

Introduced by: Joseph A. Klejka, Mayor
Introduction Date: April 10, 2012
Public Hearing: April 24, 2012
May 8, 2012
Action: Passed
Vote: 7-0

CITY OF BETHEL, ALASKA

Ordinance #11-13 Substitute

AN ORDINANCE BY THE BETHEL CITY COUNCIL AMENDING TITLE 7 ELECTIONS

Now, THEREFORE BE IT ENACTED by the City Council of Bethel Alaska as follows:

SECTION 1. Classification. This ordinance is of permanent nature and shall be codified within the Bethel Municipal Code.

SECTION 2. Bethel Municipal Code Title 7 Election is repealed in its entirety and reenacted as follows:

Chapter 7.10 General Provisions

7.10.010 Scope of title.

This title governs all city elections.

7.10.020 Definitions.

In this title, unless the context otherwise requires:

- A. "Business days" means the days the city's administrative offices are open to provide general services to the public, excluding weekends and holidays.
- B. "City" means city of Bethel.
- C. "City election" means any election:
 - 1. To fill a city office;
 - 2. Upon a proposition submitted to the voters under the ordinances of the city;
or
 - 3. That the city is required by law to administer.
- D. "Clerk" means city clerk or any properly authorized designee to the city clerk.
- E. "Calendar days" means consecutive days succeeding one (1) another in regular order.
- F. "Election" includes any regular, or special city election.
- G. "Election official" includes election officials at the polls, the clerk, the clerk's office staff, absentee voting officials, and canvass board, and review board.
- H. "Immediate family" means a candidate's grandparents, parents, grandchildren, children, siblings, spouse, spouse's children, spouses of children, or a regular member of the candidate's household.

I. "Oath" means any form of attestation by which a person signifies the person is bound in conscience to perform and act faithfully and truthfully. Oath includes affirmation.

J. "Precinct" means the territory within which resident voters may cast votes at one (1) polling place.

K. "Precinct Register" means the register maintained by the director of the State Division of Elections.

L. "Proposition" means an initiative, referendum, recall, or other question submitted by the council to the public at an election.

M. "Qualified voter" means any voter who has the qualifications required by this title and is not disqualified under Article V of the Alaska State Constitution.

N. "Questioned voter" means a voter:

1. Whose name does not appear on the register in the precinct where the voter attempts to vote;

2. Who has received an absentee ballot and does not turn it in when voting at the voter's precinct on election day;

3. Who does not present identification or is not personally known to an election official through the voter's name appears on the precinct register; or

4. Who is questioned for good cause at the polls in writing pursuant to BMC 7.50.100.

O. "Registration" or "registered" refers to the form of registration required by the state election code. For city elections, a person is registered if registered to vote in state elections at an address within the boundaries of the city thirty (30) calendar days prior to the city elections.

P. "Regular ballot" means a ballot voted at the polls which is not questioned or an absentee ballot.

Q. "Regular election" means the city election held on the first (1st) Tuesday of October annually-, unless a different date or interval of years is provided by ordinance.

R. "Signature" or "subscription" includes a mark intended as a signature or subscription.

S. "Special election" means any election held at a time other than when a regular election is held.

T. "Swear" includes "affirm."

U. "Voter" means a person who votes a ballot either in person or by absentee ballot.

7.10.030 Severability.

Should any provision of this election code, or its application to any person or set of circumstances, be held invalid, the remainder of its provisions, or of its application to any persons or circumstances, shall not be affected.

7.10.040 Powers and duties of the clerk.

A. The city clerk, in accordance with the provisions of this title, shall administer all city elections and shall determine whether candidates for municipal office are qualified in accordance with this title.

B. The clerk shall comply with the Federal Voting Rights Act, 42 USC § 1973 -1973 aa -6 as amended, and applicable regulations, and timely submit a preclearance request to

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preclear any change effecting voting, including setting a date for a special election prior to holding the election.

7.10.050 Election times.

A. Time of Regular Elections. Annually, on the first (1st) Tuesday of October, a regular election shall be held in the city for the election of vacant city offices, and for the determination of other matters as may be placed on the ballot. The council may provide for different dates for a regular election by ordinance.

B. Time of Special Elections. The council, by ~~resolution~~ or adoption of an ordinance, may call a special election at any time at least ninety (90) calendar days prior to the date of the election. Unless the council has set a date for a required special election, the city clerk shall call a special election when required by law or ordinance to place an initiative, referendum, recall or other question before the voters.

7.10.060 Notice of elections.

A. Notice of Voter Registration. The clerk shall post a notice of voter registration prior to the posting of the notice of election. The notice of voter registration shall include the qualifications required of voters, and the manner, time and place of registration.

B. Notice and Posting. The clerk shall post a notice of each election in three (3) public places in the city. The first (1st) such posting shall be accomplished at least thirty (30) calendar days before a regular election and twenty (20) calendar days before a special election. Each notice of election shall include:

1. The type of election: regular or special;
2. The date of election;
3. The hours the polling places shall be open;
4. The offices to which candidates are to be elected and the subjects of propositions and questions to be voted upon;
5. The locations of the polling places;
6. Instructions for absentee voting; and
7. Notification that anyone needing special assistance in casting their vote due to a disability or bilingual need shall contact the clerk at least twenty-four (24) hours before the time of casting their ballot.

7.10.070 Propositions and questions.

An ordinance placing propositions and questions before the voters must be adopted by the council not later than forty-five (45) calendar days before a regular or special election.

7.10.080 Nonpartisan requirement.

All city elections shall be nonpartisan.

7.10.090 Bonded indebtedness.

A. Any qualified voter may vote on a question of incurring bonded indebtedness by the city.

B. Notice of Bonded Indebtedness. Before a general obligation bond issue election, the clerk shall publish a notice at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. The notice of the city's total existing bonded indebtedness shall include:

1. The current total general obligation bonded indebtedness, including authorized but unsold bonds;
2. The cost of the debt service on the current indebtedness; and
3. The city's total assessed property value.

7.10.100 Prohibition on use of public moneys.

A. Except as provided in subsections (B) and (C) of this section, money held by the city may not be used to influence the outcome of the election of a candidate.

B. Money held by the city may be used to influence the outcome of an election concerning a ballot proposition or question, including a bond proposition, but only if the funds have been specifically appropriated for that purpose by ordinance.

C. Money held by the city and authorized for expenditure as provided in subsection (B) of this section, may be used to:

1. Disseminate information about the time and place of an election and to hold an election;

2. Provide the public with nonpartisan information about a ballot proposition or question or about all the candidates seeking election to a particular public office.

D. When expenditure of money is authorized by subsection (B) or (C) of this section and is used to influence the outcome of an election, the expenditures shall be reported to the Alaska Public Offices Commission in the same manner as an individual is required to report under AS 15.13.040.

E. City-owned or controlled buildings or facilities may be utilized for public meetings, discussions, and other assemblies by private groups supporting or opposing any ballot proposition or bond issue. City employees may arrange for public meetings and assemblies where opponents and proponents present the advantages and disadvantages of a proposed ballot proposition or bond issue. Both proponents and opponents of the ballot item shall be accorded equal access to the space.

F. No posters, fliers or other printed material advocating or opposing a ballot proposition, question, or bond issue may be displayed in any city-owned or controlled building or facility except in a single area of general public access designated by the

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building supervisor. Both proponents and opponents of the ballot item shall be accorded equal access to the space.

G. The constitutional rights of public employees to express their personal views on proposed ballot propositions, questions, or bond issues during public meetings or in interviews with news media shall not be abridged by this title. However, any employee expressing personal views shall clearly state that the statements reflect personal or professional beliefs only and do not represent the position of the city.

7.10.110 Simple majority – Prohibition on runoff elections.

All city offices shall be filled by the candidate receiving the greatest number of votes. There shall be no runoff elections. Where there is more than one term length available, the candidate who receives the greatest number of votes shall first choose the available term length for the seat in which they wish to be seated, the candidate receiving the next greatest number of votes shall then choose the next available term length. This selection process shall continue in the order and number of votes obtained until all offices are filled. In the event of a tie, the office shall be filled in accordance to the procedure set forth in BMC 7.60.070.

