

IN THE SUPREME COURT OF VIRGINIA

Richard Kowalewitch
824 24th Street
Virginia Beach, VA 23451

Donald Edwards
2441 Windward Shore Drive
Virginia Beach, VA 23451
Petitioners

v.

Case No.: 240943

Christine Lewis
Virginia Beach Voter Registrar
City of Virginia Beach
2449 Princess Anne Road
Virginia Beach, VA 23456

Jeffrey Marks, Chair
Virginia Beach Electoral Board
2449 Princess Anne Road
Virginia Beach VA 23456

Nanette Miller, Vice Chair
Virginia Beach Electoral Board
2449 Princess Anne Road
Virginia Beach VA 23456

Lauralee Grim, Secretary
Virginia Beach Electoral Board
2449 Princess Anne Road
Virginia Beach VA 23456
Respondents

**REPLACEMENT VERIFIED PETITION FOR
WRITS OF MANDAMUS AND PROHIBITION**

TABLE OF AUTHORITIES

Cases

<i>William J. Howell, et al. v. Terence R. McAuliffe, et al.</i> (2016)	6, 7
<i>Board of Cty. Supervisors of Prince William Cty. v. Hylton Enters., Inc.</i> , 216 Va. 582, 584 (1976)	7, 9
<i>Clay v. Ballard</i> , 87 Va. 787, 13 S.E. 262, 263 (1891)	9
<i>Levisa Coal Co. v. Consolidation Coal Co.</i> , 276 Va. 44, 61 (2008).....	10
<i>Cartwright v. Commonwealth Transp. Comm’r of Va.</i> , 270 Va. 58, 64 (2005)	10
<i>McClagherty v. McClagherty</i> , 180 Va. 51, 68 (1942)	10
<i>Goldman v. Landsidle</i> , 262 Va. 364, 370–71 (2001)	10, 11
<i>Cf. Town of Danville v. Blackwell</i> , 80 Va. 38, 42 (1885)	11
<i>May v. Whitlow</i> , 201 Va. 533, 538 (1960)	11
<i>Brown v. Saunders</i> 159 Va. 28, 31, 48 (1932)	12
<i>Wilkins v. Davis</i> 205 Va. 803, 810 (1965)	12
<i>Jamerson v. Womack</i> 26 Va. Cir. 145, 1991 WL 835368, at *1 (1991), aff’d, 244 Va. 506 (1992)	13
<i>re Commonwealth</i> , 278 Va. 1, 17 (2009)	13
<i>re Commonwealth</i> , 222 Va. 454, 461 (1981)	14

Statutory Provisions, Rules, Attorney General Opinion

VA. CONST. art. VI, § 1	1
VA. CODE § 8.01-644	1
Virginia Beach City Charter 3.02:2.....	3
VA. CODE § 24.2-612	4

GREB Handbook 16.9.4.....	4
VA CODE § 24.2-501	5
VA CODE § 24.2-504	5
VA. CONST. art. I, § 7.....	5, 6
Attorney General Opinion May 30, 2024.....	5, 6
VA CONST. art. II § 7	6
VA. CONST. art II § 8	8
VA. CONST. art. I, § 2.....	8
VA. CONST. art. XII, §§ 1, 2	8
VA. CONST. art. I § 5.....	8
VA. CONST. art. III § 1	8
VA. CONST. art I § 6.....	8

**REPLACEMENT
VERIFIED PETITION FOR WRITS OF MANDAMUS AND
PROHIBITION**

Petitioners, pursuant to VA. CONST. art. VI, § 1 and VA. CODE § 8.01-644, respectfully petition this Court for the issuance of writs of mandamus and prohibition directed to the Respondents, and in support thereof state:

1. Petitioners are qualified voters who live, and are registered to vote, in Virginia Beach, and who plan to vote in the 2024 General Election. Petitioner Kowalewitch is also a candidate for Mayor in that election and has qualified to have his name printed on the ballot.

2. Petitioners have been injured by the Respondent's placement of ineligible and unqualified candidates on the ballot for the November 2024 election.

3. The 2024 General Election will occur on November 5, 2024. Early voting starts on September 20, 2024 and, accordingly, relief should be awarded as soon as possible to ensure that ineligible and unqualified candidates do not appear on the ballot and undermine the legitimacy of the election. For this reason, Petitioners request the Court expedite consideration of this petition.

4. Petitioners have a clear right to the relief they seek. Respondents have a legal duty to ensure that ineligible and unqualified individuals are not placed on the ballot. Petitioners have no adequate remedy at law.

5. The taking of evidence will not be necessary for the proper disposition of this petition.

WHEREFORE, Petitioners respectfully pray as follows:

That this Court will issue a writ of mandamus commanding the Virginia Beach Electoral Board and Voter Registrar remove from the ballot current Virginia Beach City Mayor Robert “Bobby” Dyer and Council Member Sabrina Wooten who have been unlawfully qualified, in direct violation of the Virginia Beach City Charter, as eligible to have their names put on the ballot for the office of Mayor.

And that this Court will issue a writ of Prohibition, prohibiting the Virginia Beach Electoral Board and Voter Registrar from any further deviations from the laws of the United States and of Virginia to include the Constitution of Virginia, the Virginia Beach City Charter, and the Code of Virginia as it relates to their official duties and responsibilities.

**MEMORANDUM IN SUPPORT OF REPLACEMENT VERIFIED
PETITION
FOR WRITS OF MANDAMUS AND PROHIBITION**

Virginia Beach is governed by a municipal Charter. It is the primary law governing elections in the City. It is the only law that provides for the specific manner, terms, qualifications, and number of members of the City Council. It is because of this document, and others like it, that requires localities to have their own Electoral Boards and Voter Registrars. If not for the Municipal Charter,

elections could be conducted by one entity statewide. The Virginia Beach City Charter is the law that requires the Judicially appointed Body, known as the Virginia Beach Electoral Board and Voter Registrar, the Respondents to this petition.

Chapter 3.02:2 of the Virginia Beach City Charter provides the following:

“In the event any councilman, including the mayor, shall decide during his term of office to be a candidate for mayor, he shall tender his resignation as a councilman not less than ten days prior to the date for the filing of petitions as required by general law. Such resignation shall be effective on December 31, shall constitute the councilman's intention to run for mayor, shall require no formal acceptance by the remaining councilmen and shall be final and irrevocable when tendered”

This very clear, unambiguous, statutory language that required Virginia Beach Mayor Robert “Bobby” Dyer, and Council Member Sabrina Wooten to tender their resignations prior to qualifying for the ballot, for the office of Mayor, for the 2024 General Election. These resignations did not occur which makes these persons’ appearance on the ballot unlawful and a violation of the rights of all registered voters in the City of Virginia Beach, which includes the other candidates for Mayor who do lawfully qualify.

