

**ORDINANCE NO. 11-16**

**AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA, CALLING FOR A SPECIAL ELECTION TO FILL THE UNEXPIRED PORTION OF THE MAYOR'S TERM OF OFFICE FOLLOWING FORFEITURE OF OFFICE BY CLINT JOHNSON ON AUGUST 24, 2016; CALLING FOR A SPECIAL PRIMARY ELECTION TO NOMINATE CANDIDATES FOR THE SPECIAL ELECTION; PROVIDING FOR DATES, NOTICE REQUIREMENTS, AND PROCEDURES RELATED TO THE SPECIAL ELECTION, SPECIAL PRIMARY ELECTION, AND QUALIFYING PERIOD; PROVIDING FOR MODIFICATION BY THE CITY COUNCIL; PROVIDING FOR SEVERABILITY, CONFLICT WITH OTHER ORDINANCES AND LAWS, NONCODIFICATION, CORRECTION OF SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.**

**WHEREAS**, on August 24, 2016, the City Council of the City of DeBary (the "City Council") found after a public hearing that Mayor Clint Johnson had violated express prohibitions contained in Section 4.04(a) of the City Charter; and

**WHEREAS**, on August 24, 2016, the City Council found and declared after a public hearing that Mayor Clint Johnson had forfeited his office, effective immediately as of the time of such decision, in accordance with Section 4.07 of the City Charter, based on the City Council's findings that Mayor Johnson had violated express prohibitions of Section 4.04(a) of the City Charter; and

**WHEREAS**, Section 4.08 of the City Charter provides that in the event of forfeiture of office by the Mayor, "If six months or more remain in the current term of the Mayor, the Vice Mayor of the Council shall become Interim Mayor and shall temporarily relinquish his/her office as Council Member until the unexpired portion of the term is filled by a special election held and completed within 45 days of the occurrence of the vacancy" (the "Special Election"); and

**WHEREAS**, more than six months remain in the unexpired term of the office of Mayor following forfeiture of office by Clint Johnson; and

**WHEREAS**, Section 100.151, Florida Statutes, provides that "the governing authority of a municipality shall not call any special election until notice is given to the supervisor of elections and his or her consent obtained as to a date when the registration books can be available"; and

**WHEREAS**, the City was not able to obtain the consent of the Supervisor of Elections, in accordance with Section 100.151, Florida Statutes, as would be necessary to hold the Special Election on a date falling within the 45-day period as contemplated by Section 4.08 of the City Charter, as the City was informed by the Supervisor of Elections that there were and are no available election dates falling within such 45-day period, and the City Council finds that the City Charter does not require that a special election be held within the 45-day period where the Supervisor of Elections cannot hold an election or

elections within such period, and the City Council further finds that the 45-day requirement is preempted by Section 100.151, Florida Statutes in this instance in relation to the Special Election; and

**WHEREAS**, the City is authorized by provisions of the City Charter and the Florida Statutes, including but not limited to Section 5.01(c) of the City Charter and Section 100.3605, Florida Statutes, to set and/or change the dates of the Special Election, special primary election, and qualifying period, and the City is authorized by Section 5.05 of the City Charter and other provisions of law to adopt election procedures by ordinance; and

**WHEREAS**, Section 5.07 of the City Charter requires that candidates running for Mayor in the municipal general election be nominated by primary election, and Section 22-91 of the City Code of Ordinances echoes such requirement and prescribes procedures for such primary elections, and the City Council finds that holding a special primary election to nominate candidates for the Special Election is the nomination process most consistent with the City Charter, Code of Ordinances, and public welfare; and

**WHEREAS**, the City Council finds it necessary to adopt an ordinance providing for dates, notice requirements, procedures, and other matters related to the Special Election, special primary election, and qualifying period; and

**WHEREAS**, the City has obtained the consent of the Supervisor of Elections regarding the timing of the Special Election and primary election, the dates when the registration books can be available, and all other relevant matters, all in accordance with Section 100.151, Florida Statutes.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DEBARY, FLORIDA:**

**SECTION 1. FINDINGS OF FACT.** The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this ordinance.

**SECTION 2. DATES OF SPECIAL ELECTION/QUALIFYING PERIOD.** The dates of the qualifying period, special primary election, and Special Election shall be as follows:

a. The qualifying period shall begin on October 24, 2016 and shall end on November 4, 2016, unless such dates are modified by the City Council via Resolution.

b. The special primary election shall take place on January 17, 2017, unless such date is modified by the City Council via Resolution.

c. The Special Election shall take place on March 14, 2017, unless such date is modified by the City Council via Resolution.

d. If fewer than three (3) qualified persons are nominated by petition to fill the remaining term of the office of mayor, then no special primary election shall be held and the date of the special primary election provided above shall be the date of the Special Election, all in accordance with Section 5.07 of the City Charter.

**SECTION 3. NOTICE REQUIREMENTS.** The notice requirements for the qualifying period, special primary election, and Special Election shall be as follows:

a. The qualifying period, special primary election, and Special Election, and the dates thereof, shall be noticed twice by publication in a newspaper of general circulation in the City at least 10 days prior to the first day of the qualifying period.

b. The Special Election shall be noticed twice by publication in a newspaper of general circulation in the City, once in the fifth week and once in the third week prior to the week in which the Special Election is to be held.

**SECTION 4. NOMINATION, QUALIFICATION, AND ELECTION OF CANDIDATES.** Candidates for the Special Election shall be nominated and elected in accordance with Section 5.07 of the City Charter and Section 22-91 of the City Code of Ordinances, copies of which are attached hereto as Exhibits "A" and "B," respectively. Any person whose name has been submitted for candidacy by a petition described in Section 22-91 of the City Code of Ordinances shall file his or her acceptance of such candidacy, together with his or her qualifying papers, with the city clerk during the qualifying period. If such acceptance and qualifying papers are not submitted by the final day of the qualifying period, the person's name shall not appear on the ballot.

**SECTION 5. MODIFICATION BY CITY COUNCIL.** The City Council may by Resolution modify any requirement, procedure, or date contained in this Ordinance except where prohibited by law or the City Charter.

**SECTION 6. SEVERABILITY.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

**SECTION 7. CONTROL.** In the event of a conflict or conflicts between this Ordinance and any other ordinance, or between this Ordinance and a provision of the Florida Election Code, Chapters 97-106, Florida Statutes that does not expressly apply to municipalities, or any other provision of law, this Ordinance controls to the extent allowable under the law.

**SECTION 8. NONCODIFICATION.** This Ordinance shall not be codified.

**SECTION 9. SCRIVENER'S ERROR.** Scrivener's errors found in this Ordinance may be corrected by the City Manager or by the City Attorney by filing a corrected copy of this Ordinance with the City Clerk.

**SECTION 10. EFFECTIVE DATE.** This Ordinance takes effect immediately upon adoption.

FIRST READING this 7<sup>th</sup> day of September, 2016.

SECOND READING AND ADOPTION this 21<sup>st</sup> day of September, 2016.

APPROVED:

CITY OF DEBARY CITY COUNCIL

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Lita Handy-Peters, Interim Mayor

ATTESTED:

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Warren Graham, City Clerk