION 3.

Question 3. Amendment to the Town Charter relating to qualification for council seat.

Shall the Town of Malabar adopt an amendment to its charter changing the residency requirement for qualification of office from six (6) months to twelve (12) months?

_____ Yes _____ No

Proposed Charter change:

III. Referendum Question 3.

1. Section 2.03 is proposed to be amended as follows:

_____ Section 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)~~ twelve (12) 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 residence of the candidate's district. The peti-

tion must be signed by fifteen (15) valid signatures of the district and by paying a filing fee if required, not less than forty-five (45) days and not more than sixty (60) days prior to the date of such election. The candidates shall submit with the petition a sworn statement containing the candidates 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)~~ twelve (12) months.

Comments:

This proposed change increases the residency requirement to run for Council from 6 months to 12 months.

BALLOT QUESTION 4.

Question 4. Amendments to the Town Charter relating to the Town Council.

Shall the Town of Malabar adopt amendments to its Charter providing for removal of language concerning the term of the Mayor; removing language concerning compensation of the Mayor; providing the Mayor shall serve no more than two (2) consecutive four-year terms; providing for the votes required to censure officials of the Town; removing language concerning the forfeiture of office; removing compensation for Town Council; providing for changes in the specific duties of the Town Council; providing for the appointment of Chairperson and Vice-Chairperson?

_____ Yes _____ No

Proposed Charter change:

IV. Referendum Question 4.

1. Section 2.04 is proposed to be amended as follows:

_____ Section 2.04. Qualifications and duties of Mayor.

(a) The Mayor may be elected as the presiding officer of the Council, and will thereafter serve at the discretion of Council. The Mayor shall be the Titular Head of the Town Government for ceremonial purposes, and for the purpose of civil process. The Mayor shall be responsible for civil defense and military law. The Mayor shall execute all instruments that the Town is a party as the Council shall direct unless otherwise provided by this Charter or by law. The Mayor shall vote only in the event of a tie. The Mayor shall have the power to veto any Ordinance but the veto can be overridden by four-fifths (4/5) vote of the Council.

_____ (b) The Mayor shall be at least thirty (30) years of age, an 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 in 1997 for a three-year (3) term, end in 2000-

~~and thereafter for a to a four-year (4) term.~~

(c) The Mayor shall perform all duties that are delegated to the Mayor by vote of the Town Council and shall be responsible to the Town Council for the performance of these duties. The Mayor shall preside as the ceremonial chief officer of the Town at all ceremonial functions.

~~(d) The salary of the Mayor shall be set by the Council by Ordinance, but no Ordinance shall be effective to set, reduce or increase the salary of the Mayor during that term.~~

2. Section 2.07 is proposed to be amended as follows:

Section 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 ~~a three-year (3)-term in 1997 and four-year term in 2000 and thereafter 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 one of those terms was as an interim or appointed official.

3. Section 2.08 is proposed to be amended as follows:

Section 2.08. Vacancy and forfeiture of office.

(a) The office of council person or Mayor shall become vacant upon death, resignation, removal from office in any manner authorized by law or by forfeiture of office. Forfeiture of office shall be declared by the remaining members of the council.

(b) An elected official shall forfeit the office if the elected official lacks, at any time during the term of office, any qualification for the office prescribed by this Charter or by law. The office of the elected official shall be forfeited automatically and immediately when the member is convicted of a felony. ~~or a crime involving moral turpitude.~~

(c) The council shall have the power and authority to remove any member of the council or the Mayor after due notice to the member and an opportunity to be heard in the member's defense, for absence from three (3) consecutive regularly scheduled council meetings unless he was physically disabled or unless he/she was excused by the council for other good and sufficient cause.

(d) Elected officials shall be given a public hearing concerning any charge which may result in the censure or forfeiture of office. The date and time of a public hearing concerning a member charged with conduct constituting grounds for forfeiture of office shall be published in a newspaper of general circulation in the town at least one (1) week in advance of the hearing, or as otherwise provided by State or local law.

(e) If an elected official has violated any standard of conduct or code of ethics established by law for public officials, the Town's Council, after public hearing, may vote to censure that elected official with a minimum of three (3) votes being for censure. ~~If a majority of the quorum present the Town Council votes for censure,~~ an inquiry directed to the ethics commission of the State of Florida shall be drawn by Town Council with the aid of the Town Attorney.

