

RESOLUTION NO. 2968

A RESOLUTION ADOPTING A DECISION AND FINDINGS RELATING TO THE QUALIFICATIONS OF A COUNCILOR-ELECT IN THE NOVEMBER 2014 GENERAL ELECTION

DECISION AND FINDINGS OF THE BEND CITY COUNCIL OF THE QUALIFICATIONS OF COUNCILOR ELECT CASEY ROATS

REQUEST: Consider qualifications of Casey Roats prior to certification of election results based on questions raised as to his qualifications to be a Councilor under the Charter provision related to residing in the city for 12 months immediately before being elected and being a qualified elector.

PROCEEDING: Special Meeting December 1, 2014, Adoption of Findings at Regular Meeting on December 3, 2014.

BACKGROUND AND COUNCIL PROCEDURE

A. At the regular Council meeting on November 19, 2014, Councilor Victor Chudowsky spoke about issues around qualification of Casey Roats. Councilor Chudowsky moved to establish the following process to decide the election for Council Position 6 and the qualifications of Casey Roats, the candidate who received the most votes for that position:

1. The Council will meet in special session on December 1 at 3 p.m. and at that time give Councilor-elect Roats the opportunity to present evidence and argument as to why he believes he is qualified. The Council may ask Casey Roats questions regarding his qualification to serve as a Councilor.
2. After giving Councilor-elect Roats the opportunity to present his case, the Council will deliberate and decide whether he was qualified.
3. If the Council determines that Councilor-elect Roats was qualified, the Council will make findings and proceed with certification of elected councilors at the December 3 council meeting.

Councilor Scott Ramsay seconded the motion. Councilor Mark Capell clarified that the discussion was about the residency qualification in the Charter. Mayor Jim Clinton explained why Council had responsibility to interpret the Charter. Councilor Jodie Barram reiterated that it was a conversation between the Council and the candidate. It would not be a public hearing. The motion passed unanimously, 6-0 (with Councilor Russell absent)

B. By motion of the City Council at the Special Meeting on December 1, 2014, after nearly three hours of discussion and deliberation, the City Council decided by roll call vote after a motion and second, that Councilor-elect Casey Roats meets the Councilor qualifications of the City Charter. The motion passed 5-2. Because this is a matter of

community-wide interest and could set future precedent, and because the Council's decision is based on a unique set of facts as they relate to the City of Bend Charter, Council is adopting detailed Findings of Fact and Law. Council is also setting forth the view of the councilors voting "no", since in this particular instance, under the City's Charter, the City Council acts more like a judge, and a written record of its reasoning is informative to the public and future councils.

FACTS

The City Council makes the following findings of fact:

1. Casey Roats sold his home at 61047 Borden Drive in Bend, where his family lived for the previous eight years, in October of 2013.
2. He then stayed with his parents at 61788 Teal Road, which is several miles outside the city limits in Deschutes County.
3. On November 19, 2013, Casey Roats registered to vote stating a residence address of 61147 Hamilton Lane (his business address in Bend), which is inside the Bend city limits.
4. On December 4, 2013, Casey Roats submitted a Building Permit Application for the lot at 61200 Brookwood Blvd in the City of Bend; on December 5, 2013, the Building Permit Application was deemed complete and routed for review.
5. Casey Roats submitted a Candidate Filing with the City Recorder on June 19, 2014, listing 61200 Brookwood Blvd as his residence and his P.O. Box as his mailing address.
6. On June 30, 2014, Casey Roats changed his voter registration to the Brookwood Blvd address. His wife also changed her voter registration to the same address.
7. On October 3, 2014, Casey Roats received a final building inspection and residential certificate of occupancy for the Brookwood Blvd home.
8. On October 11, 2014, Casey Roats and his family moved into the new home on Brookwood and have resided there continuously.
9. In his initial statement and in response to questions, Mr. Roats conveyed to Council the following additional information:

In September of 2013 he and his wife decided that if they could sell their house they would. They always had a plan that they wanted to take advantage of the lot owned by their Trust (which owns the property and other adjoining property) on Brookwood. Shortly thereafter, he approached a gentleman looking at houses in the neighborhood and within a week, his Borden house was under contract for sale. The sale happened quickly.

