

ORDINANCE NO. 2010-04

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO ELECTIONS; MAKING FINDINGS; AMENDING SECTIONS 13-1 AND 13-2 THROUGH 13-6, AND CREATING SECTIONS 13-1.1, 13-1.2, AND 13-6.1, MELBOURNE BEACH TOWN CODE; REPEALING SECTION 13-1, MELBOURNE BEACH TOWN CODE; REPEALING PROVISIONS REQUIRING A PERMANENT SINGLE REGISTRATION SYSTEM; PROVIDING FOR THE APPOINTMENT OF A CAMPAIGN TREASURER AND DESIGNATION OF A CAMPAIGN DEPOSITORY; PROVIDING REGULATIONS RELATING TO CANDIDATE CAMPAIGN FINANCE; REVISING REGULATIONS RELATING TO NOMINATING PETITIONS, EXAMINATION OF PETITIONS, AND ORDERING NAMES TO BE PLACED ON THE BALLOT; REVISING PROVISIONS RELATING TO THE PRINTING OF BALLOTS AND ADOPTION OF THE FLORIDA ELECTION CODE; PROVIDING FOR THE METHOD OF AND REQUIREMENTS FOR QUALIFYING AS A CANDIDATE; SETTING FORTH REQUIREMENTS FOR WRITE-IN CANDIDATES; PROVIDING FOR NON-PARTISAN MUNICIPAL ELECTIONS; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR REPEAL OF PARTS OF ORDINANCES AND RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

WHEREAS, Section 13-1 makes reference to Section 98.091, Florida Statutes;

WHEREAS, Section 98.091 was transferred to Section 101.002, Florida Statutes, in 1994, and the statutory reference to Section 98.091 is therefore incorrect;

WHEREAS, Section 101.002(3), Florida Statutes, provides that:

[a]ny person who is a duly registered elector pursuant to this code and who resides within the boundaries of a municipality is qualified to participate in all municipal elections, the provisions of special actions or local charters notwithstanding. Electors who are not registered under the permanent registration system shall not be permitted to vote;

WHEREAS, Section 97.105, Florida Statutes, provides that:

[a] permanent single registration system for the registration of electors to qualify them to vote in all elections is provided for the several counties and municipalities. This system shall be put into use by all municipalities and shall be in lieu of any other system of municipal registration. Electors shall be registered pursuant to this system by a voter registration official, and electors registered shall not thereafter be required to register or reregister except as provided by law"; and

WHEREAS, the Town Commission finds that Section 13-1 currently references non-existent statutes; and that it is subsumed by Section 97.105, Florida Statutes; and

WHEREAS, given the existence of Section 97.105, the Town's use of the statewide permanent registration system is automatic pursuant to Florida law, and any reference to Sections 98.091 or 101.002 is unnecessary; and

WHEREAS, the Town Commission finds that Section 13-1 of the Town Code should be repealed; and

WHEREAS, a new Section 13-1.1 of the code is created providing for the appointment of a Campaign Treasurer and designation of a campaign depository; and

WHEREAS, it is the intention of the Town Commission that this provision implements in the Town Code the provisions of Sections 106.021(1)(a) and (c) and 106.05, Florida Statutes;

WHEREAS, in Section 13-5, the reference to Florida "Election Law" is revised to be consistent with Section 97.011, Florida Statutes, which provides that Chapters 97 through 107, Florida Statutes, are collectively known as "The Florida Election Code";

WHEREAS, in Section 13-5, reference is made to Section 100.3605(1), Florida Statutes, which statute provides that The Florida Election Code, Chapters 97-106, shall govern the conduct of a municipality's election, *unless a local ordinance or the town charter provides to the contrary*; and

WHEREAS, Section 100.3605, Florida Statutes, has been interpreted such that no local ordinance or provision in a municipal charter can override a provision in The Florida Election Code if the provision sought to be negated by the local ordinance or municipal charter provision specifically references its applicability to municipalities; and

WHEREAS, only a handful of the provisions in Chapters 97-106 specifically state that they apply to municipalities; and