7.10.120 Election supplies and equipment.

A. Before the opening of the polls, the clerk shall furnish to the election board of each precinct the state voter registration list for that precinct and shall supply each polling place with sufficient materials for that precinct's election, including those materials required by this section.

B. The clerk shall prepare and provide for posting at each polling place instructions explaining to voters how to obtain ballots, how to mark them, and how to obtain new ballots to replace those destroyed or spoiled. The clerk shall provide booths at each polling place with appropriate supplies and conveniences to enable each voter to mark his ballot screened from observation. Ballot boxes shall be placed outside the voting booths in plain view of the election officials, voters and other persons at the polling place.

C. Use of computers- The clerk shall designate the computers to be used in the counting of the ballots or use the same computers as the state. The clerk may negotiate and contract with the state or private computer service for the needed computer services.

D. Test and security- No later than one week before the election, the vote tabulation system shall be tested in the presence of, and to the satisfaction of, the review board. Upon completion of the testing, a security seal shall be placed on the tabulation system for delivery to the precincts.

7.10.130 Election expenses.

A. The city shall pay all necessary expenses relating to the conduct of each city election, including those of securing polling places and providing ballot boxes, ballots,

voting booths or screens, national flags and other supplies, and any wages due to election officials except that all expenses of making a recount shall be apportioned pursuant to BMC 7.90.070.

B. The city shall pay each election official an hourly rate for time spent at his election duties, including the receiving of instructions and posting of notices. The election supervisor shall set the hourly compensation to be paid for time spent by election officials at a rate comparable to that paid by the state for state elections. The clerk shall retain a record for auditing and payment of election expenses, including the cost of giving notice, renting polling places, paying election officials, securing ballot boxes, booths and other election necessities.

7.10.140 Preservation of election ballots, papers and materials.

A. The clerk shall preserve all official ballots in a secure manner, unopened and unaltered, for not less than thirty (30) calendar days from the date of the election certification or in cases where the election is contested, until thirty (30) calendar days after the final resolution of the contest or except as otherwise provided by law. The clerk may permit the inspection of the ballots upon order of a court of competent jurisdiction. Upon the expiration of the preservation period, the clerk shall completely destroy the ballots, and make and keep a written certificate that the ballots have been destroyed.

B. All precinct election certificates, tallies, registers receipts for ballots, and declarations of candidacy shall be preserved for four years following the certification of the election.

Chapter 7.20 Voter Qualification

7.20.010 Voter qualifications.

A person may vote in a city election only if the person:

- A. Is qualified to vote in state elections under AS 15.05.010;
- B. Has been a resident of the city for thirty (30) calendar days immediately preceding the election;
- C. Is registered to vote in state elections at a residence address within the city thirty (30) calendar days prior to the city election; and
- D. Is not disqualified under Alaska Constitution, Article V., section 2.

7.20.020 Rules for determining residence of voter.

For the purpose of determining residence for voting, the place of residence is governed by the following rules:

A. The residence of a person is that place in which habitation is fixed, and to which, whenever the person is absent, the person has the intention to return. If a person resides in one (1) place but does business in another, the former is the person's place of residence. Temporary construction camps do not constitute a dwelling place.

B. A change of residence is made only by the act of removal joined with the intent to remain in another place. There can only be one (1) residence.

C. A person does not gain or lose residence solely by reason of a person's presence or absence while employed in civil or military service of the United States or of this

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state, or because of presence or absence due to marriage to a person in the civil or military service of the United States or of this state, or while a student of an institution of learning, or while kept in an institution or asylum at public expense, or while confined in a public prison, or while residing upon an Indian or military reservation, or while residing in the Alaska Pioneers Home.

D. A person does not lose residence if the person leaves home and goes to another country, state, or place within this state for temporary purposes only and with the intention of returning.

E. A person does not gain a residence in a place to which the person comes without a present intent to establish a permanent dwelling there.

F. A person loses residence in this state if the person votes in an election held in another state, either in person or by mail and will not be eligible to vote in this state until again qualifying under AS 15.05.

G. The term of residence is computed by including the day on which the person's residence commences and by excluding the day of election.

7.20.030 Registration.

A. A person may vote in an election only if the person is a qualified voter under the Alaska State Constitution, the laws of Alaska and this chapter and the person has registered as required by the state election code and BMC 7.20.010.

B. The precinct election officials at any election shall allow a person to vote whose name is on the official precinct registration list for that precinct and who is qualified under this chapter and AS 15.05. A person whose name is not on the official registration list shall be allowed to vote a questioned ballot.

7.20.040 Voter disqualification for felony conviction.

No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed.

7.30 Candidate Qualifications

7.30.010 Candidate qualifications.

Any person is eligible for city office if the person is a qualified voter of the state and a resident of the city for at least one (1) year immediately preceding filing for office.

7.30.020 Declaration of candidacy.

A. A person who seeks to be a candidate for city council shall execute and file a declaration of candidacy with the clerk in accordance with this section. The declaration shall be executed under oath before an officer authorized to take acknowledgments.

B. A declaration of candidacy shall be on a form provided by the clerk and shall state the following:

1. The full name of the candidate, and the manner in which he wishes his name to appear on the ballot;
2. The full residence and mailing address of the candidate;
3. The day and evening telephone numbers of the candidate;
4. The office for which the candidate declares;
5. That the candidate is qualified for the office as provided by law;
6. That the candidate is a resident of the city;
7. That the candidate meets, or shall meet, as required by law, the specific requirements of the office the candidate is seeking;
8. The date and notarized statement signed by the candidate;
9. A certification by the candidate that the information in the declaration of candidacy is true and accurate.

C. Declarations of candidacy shall be provided by the clerk not earlier than seven (7) days prior to the opening of the filing period. Declarations of candidacy shall be submitted in original form and shall not be submitted by facsimile.

D. Filing for city office shall be made by filing a declaration of candidacy with the city clerk from 8:00 a.m., August fifth (5th) through 4:00 p.m., August twentieth (20th). In the event August 20th falls on Saturday Sunday or legal holiday, the candidate shall have until noon the next business day that is not a sat sun or legal holiday to file their declaration of candidacy.

E. Within four (4) business days after the filing of a declaration of candidacy, the clerk shall notify the candidate named in the declaration of candidacy whether or not it is in proper form. If not, the clerk shall immediately return it with a statement certifying wherein the declaration of candidacy is deficient to the candidate. A new declaration of candidacy for the same candidate may be filed within the time for filing declarations of candidacy.

7.30.030 Write-in candidates.

In addition to the limitations contained in BMC 7.60.020, votes for a write-in candidate will not be counted unless that candidate has filed a declaration of candidacy with the clerk. A declaration of candidacy filed under this section must be filed with the clerk not earlier than the day immediately following the last day of the filing period and not later than 5:00 p.m. five days prior to the election.

7.30.040 Notice of vacancies in office.

At least three (3) calendar days before the declaration of candidacy period is open for each regular or special election, the clerk shall post in three (3) public places a notice of offices to be filled at the election and the manner of filing a declaration of candidacy.

7.30.050 Conflict of interest statements.

A. Candidates for elective city office and declared write-in candidates shall file an Alaskan Public Offices Commission Conflict of Interest Statement with the clerk as required by the provisions of AS 39.50 at the time of:

1. Filing a declaration of candidacy. The clerk shall place the name of the candidate on the ballot only after the candidate has complied with this requirement.

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2. Declaring their candidacy as a write-in candidate.

B. Each candidate for an elective office shall file the name and address of the candidate's campaign treasurer with the Alaska Public Offices Commission no later than seven (7) days after the date of filing a declaration of candidacy.

7.30.060 Corrections, amendments and withdrawal of declarations of candidacy.

Any candidate may withdraw his nomination at any time during the period of filing a declaration of candidacy by written notice to the clerk. After the filing period has closed, no declaration of candidacy may be corrected, amended or withdrawn.

