

MEMORANDUM

TO: Town of Melbourne Beach Town Commissioners
FROM: Ryan Knight *RGK*
SUBJECT: Candidate Qualification; Town Charter Section 2.03
DATE: August 21, 2024

Mayor, Vice-Mayor, and Commissioners,

This memorandum is provided as a summary of the requirements to qualify candidates under the Code and Charter and interpretation of Section 2.03 of the Charter regarding term of office.

Section 13.6(b) of the Code outlines the requirements and document submissions a candidate must make in order to qualify as a candidate. The candidate submissions are included in the agenda packet and the Commission shall act as the judge of qualifications for candidates to hold elective office in the Town. Section 13-5.1 provides that the Town Clerk, as the Town Elections Qualifying Officer, shall collect and prepare the election packets for Commission review. Further, the Town Clerk is not responsible for interpretation of election law, filing or taking election complaints, responsible for errors or omissions on documents submitted by candidates, or the policing agent for the Town elections.

Additionally, the Charter provides additional criteria to consider for candidate qualification. Specifically, Section 2.03(b) provides:

Neither a commission member or the mayor may qualify for or serve more than two (2) complete consecutive terms and the portion of an unexpired term occurring by reason of a vacancy. Notwithstanding the foregoing, an elected city official, such as a commissioner, who has served the maximum time in office as permitted by this paragraph, may qualify for an be elected to serve in a different city elected office, such as mayor. Further, a commissioner or the mayor who has served the maximum amount of time permitted by this sub-section may again serve on the commission subject to the time and term limitations of this sub-section; provided, that the official has not served on the commission for at least one (1) year (365 days). Any city elected official who resigns within one (1) year before the end of the second consecutive term of office shall be prohibited from qualifying as a candidate for a commission seat in the next regular city election. This paragraph shall be applicable to any commission member or the mayor who, subsequent to the election held on November 2, 2004, has served for two (2) complete consecutive terms and which terms have been served in full after November 2, 2004.

Thus, a commission member or mayor who has served two complete terms, and any portion of an unexpired term by reason of vacancy, may not qualify or serve in the subsequent election. Under

the express terms of the Charter, the consecutive terms served must be completed, subject to the provision that if there is a resignation within one (1) year before the end of the second consecutive term of office, then the member or mayor shall not qualify in the next election.¹

The above section also contains a provision that requires a commissioner or mayor who has served two complete terms to wait 365 days before the commissioner or mayor can again serve on the Commission. The important distinction in this provision is that it does not prevent a candidate from qualifying for the election, as long as when the candidate begins to serve on the Commission, 365 days have elapsed. Thus, even assuming a candidate has served two complete terms of office, the relevant dates that count for the 365-day waiting requirement are as follows:

November 15, 2023 – New Mayor and Commissioners take office
November 20, 2024 – New Commissioners take office

Section 2.03(a) of the Charter provides:

Elected Commissioners shall take office at the beginning of the next official meeting following the municipal election at which they were elected.

Thus, the 365-day requirement would be satisfied since more than 365 days have elapsed since any candidate has “served” on the Commission.

Section 2.02 of the Charter provides:

The Commission shall be the judge of the qualifications of the candidates for election to the Commission, and for such purpose shall have the powers to subpoena witnesses and required the production of evidence, but the decision of the Commission in any such case shall be subject to review by the courts.

Thus, the Commission shall consider the Charter and Code requirements for candidate qualifications and be the judge of the candidate qualifications. This will require the Commission to hold a vote to qualify each candidate based on the documentation submitted by the candidate and the applicable Charter and Code provisions. Moreover, the courts have recognized that if there are doubts or ambiguities regarding eligibility of a candidate, such doubts should be resolved in favor of eligibility.²

¹ Compare with the City of Tampa’s Charter, Section 2.02, which provides in part, “[N]o person who has, or but for resignation would have, served as a member of the city council for two consecutive, full terms shall be elected as a council member for the succeeding term...”

² See *Ervin v. Collins*, 85 So. 2d 852 (Fla. 1956) (where there are doubts or ambiguities as to eligibility, they should be resolved in favor of a free expression of the people; it is the sovereign right of the people to select their own officers and the rule is against imposing disqualifications to run recognizing the sovereign right of the people to select their officers); *Smith v. Crawford*, 645 So. 2d 513, 520 (Fla. 1st DCA 1994) (“the law requires judges to resolve doubts about qualification of a political candidate in favor of the candidate”).