Ballots for local elections in Virginia Beach are created under the authority of the Respondents. By state law, candidates are required to submit a statement of qualification. If those candidates are found to be qualified to hold the office they seek and fulfill all the other requirements for a candidate, they are lawfully placed

on the ballot. However, if they are found to be ineligible and unqualified, it is the legal duty of the Local Electoral Board and Voter Registrar to notify the disqualified person of the deficiencies in this case their declarations of candidacy, and to show them the reason for their disqualification in writing.

VA. CODE § 24.2-612

Immediately after the expiration of the time provided by law for a candidate for any office to qualify to have his name printed on the official ballot and prior to printing the ballots for an election, each general registrar shall forward to the Department of Elections a list of the county, city, or town offices to be filled at the election and the names of all candidates who have filed for each office. In addition, each general registrar shall forward the name of any candidate who failed to qualify with the reason for his disqualification. On that same day, the general registrar shall also provide a copy of the notice to each disqualified candidate. The notice shall be sent by email or regular mail to the address on the candidate's certificate of candidate qualification, and such notice shall be deemed sufficient. The Department of Elections shall promptly advise the general registrar of the accuracy of the list. The failure of any general registrar to send the list to the Department of Elections for verification shall not invalidate any election. . . .

GREB Handbook 16.9.4 “Local electoral board notifies candidate(s) of deficiencies. After the filing deadline, whenever a candidate for local office must be disqualified because of deficiencies in the candidate's declaration of candidacy or petitions, the local electoral board must notify the candidate of the disqualification in writing.”

Only a person fulfilling all the requirements of a candidate shall have his name printed on the ballot for the election. Respondents have a legal duty to verify these requirements have been met.

VA CODE §24.2-501 “It shall be a requirement of candidacy for any office of the Commonwealth, or of its governmental units, that a person must file a written statement under oath, on a form prescribed by the State Board, that he is qualified to vote for and hold the office for which he is a candidate. . . .”

If a candidate is found to be ineligible to hold an office, they cannot qualify for the ballot.

VA CODE § 24.2-504. Persons entitled to have name printed on ballot.
“Only a person fulfilling all the requirements of a candidate shall have his name printed on the ballot for the election. . . .”

The Electoral Board and Voter Registrar have failed to disqualify the two persons mentioned above. These persons clearly do not qualify, by law, for the office of Mayor, because neither Robert “Bobby” Dyer nor Sabrina Wooten have tendered their resignations as required by the Virginia Beach City Charter.

The Voter Registrar simply may not unilaterally suspend and amend the Virginia Beach City Charter. The Constitution provides that “all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.” VA. CONST. art. I, § 7.

In a recent opinion from the Virginia Attorney General, Jason Miyares wrote (*attached as Exhibit 1*):

“Accordingly it is my opinion that a City of Chesapeake council member, whose term otherwise expires on December 31, 2024, but who desires to seek election as mayor at this year’s November general election, must resign from the City Council by June 30 pursuant to § 3.02(c) of the city charter.”

This opinion was due to a provision in the Chesapeake City Charter, much like the one in the Virginia Beach City Charter, requiring current members of the Council to resign their positions when seeking the office of Mayor. It is in the opinion of the Attorney General that the candidate eligibility requirements in a Municipal Charter must be followed.

On August 12, 2024, the Virginia Beach Voter Registrar was reminded of her responsibilities to the Virginia Beach City Charter and notified that she needed to remove Robert “Bobby” Dyer and Sabrina Wooten from the BALLOT.

(attached as Exhibit 2) She has not taken any action, a clear violation of her oath of office.

VA CONST. Art. II § 7

“All officers elected or appointed under or pursuant to this Constitution shall, before they enter on the performance of their public duties, severally take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as, according to the best of my ability (so help me God).”

In a July 22, 2016, opinion by Chief Justice Donald W. Lemons, relating to *William J. Howell, et al. v. Terence R. McAuliffe, et al.* (2016), the Supreme Court of Virginia had much to say about Mandamus, jurisdiction, standing, the

suspension of laws, vote dilution, and our constitutionally protected voting rights. This opinion offers insight into how this Court has ruled on similar issues in the past, and why.

According to Chief Justice Donald W. Lemons of the Virginia Supreme Court:

“The dominant role in articulation of public policy in the Commonwealth of Virginia rests with the elected branches. The role of the judiciary is a restrained one. Ours is not to judge the advisability or wisdom of policy choices. The Executive and Legislative Branches are directly accountable to the electorate, and it is in those political venues that public policy should be shaped. From time to time, disagreements between these branches of government require interpretation of our statutes, the Constitution of Virginia, or the United States Constitution. Our proper role is to interpret law and not to express our opinion on policy. The case before us today is such a case.”

Petitioners simply ask this court to command the respondents to follow the law, as it is written, and prohibit them from deviating from any of the laws for which their body is required to follow, going forward.

PETITIONERS ARE ENTITLED TO A WRIT OF MANDAMUS.

For a writ of mandamus to issue, “[1] there must be a clear right in the petitioner to the relief sought, [2] there must be a legal duty on the part of the respondent to perform the act which the petitioner seeks to compel, and [3] there must be no adequate remedy at law.” *Board of Cty. Supervisors of Prince William Cty. v. Hylton Enters., Inc.*, 216 Va. 582, 584 (1976).

Petitioners Have a Clear Right to the Relief Sought.

The Respondents inclusion of ineligible candidates on the ballot for Virginia Beach Mayor exceeds their authority under VA. CONST. art II § 8 and Title 24.2 of the Virginia Code. It also violates the Constitution by (1) unconstitutionally suspending law, in violation of VA. CONST. art. I § 7; (2) unconstitutionally exercising the amendment power reserved to the General Assembly and the People, VA. CONST. art. I, § 2; art. XII, §§ 1, 2, and the lawmaking power, both in violation of Article I, Section 5 and Article III, Section 1; and (3) unconstitutionally diluting petitioners' right to suffrage, in violation of Article I, Section 6. Because Respondents actions are unconstitutional, Petitioners have a clear right to a writ directing the Respondents to discharge their legal duty to ensure that only eligible persons are placed on the ballot. By including these ineligible and thus unqualified individuals on the ballot, it injures Petitioners because it dilutes their votes for lawfully qualified candidates. The voters in Virginia Beach have a right to elect qualified persons to represent them on City Council. By adding unqualified candidates to the ballot, the votes cast for lawfully qualified candidates is diluted by the votes cast for the ineligible candidates.

