

ORDINANCE NO. 05-2022

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPE CANAVERAL, FLORIDA; PROVIDING FOR A REFERENDUM AND BALLOT LANGUAGE FOR THE NOVEMBER 8, 2022 GENERAL ELECTION OR AN ELECTION SCHEDULED THEREAFTER; PROPOSING TO AMEND SECTION 2.02 OF THE CITY CHARTER REGARDING ELIGIBILITY TO SERVE ON THE CITY COUNCIL TO PROVIDE THAT CITY COUNCIL MEMBERS MUST BE DOMICILED WITHIN THE CITY OF CAPE CANAVERAL AT LEAST ONE (1) YEAR IMMEDIATELY PRIOR TO QUALIFYING AND MUST REMAIN DOMICILED WITHIN THE CITY OF CAPE CANAVERAL DURING THEIR TERM IN OFFICE OR FORFEIT THEIR OFFICE; PROVIDING FOR A NOTICE OF THE CITY OF CAPE CANAVERAL CHARTER REFERENDUM QUESTION; PROVIDING FOR COORDINATION WITH THE SUPERVISOR OF ELECTIONS; PROVIDING FOR ADMINISTRATION OF THE REFERENDUM BY THE CITY CLERK AND CITY MANAGER; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City is governed by a municipal charter and is granted the authority, under § 2(b), Art. VIII of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City Council is expressly authorized to propose amendments to the City Charter, by ordinance, in accordance with Section 8.01(b) of the City Charter and Section 166.031(1), Florida Statutes, and submit the proposed amendment contained in the ordinance at the next general election held within the municipality or at a special election called for such purpose; and

WHEREAS, Section 2.02 of the City Charter requires that members of the City Council shall be residents of the City of Cape Canaveral and shall have and possess the qualifications of registered voters of the City of Cape Canaveral; and

WHEREAS, although the City Charter requires "members" of the City Council to be a resident and registered voter of the City of Cape Canaveral, the City Council finds that the current City Charter does not require candidates running for City Council to likewise be a resident of the City of Cape Canaveral prior to qualifying; and

WHEREAS, the City Council believes that a minimum residency requirement should be added to the City Charter for candidates running for a seat on the City Council prior to qualifying and also when serving as a member of the City Council; and

1 **WHEREAS**, the City Council believes that reasonable residency qualifying requirements
2 helps candidates become familiar with the City and the local issues at hand, while at the same
3 time also giving constituents a better opportunity to become familiar with candidates seeking
4 their vote to represent and serve them on the City Council; and
5

6 **WHEREAS**, the City Council has surveyed other Brevard County municipalities and has
7 found that most municipalities in Brevard County have a residency requirement for candidates
8 seeking to qualify to run for a seat on their city council; and
9

10 **WHEREAS**, the City Council finds that a one-year requirement to qualify to run for a city
11 council position is relatively common and has found favor in the courts as a "reasonable residency
12 requirement." For example, in Nichols v. State, 177 So. 2d 467 (Fla. 1965), the Florida Supreme
13 Court held that a one-year durational residency requirement to qualify to run for city commission
14 was not unreasonable and valid. Additionally, in Daves v. City of Longwood, 423 F.Supp. 503 (M.D.
15 Fla., 1976), the United States District Court, Middle District of Florida, upheld a special act imposing
16 one-year residency requirement to run for city council in the City of Longwood; and
17

18 **WHEREAS**, the City Council also finds that although the terms "residence" and "domicile"
19 are often used interchangeably, they are not necessarily the same thing in the eyes of the law:
20

21 [Domicile] is of more extensive signification and includes, beyond mere physical
22 presence at the particular locality, positive or presumptive proof of an intention to
23 constitute it a permanent abiding place. 'Residence' is of a more temporary
24 character than 'domicile.' 'Residence' simply indicates the place of abode, whether
25 permanent or temporary; 'domicile' denotes a fixed, permanent residence, to
26 which, when absent, one has the intention of returning. 'Residence' has a more
27 limited, precise and local application than 'domicile,' which is used more in
28 reference to personal rights, duties, and obligations. That there is a difference in
29 meaning between 'residence' and 'domicile,' is shown by the fact that a person
30 may have his residence in one place while his domicile is in another. It has also
31 been said that domicile and residence are not synonymous for the reason that a
32 person may have more than one residence at the same time, but only one domicile.
33