7.30.070 Determination of candidate eligibility.

- A. The clerk shall determine whether each candidate filing a declaration of candidacy for municipal office is qualified as provided by law. At any time before the election the clerk may disqualify any candidate whom the clerk finds is not qualified.
- B. Any person, including the clerk, may question the eligibility of a candidate who has filed a declaration of candidacy by filing a complaint with the clerk.
- C. The complaint must be in writing and include the name, mailing address, contact phone number, signature of the person making the complaint, and a statement describing the grounds on which the candidate's eligibility is being questioned.
- D. The clerk will review only those issues in the complaint related to candidate eligibility.
- E. Upon receipt of a complaint, or if the clerk questions the eligibility of the candidate, the clerk will send notification in writing to the candidate.
- F. The clerk shall review any evidence relevant to the candidate's qualifications, including, but not limited to, the candidate's residency, voter registration, declaration of candidacy, and any other document of public record or as required by BMC 7.30.010. Based on the review of the documents, the clerk will determine whether a preponderance of evidence supports or does not support the eligibility of the candidate.
- G. If the clerk determines the preponderance of evidence supports the eligibility of the candidate, the clerk will issue a final determination supporting the candidate's eligibility.
- H. If the clerk determines the preponderance of evidence does not support the candidate's eligibility, notice to the candidate will identify any additional information or evidence that must be provided by the candidate. The clerk must receive the requested information no later than three business days from the date of notice. The clerk will consider any additional information provided and issue a final determination as to the candidate's eligibility no later than three business days from receipt of the additional information.
- I. If the information requested by the clerk is subsection H of this section is not received by the specified deadline, the clerk will issue a final determination regarding the candidate's eligibility based on the information initially reviewed.

- J. The clerk will send notice of final determination in writing to the person making the complaint if applicable, and to the candidate. The determination of the clerk shall stand.

7.30.080 Prohibitions.

- A. No elected official of the city may hold any other compensated city office or city employment, or elected position in the state or federal government while in office.
B. A public safety volunteer is exempt from this section per BMC 3.64.060.

7.40 Ballots

7.40.010 Ballot form.

The City Clerk shall prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter, and to expedite the administration of elections. The following requirements shall be followed in the preparation of the ballot:

- A. The city clerk shall determine the size of the ballot, the type of print, necessary additional instruction notes to voters, and other similar matter of form not provided by law.
- B. The city clerk shall number ballots in series to assure simplicity and secrecy and to prevent fraud.
- C. Each ballot shall bear the words "Official Ballot", and the date of the election.
- D. The title of the office to be filled shall be followed by the printed names of the candidates for such office.
- E. The names of candidates shall be printed as they appear upon the declaration of candidacy filed with the clerk, except that any honorary or assumed title or prefix shall be omitted. However, the candidate's name appearing on the ballot may include a nickname or familiar form of the proper name.
- F. The city clerk shall randomly determine the order of the names of the candidates on the ballot.
- G. Below the printed names of candidates appearing on the ballot shall be blank lines equal in number to the seats to be filled for the office, upon which the voter may write the name(s) of person(s) not listed on the ballot.
- H. Ballot propositions and questions shall be placed on the ballot in the manner prescribed by the clerk. Provisions shall be made for marking the proposition "Yes" or "No". All ballot propositions shall be stated in the affirmative and not the negative so that a yes vote will always mean that the voter approves of the affirmative of a proposition and not the negative; and a no vote disapproves the affirmative statement of an issue.

7.40.020 Preparation and distribution.

A. The clerk shall obtain the printing of all ballots for city elections. The clerk shall possess the printed ballots at least fifteen (15) calendar days before each regular election and at least ten (10) calendar days before each special election. At that time, the ballots may be inspected by any candidate whose name is on the ballot, or by his authorized agent, and any discovered mistake shall be corrected immediately.

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B. The clerk may contract for the preparation and printing of the ballots without obtaining competitive bids.

C. The clerk shall arrange for delivery of ballots and sample ballots to each election board prior to or on the date of the election before the opening of the polls. The ballots shall be delivered in separate containers, with the number of ballots enclosed. A receipt for the ballots, including the number and type of ballots, shall be signed and dated by an election official. The clerk shall keep the receipt as part of the election record.

D. No ballots shall be taken from the polling place before the closing of the polls, unless the clerk for good cause directs that the ballots be removed. A record shall be kept by the election officials of the ballots removed from a polling place.

E. If emergency ballots are needed in carrying out an election, the clerk shall be responsible for the preparation and distribution of those ballots. Emergency ballots shall be in the same form as the regular ballots at that election, and have a serial number listed on each ballot.

7.40.030 Sample ballots.

The clerk shall obtain the printing of sample ballots. Sample ballots shall be printed on nonwhite paper and be clearly labeled "Sample ballot."

7.50 Operation of polls.

7.50.010 Election officials.

A. Before each election, the clerk, subject to approval by the council, shall appoint at least three (3) election officials in each precinct to constitute the election board for that precinct. The clerk shall designate one (1) election official in each precinct as the chairperson, who shall be primarily responsible for administering the election in that precinct. If no chairperson is appointed for the precinct or the chairperson is unable to fulfill the chairperson's duties, the other election officials shall perform the chairperson's duties. After council approval, the clerk may make necessary adjustments to the election boards as required to conduct a properly held election.

B. The clerk may appoint clerks and counters at any polling place where they are needed to conduct an orderly election and to relieve the election officials of undue hardship.

C. If any election official fails or refuses to attend and serve, the election chairperson of the precinct or clerk shall appoint a person eligible under this section to serve in place of the absent election official.

D. Each election official shall be a registered qualified voter of the precinct for which the election official is appointed, unless no voter is willing to serve. There shall be no inquiry into an election official's political party as a prerequisite to service.

E. All election officials before entering upon their duties must subscribe to the oath required of all public officers by the Alaska State Constitution in the manner prescribed by the clerk.

F. Candidates or members of the candidate's immediate family may not serve as election officials for an election in which the candidate has filed a declaration of candidacy. Those familial relationships are:

1. Mother, mother-in-law, stepmother, grandmother;
2. Father, father-in-law, stepfather, grandfather;
3. Sister, sister-in-law, stepsister;
4. Brother, brother-in-law, stepbrother;
5. Child, child-in-law, stepchild, grandchild;
6. Spouse; or
7. Person sharing the same living quarters.

G. If the clerk knows or learns that any of these relationships exist, the precinct election officials, clerk or member of the ballot counting team shall be notified and replaced.

H. All election officials shall attend training sessions offered or approved by the clerk unless they have completed the training sessions within the immediate 12 months prior to the election.

7.50.020 Opening of polling place.

A. On the day of the election, each election board shall open the polls for voting at 8:00 a.m., shall close the polls for voting at 8:00 p.m., and shall keep the polls continuously open during the time between those hours. The election board shall report to the polling place by 7:30 a.m. so that voting will start promptly at 8:00 a.m. The chairman of the election board shall rotate times at which election judges, board members and clerks may be relieved for breaks and meals; provided, however, that at all times at least two (2) judges from the election board are present at the polling place.

B. Before issuing any ballots, the election board must, in the presence of any persons assembled at the polling place, open and exhibit the ballot box to be used at the polling place. The ballot box then shall be closed and shall not be removed from the polling place until the polls have closed. Ballot boxes shall not be opened during the stated election time unless for mechanical reasons, the election chair determines it is necessary. In this instance, the ballot box must be opened in plain view of voters and/or poll workers.

7.50.030 Keeping of register.

The election officials shall keep an original register or registers in which each voter before receiving his ballot shall sign his name and give both his residence and mailing address. A record shall be kept in the registration book, in a space provided, of the names of persons who offer to vote but who actually do not vote, and a brief statement of explanation. The signing of the register constitutes a declaration by the voter that he is qualified to vote. If any election official present believes the voter is not qualified, he may question the vote in accordance with the provisions of this title.

7.50.040 Voter identification at polls.

A. Before being allowed to vote, each voter shall exhibit to an election official one (1) form of identification, including but not limited to an official voter registration card,

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driver's license, passport, hunting or fishing license, state identification card, or tribal identification card.

B. An election official may waive the identification if the election official knows the first and last name of the voter.

C. A voter who cannot exhibit a satisfactory form of identification shall be allowed to vote a questioned ballot.

7.50.050 Persons not on official registration list.

If a person's name does not appear on the official registration list in the precinct in which the person seeks to vote, the person may vote a questioned ballot.