Respondents have a Legal Duty To Perform the Acts that Petitioners Seek To Compel.

“Mandamus is the proper remedy to compel performance of a purely ministerial duty, but it does not lie to compel the performance of a discretionary

duty.” *Board of Cty. Supervisors of Prince William Cty. v. Hylton Enters., Inc.*, 216 Va. 582, 584 (1976). Respondents have a legal duty to obey the Constitution and the Virginia Beach City Charter, to prevent unqualified persons to have their name printed on the ballot for City Council.

Petitioners Have No Adequate Remedy at Law.

The remedies open to petitioners—an action for an injunction or a writ of mandamus in Circuit Court—are neither “at law,” nor are they “adequate.” The inquiry here is not whether there is any alternative remedy, but whether there is an “adequate” alternative remedy “at law.” As this Court has explained in the course of granting a voter’s original petition for a writ of mandamus to compel an election official to perform his statutory duties, the mere fact that “a subordinate, local court was open to the petitioner” to seek a writ of mandamus does not mean that “he ought to have pursued his remedy in that court” *Clay v. Ballard*, 87 Va. 787, 13 S.E. 262, 263 (1891). Instead, “where the object is to enforce obedience to a public statute it has been invariably held that the writ is demandable of right.” *Id.* Petitioners seek to enforce obedience to the Constitution, and the Virginia Beach City Charter, and they are authorized to seek that relief in this Court via mandamus.

Although Petitioners could seek injunctive relief from a Circuit Court, such an action is not a remedy “at law.” It is well settled that “a party must establish . . .

irreparable harm and lack of an adequate remedy at law, before a request for injunctive relief will be sustained.” *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 61 (2008) (quotation marks omitted). An action for injunctive relief plainly cannot be an “adequate remedy at law” when an injunction will not be issued unless the movant establishes the “lack of an adequate remedy at law.” *Id.* Nor would a Circuit Court injunction remedy be “adequate.” A remedy is “adequate” only if it is “equally as convenient, beneficial, and effective as the proceeding by mandamus.” *Cartwright v. Commonwealth Transp. Comm’r of Va.*, 270 Va. 58, 64 (2005) (quotation marks omitted). To be adequate, a remedy “must reach the whole mischief, and secure the whole right of the party in a perfect manner, at the present time and in the future, otherwise equity will interfere and give such relief and aid as the particular case may require.” *McClaugherty v. McClaugherty*, 180 Va. 51, 68 (1942) (emphasis added) (quotation marks omitted). And in determining whether to issue the writ, “[c]onsideration must be given to the urgency that prompts the exercise of the discretion, the public interest and interest of other persons, the results that will occur if the writ is denied, and the promotion of substantial justice.” *Goldman v. Landsidle*, 262 Va. 364, 370–71 (2001).

Time is of the essence here. The November elections will occur less than three months from today. There is not enough time for litigation to proceed on a normal schedule through the Circuit Court and then on appeal to this Court. Even

the most expeditious proceedings in a Circuit Court may not conclude before the election. Even if a Circuit Court could reach a final decision before November, this Court would have little or no time to entertain an appeal and give this case the thoughtful deliberation that it deserves. Cf. *Town of Danville v. Blackwell*, 80 Va. 38, 42 (1885) (an “appeal from the final determination of the cause . . . might be, in the language of this court . . . ‘too late,’ and even then such an appeal would not bring up or secure the review of the order the effects of which the mandamus is invoked as a remedy for”). It is hard to imagine a greater “urgency that prompts the exercise of the [Court’s] discretion,” *Goldman*, 262 Va. at 370–71, than the prospect that the 2024 Virginia Beach election may be conducted with ineligible candidates on the ballot, and because review by this Court after it is too late to correct candidate eligibility could throw into doubt the validity of elections in the entire the Commonwealth.

Respondent will not suffer any prejudice if this Court were to resolve this controversy via mandamus. Mandamus relief is appropriate where “[n]o prejudice was suffered by any party, and harm rather than good would result from sending the parties back to try the same issue, to be raised by different pleadings.” *May v. Whitlow*, 201 Va. 533, 538 (1960). In this case, all parties benefit from having this Court immediately and authoritatively decide the important constitutional questions presented in this case.

In light of the foregoing, it should come as no surprise that it has long been the practice of this Court to decide, via a petition for writ of mandamus, important questions of election law, particularly when, as here, the question must be decided on an expedited basis. The Court has not hesitated to issue the writ, even shortly before an election, when the circumstances warrant such relief. For example, in *Brown v. Saunders*, this Court issued a writ of mandamus less than one month before an election, invalidating Virginia's district maps and requiring the Commonwealth to conduct the upcoming elections for the United States House of Representatives on an at-large rather than county basis. 159 Va. 28, 31, 48 (1932). The petitioner in *Brown* was a candidate for office who filed an original petition in this Court less than sixty days prior to the election, and this Court issued the writ because Virginia's district maps violated the Constitution of Virginia. *Id.* at 31, 45–46. Similarly, in *Wilkins v. Davis*, this Court issued a writ of mandamus enjoining Virginia's district maps because they violated the Virginia and Federal Constitutions. 205 Va. 803, 810 (1965). The petitioner in *Wilkins* was a voter and taxpayer who filed an original action in this Court, and the Court issued a writ of mandamus requiring the members of the State Board of Elections to conduct elections on an at-large basis until the General Assembly enacted a valid reapportionment act. *Id.* at 803, 814.

There is also authority suggesting that, for election-law challenges, proceeding via an application for an original writ of mandamus is preferable to seeking a declaratory judgment in the circuit court. In *Jamerson v. Womack*, a circuit court declined to issue a declaratory judgment declaring invalid Virginia's redistricting of two senatorial districts. 26 Va. Cir. 145, 1991 WL 835368, at *1 (1991), *aff'd*, 244 Va. 506 (1992). After rejecting the challenge on the merits, the court held that "more appropriate means of redress were available" because the petitioners could have sought a writ of mandamus. *Id.* at *3. The Court stated that "[t]he existence and equivalence of such a means of redress indicate that declaratory judgment is not needed as a means of challenging unconstitutional redistricting. . . ." *Id.* Only this Court can authoritatively determine the eligibility of Mayor Robert "Bobby" Dyer and Sabrina Wooten to be on the ballot for Virginia Beach Mayor. It is manifestly in the public interest for the Court to do so before the November General Election.