(f) If the elected official shall be charged with forfeiture of office because the official lacks at anytime any qualification for the office prescribed by this Charter or by law or because the elected official has been convicted of a felony ~~or crime involving moral turpitude,~~ a public hearing resulting in a majority vote by the remaining Town Council members shall determine whether the elected official shall forfeit the office.

(g) If an elected official shall be charged with forfeiture of office because the official has been convicted of a felony ~~or crime involving moral turpitude,~~ the public hearing aforementioned shall be solely for the determination by the Town Attorney whether or not such a conviction as defined by law has occurred. If the Town Attorney determines that the elected official has been convicted of a felony ~~or crime involving moral turpitude,~~ the elected official shall forfeit the office immediately.

4. Section 2.12 is proposed to be amended as follows:

(Intentionally left blank)

~~The Council may determine its annual salary by Ordinance, but no Ordinance setting/increasing such salary shall become effective during the terms of the Council adopting the Ordinance.~~

5. Section 2.13 is proposed to be amended as follows:

Section 2.13. Chairperson and Vice-Chairperson

The full council shall elect from among its members and mayor a chairperson and vice-chairperson. Election of the chairperson and vice-chairperson shall be done annually at the first regular council meeting after the Town election. The chairperson shall preside at meetings of the council, and shall have such duties as described herein. The vice-chairperson shall act as chairperson during the absence or disability of the chairperson.

6. Section 2.14 and Section 3.01 are proposed to be

amended as follows:

Proposed Charter change:

Section 2.14. Specific Duties.

V. Referendum Question 5.

~~(a) The Town Council shall appoint or remove all the Town Administrative Officers. employees or agents by four-fifths (4/5) vote of full council.~~

1. Old Section 2.15 is proposed to be renumbered and new Section 2.16 is proposed to be added as follows:

~~(b) In the absence of a Town Administrator, the Town Council will be responsible for the direction and supervision of Town Officers, employees and agents.~~

~~Section 2.15~~ 16 Council to appoint Town Clerk.

Section 3.01. Powers and Duties of the Town Council

The Town Clerk shall be appointed by vote of the Town Council. ~~The Town Clerk shall give notice of Council meetings to its members and the public and shall keep the minutes of its proceedings which shall be a public record. The Town Clerk shall perform other duties at the request and under the direction of the Town Council or any member of the Town Council or the Mayor at the direction of the Council.~~

The Town Council shall be responsible for the administration of all Town affairs and to that and subject to the provisions of this Charter shall have the power and are required to:

2. Old Section 2.16 is proposed to be renumbered as follows:

1. Appoint, suspend and remove Town ~~employees~~ administrative offices;
2. Set the salary of the Town employees;
3. Approve an annual Town budget, together with such other fiscal reports and programs as required, and be responsible for the administration of the Town Budget and other fiscal programs, as required;
4. Make such reports concerning the operation and administration of the Town Government as required; and
5. Perform such other duties as may be prescribed in Ordinances consistent with the Charter.

~~Section 2.16~~ 17 Ordinances.

(a) The Council shall have the power to pass Ordinances not inconsistent with this Charter, the Comprehensive Land Use Plan, the Constitution and laws of the State of Florida or the United States.

(b) No Ordinances except an emergency Ordinance shall be passed and has been read in at least two (2) meetings. At least ten (10) days shall elapse between the first and second meeting except in the case of an emergency Ordinance. Notice of the proposed Ordinance shall be given by publishing the title of the Ordinance by posting it at the door of the Town Hall and by publishing the title at least ten (10) days prior to the adoption of the proposed Ordinance in a newspaper of general area circulation in the Town.

(c) The ordaining clause of every Ordinance shall be as follows:

Be it ordained by the Council of the Town of Malabar, Florida.

(d) The readings may be made by title only.

(e) An emergency Ordinance shall be so classified and can be passed with two (2) readings in the same meeting.

3. Section 3.03 is proposed to be amended as follows:

Comments:

This proposed change covers many items that Council believes best reflects the current situation in the Town, such as deleting verbiage regarding a salary for the Mayor and Council, who are not currently paid. Council also believes that two four-year terms is best for the position of Mayor, as opposed to three four-year terms. Since we are past 1997 old language regarding the Mayor's term can be removed. And this proposed change deletes verbiage about moral turpitude that is outdated and cannot be easily defined. It changes the number of votes required for censure. It removes a 4/5 vote requirement to appoint or remove Town Administrative Officers and makes the Council responsible for the direction and supervision of Town Officers, employees and agents in the absence of the Town Administrator. Finally, this proposed change deals with the appointment, suspension and removal of Town administrative offices.