7.50.060 Voting procedure.

A. When a voter has qualified to vote, the election official shall give the voter an official ballot. The voter shall retire to a booth or private place to mark the ballot. After a voter has marked the ballot, the voter shall deposit the ballot in the ballot box in the presence of the election official unless the voter requests the election official to deposit the ballot.

B. Subject to BMC 7.50.070, a voter may not exhibit the voter's ballot to an election official or any other person so as to enable any person to ascertain how the voter marked the ballot.

7.50.070 Assisting voter.

A qualified voter, may request assistance to vote or bring a person or if necessary two persons of their choice with them to the poll, or before an election official, to assist the voters in casting the ballot. If an election official is requested, the election official shall assist the voter. If a person, other than an election official is to provide assistance, the person must take an oath before an election official not to divulge how the voter cast the ballot. The persons assisting the voter may not be a candidate for office in that election, an immediate family member of the candidate for office in that election, or a member of the voter's union. Not more than two persons of the voter's choice may assist the voter.

7.50.080 Spoiled ballots.

If a voter mutilates, improperly marks, spoils or otherwise damages the voter's ballot, the voter may request and the election official shall provide another ballot upon the voter returning the damaged ballot to the election official. The election official shall record the replacement ballot number on the ballot accountability form and return the spoiled ballot unexamined to the voter who shall destroy and discard it immediately in the presence of an election official. A voter may obtain a maximum of three replacements for each ballot under this procedure.

7.50.90 Question ballot-notice.

The clerk shall prepare and post at every precinct a "Notice to Questioned Ballot Voters." The notice shall contain:

- A. Information as to how the questioned voter's ballot will be counted;
- B. The date, time and place where the canvass board will meet; and
- C. A statement notifying the voter that, within 30 calendar days after election certification, written notification will be sent to the voter informing them of the reason why their ballot was not counted. The notice will further state that if the voter does not receive notification, then the ballot was counted.

7.50.100 Questioned ballots-Issuance.

A. If the polling place of a voter is in question, the voter shall vote a questioned ballot after complying with subsection C of this section.

B. Every election official shall question, and any other person qualified to vote may question a person attempting to vote if the questioner has good reason to suspect that the questioned person is not qualified to vote in the election. All questions regarding a person's qualifications to vote shall be made in writing, setting out the reason that the person has been questioned.

C. The questioned person, before voting, shall subscribe to an oath or affirmation on a form provided by the election official attesting to the fact that in each particular the person meets all the qualifications of a voter, is not disqualified, and has not voted at the same election. After the questioned person has executed the oath or affirmation, the person may vote. If the questioned person refuses to execute the oath or affirmation, the person may not vote.

D. A voter who casts a questioned ballot shall vote his ballot in the same manner as prescribed for other voters. The voter shall insert the ballot into a small envelope and put the small envelope into a larger envelope on which the statement he previously signed is located. These larger envelopes shall be sealed and deposited in the ballot box. When the ballot box is opened, these envelopes shall be segregated, counted, compared to the voting list, and delivered to the election canvassing board. The election canvassing board shall review and judge the applicability of questioned ballots in accordance with BMC 7.80.020 and 7.80.030.

E. The questioned ballots and statements shall remain in the election official's custody and shall be delivered to the clerk. The clerk shall deliver the questioned ballots and statements to the canvass board for canvassing.

7.50.110 Special needs voting.

A. A voter with a disability who, because of that disability, is unable to go to a polling place or absentee voting office to vote, may vote a special needs ballot.

B. The voter, through a representative, may request a special needs ballot from:

1. The clerk on or after the fifteenth calendar day before a regular election or on or after the tenth calendar day before a special election; or
2. An absentee voting official at an absentee voting station designated by the clerk at a time when the absentee voting station is in operation; or

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3. A member of the precinct election board on election day.

C. A representative requesting a special needs ballot shall sign a register provided by an election official. The register must include the following information:

1. The representative's name; and
2. The name of the voter on whose behalf the representative is requesting a ballot and voting materials.

D. The representative shall deliver the special needs ballot and other voting materials to the voter as soon as practicable. The voter shall mark the ballot in secret, place the ballot in a secrecy sleeve, and place the secrecy sleeve in the envelope provided. The voter shall provide the information on the envelope and shall sign the voter's certificate in the presence of the representative. The representative shall witness the voter's signature, and sign and date the representative's oath as provided on the envelope.

E. If a voter's disability precludes the voter from performing any of the requirements of subsection D of this section, the representative may perform those requirements, except making the voting decision, on the voter's behalf.

F. The representative shall deliver the ballot envelope to a city election official at a city precinct not later than 8:00 p.m. on election day. An election official shall deliver the voted special needs ballot to the clerk. The clerk shall deliver the voted special needs ballot to the canvass board for canvassing.

G. No person who is a candidate for office at the election, an immediate family member of the candidate, the voter's employer, an agent of the voter's employer, or an officer or agent of the voter's union may act as a representative for a voter.

7.50.120 Closing of the polls.

A. Fifteen (15) minutes before the closing of the polls, and at the time of the closing of the polls, an election official shall announce both the designated closing time and the actual time at which the announcement is made. Failure to make the announcement at fifteen (15) minutes before closing time shall not in any way invalidate the election or extend the time for closing of the polls.

B. Every qualified voter present and in line at the time prescribed for closing the polls may vote. After closing, no person will be allowed to enter the polling place for purposes of voting.

C. When the polls are closed and the last vote has been cast, the election board shall account for all ballots by completing a ballot statement, in a manner prescribed by the clerk, including:

- (1) the number of official ballots received;
- (2) the number of official ballots voted;

- (3) the number of official ballots spoiled; and
- (4) the number of official ballots unused and destroyed.

D. The election board shall count the number of questioned ballots and shall compare that number to the number of questioned voters in the register. Discrepancies shall be noted on the ballot statement.

7.50.130 Prohibitions.

A. During the hours that the polls are open, no election official may discuss any political party, candidate or issue while on duty.

B. During the hours the polls are open, no person who is in the polling place or within two hundred (200) feet of any entrance to the polling place may attempt to persuade a person to vote for or against a candidate, proposition or question. Nor may any person conduct other political activities that may pertain to any future election or potential ballot proposition. For the purposes of this section, the entrance to a polling place shall be the entrance to the building in which the polling place is located. The election board shall post warning notices in the form and manner prescribed by the clerk.

C. No voter may exhibit a ballot to an election official or any other person as to enable any person to ascertain how the voter marked the ballot, except as provided in BMC 7.50.070.

D. While the polls are open, no election official may open any ballot received from a voter, mark a ballot by folding or otherwise so as to be able to recognize it, or otherwise attempt to learn how a voter marked a ballot, or allow the same to be done by another person.

E. No person may leave the polling place with the official ballot that the person received to mark.

7.50.140 Unused ballots.

The numbers of all ballots not issued shall be recorded and then all such ballots shall be disposed of as instructed by the clerk before the ballot box is opened. The numbers of ballots damaged by voters and replaced by election officials shall also be recorded. The record of ballots not issued and ballots damaged and replaced shall be preserved for thirty (30) days unless the election is contested.

7.60 Ballot Counting Procedures

7.60.010 Commencement of ballot count.

A. For counting paper ballots, when the polls are closed and the last vote has been cast, the election board and clerks or counters shall immediately proceed to open the ballot box, separate the questioned ballot envelopes from other ballots and then proceed to count the votes cast. In all cases the election board shall cause the count to be continued without adjournment until the count is complete.

B. For ballots counted by computer, when the polls have closed and the last vote has been cast, the election board shall immediately proceed to open the ballot box and separate the questioned ballots from the other ballots and place all emergency ballots in an envelope provided by the clerk. Ballots with write-in votes shall be segregated,

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rubber-banded, and placed in the back of the special ballot container. All voted ballots are placed in the transfer case for delivery to the election supervisor. The ballot counting unit shall be delivered to the location designated by the election supervisor.