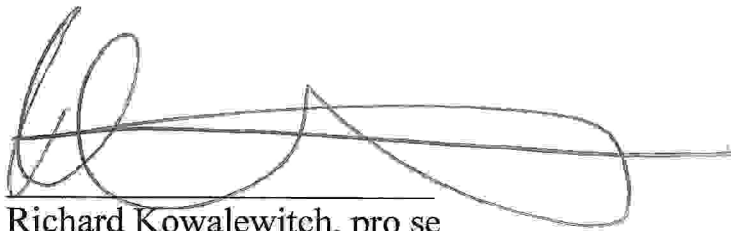
PETITIONERS ARE ENTITLED TO A WRIT OF PROHIBITION.

For substantially all of the foregoing reasons, Petitioners are also entitled to a writ of prohibition. The writ of prohibition "commands the person to whom it is directed not to do something which . . . the court is informed he is about to do." *In re Commonwealth*, 278 Va. 1, 17 (2009) (quotation marks omitted). A writ of prohibition may serve to "suspend all action, and to prevent any further proceeding

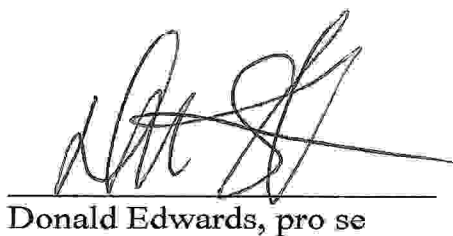
in the prohibited direction.” Id. (quotation marks omitted). The writ is used to restrain a government actor “either when he has no jurisdiction or when he exceeds his jurisdiction. . . .” *In re Commonwealth*, 222 Va. 454, 461 (1981).

For the foregoing reasons we respectfully submit that the Court should enter a writ of mandamus requiring Respondents to fulfill their legal duty. The Court should also enter a writ of prohibition prohibiting the Respondents from ignoring the law in the future.

Respectfully submitted,



Richard Kowalewitch, pro se

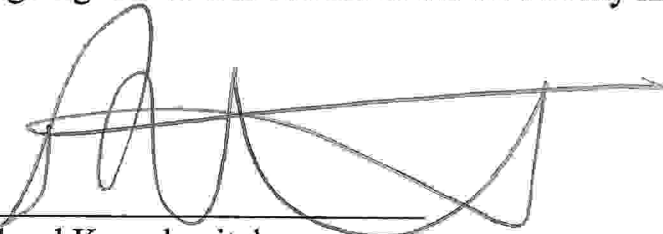


Donald Edwards, pro se

August 30, 2024

VERIFICATION

Pursuant to VA. Code 8.01-4.3, I verify under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.



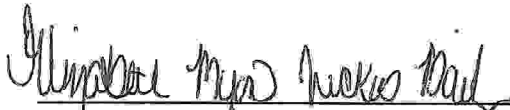
Richard Kowalewitch

August 30, 2024

NOTARY:

State/Commonwealth of Virginia City/County of Virginia Beach

Subscribed and Sworn/affirmed before me on the 3rd Day of September 2024


NOTARY PUBLIC / CLERK

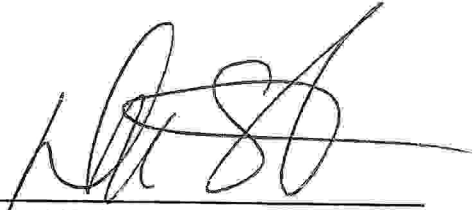
01/31/2027
(My Commission Expires)

Registration No. 7501946

ELIZABETH RYAN NUCKOLS BAILEY
NOTARY PUBLIC
REG. #7501946
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES JANUARY 31, 2027

VERIFICATION

Pursuant to VA. Code 8.01-4.3, I verify under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.




Donald Edwards

August 30, 2024

NOTARY:

State/Commonwealth of Virginia City/County of Virginia Beach

Subscribed and Sworn/affirmed before me on the 3rd Day of September 2024


NOTARY PUBLIC / CLERK

01/31/2027
(My Commission Expires)

Registration No. 7501946

ELIZABETH RYAN NUCKOLS BAILEY
NOTARY PUBLIC
REG. #7501946
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES JANUARY 31, 2027

Exhibit 1



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Jason S. Miyares
Attorney General

May 30, 2024

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

Catherine H. Lindley, Esquire
City Attorney, City of Chesapeake
306 Cedar Road
Chesapeake, Virginia 23322

Dear Ms. Lindley:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether a sitting member of the Chesapeake City Council, whose term otherwise expires on December 31, 2024, but who desires to seek election as mayor at this year's November general election must resign from the City Council by June 30 pursuant to a provision of the city charter.

Response

It is my opinion that a council member who desires to seek election as mayor at this year's November general election must resign from the City Council by June 30 pursuant to § 3.02(e) of the city charter.

Applicable Law and Discussion

The Charter for the City of Chesapeake provides, in § 3.02(c), that sitting council members may be candidates for mayor while they are serving as council members.¹ The same provision further directs that a member who decides to be a candidate for mayor "shall tender a resignation as a member of council . . . to be effective June 30 of such election year."² In light of recent legislation enacted by the General Assembly that altered the timing of municipal elections in Virginia, you seek guidance on the applicability of this provision to a current Chesapeake council member who is a mayoral candidate in November's election, asking whether the member must resign his council position effective June 30, even though his term as councilman now otherwise expires December 31.

¹ CHARTER FOR THE CITY OF CHESAPEAKE, VA., § 3.02(c). ("In the event any member of council during his or her term of office shall decide to be a candidate for the office of mayor, he or she may be eligible to do so . . .").

² *Id.*

When § 3.02(c) of the Charter provision was adopted in 1987,³ the law provided that “[a]ll terms for mayor and council members [of the City of Chesapeake] shall begin on the first day of July” following their election⁴ and that municipal elections statewide were held in May.⁵ During its 2021 session, however, the General Assembly directed that “beginning with any election held after January 1, 2022”—and “[n]otwithstanding . . . any other provision of law”—elections for mayor or members of a local governing body “shall be held at the time of the November general election for terms to commence January 1.”⁶ In mandating this change, the General Assembly further provided that “[n]o term of a mayor [or] member of council . . . shall be shortened in implementing the change to the November election date” and directed that those officers “who were elected at a May general election and whose terms are to expire as of June 30 shall continue in office until their successors have been elected at the November general election and have been qualified to serve.”⁷

In the wake of this legislation, the Chesapeake City Council amended its Code of Ordinances to comport with the new law by moving the affected elections from May to November and setting new terms of office accordingly.⁸ In amending the pertinent section of the City Code, the City Council further provided that, “[e]xcept for the changes to the date of elections and corresponding changes in the terms of office[,] . . . all other provisions of the city charter relating to the election of council members [and] the mayor . . . shall remain in effect.”⁹

In essence, you ask what effect, if any, these legislative changes had on the resignation requirement imposed by § 3.02(c) of the City Charter.