34 Minick v. Minick, 149 So. 483, 488 (Fla. 1933) (quoting 19 Corpus Juris 395). Accord Kevoloh v.
35 Carter, 699 So. 2d 285 (Fla. 5th DCA 1997); In re DeFelice, 172 B.R. 130 (Bankr. S.D. Fla. 1994); and
36

37 **WHEREAS**, after careful study of the apparent legal distinction between the definitions of
38 "residency" and "domiciled" given by Florida and other Courts, the City Council finds that a
39 domiciled requirement for candidates and members of the City Council would better serve the
40 citizens of Cape Canaveral by requiring a person to have a more permanent relationship with the

1 City of Cape Canaveral community both prior to qualifying to run for City Council and serving on
2 the City Council upon election; and
3

4 **WHEREAS**, the City Council also finds that a one year domicile requirement to qualify
5 candidates to run for a seat on the City Council serves a legitimate public purpose by attempting
6 to achieve the desirable goals of attaining candidates and councilmembers who are aware of the
7 issues within the governmental unit that they are to serve, of attaining voters who are aware of
8 the relative merits of the candidates and councilmembers, and of precluding fraudulent
9 candidacies by persons who are not seriously concerned with or capable of serving the
10 constituents of the City; and
11

12 **WHEREAS**, the City Council finds that the proposed referendum ballot question should
13 be submitted to the City electorate for its consideration and final approval or disapproval; and
14

15 **WHEREAS**, the City Council finds this Ordinance to be in the best interests of the public
16 health, safety, and welfare of the citizens of Cape Canaveral.
17

18 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CAPE CANAVERAL HEREBY**
19 **ORDAINS, AS FOLLOWS:**

20 **SECTION 1. Recitals.** The foregoing recitals are hereby fully incorporated herein by
21 this reference as legislative findings and the intent and purpose of the City Council of the City of
22 Cape Canaveral.
23

24 **SECTION 2. Referendum Election.** A referendum election is hereby called and
25 scheduled to be held on the 8th day of November, 2022, or such other date as may be authorized
26 by law, to determine whether the ballot question appearing in Section 3 hereof shall be approved
27 by a majority of the votes cast in such election in which qualified electors residing in the City shall
28 participate. Each question appearing on the ballot with the referendum question shall be voted
29 on separately and approved or disapproved based on its own merit. Such referendum election
30 shall be held and conducted in the manner prescribed by law. The places for voting in such
31 referendum election shall be such locations as shall otherwise be established for the general
32 election on November 8, 2022 or such other date as may be authorized by law. All duly qualified
33 electors of the City of Cape Canaveral shall be entitled to participate in said election.
34

35 **SECTION 3. Amending Section 2.02 of the City Charter.**
36

37 (A) **Proposed Amendment to the City Charter.** It is proposed that the electorate of the City
38 of Cape Canaveral provide its approval or disapproval of an amendment to the City Charter
39 establishing a one (1) year durational domicile requirement as a qualification for candidates
40 seeking to run for a seat on the City Council and requiring elected members of the City Council
41 to remain domiciled during their term in office. Upon approval by the electorate, Section 2.02(b)
42 will be amended as follows (underlined type indicates additions to the Charter and ~~strikeout~~ type

1 indicates deletions, while "****" indicate text omissions contained in the city charter not affected
2 by the proposed amendment):

3 4 CITY CHARTER

5
6 * * *

7 8 Article II. City Council

9
10 * * *

11 12 Section 2.02 – Composition, eligibility, terms

13
14
15 (a) *Composition.* There shall be a city council composed of a mayor and four council members
16 elected by the voters of the city at large during a nonpartisan election held in accordance with
17 provisions of article VI.

