

By: City Clerk  
Introduced: August 24, 2015  
Public Hearing: September 14, 2015  
Amended: September 14, 2015  
Adopted: September 14, 2015  
Vote: Buswell, Graham, O’Barr, and Wall in favor  
Sullivan-Leonard and Wilson absent

**City of Wasilla  
Ordinance Serial No. 15-24(AM)**

**An ordinance of the Wasilla City Council amending Wasilla Municipal Code 4.32 in regard to election contests, and enacting Wasilla Municipal Code 4.34 in regard to election recounts.**

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**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the city code.

**Section 2. Amendment of chapter title.** The title of WMC Chapter 4.32 Election Contests and Recounts, is hereby amended to read as follows:

CHAPTER 4.32 ~~ELECTION CONTESTS~~ **OF ELECTION AND RECOUNTS**

**Section 3. Amendment of sections.** WMC Sections 4.32.010 through 4.32.030 are hereby amended to read as follows:

**4.32.010 Grounds for election contest.**

**(A)** A candidate or 10 qualified **city** voters may **apply to** contest **an** the election **on** ~~of any person or the approval or rejection of any question or proposition upon~~ one or more of the following grounds:

- (1A)** Malconduct, fraud or corruption **on the part of** by an election official sufficient to change the result of the election;
- (2B)** The person **certified as** elected is not qualified **as required by** ~~under law or ordinance;~~ or
- (3C)** ~~A~~ Existence of a corrupt election practice as defined by **law** ~~the laws of the State of Alaska~~ sufficient to change the result of the election.

**4.32.020 Contest application and procedure.**

**(A)** **An application to contest an election** ~~Notice of contest of an election~~ shall be submitted in writing to:

- (1)** The Clerk **no later than noon** ~~before 5:00 p.m.~~ on the day of the certification of the election **by the Council;** or to
- (2)** The Council at **the commencement of** its meeting to certify the election ~~returns.~~

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**(B) An application to contest an election shall contain:**

- (1) A summary of the grounds for the contest;**
- (2) The contact information of a representative and an alternate who will receive communications from the City regarding the application; and**
- (3) The name, residence address, contact information and notarized signature of each candidate or city voter who is an applicant.**

~~The notice of contest shall specify the election being contested, the grounds of the contest, and shall bear the notarized signatures 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 or run-off) election of the City of Wasilla held on the \_\_\_\_ day of \_\_\_\_\_. The grounds for the contest are as follows:~~

\_\_\_\_\_  
Signature and date  
(Notarization)

**(CB) Upon receipt of an application to contest an election, the Clerk shall submit it to the Council. The Clerk and City Attorney shall investigate the grounds of the contest and submit a report to the Council outlining their findings. The Clerk may request the canvass board, or employ additional personnel necessary, to assist with the review. The Council shall defer the certification of the contested election results pending receipt of the report, but may proceed with certification of all election results that are not contested.** ~~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.~~

**(DC) If the Council determines that any of the grounds of the contest are valid and would change the results of the election, the Council shall proceed in a manner that is consistent with its determination. If the Council finds that the grounds for the contest are not sufficient to change the election results, it may certify the contested election results.** ~~If the contest involves the eligibility of voters, the Council shall direct the Clerk to recheck the voter qualifications set forth in § 4.08.010. 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.~~

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~~(E) The contestants shall pay all costs and expenses incurred in a recount of an election as provided by § 4.32.090.~~

**4.32.030 Appeal or judicial review.**

~~No~~ A person qualified to file an election contest pursuant to § 4.32.010 may not appeal or seek judicial review of an election for any cause unless the person is qualified to vote in the city; has exhausted the administrative remedies before the Council; and has commenced an action in the Superior Court **for the State of Alaska, Third Judicial District at Palmer**, within 10 calendar days after the Council has finally certified the election results. If ~~court~~ an action under this section is not commenced within the 10-day period, the election and the election results shall be conclusive, final, and valid in all respects.

**Section 4. Amendment of sections.** WMC Sections 4.32.040 through 4.32.100 are renumbered 4.34.010 through 4.34.070, respectively, in a new Chapter 4.34 Election Recount, and are hereby amended to read as follows:

**Chapter 4.34 ELECTION RECOUNT**

**4.34.010 Recount application.**

(A) A defeated candidate or 10 qualified city voters may **apply** ~~file an application with the Clerk~~ for a recount of the votes from any particular precinct, or for any particular office, proposition or question by filing the application **in person**:

- (1) With the Clerk **no later than noon** ~~before 5:00 p.m.~~ on the day of the certification of the election **by the Council results**; or by ~~delivering the application for recount~~
- (2) To the Council at **the commencement of** its meeting to certify the election returns. ~~The date on which the Clerk receives an application rather than the date of mailing or transmission determines whether the application is filed within the time allowed under this subsection.~~

(B) If two or more candidates tie in having the highest number of votes for the same office, to which only one candidate is to be elected, the Clerk shall initiate a recount.