7.60.020 Counting ballots, general.

- A. The Ballots shall be counted by the vote tabulation system selected by the clerk.
- B. At no time during the tallying of votes may anyone but the election officials handle the ballots. The ballots shall not be marked in any way by anyone during the tallying.
- C. The election board shall count the ballots in a manner that allows watchers to see the ballots when opened and read.
- D. Hand-counted and computer counted ballots shall be tabulated according to the following rules:
 - 1. A voter may mark a ballot only by the use of cross marks, "X" marks, diagonal horizontal, or vertical marks, solid marks, stars, circles, asterisks, checks or plus signs that are clearly spaced in the oval opposite the name of the candidate or proposition the voter desires to designate.
 - 2. Failure to properly mark a ballot as to one or more candidates does not itself invalidate the entire ballot.
 - 3. If a voter marks fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked.
 - 4. If a voter marks more names than there are persons to be elected to the office, the votes for that office shall not be counted.
 - 5. Improper marks on the ballot shall not be counted and shall not invalidate marks for candidates of propositions properly made.
 - 6. An erasure or correction invalidates only that section of the ballot in which it appears, unless the intent of the voter is clear.
- E. Stickers may not be used on ballots.
- F. The rules set out in this section are mandatory and there shall be no exceptions to them. A ballot may not be counted unless marked in compliance with these rules.

7.60.030 Write-in votes.

- A. In order to vote for a write-in candidate, the voter must write in the candidate's name in the space provided and, in addition, mark the oval opposite the candidate's name. Stickers may not be used on ballots.
- B. Write-in votes shall not be tallied by hand count, unless the total number of write-in votes for an office exceeds the smallest number of votes cast for a candidate for that office whose name is printed on the ballot.
- C. Votes for a write-in candidate shall not be counted unless that candidate has filed a declaration of candidacy with the clerk in accordance with BMC 7.30.030.

7.60.040 Other election boards and teams.

- A. Review Board. When using computers to count the ballots the clerk shall appoint a review board. The review board shall consist of at least three members. The review board shall ensure that all ballots are completely and accurately counted.
- B. Canvass Board. The clerk shall appoint a canvass board consisting of a minimum of three election officials. The canvass board shall tally absentee ballots and questioned ballots and perform the duties as stated in BMC 7.80.
- C. Failure to serve. A vacancy on a board or team shall be filled by the clerk.

7.60.050 Disqualified candidate.

Votes cast for a candidate who is disqualified shall not be counted for any purpose.

7.60.060 Determination of tie votes.

A. If two (2) or more candidates tie in having the highest number of votes for the same office for which there is to be elected only one (1) candidate, the clerk shall notify the candidates who are tied. The clerk shall immediately proceed with the recount of votes in the manner provided by this title.

B. If after a recount two or more candidates tie in having the highest number of votes for the same office, the clerk shall notify the candidates who are tied. The clerk shall notify the candidates of a reasonably suitable time and place, in a meeting of the council and under its direction, to determine the successful candidate by coin toss if two are tied and by lot if more than two are tied.

7.60.070 Completion of ballot count.

A. When the tally of regularly voted ballots is completed, the voted ballots shall be sealed into containers to be preserved by the clerk for thirty (30) days. Ballot containers may only be opened by the canvass board or recount team or if the clerk is ordered to do so by the council or by the court.

B. No later than the day after the election, the election board shall make a certificate in duplicate of the results. The certificate includes the number of votes cast for each candidate, for and against each proposition, yes or no on each question, and any additional information prescribed by the election supervisor.

C. The election board shall, immediately upon completion of the certificate, hand-deliver to the election supervisor both copies of the certificate and register. In addition, all ballots properly cast shall be hand-delivered to the election supervisor. The package shall clearly indicate the precinct from which it came.

D. To assure adequate protection, the election supervisor shall prescribe the manner in which the ballots, registers and all other election records and materials are thereafter preserved, transferred and destroyed.

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7.70 Absentee voting

7.70.010 Administration of absentee voting.

The clerk shall provide general administrative supervision over the conduct of absentee voting. The clerk shall make available instructions to absentee voters regarding the procedure for absentee voting.

7.70.020 Eligibility

Any qualified voter may vote an absentee ballot at any election for any reason pursuant to the procedures set forth in this chapter.

7.70.030. Materials for absentee voting.

The clerk shall provide ballots for use as absentee ballots for all precincts and shall provide a small envelope in which the voter shall initially place the marked ballot, and shall provide a larger envelope, with the prescribed voter's certificate, in which the smaller envelope with ballot enclosed shall be placed. The clerk shall provide the form of and prepare the voter's certificate on the back, in which the smaller envelope with ballot enclosed shall be placed. The clerk shall provide the form of and prepare the voter's certificate which shall include an oath, for use when required, that the voter is a qualified voter in all respects, a blank for the voter's signature, a certification that the affiant properly executed the marking of the ballot and identified himself, blanks for the witness, and a place for recording the date the envelope was sealed and witnessed.

7.70.040 Fee prohibited.

No person may receive a fee from the voter for attesting to any voter's certificate required in voting absentee.

7.70.050 Absentee voting – In person.

A. Absentee voting in person before an election official, including the clerk, shall not begin prior to 15 calendar days before a regular or 10 calendar days before a special election, up to and including the day of the election. The absentee voter shall appear before an election official, and provide his or her name and proof of identification as required in this title. The voter shall complete the required information and sign the certification on the ballot oath and affidavit envelope and have it witnessed by an election official. The voter shall receive an official ballot, mark the ballot in private, and place the ballot in a secrecy sleeve. The secrecy sleeve shall then be placed in the completed ballot oath and affidavit envelope and the envelope will be sealed. An election official shall deliver the voted absentee ballots to the clerk. The clerk shall deliver the voted absentee ballots to the canvass board for canvassing.

B. Prior to the election, the clerk shall give to the election board in each precinct a list of voters from the precinct who have voted absentee ballots. If a voter who voted an

absentee ballot in person returns to the voter's precinct on election day, the voter may not vote a regular ballot but may vote a questioned ballot.

7.70.060 Absentee voting – By mail.

A. A qualified voter may apply for an absentee ballot by mail if postmarked not earlier than the first (1st) of the year in which the election is to be held, nor less than ten (10) calendar days before an election. A request may be accepted by facsimile.

B. All applications for an absentee ballot by mail shall be in writing either on a form provided by the clerk's office or in a letter containing the following information.

1. The applicant's place of residence;
2. The address the applicant desires the absentee ballot to be mailed;
3. The applicant's signature; and
4. A voter identifier such as voter number, a Social Security number, or date of birth.

C. After receipt of an application by mail, the clerk shall deliver to the applicant, at the mailing address given in the application, an official ballot for the election and other absentee voting material by regular first class mail. The materials shall be sent as soon as they are ready for distribution. The return envelope sent with the materials shall be addressed to the city clerk.

D. At any time on or before the day of the election, any voter receiving an absentee ballot by mail may vote the ballot. The voted ballot shall then be placed in the secrecy sleeve, which is then placed in the return envelope, and the voter shall sign the certification on the return envelope and have it witnessed in the presence of:

1. An authorized official such as a notary public, U.S. Postmaster or authorized postal clerk, commissioned military officer, judge, justice, magistrate, clerk of the court, a duly appointed voter registrar, or election official as defined in BMC 7.10.020; or
2. If none of the officials listed in this subsection D. 1 is reasonably accessible, an absentee voter shall sign the voter's certificate in the presence of an individual who is 18 years of age or older in addition, the voter shall certify, as prescribed in AS 09.63.020, under penalty of perjury, that the statements in the voter's certification are true.

E. After witnessing the absentee voter's signature, the official or witness shall attest to the date on which the voter signed the certificate in the individual's presence, and, return the voted ballot to the voter who shall mail or otherwise deliver the ballot to the clerk. A precinct election official shall deliver the voted absentee ballots to the clerk. The clerk shall deliver the voted absentee ballots to the canvass board for canvassing.

~~D.~~ F. The clerk may require a voter casting an absentee ballot by mail to provide proof of identification or other information to aid in the establishment of his identity.

~~E.~~ G. The clerk shall maintain a record of the name of each voter to whom an absentee ballot is sent by mail. The record must list the date on which the ballot is mailed and the date on which the ballot is received by the city clerk and the date on which the ballot was executed and postmarked.