WHEREAS, the Town Commission finds that by literal application of Section 100.3605(1), a municipality must follow provisions in Chapters 97 through 106 of the Florida Statutes, if the provision specifically states it applies to a municipality; and

WHEREAS, the Town Commission finds that by literal application of Section 100.3605(1), a municipality must follow the provisions in Chapters 97 through 106 of the Florida Statutes, unless a town charter provision or local ordinance provides to the contrary and assuming that the provision in The Florida Election Code does not specifically state it applies to a municipality; and

WHEREAS, the Town Commission finds that the Town could pass an ordinance exempting itself from or, alternatively, supplementing any provision of Chapter 97 through 106, Florida Statutes, assuming that the provision does not specifically state that it applies to municipalities. *Accord* DE 02-01, 03-01, and 09-05 (opinions of the Florida Division of Elections);

WHEREAS, the Town Commission intends consistent with Section 100.3605(1), that the effect of Section 13-5 of the Town Code is to require that all provisions of Chapters 97 through 106, Florida Statutes, apply to Melbourne Beach municipal elections, except in one instance: when a provision of the Town Code or Town Charter exempts Town elections from

the effect of Chapters 97 through 106, Florida Statutes and the provision of Chapters 97 through 106 does not state that it applies to municipalities;

WHEREAS, in Section 13-6(b)(9), candidates are required to execute the candidate oath required in Section 99.021, Florida Statutes;

WHEREAS, the foregoing candidate oath refers to the oath it being signed by any candidate running for a "public office;" and

WHEREAS, pursuant to Section 97.021(30), Florida Statutes, defines the term "public office" as specifically including municipalities; and

WHEREAS, the Town Commission finds that the Section 99.021 candidate oath by virtue of its reference to "public office" is mandatory for compliance by candidates for municipal elective office; and

WHEREAS, in Section 13-6(c) of the Town Code, reference is made to an election assessment and the qualifying fee being one in the same;

WHEREAS, Section 99.093 requires payment of an election assessment, and this section was enacted in 1989;

WHEREAS, Section 2.02 of the Town Charter requires payment of a \$10 filing fee, *unless the Town Code provides otherwise;* and

WHEREAS, Section 2.02 was enacted as a part of the 1973 Town Charter and was therefore adopted long before the Section 99.093 statutory election assessment; and

WHEREAS, the Town Commission concludes that the drafters of the Town Charter intended that a *de minimis* fee be paid at qualifying in an effort to encourage Town residents to seek election to office; and

WHEREAS, the Town Commission finds that by declaring in the Town Code that the statutory election assessment is also the qualifying fee, it appears that the fee to be paid at the time of qualifying could be minimized; and

WHEREAS, a new Section 13-6.1 is created to confirm and remove any question that the Town elections, like all other municipal elections in Brevard County and in over 99% of all Florida municipalities, are without party designation,
BE IT ENACTED by the Town of Melbourne Beach, Florida:

Section 1. That Section 13-1, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§13-1. PERMANENT SINGLE REGISTRATION SYSTEM. (Repealed).

~~The town, pursuant to Section 98.091, Florida Statutes, hereby adopts the permanent registration system of Brevard County, as the registration system of the town for use in its municipal elections and referenda.~~

Section 2. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 13-1.1, which said section reads as follows:

§13-1.1. APPOINTMENT OF CAMPAIGN TREASURER; DESIGNATION OF A CAMPAIGN DEPOSITORY.

(a) No person shall accept any contribution or make any expenditure with a view to bringing about his or her election to the town commission, or authorize another person to accept such contributions or make such expenditures on the person's behalf, unless such person has appointed a campaign treasurer, designated a primary campaign depository for monetary contributions, and declared the office that the person is seeking.

(b) The appointment of Campaign Treasurer/ Designation of Campaign Depository form must be submitted to the town clerk prior to opening a candidate campaign account. No designations or appointments shall be considered official until received by the town clerk and accepted by the designee.

(c) A prospective candidate may appoint himself or herself as the campaign treasurer. The designated campaign treasurer must accept the appointment in writing and file said writing in the office of the town clerk before the appointment may become effective.

