

ORDINANCE 27 - 22

AN ORDINANCE PROVIDING FOR A REFERENDUM TO CONSIDER THE ADOPTION OF AMENDMENTS TO SECTION 4.11, "VACANCIES; FORFEITURE OF OFFICE; FILLING OF VACANCIES", OF THE CITY OF CAPE CORAL CHARTER CONCERNING THE FILLING OF VACANCIES OF THE MAYOR AND CITY COUNCILMEMBERS; PROVIDING FOR PUBLICATION OF A NOTICE OF THE REFERENDUM ELECTION; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AS FOLLOWS:

SECTION 1. A general referendum election is hereby ordered to be held in the City of Cape Coral, Florida on August 23, 2022 to consider the adoption of an amendment to the Charter for the City of Cape Coral.

SECTION 2. The polls will be open at the voting places on the date of such election and as otherwise determined by the Lee County Supervisor of Elections. All qualified electors residing within the City shall be entitled and permitted to vote at such election as hereinafter provided. The places of voting for the election are set by the Lee County Supervisor of Elections. The inspectors and clerks for said election shall be appointed as provided by general law.

SECTION 3. The ballots to be used in said election shall contain the description to be voted on, and shall be in substantially the following form:

**OFFICIAL BALLOT
CITY OF CAPE CORAL, FLORIDA
ELECTION AUGUST 23, 2022**

REFERENDUM

CITY CHARTER AMENDMENT RELATING TO THE FILLING OF VACANCIES OF THE MAYOR AND CITY COUNCILMEMBERS.

This proposal amends the Cape Coral City Charter to provide that when a special election is required to fill a Council vacancy, if three or more candidates qualify, a special primary election is required and must occur no sooner than 90 days and not later than 120 days following the date of the vacancy. A special general election must be held within 45 days following certification of the special primary election results.

Shall the above-described amendment to the Charter be adopted?

_____ YES

_____ NO

SECTION 4. Provision shall be made for instruction to the voters all as provided by general law.

SECTION 5. Adequate provision shall be made for absentee voting. The ballots to be used in said election for absentee voters shall be in substantially the form set out above.

SECTION 6. The Lee County Supervisor of Elections is hereby requested to hold the election in accordance with the election laws of the State of Florida.

SECTION 7. The appropriate election officials, being the City Canvassing Board, shall canvass the ballots and certify same to Lee County Supervisor of Elections and she, in turn, shall certify the election results to the City Council of the City of Cape Coral. The City Council shall, in turn, canvass the votes and declare the results thereof and such returns shall be recorded in the minutes of the City Council at the first meeting after such certification. If a majority of the votes cast at such election support a referendum issue, such issue shall be approved, and shall be effective immediately.

SECTION 8. The City Clerk is hereby authorized and directed to place a notice of this referendum election in a newspaper of general circulation published in Lee County. The publication shall be made

at least thirty (30) days prior to the referendum and shall be made at least twice, once in the fifth week and once in the third week prior to the week in which the referendum is to be held. The notice of referendum shall be in substantially the following form:

**CITY OF CAPE CORAL
NOTICE OF ELECTION
AUGUST 23, 2022**

NOTICE IS HEREBY GIVEN THAT AN ELECTION will be held on the 23rd day of August, 2022, in the City of Cape Coral, Florida, for the purpose of determining whether or not the voters support an amendment to the Charter for the City of Cape Coral.

The polls will open at the voting places on the date of said election at 7:00 a.m. until 7:00 p.m. on the same day. All qualified electors residing within the city shall be entitled, qualified and permitted to vote at such election.

SECTION 9. The full text of the proposed Charter amendment is set forth in the attached Exhibit A.

SECTION 10. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 11. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2022.

JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER	_____	NELSON	_____
TATE	_____	WELSH	_____
SHEPPARD	_____	LONG	_____
HAYDEN	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2022.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
ord/Charter Amendment-Filling Council Vacancies

EXHIBIT A

§ 4.11. - Vacancies; forfeiture of office; filling of vacancies.

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(a) Vacancies. The office of Mayor or of a Council member shall become vacant upon the Mayor's or the Council member's death, resignation, removal from office in any manner authorized by law, or forfeiture of the person's office.

(b) Forfeiture of office. The Mayor, or a Council member shall forfeit his or her office if he or she:

- (1) Lacks at any time during the term of office any qualification for the office prescribed by this Charter or by applicable law;
- (2) Violates any express prohibition of this Charter;
- (3) Is convicted of a felony; or
- (4) Fails to attend three (3) consecutive regular meetings of the Council without being excused by the Council.

(c) Filling of vacancies. A vacancy in the Council shall be filled for the remainder of the unexpired term, if any, at the next City general election following not less than sixty (60) days upon the occurrence of the vacancy, but the Council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired terms takes office. If the Council fails to do so within thirty (30) days following the occurrence of the vacancy, the Council shall call a special election to fill the vacancy, to be held not sooner than ninety (90) days and not later than one hundred twenty (120) days following the occurrence of the vacancy and to be otherwise governed by the provisions of Article VIII, unless three (3) or more candidates qualify for the vacancy, whereby a special primary election is required. The special primary election shall occur within the timeframe provided above no sooner than ninety (90) days and not later than one hundred twenty (120) days following the occurrence of the vacancy and the special general election shall be held within 45 days following certification of the special primary election results. Notwithstanding any requirement for a quorum of the Council, if at any time the membership of the Council is reduced to less than a quorum, the remaining members may by majority action appoint additional members to raise the membership to meet the requirements of a quorum.