18 (b) *Eligibility.* Each candidate seeking the office of city council shall be domiciled within the
19 city at least one (1) year immediately prior to the time of qualifying. The members of the city
20 council shall be ~~residents of~~ domiciled within the City of Cape Canaveral and shall have and
21 possess the qualifications of registered voters of the City of Cape Canaveral. Any member of the
22 city council who shall cease to have and possess the qualifications imposed on such office shall
23 forfeit his or her office and said office shall immediately become vacant.

24 (c) *Terms of office.* The term of office for the mayor and city council members shall be three
25 years elected in accordance with article VI. There shall be no limit on the total number of terms
26 the mayor or council members may serve, except that no person shall be elected to more than
27 two consecutive elected terms as mayor or council member. However, this limitation shall not
28 prohibit a person who has served two consecutive elected terms of office as council member from
29 qualifying and being elected for two additional consecutive elected terms as Mayor.

30 The accruing of consecutive terms shall include only those terms beginning with the November
31 2, 2010, general election and all other terms arising out of subsequent elections.

32 (d) *Elected council members.* Any newly elected mayor and city council member shall assume
33 the duties of office at the next regular meeting of the city council following their election.

34
35 * * *

36
37 (B) **Ballot Question.** Concurrent with the City General Election scheduled for November 8,
38 2022, the following referendum question shall be placed on the ballot following the placement
39 on the ballot related to the election of Council members. The caption and question shall be
40 worded substantially as follows:

1 **AMENDING ELIGIBILITY REQUIREMENTS FOR**
2 **COUNCIL MEMBERS PRIOR TO QUALIFYING AND DURING TERM IN OFFICE**
3

4 Shall Section 2.02(b) of the City Charter regarding eligibility to serve on the City Council be
5 amended to require that City Council members must be domiciled within the City of Cape
6 Canaveral at least one (1) year immediately prior to qualifying and must remain domiciled within
7 the City of Cape Canaveral during their term in office or forfeit their office?
8

9 _____ Yes

10
11 _____ No
12

13 **SECTION 4. Coordination with Supervisor of Elections.** The City Clerk is hereby
14 authorized and directed to instruct and coordinate with the Supervisor of Elections of Brevard
15 County to include the above-described question on the ballot concurrent with the general election
16 to be held on November 8, 2022 or as authorized in Section 2 of this Ordinance.
17

18 **SECTION 5. Notice of Referendum Election.** General notice shall be first published at
19 least thirty (30) days prior to the November 8, 2022 general election or the date that the election
20 is actually held in accordance with Section 2 of this Ordinance. The publication of said notice shall
21 be made at least twice, once in the fifth week and once in the third week prior to the week in
22 which the election is held, in the manner provided in Section 100.342, *Florida Statutes*, and
23 substantially in the form attached hereto as **Exhibit "A"** or as otherwise lawfully provided.
24

25 **SECTION 6. Payment of Referendum Expenses.** The City Manager is hereby authorized
26 and directed to approve the payment of lawful expenses associated with conducting the City
27 Charter referendum election.
28

29 **SECTION 7. Voter Registration Books.** The Supervisor of Elections for Brevard County
30 is hereby authorized and requested to furnish to the inspectors and clerks at each place where
31 the votes are to be cast in such City Charter referendum, applicable portions of the registration
32 books or certified copies thereof showing the names of the qualified electors residing in the City
33 of Cape Canaveral.
34


35 **SECTION 8. Election Administration.** The City Charter referendum shall be held and
36 conducted in the manner prescribed by law and shall be as soon as practicable, be returned and
37 canvassed in the manner prescribed by law. The result shall show the number of qualified electors
38 who voted at such Charter referendum and the number of votes cast respectively for and against
39 approval of the City Charter. Upon certification in the manner prescribed by law, the results shall
40 be recorded in the minutes of the City Council of the City of Cape Canaveral.
41

42 **SECTION 9. Severability.** Should any section or provision of this Ordinance, or any
43 portion hereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction


1 to be invalid, such decision shall not affect the validity of the remainder hereto as a whole or part
2 thereof to be declared invalid.