Section 3. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 13-1.2, which said section reads as follows:

§13-1.2. CANDIDATE CAMPAIGN FINANCE.

Pursuant to Section 106.023, Florida Statutes, the candidate is responsible for comprehending Chapter 106, Florida Statutes, regarding campaign financing and reporting all campaign donations and loans and all expenditures. The candidate must ensure that they follow all rules and regulations pertaining to contributions and expenditures, including timely submission of itemized contribution and expenditure forms. Within ten (10) days of the date of filing the Campaign Treasurer/Designation of Campaign Depository referenced in section 13-1.1, a prospective candidate shall also file a statement of candidate that a candidate has reviewed and understands the statutory requirements for campaign financing as set forth in Chapter 106, Florida Statutes, and required by Section 106.023, Florida.

Section 4. That Section 13-2, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§13-2. NOMINATING PETITIONS.

(a) Required; number of signatures; filing. Every candidate for elective town office, excepting a write-in

candidate, shall file with the Town Clerk a petition signed by not less than 25 qualified electors of the town requesting the Town Commission to place the name of such candidate upon the official ballot. The petition shall be filed in the office of the Town Clerk not less than 70 days nor more than 81 days before any general election.

(b) Form of petition. The petition of any person seeking to qualify as a candidate for office in the town shall be in the following form:

"We, the undersigned qualified electors of the Town of Melbourne Beach, Florida, hereby request that the name of _____ be placed on the Official Ballot for the Office of _____." (Said Ballot to be used in the Town Election to be held on the _____ day of _____, 20~~19~~__) "We further certify that we have signed the Petition of no other Candidate for this particular Office in this Election."

(c) Electors are not to sign more than one petition. It shall be unlawful for any person to sign the petition of more than one candidate for any one office in any one election. If an elector's signature appears on two or more petitions for any office submitted to the Town Clerk, the elector's signature shall be declared by the Town Clerk to be invalid on the petition(s) submitted later in time than the first petition

submitted to the Town Clerk upon which said elector's name shall appear, the intent being that said elector's signature shall be valid on only one petition.

(d) Copies of petition to be made available to public. Copies of nominating petitions required by this chapter shall be kept on file in the office of the Town Clerk and made available without cost to any individual.

(e) Time of collection of signature on nominating petition. Signatures on all nominating petitions shall not be collected prior to filing with the Town Clerk the Appointment of Campaign Treasurer/Designation of Campaign Depository form and the loyalty oath form referenced in section 13-1.1 of this code. Fee for filing petition. At the time of filing of the petition required by division (a) of this section, there shall be paid to the Town Clerk a filing fee of \$10.

Section 5. That Section 13-3, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§13-3. EXAMINATION OF PETITIONS; ORDERING NAMES TO BE PLACED ON THE BALLOT.

The Town Commission shall hold a meeting as soon as practicable after the deadline for qualifying ~~the filing of the petitions required by § 13-2~~ to ascertain whether or not the petitions are in order, the filing fees paid and that all ~~the~~ candidates,

including write-in candidates, have met the other applicable
necessary requirements for qualification. If those candidates
are found to be qualified, the Commission shall order that the
names of the candidates, excepting write-in candidates, be
placed upon the ballot for the office which they are seeking.
In the case of write-in candidates, if the Town Commission
determines that said candidates meet the applicable
requirements for qualification, then the Commission shall
approve said candidates participating as write-in candidates.
Subject to the ability of the Town Commission to serve as the
judge of qualifications of candidates as provided by the town
charter, any candidate (excepting write-in candidates) who has
qualified as prescribed by law and this code is entitled to
have his or her name printed on the official election ballot.
However, when there is only one candidate, including a write-in
candidate, qualified for an office, the name of the candidate,
excluding write-in candidates, shall not be printed on the
election ballot, and such candidate shall be declared nominated
for the office.

Section 6. That Section 13-4, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§13-4. TOWN CLERK TO HAVE BALLOTS PRINTED.