H. Prior to the election, the clerk shall give the election board a list of voters from the city who have been issued absentee by-mail ballots. If a voter who was issued an absentee ballot by mail returns to the voter's precinct on election day, the voter may

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not vote a regular ballot at the polling place unless the voter first surrenders to the election board the absentee ballot, ballot envelope and return envelope issued to the voter. If the absentee voter does not have the absentee ballot to surrender, the voter may vote a questioned ballot. Surrendered absentee ballots, ballot envelopes and return envelopes collected by the election board shall be returned to the clerk.

I. To be counted in the election, an absentee by mail ballot shall be postmarked on or before election day and must be received by the clerk no later than 6:00pm two calendar days following the election. Absentee by-mail ballot envelopes received by the clerk after the deadline shall not be opened, shall be marked invalid with the date of the receipt noted thereon and shall not be counted.

7.70.070 Absentee voting-Special needs.

A. A voter with a disability who, because of that disability, is unable to go to an absentee voting office to vote, may vote a special needs ballot pursuant to 7.50.110.

7.70.070 Names of absentee voters.

The clerk shall maintain a record of the name of each voter to whom an absentee ballot is sent under this section. The record must list the date on which the ballot is mailed or provided by personal representative and the date on which the ballot is received by the clerk. The record shall be available for public inspection.

Chapter 7.80 Canvassing and certification of election results

7.80.010 Canvass board.

Before each election, the clerk, subject to approval of the city council, shall appoint four (4) or more qualified voters who shall constitute the election canvass board for that election. All members of the election canvass board, before entering upon their duties, must subscribe to the oath required of all public officials by the Constitution of the State of Alaska in the manner prescribed by the clerk.

7.80.020 Canvass of returns.

A. No later than Tuesday following each election, the election canvass board shall meet in public session and canvass all election returns. In full view of those present, the election canvass board shall judge the applicability of absentee and questioned ballots, shall open and tally those accepted, and shall compile the total votes cast in the election. The canvass of the ballot vote counted by the precinct election boards shall be accomplished by reviewing the tallies of the recorded vote to check for mathematical error by comparing totals with the precinct's certificate of results. All obvious errors found by the election canvass in the transfer of totals from the precinct tally sheets to the precinct returns shall be corrected by the canvass board. A mistake which has been made in precinct returns that is not clearly an error in the transfer of the results from

the tallies to the certificate of results empowers the canvassing board to recommend a recount of the results of the precinct or precincts for that portion of the returns in question.

B. If the canvass determines that a failure to comply with provisions of state law and city ordinances, or an illegal election practice has occurred, and that such failure is sufficient to change the outcome of the election they shall provide that information in their written report to the city council.

C. Upon completion of the canvass, the canvassing board shall prepare a final certificate of the results of votes cast by absentee, questioned and challenged ballots and of votes cast by regular ballot, and shall prepare a written report of the results to be submitted to the city council.

7.80.030 Counting of absentee ballots.

To be counted in the election, an absentee ballot must be postmarked on or before the election day and received by the clerk on or before 6:00 p.m. two calendar days following the election. Absentee ballot envelopes received by the clerk after 6:00 p.m. two days following the election shall not be opened, but shall be marked "invalid" and the date of receipt noted thereon. Such envelopes shall be retained with the other election records and destroyed with them as provided by the city's record retention schedule. Absentee ballot envelopes shall be examined by the canvass board, whose members shall determine whether the absentee voter is qualified to vote at the election and whether the ballot has been properly cast.

7.80.030 Counting questioned ballots.

After research, the canvass board by majority vote may refuse to accept the question and count the ballot of a person properly questioned. If the ballot is refused, the clerk shall return a copy of the statement questioning the ballot to the voter, and shall enclose all rejected ballots in a separate envelope with statements of the basis for the question. The envelope shall be labeled with "rejected ballots" and shall be preserved with other voted ballots. If the ballot is not refused, the large envelope shall be opened, the small inner envelope shall be mixed with other voted ballots for counting. The mixed smaller envelopes shall be opened, and the ballots shall be counted according to the rules for determining properly marked ballots.

7.80.040 Certification of the election results.

- A. Not later than the second Tuesday after the election, the council shall meet in public session and review the canvass board report. The review may be postponed for cause from day to day, but there shall be no more than three postponements.
- B. If the canvass board reports that a failure to comply with provisions of state law and/or city ordinances, or an illegal election practice has occurred, and that such failure is sufficient to change the outcome of the election, then the council may exclude the votes cast in one (1) or more precincts where such failure or illegal practices occurred from the total returns, or may declare the entire election invalid and order a new election.

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- C. Unless an election contest or recount has been previously filed pursuant to BMC 7.90 the council shall declare the election valid and certify the election results. The council shall certify results not in question immediately and shall complete contest procedures as soon as practicable to assure prompt certification.
- D. The council shall by resolution certify the election results and enter the results in the minutes along with the following information:
 - 1. The total number of poll, early-voter, absentee, questioned, and special needs ballots cast in the election;
 - 2. The offices, names, and number of votes counted for each candidate at the election;
 - 3. The propositions voted upon at the election; and
 - 4. The number of votes counted for each proposition voted upon.
- E. Upon certification of a valid election, the clerk shall deliver to each person elected to office a certificate, signed by the clerk and authenticated by the seal of the city.

7.90 Election contests and recounts.

7.90.010 Grounds for election contest.

A candidate or ten (10) qualified voters may contest the election of any person or the approval or rejection of any question or proposition upon one or more of the following grounds:

- 1. Malconduct, fraud or corruption by an election official sufficient to change the results of the election;
- 2. The person elected does not meet the qualifications required by law; or
- 3. Existence of a corrupt election practice as defined by the laws of the state of Alaska sufficient to change the result of the election.

7.90.020 Contest procedure.

A. Notice of contest of an election shall be submitted in writing to the clerk before five p.m. on the day of the certification of the election. The notice of contest shall specify the election being contested, the grounds of the contest, and shall bear the notarized signature of the candidate or qualified voters bringing the contest. The notice shall be in substantially the following form:

NOTICE OF ELECTION CONTEST

The undersigned contest the regular (or special) election of the City of Bethel held on the ___ day of _____. The ground for the contest are as follows:

Signature and date
(Notarization)

B. Upon receiving a notice of contest, the council shall order an investigation be conducted by the clerk and city attorney. Those contesting the election, those whose election is contested, and the public shall be allowed to attend all investigation and recounting proceedings.

C. If the contest involved the eligibility of voters, the council shall direct the clerk to check the voter qualifications set forth in BMC 7.20. After considering the report provided by the clerk and any other proof, the council shall determine whether any illegally cast votes could have affected the election results. If they could not have, the council may declare the election valid and certify the results.

D. If the contest involves other prohibited election practices which are shown to have taken place, the council shall exclude the vote of the precincts where the practices occurred. If it is determined that the exclusion could not affect the election results, the council shall declare the election valid and certify the results.

E. The contestants shall pay all costs and expenses incurred in a recount of an election as provided by Section 7.90.030.

7.90.030 Recount application.

A. A recount application shall state in substance the basis of the belief that a mistake has been made and shall identify the particular precinct, office, proposition or question for which the recount is to be held, and shall state that the person making the application is a defeated candidate or that the ten (10) persons making the application are qualified voters. The defeated candidate or person making the application shall designate by full name and mailing address two persons who shall represent the applicant during the recount. Any person may be named representative, including the candidate or any person signing the applications. Applications by ten qualified voters shall also include the designation of one of the number as contact person. The candidate or persons making the application shall sign the application and shall print their full name and mailing address.

B. A recount application shall be submitted in writing to the clerk before five p.m. on the day of the certification of the election. The date and time on which the clerk receives rather than the date of mailing or transmission determines whether the application is timely filed.

C. The application shall include a deposit in cash, or by certified check. The amount of the deposit shall be one hundred dollars (\$100.00) for each precinct.

7.90.040 Date of recount – Notice.

A. If the clerk determines that a recount application is substantially in the required form, the clerk shall fix the date of the recount to be held within ten (10) days after the receipt of an application requesting a recount of the votes.

B. The clerk shall give the representative named in a recount application notice of the time and place of the recount by certified mail, telephone, facsimile or by electronic transmission.

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7.90.050 Procedure for recount.

A. In conducting a recount, the clerk shall appoint a recount board of four (4) or more qualified voters to conduct the recount of ballots or those precincts cited in the application for recount.