Charters are subject to the same principles of interpretation as statutes generally,¹⁰ whereby “[the] primary objective is ‘to ascertain and give effect to legislative intent[.]’”¹¹ Legislative intent, in turn, must be gathered from the words used in the statute,¹² and “[w]hen a statute is unambiguous, we must apply the

³ See 1987 Va. Acts ch. 76.

⁴ See *id.* Chesapeake council members serve staggered four-year terms. See *id.*; CHARTER FOR THE CITY OF CHESAPEAKE, VA., § 3.02(c); CITY OF CHESAPEAKE, VA., Code § 2-1(c).

⁵ See former VA. CODE ANN. § 24.1-90; 2000 Va. Acts ch. 1045 (amending Code § 24.2-222 and adopting § 24.2-222.1).

⁶ 2021 Va. Acts ch. 103 (Sp. Sess. I) (codified at VA. CODE ANN. § 15.2-1400(E)). From 2000 to 2022, cities were authorized to choose whether they conducted their municipal elections in May or November. See 2000 Va. Acts ch. 1045 (amending § 24.2-222 and adopting § 24.2-222.1 to allow cities to shift their elections from May to November.).

⁷ 2021 Va. Acts ch. 103 (Sp. Sess. I) (enactment cl. 2).

⁸ CITY OF CHESAPEAKE, VA., Code § 2-1. See 2021 Va. Acts ch. 103 (Sp. Sess. I) (enactment cl. 2) (directing cities with May elections to adopt an ordinance “provid[ing] for the transition of such elections to the November general election date”).

⁹ CITY OF CHESAPEAKE, VA., Code § 2-1(f).

¹⁰ See 2014 Op. Va. Att’y Gen. 70, 71 (“[A] municipal charter is an act of the General Assembly[.]”); Uhrin v. Nygaard, 101 Va. Cir. 252, 253 (Va. Beach Cir. Ct. 2019) (“[A] charter may also be construed as an amendment of the Code.” (citing Davis v. Dusch, 205 Va. 676, 683 (1964))).

¹¹ Morris v. Fed. Express Corp., 70 Va. App. 571, 578 (2019) (quoting Prophet v. Bullock Corp., 59 Va. App. 313, 316 (2011)).

¹² *Id.*; 2006 Op. Va. Att’y Gen. 101, 102.

plain meaning of that language.”¹³ Statutes, including charters, are to be considered in their entirety,¹⁴ and “courts may not ‘add . . . or delet[e] language from a statute’ in the guise of interpreting that statute[.]”¹⁵ rather, courts “disfavor a construction . . . that renders any part of the statute useless or superfluous.”¹⁶ Moreover, “whenever ‘a given controversy involves a number of related statutes, they should be read and construed together in order to give full meaning, force, and effect to each.’”¹⁷ It is assumed that the General Assembly, “when enacting new legislation, was aware of existing laws pertaining to the same subject matter and intended to leave them undisturbed.”¹⁸ Accordingly, repeal of a statute by implication is not favored, and “[t]here is a presumption against a legislative intent to repeal where the later statute does not amend the former or refer expressly to it.”¹⁹ Taken together, the settled, overarching rule is that “we presume that the legislature says what it means and means what it says.”²⁰

The General Assembly, in amending the *Code of Virginia* in 2021, clearly established, statewide, January 1 as the date upon which newly elected municipal officers were to assume office, so that a predecessor’s term thus would end on the last day of the preceding year. In so doing, the legislature further made clear that the transition from May to November elections was not to shorten an incumbent’s term. Accordingly, in the normal course, the term of current Chesapeake council members now expires on December 31.

Although a sitting council member’s compliance with the charter provision has the effect of shortening his term (June rather than December), that shortening is due to his voluntary decision to seek election to the office of mayor, as was the case prior to the 2021 amendments for council members seeking to become mayor in middle of their otherwise four-year term. The June resignation thus is not an unavoidable, automatic term reduction resulting from “implementing the change to the November election date,” *i.e.*, seating winners of newly established November elections prior to the regularly scheduled end of a sitting representative’s term, thus prematurely ending that term. Because the shortening, instead, is one caused by the council member’s own independent action, the recently mandated transition to November elections does not negate the effect of the resignation requirement contained in § 3.02(c) of the city charter.²¹

¹³ *Appalachian Power Co. v. State Corp. Comm’n*, 284 Va. 695, 706 (2012).

¹⁴ *Dep’t of Med. Assistance Servs. v. Beverly Healthcare of Fredericksburg*, 268 Va. 278, 285 (2004) (“[A] statute should be read and considered as a whole, and the language of a statute should be examined in its entirety to determine the intent of the General Assembly from the words contained in the statute.”).

¹⁵ *Berry v. Bd. of Supvrs. of Fairfax Cnty.*, 302 Va. 114, 133 (2023) (alteration in original) (quoting *Appalachian Power Co. v. State Corp. Comm’n*, 284 Va. 695, 706 (2012)).

¹⁶ *Shoemaker v. Funkhouser*, 299 Va. 471, 487 (2021). It is a “well-settled principle that ‘[i]t is not to be presumed that the legislature intended any part of [a] statute to be without meaning.’” *Id.* at 488 (alteration in original) (quoting *Postal Tel. Cable Co. v. Norfolk & W. R.R. Co.*, 88 Va. 920, 926 (1892)).

¹⁷ *Boynton v. Kilgore*, 271 Va. 220, 229 (2006) (quoting *Ainslie v. Inman*, 265 Va. 347, 353 (2003)).

¹⁸ *Sexton v. Cornett*, 271 Va. 251, 257 (2006).

¹⁹ *Ogunde v. Commonwealth*, 271 Va. 639, 644 (2006).

²⁰ *Prease v. Clarke*, 302 Va. 376, 383 (2023) (quoting *Tvardek v. Powhatan Vill. Homeowners Ass’n, Inc.*, 291 Va. 269, 277 (2016) (internal punctuation omitted)).

²¹ In ascertaining legislative intent, courts “consider ‘the evil sought to be corrected by the legislature’ when it adopted the pertinent language.” *GEICO Advantage Ins. Co. v. Miles*, 301 Va. 448, 455 (2022) (quoting *So. Ry. Co. v. Commonwealth*, 205 Va. 114, 117 (1964)).