Roats' parents were going to be gone for some period of time. Since Roats needed to save money, he took advantage of the opportunity to stay at his parents' house for free. In his written response, Casey Roats also noted the shortage of rentals in the city, particularly short term leases. They therefore moved out to his parents' house and began construction plans. This took a few months. Work on the house began in January 2014. Casey Roats did all excavation work and plumbing and helped with concrete. He stated he really

anticipated their home being done in June or July of 2014, but with the Murphy Crossing work he didn't have as much time as expected, so it took until October.

They were not intending to live with his parents any longer than they had to. The family moved in to their Brookwood home on October 11, 2014. During the time of their stay at his parents, their personal belongings were distributed amongst various locations including two storage units. About 60% of their belongings remained boxed in a detached garage at his mom and dad's house, since the home was furnished. Some belongings were also at his office in the city. Although they stayed with his parents, they did not get mail or use it as an address, and never intended to stay except while their new house was being built. He noted that his whole life revolves around Bend, and that building a house demonstrates his commitment to Bend.

He owns the building where his business is located in the city. He used the business address on his voter's registration simply because he thought it was the best available address at the time to reach him physically.

His personal mail goes to a PO Box in Bend. His license address is still Borden Drive. His DMV address is still Borden Drive. His utility bills for his business all go to Hamilton (his business address), the new utilities go to Brookwood. He has been paying the power meter on the Brookwood property since they began construction in January of 2014. His taxes were filed at the Borden address for 2013, and will be filed with the Brookwood address for 2014. Neither he nor his wife paid utilities, rent or anything else at his parents' house. They considered it a temporary stay.

He acknowledged that he was on the Sewer Infrastructure Advisory Committee and the Infrastructure Advisory Committee, which are committees to the City Council that require members to reside within the city limits (he lived at Borden Drive at the time he applied for those committees). He stated that he considered himself a resident of the city, that people knew he had sold his prior home and was building a new house, and the issue never came up in regards to his membership on the committees when he stayed at his parents.¹

10. The Council finds his testimony to be forthright, credible, and genuine in his intent. Casey Roats did not hide any facts and his belief and intent was apparent in his description of the events.
11. An issue was raised by a neighbor relating to whether he lived in the Brookwood home continuously after October 11, and whether he intended to build the house and sell it as a speculative investment rather than as a home for his family. Casey Roats provided letters evidencing his intent to live in the house with his family, and relayed to Council that he did not solicit, entertain or accept any offers on the house. The Council finds that there is adequate and credible

¹ Council notes that Non-City residents may appointed to advisory committees when the board, committee, or commission serves persons outside City boundaries. Bend Code Section 1.20.010(D).

evidence that he did live in the house continuously from October 11 on, and that he intended to move into it as a family home during its construction.

12. Casey Roats was elected by receiving 44.4% of the total votes cast for Position 6 candidates. The next candidate received 41.88% of the votes. The issue of his residency was first raised by the Source on October 21, 2014, and in a Bulletin article on October 21, 2014. Regular ballots were mailed on October 15 (September 20 for military/overseas; October 6 for out of state). The issue was raised in other articles and letters to editors and was publicly debated during the election.
13. This decision is based on the City's Charter, the legal parameters explained by the City Attorney and state law, the Exhibits provided by the City Attorney as well as Councilors, and the answers to questions and explanations provided by Councilor-elect Casey Roats.

COUNCIL DECISION

Charter:

1. Section 12 of the City of Bend Charter of 1995 (Bend Charter) provides:

Section 12. Qualifications.

- (1) A councilor shall be a qualified elector under the state constitution and shall have resided in the city during the 12 months immediately before being elected or appointed to the office. In this subsection, "city" means area inside the city limits at the time of the election or appointment.
- (2) A councilor may be employed in a city position that is substantially volunteer in nature. Whether the position is so may be decided by the municipal court or in some other manner, whichever the council prescribes.
- (3) Except as subsection (2) of this section provides to the contrary, the council is the final judge of the election and qualifications of councilors.

The section on Vacancies also addresses residency, and states:

Section 21. Vacancies. The office of a councilor becomes vacant:

- ...
- (2) Upon declaration by the council of the vacancy in the case of the incumbent's:
 - (a) Failure, following election or appointment to the office, to qualify for the office within ten days after the time of his or her term of office is to begin,
 - (b) Absence from the city for 30 days without the council's consent or from all meetings of the council within a 60 day period,

- (c) Ceasing to reside in the city,
- (d) Ceasing to be a qualified elector under state law,
- (e) Conviction of a crime of moral turpitude, or
- (f) Resignation from the office.