3
4 **SECTION 10. Effective Date.** This Ordinance shall become effective immediately upon
5 adoption by the City Council of the City of Cape Canaveral, Florida; however, the ballot proposal
6 in Section 3 shall only become effective, independent of any other ballot proposal, if a majority of
7 the registered electors of the City of Cape Canaveral, Florida, who vote at the referendum election
8 required by this Ordinance, approve the specific ballot question set forth in Section 3 of this
9 Ordinance. The City Clerk is directed upon adoption of the revised Charter to promptly file the
10 revised Charter therein with the State of Florida, Department of State, as required by Section
11 166.031, *Florida Statutes*, and incorporate the Charter amendment into the City Charter. If
12 approved, the one (1) year domicile qualification requirement for candidates seeking to run for
13 City Council shall be applied during all City Council elections following the November 8, 2022
14 general election.

15
16 **ADOPTED** by the City Council of the City of Cape Canaveral, Florida, this 21st day of
17 June, 2022.

18
19
20 
21 **Wes Morrison, Mayor**

22
23 ATTEST:

24
25 
26
27 **Mia Goforth, CMC**
28 **City Clerk**

	For	Against
Kim Davis	<u> x </u>	<u> </u>
Mickie Kellum	<u>Motion</u>	<u> </u>
Wes Morrison	<u> x </u>	<u> </u>
Angela Raymond	<u> x </u>	<u> </u>
Don Willis	<u>Second</u>	<u> </u>

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35 First Reading: May 17, 2022
36 Advertisement: June 9, 2022
37 Second Reading: June 21, 2022

38
39 Approved as to legal form and sufficiency
40 for the City of Cape Canaveral only by:

41
42 
43 **Anthony A. Garganese, City Attorney**

EXHIBIT A
Ordinance No. 05-2022

NOTICE OF CITY REFERENDUM

Pursuant to the provisions of Section 100.342, Florida Statutes, notice is hereby given that a referendum shall be held on November 8, 2022, or such other date as may be authorized by law, where the citizens of the City of Cape Canaveral, Florida will have an opportunity to vote upon the referendum question described in Ordinance 05-2022, adopted by the City Council of the City of Cape Canaveral, Florida on the 21st day of June, 2022. The title of the Ordinance is as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPE CANAVERAL, FLORIDA; PROVIDING FOR A REFERENDUM AND BALLOT LANGUAGE FOR THE NOVEMBER 8, 2022 GENERAL ELECTION OR AN ELECTION SCHEDULED THEREAFTER; PROPOSING TO AMEND SECTION 2.02 OF THE CITY CHARTER REGARDING ELIGIBILITY TO SERVE ON THE CITY COUNCIL TO PROVIDE THAT CITY COUNCIL MEMBERS MUST BE DOMICILED WITHIN THE CITY OF CAPE CANAVERAL AT LEAST ONE (1) YEAR IMMEDIATELY PRIOR TO QUALIFYING AND MUST REMAIN DOMICILED WITHIN THE CITY OF CAPE CANAVERAL DURING THEIR TERM IN OFFICE OR FORFEIT THEIR OFFICE; PROVIDING FOR A NOTICE OF THE CITY OF CAPE CANAVERAL CHARTER REFERENDUM QUESTION; PROVIDING FOR COORDINATION WITH THE SUPERVISOR OF ELECTIONS; PROVIDING FOR ADMINISTRATION OF THE REFERENDUM BY THE CITY CLERK AND CITY MANAGER; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

The ballot caption and referendum question is as follow:

**AMENDING ELIGIBILITY REQUIREMENTS FOR
COUNCIL MEMBERS PRIOR TO QUALIFYING AND DURING TERM IN OFFICE**

Shall Section 2.02(b) of the City Charter regarding eligibility to serve on the City Council be amended to require that City Council members must be domiciled within the City of Cape Canaveral at least one (1) year immediately prior to qualifying and must remain domiciled within the City of Cape Canaveral during their term in office or forfeit their office?

_____ Yes

_____ No

The ordinance is available for inspection and/or copying at City Hall located at 100 Polk Avenue, Cape Canaveral, Florida 32920, or on the City's official website at www.cityofcapecanaveral.org. Inquiries regarding inspecting and/or copying of the ordinance should be directed to Mia Goforth, City Clerk, by email at m.goforth@cityofcapecanaveral.org, or by phone at 321-868-1220.