It shall be the duty of the Town Clerk to cause the ballot to be printed containing all of the names of those persons who have qualified as candidates, excluding write-in candidates, in the manner provided by this chapter, or to coordinate with the supervisor of elections, to accomplish the same. In addition to the names of the candidates, referenda shall also be placed upon the ballot following the ballot positions for candidates for town commission ~~there shall be printed on the ballots one blank line underneath the names of the candidates for each respective office to be voted upon at the general election in case an elector wants to write in a name other than the candidates on the ballot.~~

Section 7. That Section 13-5, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§13-5. ADOPTION OF STATE LAW BY REFERENCE.

Except to the extent inconsistent with the town charter or this code, the ~~The~~ town hereby adopts ~~the~~ The Florida Election Code, Chapters 97 through 107, Florida Statutes, ~~Florida Election Law~~, by reference as part of this chapter as fully as if set out at length herein.

Section 8. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 13-5.1, which said section reads as follows:

§13-5.1. ELECTIONS QUALIFYING OFFICER.

(a) The Town Clerk is the designated town elections qualifying officer. The Town Clerk is responsible for:

(1) Preparing election packets for candidates wishing to qualify for the town commission;

(2) Collecting required forms and fees from candidates seeking qualification;

(3) Filing all appropriate election documentation on behalf of the town with the State of Florida elections office and the Brevard County supervisor of elections;

(4) Counting and validating all candidate petition signatures for recommendation to the town commission;

(5) Assisting candidates with information concerning deadlines, appointments and important dates;

(6) Collecting campaign reports; and

(7) Recording and storing election documents in accordance with appropriate records retention procedures.

(b) The town clerk/elections qualifying officer is not:

(1) Responsible for interpreting election law;

(2) Capable of filing or taking election complaints made by candidates, citizens or town commissioners not running for office;

(3) Responsible for errors or omissions on documents submitted by candidates running for office; and

(4) A policing agent for town elections. Concerns and complaints are to be directed to the Florida Elections Commission.

Section 9. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 13-5.2, which said section reads as follows:

§13-5.2. GRIEVANCES.

All complaints, inquiries and concerns shall be directed to the Florida Elections Commission, the town clerk/elections qualifying officer is not responsible for interpreting The Florida Election Code or the provisions of chapter 13 of the town code.

Section 10. That Section 13-6, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§13-6. TIME AND METHOD OF CANDIDATE QUALIFICATION.

(a) Each candidate seeking the office of Mayor or Town Commission member shall seek to qualify for election to that office in the manner prescribed by the Town Charter, not less than 70 ~~77~~ days nor more than 81 ~~89~~ days prior to the date of such election. In computing the qualification days, the Election Day is to be excluded, but all Sundays and holidays are to be included. Should the 70th ~~77th~~ day preceding an election fall on a Sunday, Saturday or holiday, the notice must

be filed by 5:00 p.m. on the preceding business day. Each person seeking to qualify for election to office as a write-in candidate shall qualify for election to that office in the same manner prescribed by the Town Charter, on or before 12:00 noon of the 70th ~~74th~~ day prior to the general election.

(b) Subject to the power of the town commission to act as the judge of qualifications for candidates to hold elective office in the town, to qualify for the office of Mayor or Town Commissioner, a person must:

(1) Be a qualified elector of the town at the time of qualification;

(2) Have maintained continuous residency within the town for at least six (6) continuous months immediately prior to the date of qualification for the office sought;

(3) Submit a nominating petition completed consistent with section 13-2 signed by twenty-five (25) qualified town electors who are qualified electors at the time of submission to the town clerk of the nominating petition;

(4) Comply with Section 99.093, Florida Statutes and section 13-6(c) of this code, with regard to payment of the qualifying fee/Florida Department of State election trust fund assessment fee;

(5) Submit a sworn statement under oath of his or her name, address, occupation, that said person possesses all

of the qualifications required by law and this code for the office, the name of the office he seeks, and that said candidate is in compliance with paragraphs (1) and (2) above;

(6) File a loyalty oath as required by Section 876.05, Florida Statutes;

(7) Submit a statement of a willingness to serve as required by the town charter;

(8) File a statement of financial interests (financial disclosure form) as required by Section 99.061, Florida Statutes. As provided in Section 99.061(7)(a)6., a person seeking to qualify who has previously filed a full and public financial disclosure or statement of financial interests with the Florida Commission on Ethics or the supervisor of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying;

(9) File a candidate oath as required by Section 99.021, Florida Statutes; and

(10) Submit or file such other documentation as may be required by the Brevard County supervisor of elections and/or the state of Florida division of elections.