2. Based on this language, Council on December 1 generally considered the following questions, as well as additional discussion, for almost three hours, in the context of the above language.

1. Can a person reside in the city without having a specific residential address in the city?
2. What does it mean to have a resident address?
3. What is the role of intent in the analysis?
4. What is the purpose of the Charter provision and the result sought to be accomplished by the requirement?
5. Is there a concern related to his being a "qualified" elector under the Charter?

Council Findings:

1. Article XI, section 2 of the Oregon Constitution provides:

Section 2. Formation of corporations; municipal charters; intoxicating liquor regulation. Corporations may be formed under general laws, but shall not be created by the Legislative Assembly by special laws. The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon, and the exclusive power to license, regulate, control, or to suppress or prohibit, the sale of intoxicating liquors therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the State of Oregon. (*Emphasis added.*)

2. The City's Charter establishes its home rule authority under the state constitution. Chapter II, Sections 4 and 5. It therefore has all the powers expressly or impliedly granted or allowed to the city, all powers are vested in the council unless reserved to the voters, and all powers under the charter are to be liberally construed.
3. A home rule municipality has the power to act on all matters under the Oregon Constitution unless a state law prohibits it acting on that specific matter, or clearly displaces local civil or administrative regulations. Especially with regard to

matters of responsible government, in elections, in official accountability, in the procedures of policy planning and decision, taxing and borrowing, these are matters of local control unless a state law is addressed to a concern of the state with the structure and procedures of local agencies, and the concern is justified by a need to safeguard the interests of persons affected by the procedures of local government. *City of LaGrande/Astoria v. PERB*, 281 Or 137, 143, 147-48, 156 (1978). Qualifications of councilors are a local matter. No state statutes—not the election statutes or otherwise—preempt this local authority, or suggest an intent to displace the Charter criteria or Council’s authority to determine the qualifications of Councilors.

4. Based on the language of the Bend Charter in conjunction with the election laws, and as determined by Council on November 19, 2014, the current Council has the authority to determine the qualifications of Councilor-elect Casey Roats.
5. In interpreting the Bend Charter, the Council is guided by basic statutory construction principles as follows:
 - a. It is to interpret a city charter provision by the same means as other legislation, including attention to the meaning intended by those who adopted it if that can be ascertained. See, e.g., *Brown v. City of Eugene*, 250 Or.App. 132 (2012); ORS 174.020.
 - b. When interpreting a city charter provision that was enacted by the voters, the Council is to discern what the voters intended, which intent can be derived first by looking to the text and context of the provision.
 - c. To interpret a charter enacted by the voters, in the same way that Council would interpret an ordinance, by first examining the text in context, together with any relevant legislative history. See, e.g., *Miller v. City of Portland* (2014), WL 5474513.
 - d. Local charters and ordinances, as well as state statutes, are subject to the general rules of statutory construction; that is, rules for ascertaining the meaning of ambiguous legislation. In general, grants of power to local government are strictly construed, and doubt is usually resolved against the local government and in favor of the individual. To overcome this rule of strict construction, most city charters include a requirement that they be liberally construed.” League of Oregon Cities, *City Handbook*, (May 2013), 2-9 – 2-10.
 - e. In the absence of explicit definitions, courts presume that the legislature intended that words be given their plain, natural and ordinary meanings. *Oregonian Publishing Co. v. Portland School District*, 329 Or 393 (1999).

6. On the question of the Charter requirement of being a "qualified elector" at the time of the election, the Council finds that this qualification is met. The Charter requires that a councilor be a "qualified elector" at the time of the election. This requirement is straightforward. Under the State Constitution, to be a "qualified elector" a person has to be 18, have resided in the state for 6 months prior to the election (with some exceptions), and be registered not less than 20 days immediately preceding the election in the manner provided by law. Oregon Constitution, Article II, Section 2(1). No facts have been raised that dispute that Mr. Roats was a qualified elector. He is a citizen, over 18, lives in the State and was registered to vote not less than 20 calendar days before the election.² The City Recorder confirmed his timely registration to vote with Deschutes County, and the City Attorney confirmed his timely registration to vote with the State Elections Office. Under the City Charter and state law, this makes him a qualified elector. Whether there is an issue with his registration form, the accuracy of the information on his registration form, and/or his knowledge or fault, is for the State Elections office to determine. These issues do not appear to be reflective of whether Casey Roats was a "qualified elector" entitled to vote in the election.
7. The Council discussion focused on three key points of view in considering the issue before it regarding the "reside" provision. First, the meaning of the word "reside" based on the dictionary definition. Second, the intent of the requirement based on the definition and in the context of the Charter as a whole. Third, the interpretation of the requirement in light of the purpose of the qualification requirement.
8. The Council first considered the Dictionary definitions:

Reside 1. To make one's home :1: Dwell 2: to be present as a quality or vested as a right The New Merriam-Webster Dictionary (3rd International Edition, 1989)

Reside:

1. *a: to be in residence as the incumbent of a benefice or office
b: to dwell permanently or continuously: occupy a place as one's legal domicile*
2. *a: to be present as an element or quality
b: to be vested as a right*

Examples of reside:

He resides in St. Louis.

He still resides at his parents' house.

Meaning resides within the text of the poem.

² In Oregon, people with past felony convictions, on parole, probation and post-prison supervision can register and vote. Only people in the custody of the Oregon Department of Corrections cannot vote. People who are homeless can vote, and can use the address where they spend the greatest amount of their time as their Oregon residence address, or the County Clerk's office.

The importance of this decision resides in the fact that it relates to people across the country. Merriam—Webster, On-line version.

Reside:

intransitive verb

resided, residing

1. *to dwell for a long time; have one's residence; live (in or at)*
2. *to be present or inherent; exist (in): said of qualities, etc.*
3. *to be vested (in): said of rights, powers, etc.*

re·sid·ed, re·sid·ing, re·sides

1. *To live in a place permanently or for an extended period.*
 2. *To be inherently present; exist: the potential energy that resides in flowing water.*
 3. *To be vested, as a power or right: the authority that resides in the Supreme Court.*
 4. *Computers To be located or stored: a file that resides on a shared drive.*
- The American Heritage Dictionary (5th Edition, 2010, 2013, Houghton Mifflin Harcourt Publishing Company).*

9. The Council also reviewed the rules in the state election statute for its determination of residency for elector (voter) purposes. The Council used these rules as guidance but did not find them binding:

ORS 247.035 Rules to consider in determining residence of person for voting purposes

(1)An elections official, in determining the residence and qualifications of a person offering to register or vote, shall consider the following rules, so far as they may be applicable:

(a)The persons residence shall be the place in which habitation is fixed and to which, when the person is absent, the person intends to return.

(b)If a persons property is split by a jurisdictional line, the person shall be registered where the residence is located. If the residence is split by a jurisdictional line, the person shall register where the greatest value of the residence is located according to county assessment and taxation records.

(c)A person shall not be considered to have gained a residence in any location in this state into which the person comes for temporary purposes only, without the intention of making it the persons home.

(d)If a person moves to another state with the intention of making a permanent home, the person shall be considered to have lost residence in this state.

(e) If a person goes from this state into any other state or territory and votes there, the person shall be considered to have lost residence in this state.

(f) A person who has left the place of the persons residence for a temporary purpose only shall not be considered to have lost residence.

(2) Notwithstanding subsection (1) of this section, a person who has left the place of the persons residence for a temporary purpose only, who has not established another residence for voter registration purposes and who does not have a place in which habitation is fixed shall not be considered to have changed or lost residence. The person may register at the address of the place the persons residence was located before the person left.

(3) An elections official may consider, but is not limited to considering, the following factors in determining residency of a person for voter registration purposes:

(a) Where the person receives personal mail;

(b) Where the person is licensed to drive;

(c) Where the person registers motor vehicles for personal use;

(d) Where any immediate family members of the person reside;

(e) The address from which the person pays for utility services; and

(f) The address from which the person files any federal or state income tax returns. [Formerly 250.410; 1995 c.214 §1]

10. The majority of Council finds that one of the dictionary definition of "reside" is the definition of "to occupy a place of one's legal domicile", to "dwell permanently and continuously." Under the facts here, clearly the intent was to dwell permanently in Bend. A legal residence means a place someone intends to live permanently or for an indefinite period of time.

11. The facts also fall within the factors considered to establish residency in ORS 247.035 (3). The extenuating circumstances with regard to elections have to do with temporary displacement with regard to that residence, and are the most similar to the policy basis allowing flexibility for homeless persons. The fact that his personal property was in two storage units, in a detached garage at his parents' property, and in his office, that he did not pay rent or utilities or sign a lease and did not receive personal mail at the temporary location, show an intent to never have a domicile anywhere else but in Bend. Temporary displacement

from the City does not take away from meeting the requirement. He was living in Bend at the time of the election as planned.