B. In conducting the recount, the recount board shall review all ballots to determine which ballots, or parts of ballots, were properly marked, which ballots are to be counted in the recount, and shall check the accuracy of the original count and all documentation provided by the election officials. The recount board shall check the number of ballots and questioned ballots cast in a precinct against the registers and shall check early and absentee ballots voted against early and absentee ballots distributed. The rules in BMC 7.60 governing the counting of ballots shall be followed in the recount.

C. The ballots and other election materials shall remain in the custody of the clerk during the recount and the highest degree of care shall be exercised to protect the ballots against alteration or mutilation. The recount shall be completed within ten (10) calendar days. The clerk may employ additional personnel necessary to assist in the recount.

7.90.060 Certification of recount results.

Upon completing the recount, the recount board shall provide a report of the results of the recount for submission to the council. The council shall issue a certification of the election.

7.90.070 Return of deposit and apportionment of expenses upon recount.

If, upon recount, a different candidate or position on a proposition or question is certified or if the vote on recount is two (2) percent or more in excess of the vote originally certified for the candidate or position on a proposition or question supported by the recount application, the entire deposit shall be refunded to the recount application. If this section does not require that the entire deposit be refunded, the clerk shall refund any money remaining after the cost of the recount has been paid from the deposit. If it is determined that the contestant shall bear the costs of the recount pursuant to this section and the deposit is insufficient to cover the costs, the city may recover the excess costs from the contestant. If the recount is obtained by voters, each of them shall be individually liable for the whole amount of such expense.

7.90.080 Appeal or judicial review.

A. No person may appeal or seek judicial review of an election for any cause without having first exhausted the administrative remedies provided in this chapter.

B. Recount appeal. A defeated candidate or any person who requested a recount under this chapter and who is aggrieved by the result of a recount or decision to deny a recount may appeal to the Superior Court for the State of Alaska, Fourth Judicial District at Bethel in accordance with applicable court rules governing appeals in civil matters. The recount appeal shall be filed within five (5) calendar days of completion of the

recount or the decision to deny a recount. Upon order of the court, the clerk shall furnish the record of the recount, including all ballots, registers, and other election material and papers pertaining to the recount. The appeal shall be heard by the court sitting without a jury. The inquiry and the appeal shall extend to the questions whether or not the clerk has properly determined what ballots, parts of ballots, or marks for candidates on ballots, are valid, and to which candidate or division on the proposition or question the vote should be attributed. The court shall enter judgment either setting aside, modifying, or affirming the results of the recount or decision to deny a recount. If an action under this subsection is not commenced within the 5-day period, the election and the election result shall be conclusive, final and valid in all respects.

C. Appeal of election contest. A defeated candidate or person who filed an election contest under this chapter and who is aggrieved by the result of an election contest or a decision to deny an election contest may appeal to the Superior Court for the State of Alaska, Fourth Judicial District at Bethel in accordance with applicable court rules governing appeals in civil matters. The appeal shall be filed within ten (10) calendar days after certification of the election results. Upon order of the court, the clerk shall furnish the record of the recount, including all ballots, registers, and other election material and papers pertaining to the election contest. The appeal shall be heard by the court sitting without a jury. If an action under this subsection is not commenced within the ten (10) day period, the election and the election results shall be conclusive, final, and valid in all respects.

Chapter 7.100 Initiative, Referendum and Recall

7.100.010 Reservation of powers.

The powers of initiative and referendum are reserved the qualified voters of the city, except as provided by article XI, section 7 of the Alaska Constitution, state law and this code. The power of recall is reserved to the qualified voters of the city pursuant to article XI, section 8 of the Alaska Constitution State law, and this code.

7.100.020 Application for petition.

A. An initiative or referendum is proposed by filing an application with the city clerk containing the ordinance or resolution to be initiated or the ordinance or resolution to be referred and the name and address of the contact person and an alternate to whom all correspondence relating to the petition may be sent. The application shall be on a form provided by the clerk. An application shall be signed by at least ten (10) voters who will sponsor the petition. An additional sponsor may be added at any time before the petition is filed by submitting the name of the sponsor to the clerk. Within two (2) weeks the clerk shall certify the application if the clerk finds that it is in proper form and, for an initiative petition, that the matter:

1. Is not restricted by AS 29.26.100 or BMC 7.100.010 (B);
2. Includes only a single subject;
3. Relates to legislative rather than to an administrative matter; and
4. Would be enforceable as a matter of law.

B. Upon receipt of a completed application for a petition the municipal clerk shall immediately remit a copy of the application to the municipal attorney for review. The

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city clerk shall verify the sponsors' qualifications and, after consultation with the city attorney, determine and certify the legal sufficiency, or lack thereof, of the application and the proposed initiative or referendum.

C. A decision by the clerk on an application for petition is subject to judicial review.

7.100.030 Petition format.

A. The petition prepared by the clerk for issuance to the petition sponsors shall be in substantial compliance with this section. The petition shall be prepared within two (2) weeks after certification of the application. Each copy of the petition shall contain:

1. Each page must contain a summary of the ordinance or resolution to be initiated or the ordinance or resolution to be referred;
2. The complete ordinance or resolution sought to be initiated or referred as submitted by the sponsors;
3. The date on which the petition is issued by the clerk;
4. Notice that signatures must be secured within 90 calendar days after the date the petition is issued;
5. Space for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing address of each signer;
6. A statement, with space for the sponsor's sworn signature and date of signing, that the sponsor personally circulated the petition, that all signatures were affixed in the presence of the sponsor, and that the sponsor believes the signatures to be those of the persons whose names they purport to be; and
7. Space for indicating the total number of signatures on the petition.

B. Each booklet shall be assembled by the clerk and all pages within each booklet shall be stapled or otherwise fastened together.

C. The clerk shall notify the contact person in writing when the petition is available. The contact person is responsible for notifying sponsors. Copies of the petition shall be provided by the clerk to each sponsor who appears in the clerk's office and requests a petition, and the clerk shall mail the petition to each sponsor who requests that the petition be mailed.

7.100.040 Instructions to sponsors.

The clerk shall issue written instructions to the sponsors setting forth the requirement that to be valid the signature line must contain the signature in ink, the legible printed name, and the legible residence address of the municipal voter signing the petition. The instructions shall also include the types of addresses which are and are not acceptable as residence addresses.

7.100.050 Submission and receipt of petitions.

A. The sponsors shall file the petitions booklets as a single instrument. After the filing, no additional petition booklets may be received by the clerk for validation whether such additional booklets are submitted before or after the expiration of the petition

period. Such late booklets shall be received only for the purpose of preservation for the record.

B. Filing shall be done during city business hours. If the last day of the period falls on a Saturday which is not a city holiday, the clerk shall make arrangements with the sponsors to receive the petitions at the clerk's office at or before 4:30 p.m. on that Saturday. If the last day of the period falls on a Sunday or other city holiday, the sponsors may file the petition no later than 9:00 a.m. on the first (1st) weekday which is not a holiday.

C. Immediately upon receipt of the petition, and in the presence of the person submitting the petition, the clerk shall check each booklet and shall mark as rejected on its face, and the reason for rejection, any petition booklet which:

1. Shows evidence of having been disassembled and reassembled;
2. Does not contain all pages of the ordinance to be initiated or referred;
3. Does not contain the fully completed, signed and notarized affidavit of the sponsor.

7.100.060 Signature requirements.

A. The signatures on an initiative or referendum petition shall be secured within ninety (90) days after the clerk issued the petition. The statement provided under BMC 7.100.030 (A) (6) shall be signed and dated by the sponsor. Signatures shall be in ink.

B. The clerk shall determine the number of signatures required and inform the contact person in writing. The petition shall be signed by a number of voters based on the number of votes cast in that municipality at the last regular election held before the date written notice is given to the contact person that the petition is available equal to:

- (1) 25 percent of the votes cast if the municipality has fewer than 7,500 persons; or
- (2) 15 percent of the votes cast if the municipality has 7,500 persons or more.

C. A petition signer may withdraw the signer's signature on written application to the clerk before certification of the petition.