~~Section 3.03~~ 3.04. Office of the Town Clerk.

The office of the town clerk shall be headed by a Town Clerk appointed by the Council. The salary of the Town Clerk shall be approved by the Council. The Town Clerk shall be under the administrative direction and control of the Town Council. The town clerk shall be the clerk of the council and shall keep the council journal and shall

BALLOT QUESTION 5.

Question 5. Amendments to the Town Charter relating to the Town Clerk.

Shall the Town of Malabar adopt amendments to its Charter relating to the duties of the Town Clerk?

_____ Yes _____ No

be custodian of ordinances, resolutions and such other official records as the Council may prescribe. The town clerk shall give notice of council meetings to its members and the public and shall keep the minutes of its proceedings which shall be a public record. The town clerk shall attest to contracts, bonds and other instruments as may be prescribed by law. The town clerk shall be the chief elections officer of the town. The town clerk shall have such other duties as prescribed by town council by ordinance, and all other duties at the request and under the direction of the Town Council or any member of the Town Council or the Mayor at the direction of the Town Council. The town clerk shall be the town treasurer and as such shall be custodian of all monies of the Town. At the discretion of the Town Council the duties of treasurer signed herein to the Clerk may be delegated to an appointed treasurer.

Comments:

This proposed change reclassifies verbiage regarding the position of the Clerk. It takes verbiage out of the Appointment of the Town Clerk section and moves it to the Office of the Town Clerk section, which deals more with the duties of the Clerk.

BALLOT QUESTION 6.

Question 6. Amendment to the Town Charter renumbering Sections.

Shall the Town of Malabar Charter be amended to renumber old Sections 3.04 through 3.06?

_____ Yes _____ No

Proposed Charter change:

VI. Referendum Question 6.

Old Sections 3.04 through 3.06 are proposed to be amended as follows:

1. Section 3.04 is proposed to be amended as follows:

Sec. ~~3.04~~ 3.05. Office of the Town Attorney.

The Town Attorney shall be appointed by the council. The Town Attorney shall be a member in good standing of the Florida Bar. The compensation of the Town Attorney shall be set by the Council. The Town Attorney shall be the legal advisor to the officers of the Town in all matters affecting the Town or relating to their official duties. The Town Attorney shall prosecute and defend on behalf of the Town all civil actions in which the town is concerned and perform such other duties as the Town Council may require. The Town Attorney and his assistants shall be admitted to and have authority to practice in all the courts of the state and the Federal District Court. The town attorney may recommend assistant Town Attorneys when necessary as determined by the Council.

2. Section 3.05 is proposed to be awarded as follows:

Sec. ~~3.05~~ 3.06. Advisory Boards.

The council may establish advisory boards to make recommendations including but not limited to, economic development, recreation, parks, playgrounds and their facilities and activities as well as planning and zoning and such other municipal functions as the council deems advisable. The voting members of the boards shall be registered electors of the town appointed based on their qualification to be a member of that board.

3. Section 3.06 is proposed to be amended as follows:

Sec. ~~3.06~~ 3.07. Residential Zoning.

In order to preserve the rural character of the Town Malabar, no area which is or will be zoned for single family residences shall contain a density greater than one (1) unit for every one and one-half (1 1/2) acres or as set forth in the Comprehensive Land Use Plan of the Town. All lots of record will be grandfathered in.

Comments:

This proposed change is a result of adding the sections for Town Administrator and renumbers the subsequent sections.

BALLOT QUESTION 7.

Question 7. Amendment to the Town Charter relating to financial matters.

Shall the Town of Malabar Charter be amended to authorize the Town Administrator to sign Town checks and to change the number of authorized persons to sign Town checks from two of three persons to two of four persons?

_____ Yes _____ No

Proposed Charter change:

VII. Referendum Question 7.

_____ Section 4.01 Public Monies is proposed to be amended as follows:

Section 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 by check to be signed by two (2) of ~~three (3)~~ four (4) authorized signatures. The town clerk, the administrator, the mayor and a delegated council member shall be authorized to sign checks.

Comments:

This proposed charter change adds the Administrator to the list of who can sign checks. This would increase the number

of qualified check signers from three to four. Council believes that the administrator should sign checks and the Clerk (who is also the Treasurer) should only sign checks as a last resort.

BALLOT QUESTION 8.

Question 8. Amendment to the Town Charter relating to initiative and referendum.

Shall the Town of Malabar Charter be amended to change the percentage requirement for initiative and referendum petitions which must be signed by qualified voters of the Town; providing for the determination of sufficiency of an initiative or referendum petition?