Catherine H. Lindley, Esq.
May 30, 2024
Page 4

Rather, because the General Assembly in no way addressed resignation requirements or any other charter provisions in enacting the legislation, Charter § 3.02(c) remains applicable law.²²

I therefore conclude that the charter provision requiring resignation can stand and be given effect irrespective of the recent Code amendments. In reaching this conclusion, I apply the rule that “where there are two statutes, the earlier special and the later general, and the terms of the general are broad enough to include the subject matter provided for in the special, a presumption arises that the earlier special act is to be considered as remaining in effect”²³ Because the charter here is the earlier, special act, the effect of its plain language cannot be rendered superfluous and § 3.02(c) is not superseded by the later, general act adopted in 2021.²⁴ In other words, laws applicable to a particular city “ordinarily are not repealed by general laws relating to the same subject-matter.”²⁵ The unambiguous, plain language of § 3.02(c) of Chesapeake’s city charter therefore controls, and a council member seeking election to the office of mayor must resign his council position effective June 30.²⁶

Conclusion

Accordingly, it is my opinion that a City of Chesapeake council member, whose term otherwise expires on December 31, 2024, but who desires to seek election as mayor at this year’s November general election, must resign from the City Council by June 30 pursuant to § 3.02(c) of the city charter.²⁷

With kindest regards, I am,

Very truly yours,



Jason S. Miyares
Attorney General

²² Indeed, the General Assembly, since 2021, has chosen to amend the charter, but in so doing left § 3.02(c) untouched, further evincing its intent that the resignation requirement remain in effect. *See* 2022 Va. Acts ch. 280 (striking a provision of § 5.04 of the city charter).

²³ *Sexton*, 271 Va. at 257.

²⁴ As previously explained by this Office, “[t]he guiding principle governing the construction of charter provisions and general statutes is that conflicts between the two should be avoided if reasonably possible. The conflict between the two statutes must be clear and the provisions of the two so inconsistent with each other that both cannot prevail, before the prior statute will be held to be repealed or inoperative.” 2010 Op. Va. Att’y Gen. 137, 139 (footnotes omitted).

²⁵ *Scott v. Lichford*, 164 Va. 419, 423 (1935).

²⁶ “When the language of a statute is unambiguous, courts are bound by the plain meaning of that language and may not assign a construction that amounts to holding that the General Assembly did not mean what it actually has stated.” *Williams v. Commonwealth*, 265 Va. 268, 271 (2003). A court “can only administer the law as it is written.” *Prease*, 302 Va. at 385 (quoting *In re Woodley*, 290 Va. 482, 490 (2015)).

²⁷ I note that Virginia law affords localities a process by which they can seek charter amendments by the General Assembly. *See* VA. CODE ANN. § 15.2-201 (2018).

Exhibit 2

824 24th Street
Virginia Beach, VA 23451
August 12, 2024

HAND DELIVER

Ms. Christine Lewis, General Registrar/Director of Elections
Voter Registrar's Office
City of Virginia Beach
P.O. Box 6247
Virginia Beach, VA 23456-0247

Dear Ms. Lewis:

RE: INELIGIBLE CANDIDATES ON THE BALLOT

By authority of your office as the Voter Registrar of Virginia Beach, I respectfully request that you remove from the ballot, for the November 5, 2024 election, the following persons for the following reasons.

- Bobby Dyer, for not resigning his office as required by the Virginia Beach City Charter Charter §3.02:2
- Sabrina Wooten, for not resigning her office as required by the Virginia Beach City Charter Charter §3.02:2

Virginia Beach City Charter §3.02:2 “. . . In the event any councilman, including the mayor, shall decide during his term of office to be a candidate for mayor, he shall tender his resignation as a councilman not less than ten days prior to the date for the filing of petitions as required by general law. . . .”

I would like you to take notice of Virginia Attorney General Miyares's opinion of May 30, 2024, with special attention to his conclusion, which states:

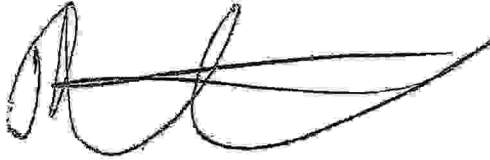
“Accordingly, it is my opinion that a City of Chesapeake council member, whose term otherwise expires on December 31, 2024, but who desires to seek election as mayor at this year's November general election, must resign from the City Council by June 30 pursuant to § 3.02(c) of the city charter”

Clearly, the Virginia Beach City Charter states Council Members, including the Mayor, must resign ten days prior to petition date, meaning on the date your office qualified the two persons mentioned above, they were not eligible for and must be removed from the ballot. The language is clear and unambiguous as is the opinion from the Attorney General.

Ms. Christine Lewis
Page 2
August 12, 2024

I understand this is likely an oversight, however it must be corrected immediately. If not, it would be an egregious violation of my rights as a candidate in this election. Thank you for your time in advance.

Sincerely,

A handwritten signature in black ink, appearing to be 'RK' followed by a long, sweeping horizontal line that ends in a small hook.

Richard W. "RK" Kowalewitch

Enclosures:

Opinion from AG Miyares dated May 30, 2024
Virginia Beach City Charter §3.02:2



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Jason S. Miyares
Attorney General

May 30, 2024

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

Catherine H. Lindley, Esquire
City Attorney, City of Chesapeake
306 Cedar Road
Chesapeake, Virginia 23322

Dear Ms. Lindley:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether a sitting member of the Chesapeake City Council, whose term otherwise expires on December 31, 2024, but who desires to seek election as mayor at this year's November general election must resign from the City Council by June 30 pursuant to a provision of the city charter.

Response

It is my opinion that a council member who desires to seek election as mayor at this year's November general election must resign from the City Council by June 30 pursuant to § 3.02(e) of the city charter.

Applicable Law and Discussion

The Charter for the City of Chesapeake provides, in § 3.02(e), that sitting council members may be candidates for mayor while they are serving as council members.¹ The same provision further directs that a member who decides to be a candidate for mayor "shall tender a resignation as a member of council . . . to be effective June 30 of such election year."² In light of recent legislation enacted by the General Assembly that altered the timing of municipal elections in Virginia, you seek guidance on the applicability of this provision to a current Chesapeake council member who is a mayoral candidate in November's election, asking whether the member must resign his council position effective June 30, even though his term as councilman now otherwise expires December 31.