All of the foregoing information must be filed with the town clerk in proper, complete, fully executed, and legal form

during the time of qualification as set forth in sub-section (a) above.

(c) Payment of qualifying fee. With the exception of write-in candidates, at the time an individual seeks to qualify as a candidate for the office of town commissioner or mayor, the candidate shall pay a qualifying fee as described in the town charter. The qualifying fee is co-extensive with and consists of the payment of the Florida Department of State election trust fund assessment fee. Pursuant to Section 99.093, Florida Statutes, the assessment/qualifying fee is equivalent to one percent (1%) of the annual salary of the position to which the candidate seeks election. All payments of fees and assessments must be made in the form of a check or money order drawn on the candidate's campaign account. As required by Section 99.093, Florida Statutes, any person seeking to qualify for town commission who is required to pay and who is unable to pay the election assessment without imposing an undue burden on personal resources, shall certify of such inability under oath in the presence of the qualifying officer. Thereafter, the individual shall be excused from paying a qualifying or election trust fund assessment fee.

(d) Qualification of write-in candidates.

(1) Each person seeking to qualify for election to

office as a write-in candidate shall file his or her qualification papers with the town clerk during the period for qualifying as a candidate. All write-in candidates shall comply with sub-section (b)(1), (2), and (5) through (10), above. Any person who is seeking election as a write-in candidate shall not be required to pay a qualifying fee or election assessment.

(2) A write-in candidate is not entitled to have his or her name printed on any ballot; however, space for the write-in candidate's name to be written in must be provided on the election ballot. At the time of certifying under oath compliance with the above information in sub-section (b)(1), (2), (5), (6), and (9) and filing the required information in sub-section (b)(7), (8), and (10), a write-in candidate shall be considered a candidate. A person may not qualify as a write-in candidate if the person has also otherwise qualified for nomination or election to such office. Failure to qualify as a write-in candidate shall mean that any write-in votes cast for such person shall not be counted.

Section 11. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 13-6.1, which said section reads as follows:

§13-6.1. NON-PARTISAN ELECTIONS.

All elections for the office of town commission, including mayor and town commissioner, shall be conducted on a nonpartisan basis without any designation of political party affiliation, and those elected shall be chosen at large by the electors of the town.

Section 12. Severability/Interpretation.

(a) In the event that any term, provision, clause, sentence or section of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) In interpreting the provisions of this Ordinance, the following rules and symbols shall apply:

(1) Words underlined are additions to existing text.

(2) Words ~~stricken through~~ are deletions from existing text.

(3) Asterisks (* * *) indicates a deletion from the Ordinance of text existing in the Code of Ordinances. It

is intended that the text in the Code of Ordinance denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

Section 13. Ordinances and Resolutions in Conflict. All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith, except portions of the Comprehensive Plan, are hereby repealed.

Section 14. Effective Date. The provisions within this Ordinance shall take effect immediately upon the enactment of this Ordinance.

Section 15. Adoption Schedule. This Ordinance was PASSED by the Town Commission of the Town of Melbourne Beach on first reading on the 20th day of January, 2010, and ADOPTED by the Town Commission of the Town of Melbourne Beach, Brevard County, Florida, on second and final reading on the 17th day of February, 2010.

TOWN OF MELBOURNE BEACH, FLORIDA,
A Florida Municipal Corporation

By: _____
Rita Karpie, Mayor

ATTEST:

Christina Hoffkins, CMC
Town Clerk

(TOWN SEAL)