7.100.070 Sufficiency of petition.

All copies of an initiative or referendum petition shall be assembled and filed as a single instrument. Within ten (10) days after the date the petition is filed, the clerk shall:

- A. Certify on the petition whether it is sufficient; and
- B. If the petition is insufficient, identify the insufficiency and notify the contact person by certified mail.

7.100.080 Supplemental petition.

A. If the clerk determines that there is an insufficient number of valid signatures on the petitions filed during the ninety (90) day period, notice of the insufficiency shall be provided to the contact person by certified mail, return receipt requested. The sponsors shall have an additional ten (10) days from receipt of the notice to gather additional signatures on petitions supplied to the sponsors by the clerk for that purpose. The

Introduced by: Joseph A. Klejka, Mayor
Introduction Date: April 10, 2012
Public Hearing: April 24, 2012
May 8, 2012
Action: Passed
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petitions supplied by the clerk for the supplemental period shall be in the format specified in BMC 7.100.030, except that the signature page numbering shall not duplicate that utilized for the ninety (90) day period.

B. Petitions shall be submitted and received in the manner provided in BMC 7.100.050.

C. No signatures obtained on booklets issued during the first (1st) ninety (90) day period shall be valid if submitted with the supplemental petition.

7.100.090 Validation of signatures.

A. The clerk shall reject the signature of any person whose name does not appear on the most recent printed voter registration list available from the state elections office and is determined by the state elections office to be a person who is not registered on the day the clerk requests state verification of the voter status of the person.

B. The clerk shall reject the signature of any person whose signed and printed name are so illegible that the clerk cannot identify the name; provided, however, the clerk may accept an otherwise illegible name if the voter has provided a registration number and the legible address information given by the person corresponds to voter registration information of the person registered to the voter registration number given.

C. The clerk shall reject all but one (1) signature of any person who has signed his or her name two (2) or more times to petition booklets.

D. The clerk shall reject the signature of any person whose signature is not executed in ink.

E. The clerk shall reject the signature of any person who fails to provide a legible and adequate residence address as provided in this section.

F. The clerk shall reject the signature of any person whose petition signature and printed name are not the form in which the person is registered to vote unless the clerk is able to determine from the voter registration number or the address information from the state elections officer that the signature is that of a registered voter.

G. The clerk shall reject an entire petition booklet if it is shown that a petition sponsor has either failed to do any act or had no reasonable basis for a belief to which he is required to swear under BMC 7.100.030 (6).

7.100.100 Residence address requirements.

A. A residence address for the purpose of initiative and referendum petition requirements is a locatable address where the person lives. A residence address is adequate only if it contains sufficient information to permit the person's place of residence to be found by an ordinary person with no particular knowledge of the city area if such person is given the residence address information which appears on the petition, the official map of the city, the approved house number maps of the city, and relevant approved plan maps.

B. Notwithstanding the general definition provided in subsection A of this section, the following shall be deemed to be adequate residence addresses:

1. A subdivision name with a lot and block number;

2. A United States survey number when the smallest recorded subdivision which is applicable to the property is included;
3. A milepost when accompanied by a road or highway name;
4. A boat harbor or marina name when the stall, slip, or boat name is also included;
5. A hotel or motel if the room number is included;
6. A trailer court if the space number or street name and number within the trailer court is given;
7. A house number with a street or highway name;
8. An apartment or condominium name when accompanied by an apartment or unit number.

C. The following types of addresses are inadequate as a residence address:

1. A street name without a house number;
2. A milepost without a highway or road name;
3. A highway or road name without a milepost or house number;
4. Alaska, Bethel, City Sub, Tundra Ridge, BIA housing, or any other similar designation by a geographic area or subdivision only;
5. A rural route box number;
6. A post office box number;
7. A street, highway or road intersection;
8. Any address which is ambiguous either on its face or becomes ambiguous upon consulting a map or plat to which one (1) would be led from the residence address information;
9. An illegible address.

D. If there is a dispute as to the adequacy of a residence address given by a person whose name has been rejected by the clerk, the name shall be rejected if it is determined that a house number has been assigned to the place of residence of the person whose name has been rejected unless the assigned street name and house number or an accurate legal description of the property has been used on the petition.

7.100.110 Protest

If the clerk certifies that an initiative or referendum petition is insufficient, a signer of the petition may file a protest with the mayor within seven days after the certification. The mayor shall present the protest at the next regular meeting of the city council. The city council shall hear and decide the protest.

7.100.120 New petition.

Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition on substantially the same matter may not be filed sooner than six (6) months after a petition is rejected as insufficient.

7.130.130 Termination of suspension of ordinance effective date.

An ordinance or resolution which has been suspended by the filing of a referendum petition shall become effective five (5) business days after notice of insufficiency of the referendum petition has been delivered to the prime sponsor unless an appeal of the clerk's decision is filed within that time.

Introduced by: Joseph A. Klejka, Mayor
Introduction Date: April 10, 2012
Public Hearing: April 24, 2012
May 8, 2012
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7.100.140 Initiative election.

A. Unless substantially the same matter is adopted, when a petition seeks an initiative vote, the clerk shall submit the matter to the voters at the next regular election or if already scheduled as a special election occurring no sooner than sixty 60 days after certification of the petition. If no election is scheduled to occur within 75 days after the certification of a petition and the city council determines it is in the best interest of the municipality, the governing body may by ordinance order a special election to be held on the matter before the next election that is already scheduled, but not sooner than 60 days after certification of the petition.

B. If the council adopts substantially the same measure, the petition is void and the matter initiated may not be placed before the voters.

C. The ordinance or resolution initiated shall be published in full in the notice of the election, but may be summarized on the ballot to indicate clearly the proposal submitted.

D. If a majority vote favors the ordinance or resolution, it becomes effective upon certification of the election, unless a different effective date is provided in the ordinance or resolution.

7.100.150 Referendum election.

A. Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to the voters at the next regular election or if already scheduled as a special election occurring no sooner than sixty 60 days after certification of the petition. If no election is scheduled to occur within 75 days after the certification of a petition and the city council determines it is in the best interest of the municipality, the governing body may by ordinance order a special election to be held on the matter before the next election that is already scheduled, but not sooner than 60 days after certification of the petition.

B. If a petition is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the council may not enact an ordinance or resolution substantially similar to the suspended measure.

C. If the council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

D. If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective on certification of the election.

7.100.160 Effect.

A. The effect of an ordinance or resolution may not be modified or negated within two (2) years after its effective date if adopted in an initiative election or if adopted after a petition that contains substantially the same measure has been filed.

B. If an ordinance or resolution is repealed in a referendum election or by the council after a petition that contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the council for a period of two (2) years.

C. If an initiative or referendum measure fails to receive voter approval, a new petition application for substantially the same measure may not be filed sooner than six (6) months after the election results are certified.

7.100.170 Recall.

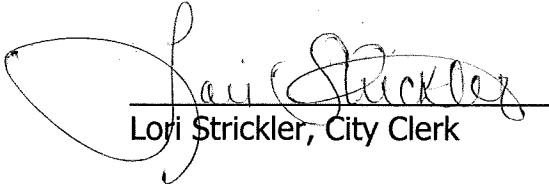
An official who is elected or appointed to an elective city office may be recalled as provided by Title 29 of Alaska Statutes.

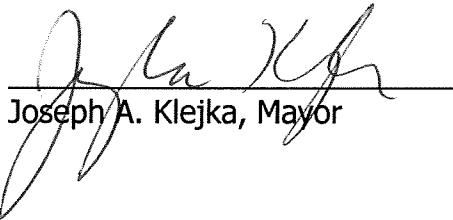
Section 4: Preclearance: Upon approval of this ordinance by the City Council, the City Clerk shall prepare and submit this ordinance for preclearance by the United States Department of Justice pursuant to Section 5 of the Federal Voting Rights Act.

Section 5: Effective Date: This ordinance shall become effective upon preclearance from the U.S. Department of Justice, or sixty (60) days following submission of the preclearance request authorized by Section 3 of this ordinance if no objection is interposed pursuant to 28 C.F.R. § 51.42.

PASSED AND APPROVED THIS 8 DAY OF MAY, 2012 BY A VOTE OF 7 IN FAVOR AND 0 OPPOSED.

ATTEST:


Lori Strickler, City Clerk


Joseph A. Klejka, Mayor