¹ CHARTER FOR THE CITY OF CHESAPEAKE, VA., § 3.02(e). ("In the event any member of council during his or her term of office shall decide to be a candidate for the office of mayor, he or she may be eligible to do so . . .").

² *Id.*

When § 3.02(c) of the Charter provision was adopted in 1987,³ the law provided that “[a]ll terms for mayor and council members [of the City of Chesapeake] shall begin on the first day of July” following their election⁴ and that municipal elections statewide were held in May.⁵ During its 2021 session, however, the General Assembly directed that “beginning with any election held after January 1, 2022”—and “[n]otwithstanding . . . any other provision of law”—elections for mayor or members of a local governing body “shall be held at the time of the November general election for terms to commence January 1.”⁶ In mandating this change, the General Assembly further provided that “[n]o term of a mayor [or] member of council . . . shall be shortened in implementing the change to the November election date” and directed that those officers “who were elected at a May general election and whose terms are to expire as of June 30 shall continue in office until their successors have been elected at the November general election and have been qualified to serve.”⁷

In the wake of this legislation, the Chesapeake City Council amended its Code of Ordinances to comport with the new law by moving the affected elections from May to November and setting new terms of office accordingly.⁸ In amending the pertinent section of the City Code, the City Council further provided that, “[e]xcept for the changes to the date of elections and corresponding changes in the terms of office[.], . . . all other provisions of the city charter relating to the election of council members [and] the mayor . . . shall remain in effect.”⁹

In essence, you ask what effect, if any, these legislative changes had on the resignation requirement imposed by § 3.02(c) of the City Charter.

Charters are subject to the same principles of interpretation as statutes generally,¹⁰ whereby “[the] primary objective is ‘to ascertain and give effect to legislative intent[.]’”¹¹ Legislative intent, in turn, must be gathered from the words used in the statute,¹² and “[w]hen a statute is unambiguous, we must apply the

³ See 1987 Va. Acts ch. 76.

⁴ See *id.* Chesapeake council members serve staggered four-year terms. See *id.*: CHARTER FOR THE CITY OF CHESAPEAKE, VA., § 3.02(C), CITY OF CHESAPEAKE, VA., Code § 2-1(e).

⁵ See former VA. CODE ANN. § 24.1-90; 2000 Va. Acts ch. 1045 (amending Code § 24.2-222 and adopting § 24.2-222.1).

⁶ 2021 Va. Acts ch. 103 (Sp. Sess. I) (codified at VA. CODE ANN. § 15.2-1400(B)). From 2000 to 2022, cities were authorized to choose whether they conducted their municipal elections in May or November. See 2000 Va. Acts ch. 1045 (amending § 24.2-222 and adopting § 24.2-222.1 to allow cities to shift their elections from May to November).

⁷ 2021 Va. Acts ch. 103 (Sp. Sess. I) (enactment cl. 2).

⁸ CITY OF CHESAPEAKE, VA., Code § 2-1. See 2021 Va. Acts ch. 103 (Sp. Sess. I) (enactment cl. 2) (directing cities with May elections to adopt an ordinance “provid[ing] for the transition of such elections to the November general election date”).

⁹ CITY OF CHESAPEAKE, VA., Code § 2-1(f).

¹⁰ See 2014 Op. Va. Att’y Gen. 70, 71 (“[A] municipal charter is an act of the General Assembly[.]”); *Uhrin v. Nygaard*, 101 Va. Cir. 252, 253 (Va. Beach Cir. Ct. 2019) (“[A] charter may also be construed as an amendment of the Code.” (citing *Davis v. Dusch*, 205 Va. 676, 683 (1964))).

¹¹ *Morris v. Fed. Express Corp.*, 70 Va. App. 571, 578 (2019) (quoting *Prophet v. Bullock Corp.*, 59 Va. App. 313, 316 (2011)).

¹² *Id.*; 2006 Op. Va. Att’y Gen. 101, 102.

plain meaning of that language.¹³ Statutes, including charters, are to be considered in their entirety,¹⁴ and “courts may not ‘add . . . or delet[e] language from a statute’ in the guise of interpreting that statute[.]”¹⁵ rather, courts “disfavor a construction . . . that renders any part of the statute useless or superfluous.”¹⁶ Moreover, “whenever ‘a given controversy involves a number of related statutes, they should be read and construed together in order to give full meaning, force, and effect to each.’”¹⁷ It is assumed that the General Assembly, “when enacting new legislation, was aware of existing laws pertaining to the same subject matter and intended to leave them undisturbed.”¹⁸ Accordingly, repeal of a statute by implication is not favored, and “[f]here is a presumption against a legislative intent to repeal where the later statute does not amend the former or refer expressly to it.”¹⁹ Taken together, the settled, overarching rule is that “we presume that the legislature says what it means and means what it says.”²⁰

The General Assembly, in amending the *Code of Virginia* in 2021, clearly established, statewide, January 1 as the date upon which newly elected municipal officers were to assume office, so that a predecessor’s term thus would end on the last day of the preceding year. In so doing, the legislature further made clear that the transition from May to November elections was not to shorten an incumbent’s term. Accordingly, in the normal course, the term of current Chesapeake council members now expires on December 31.

Although a sitting council member’s compliance with the charter provision has the effect of shortening his term (June rather than December), that shortening is due to his voluntary decision to seek election to the office of mayor, as was the case prior to the 2021 amendments for council members seeking to become mayor in middle of their otherwise four-year term. The June resignation thus is not an unavoidable, automatic term reduction resulting from “implementing the change to the November election date,” *i.e.*, seating winners of newly established November elections prior to the regularly scheduled end of a sitting representative’s term, thus prematurely ending that term. Because the shortening, instead, is one caused by the council member’s own independent action, the recently mandated transition to November elections does not negate the effect of the resignation requirement contained in § 3.02(c) of the city charter.²¹

¹³ *Appalachian Power Co. v. State Corp. Comm’n*, 284 Va. 695, 706 (2012).

¹⁴ *Dep’t of Med. Assistance Servs. v. Beverly Healthcare of Fredericksburg*, 268 Va. 278, 285 (2004) (“[A] statute should be read and considered as a whole, and the language of a statute should be examined in its entirety to determine the intent of the General Assembly from the words contained in the statute.”).

¹⁵ *Berry v. Bd. of Supvrs. of Fairfax Cnty.*, 302 Va. 114, 133 (2023) (alteration in original) (quoting *Appalachian Power Co. v. State Corp. Comm’n*, 284 Va. 695, 706 (2012)).