_____ Yes _____ No

Proposed Charter change:

VIII. Referendum Question 8.

_____ Section 5.03 is proposed to be amended as follows:

Section 5.03. Petitions.

_____ 1. (a) Initiative and referendum petitions must be signed by qualified voters of the town equal in number to at least ~~fifteen~~ ten percent ~~(15%)~~ (10%) of the total number of qualified voters registered to vote at the last regular town election.

(c) All pages 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.

(d) Referendum petitions must be filed within thirty (30) days after adoption by the council of the ordinance sought to be reconsidered.

2. Section 5.06 is proposed to be amended as follows:

_____ Section 5.06. Action to Petitions.

_____ (a) After the town clerk has determined the sufficiency of an initiative or referendum petition in accordance with state statute and the provisions of this charter, the council will review the determination at its next scheduled meeting. The council's decision shall be a final determination as to the sufficiency of the petition. When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance in the manner provided for adopting ordinances or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiative ordinance without any change in substance within

sixty (60) days or fails to repeal the referred ordinance within thirty (30) days, it shall submit the proposed or referred ordinance to the voters of the town.

(b) The referendum on a proposed or referred ordinance shall be held not less than ninety (90) days and not later than 120 days from the date the petition was considered by the council. If no regular town election is to be held within the period described in this subsection, the council shall provide for a special election except that the council may in its discretion provide for a special election at an earlier date within the described period. Copies of the proposed or referred ordinance shall be available at the polls.

(c) An initiative or referendum petition may be withdrawn at any time preceding the day set for the final determination by the town council by filing with the town clerk or other official designated by the council a request for withdrawal signed by at least four (4) members of the petitioners' committee. Upon the filing of such request for withdrawal, the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Comments:

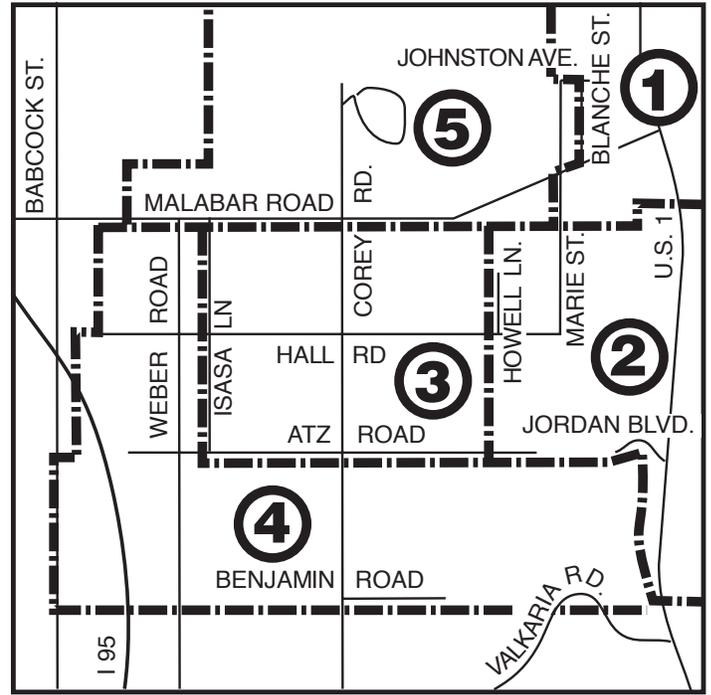
This proposed change reduces the number of signatures needed to file for the adoption or repeal of ordinances and it adds criteria on how to file for petitions.

MALABAR DAY
help needed!
If you are interested in helping
with Malabar Day,
Please call Debby at Town Hall
727-7764.

Know Your Representatives on Council

The following Council members represent these districts:

District 1	Jane Havet 1125 Marie St.	733-6413
District 2	Brian Hunter 2825 US 1	956-2014
District 3	Steve Rivet 2005 Rivet Lane	956-6551
District 4	Bobbi Moccia 3135 Kramer Lane	722-3447
District 5	Bob Rossman 1635 Country Cove Cr.	729-9444
Mayor	Phillip Crews 2480 Johnston Ave.	951-0422
Town Administrator	Ed Booth Town Hall	727-7764
Town Clerk/ Treasurer	Susan Kabana Town Hall	727-7764
Town Fax		722-2234
County Comm.	Nancy Higgs, Dist. 3	952-6300



Editor - Susan Kabana www.malabartown.org

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 Christmas Tree Lighting December 6th at 6 p.m. at the Fire Station

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