12. Likewise, under ORS 247.035(c), it would not be reasonable for Roats to consider that he gained a residence at his parent's house in the County under the facts as conveyed to Council.
13. The Council finds that intent is a consideration in the interpretation of the phrase "resided in the city." Casey Roats intended to stay with his parents outside of the city for the shortest period of time possible, intended to remain a resident of Bend permanently, maintained community and personal ties with Bend, was constructing a home in Bend and continued his business in Bend. Council considered the idea of residency at the federal level, dating back to the qualifications provisions of the U.S. Constitution debated at the founding of our country, and in other legal contexts, and finds that in limited situations, it does not always require a continuous physical presence. In other words, it is possible to maintain a legal residence without physical presence.
14. In interpreting language, Council is to look not just at a word in isolation, but at the words it modifies and the context of the charter document as a whole. According to the Charter vacancy section 21, absence for 30 days or ceasing to reside would create a vacancy. The Charter thus treats presence and residing as two different ideas. The charter recognizes that one can be absent from the city and still be a resident. If it intended them to be the same, it could have said so in the qualifications section of the Charter, but it does not. It is reasonable to surmise that this omission was intentional. At the least, the difference can be presumed to give some support for treating the concepts of absence differently in the qualifications section, if reasonable, particularly in light of unusual facts.
15. Council acknowledges that the issue in durational residency requirements can be the constitutional right to travel, right to associate, and right to vote for one's candidate of choice. Such requirements are upheld, where reasonable, based on the legitimate municipal purpose of ensuring knowledgeable candidates and acquaintance with municipal issues. The City Council agrees that the City wants knowledgeable candidates who are invested in the community, but the Council does not want to exclude qualified candidates or circumvent the will of the voters. The Council is mindful of interpreting the Charter in light of the purpose of the Charter and the result sought to be accomplished by the "resided in the city" requirement.
16. Council emphasizes that its conclusion is based upon the unique facts of this case: an intent to live within the City as evidenced by the facts, no true legal residence outside the city, intent to reside in the City as evidenced by the Councilor-elects actions, and an indisputably knowledgeable candidate. Either temporary absence or residing elsewhere because of such an explainable

necessity, which is found reasonable in this case, does not disqualify a councilor within the meaning of Section 12 of the Bend Charter.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF BEND RESOLVES AS FOLLOWS:

1. Council finds that Councilor-elect Casey Roats meets the qualifications of a Councilor under Section 12 of the Bend Charter for the reasons stated in these findings of fact and decision, in council deliberations, and is also based on Casey Roats' testimony and the Exhibits considered by Council.

Adopted by the City Council the 3rd day December, 2014.


YES: Councilor Jodie Barram
Councilor Mark Capell
Councilor Scott Ramsay
Councilor Victor Chudowsky
Councilor Sally Russell

NO: Mayor Clinton
Councilor Doug Knight

Attest:

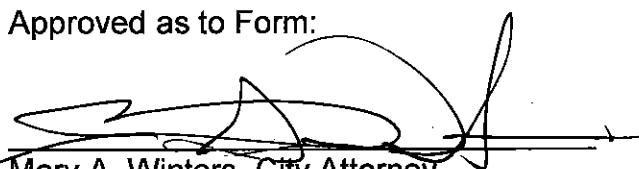


Robyn Christie, City Recorder



Jim Clinton, Mayor

Approved as to Form:



Mary A. Winters, City Attorney

The view of the two City Council members who did not vote in favor of this Resolution is generally as follows:

1. This is not a decision about Mr. Roats' character or competence for office, but a simple question of whether he did in fact reside within the city limits during the twelve months preceding the November 12 election. Giving the word "reside" its plain, natural and ordinary meaning, it means to "dwell, to live." "Shall have resided" has a clear and plain meaning. Where one resides is where one lives.
2. Mr. Roats has lived outside of the City limits during most of the duration of the 12

months before the November 4 election. He has freely admitted this fact which is not in dispute. Each person must have a residence address, including a residence to be temporarily away from. Mr. Roats has not identified a residence address within the City for the 12 months preceding the election. Given this fact, there is no room for interpretation of intent. He therefore does not meet the qualifications requirement of the Bend Charter Section 12.