¹⁶ *Shoemaker v. Funkhouser*, 299 Va. 471, 487 (2021). It is a “well-settled principle that ‘[i]t is not to be presumed that the legislature intended any part of [a] statute to be without meaning.’” *Id.* at 488 (alteration in original) (quoting *Postal Tel. Cable Co. v. Norfolk & W. R.R. Co.*, 88 Va. 920, 926 (1892)).

¹⁷ *Boynston v. Kilgore*, 271 Va. 220, 229 (2006) (quoting *Ainslie v. Inman*, 265 Va. 347, 353 (2003)).

¹⁸ *Sexton v. Cornett*, 271 Va. 251, 257 (2006).

¹⁹ *Ogunde v. Commonwealth*, 271 Va. 639, 644 (2006).

²⁰ *Prease v. Clarke*, 302 Va. 376, 383 (2023) (quoting *Tvardek v. Powhatan Vill. Homeowners Ass’n, Inc.*, 291 Va. 269, 277 (2016) (internal punctuation omitted)).

²¹ In ascertaining legislative intent, courts “consider ‘the evil sought to be corrected by the legislature’ when it adopted the pertinent language.” *GEICO Advantage Ins. Co. v. Miles*, 301 Va. 448, 455 (2022) (quoting *So. Ry. Co. v. Commonwealth*, 205 Va. 114, 117 (1964)).

Catherine H. Lindley, Esq.
May 30, 2024
Page 4

Rather, because the General Assembly in no way addressed resignation requirements or any other charter provisions in enacting the legislation, Charter § 3.02(c) remains applicable law.²²

I therefore conclude that the charter provision requiring resignation can stand and be given effect irrespective of the recent Code amendments. In reaching this conclusion, I apply the rule that “where there are two statutes, the earlier special and the later general, and the terms of the general are broad enough to include the subject matter provided for in the special, a presumption arises that the earlier special act is to be considered as remaining in effect”²³ Because the charter here is the earlier, special act, the effect of its plain language cannot be rendered superfluous and § 3.02(c) is not superseded by the later, general act adopted in 2021.²⁴ In other words, laws applicable to a particular city “ordinarily are not repealed by general laws relating to the same subject-matter.”²⁵ The unambiguous, plain language of § 3.02(c) of Chesapeake’s city charter therefore controls, and a council member seeking election to the office of mayor must resign his council position effective June 30.²⁶

Conclusion

Accordingly, it is my opinion that a City of Chesapeake council member, whose term otherwise expires on December 31, 2024, but who desires to seek election as mayor at this year’s November general election, must resign from the City Council by June 30 pursuant to § 3.02(c) of the city charter.²⁷

With kindest regards, I am,

Very truly yours,



Jason S. Miyares
Attorney General

²² Indeed, the General Assembly, since 2021, has chosen to amend the charter, but in so doing left § 3.02(c) untouched, further evincing its intent that the resignation requirement remain in effect. *See* 2022 Va. Acts ch. 280 (striking a provision of § 5.04 of the city charter).

²³ *Sexton*, 271 Va. at 257.

²⁴ As previously explained by this Office, “[t]he guiding principle governing the construction of charter provisions and general statutes is that conflicts between the two should be avoided if reasonably possible. The conflict between the two statutes must be clear and the provisions of the two so inconsistent with each other that both cannot prevail, before the prior statute will be held to be repealed or inoperative.” 2010 Op. Va. Att’y Gen. 137, 139 (footnotes omitted).

²⁵ *Scott v. Lichford*, 164 Va. 419, 423 (1935).

²⁶ “When the language of a statute is unambiguous, courts are bound by the plain meaning of that language and may not assign a construction that amounts to holding that the General Assembly did not mean what it actually has stated.” *Williams v. Commonwealth*, 265 Va. 268, 271 (2003). A court “can only administer the law as it is written.” *Prease*, 302 Va. at 385 (quoting *In re Woodley*, 290 Va. 482, 490 (2015)).

²⁷ I note that Virginia law affords localities a process by which they can seek charter amendments by the General Assembly. *See* VA. CODE ANN. § 15.2-201 (2018).

1987, c. 227; 1995, c. 697; 2007, c. 725)

§ 3.02:2. Election of mayor.

The mayor shall be elected at the general election in November 2008, and each fourth year thereafter, to serve for a term of four years. Candidates for mayor shall run for one of the at-large seats. A candidate running for mayor shall not run for any other seat.

In the event any councilman, including the mayor, shall decide during his term of office to be a candidate for mayor, he shall tender his resignation as a councilman not less than ten days prior to the date for the filing of petitions as required by general law. Such resignation shall be effective on December 31, shall constitute the councilman's intention to run for mayor, shall require no formal acceptance by the remaining councilmen and shall be final and irrevocable when tendered.

The unexpired portion of the term of any council member who has resigned to run for mayor shall be filled at the same general election. (1987, c. 227; 2007, c. 725)

§ 3.02:3. Council member resignation to run for new seat.

A. In the event that any council member from one of the residence districts shall decide during his term of office to be a candidate for an at-large seat, the council member shall tender his resignation as a council member not less than 10 days prior to the date for the filing of petitions as required by general law. Such resignation shall be effective on December 31, shall constitute the council member's intention to run for the at-large seat, shall require no formal acceptance by the remaining council members, and shall be final and irrevocable when tendered. The unexpired portion of the term of any council member who has resigned to run for an at-large seat shall be filled at the same general election, or by special election if the at-large seat is to be filled by special election.

B. In the event that any council member from one of the at-large seats shall decide during his term of office to be a candidate for a residence district seat, the council member shall tender his resignation as a council member not less than 10 days prior to the date for the filing of petitions as required by general law. Such resignation shall be effective on December 31, shall constitute the council member's intention to run for the residence district seat, shall require no formal acceptance by the remaining council members, and shall be final and irrevocable when tendered. The unexpired portion of the term of any council member who has resigned to run for a residence district seat shall be filled at the same general election, or by special election if the residence district seat is to be filled by special election. (2020, cc. 127, 762)

§ 3.03. Filling vacancies.

Vacancies in the office of councilmen, from whatever cause arising, except where such vacancy occurs due to a resignation to run for the office of mayor, shall be filled within 60 days for the unexpired portion of the term by a majority vote of the remaining members of the council, provided that so long as any councilmen are elected by and from districts the vacancy shall be filled by a qualified voter residing in the same district.

If a vacancy shall occur in the office of mayor, the council shall choose by majority vote of the remaining members thereof one of its members to be mayor until his successor is elected and qualified in accordance with general law. (1962, c. 147; 1987, c. 227; 2003, c. 869)