**4.34.020 Form of application.**

(A) A recount application shall **contain**:

- (1) **The precinct, office, proposition, or question for which the recount is requested**; 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
- (2) **The contact information of a representative and an alternate who will receive communications from the City regarding the application**; and state that the person making the application; is a candidate or that the 10 persons making the application are

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~~qualified voters. The candidate or persons making the application shall designate by full name and mailing address~~

- (3) **The name, residence address, contact information and notarized signature of each candidate or city voter who is an applicant.** ~~two persons who shall represent the applicant during the recount. Any person may be named representative, including the candidate or any person signing the application. Applications by 10 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) The application shall include a deposit in cash, ~~or~~ by certified check, **or credit card if the application is filed during business hours.** The amount of the deposit shall be \$100 for each precinct. **If all precincts are to be counted, there shall be no additional charge to recount early voter, absentee by-mail, questioned or personal representative ballots.**

#### **4.34.030 Date of recount—Notice.**

(A) If the Clerk determines ~~that~~ the application is substantially in the required form, the Clerk shall **schedule** ~~fix the date of~~ the recount to be held within seven calendar days after the receipt of **the** ~~an~~ application requesting a recount of the votes in the election.

(B) The Clerk shall **provide notice to the representative and alternate, and to each** ~~give the recount applicant and other directly~~ **candidate and sponsor of a proposition or question for which the vote will be recounted of the time, date and place of the recount** ~~interested parties notice of the time and place of the recount by certified mail, telegraph, facsimile, or by telephone.~~

(C) **The clerk shall post notice on the city's website of the time, date and place of the recount as soon as its scheduled.**

#### **4.34.040 Procedure for recount.**

(A) **The** ~~If a recount of ballots is demanded,~~ the Clerk shall have the canvass board **or counting teams** perform the recount **using the ballot tabulation system designated by the Clerk.**

(B) **The** ~~In conducting the recount,~~ the canvass board **or counting teams** 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:

(1) **Check** ~~check~~ the accuracy of the original count and all documentation provided by the **Clerk and** election officials; ~~The canvass board shall~~

(2) **Compare** ~~Check~~ the number of ballots **issued and cast to the numbers distributed to each precinct and early voting location and issued for other methods of voting.** ~~and questioned ballots~~

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~~east in a precinct against the registers and shall check early and absentee ballots voted against early and absentee ballots distributed. The rules in Chapter 4.28 governing the counting of hand-marked 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.

(D) The recount shall be completed within 10 calendar days.

(E) The Clerk may employ additional personnel necessary to assist in the recount.

#### **4.34.050 Certification of recount result.**

(A) Upon **completion of** ~~completing~~ the recount, the canvass board shall provide a report of the results of the recount for submission to the Council.

(B) The Council shall **certify the recount results and** issue a certificate of the election.

#### **4.34.060 Return of deposit and apportionment of expenses upon recount.**

(A) **The deposit submitted with a recount application shall be refunded to the candidate or applicants if upon recount:**

(1) **A different candidate is elected or the result of the vote on a proposition or question changes; or**

(2) **The number of votes for the candidate or position on a proposition or question changes by more than 2% of the original number.** ~~If, upon recount, a different candidate or position on a proposition is certified, or if the difference between the winning and losing vote on the result contested is 2% or less, the entire deposit shall be refunded to the recount applicant.~~

(B) ~~If none of the requirements of~~ **subsection (A) of** this section are **not** met,:

(1) The Clerk shall refund **to the candidate or applicants who requested the recount any amount by which the deposit exceeded;** ~~any money remaining after the cost of the recount has been paid from the deposit.~~

(2) **The candidate or applicants who requested the recount shall be jointly and severally responsible to pay the City any amount by which the cost of the recount exceeded the deposit.** ~~If the deposit posted is insufficient to cover the costs of the recount, the city may recover the excess costs from the contestant. If voters obtain the recount, each of them shall be individually liable for the whole amount of the expenses.~~

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**4.34.070 Appeal.**

No person may seek judicial review of the counting of votes in an election without first applying for a recount as provided in this chapter. ~~A candidate or person requesting a recount who is aggrieved by the result of a recount or decision not to grant a recount may appeal the recount to the Superior Court, Third Judicial District. The appeal shall be filed within 10 calendar days of council action certifying the election. 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 Court sitting without a jury shall hear the appeal. The issues on appeal shall include whether 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 the vote should be attributed. If an action under this section is not commenced within the 10 day period, the election and the election result shall be conclusive, final and valid in all respects.~~

**Section 5. Effective date.** This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on September 14, 2015.

  
\_\_\_\_\_  
BERT L. COTTLE, Mayor

ATTEST:

  
\_\_\_\_\_  
KRISTIE SMITHERS, MMC, City Clerk


[SEAL]





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## CITY COUNCIL LEGISLATION STAFF REPORT

**Ordinance Serial No. 15-24: Amending Wasilla Municipal Code 4.32 in regard to election contests, and enacting Wasilla Municipal Code 4.34 in regard to election recounts.**

Originator: Kristie Smithers, MMC, City Clerk   
Date: 7/28/2015 Agenda of: 8/24/2015

Route to:	Department Head	Signature	Date
X	Finance Director		8-6-15
X	Deputy Administrator		
X	City Attorney		8/6/15
X	City Clerk		7.28.15

Reviewed by Mayor Bert L. Cottle:  August 8<sup>th</sup> 2015

**Fiscal Impact:**  yes or  no      **Funds Available:**  yes or  no

**Attachments:** Ordinance Serial No. 15-24 (6 pages)

**Summary Statement:** The attached ordinance updates the Wasilla Municipal Code in regard to Chapters 4.32 in regard to an election contest and the recount process which will now be included in its own chapter 4.34. It has been years since these sections of the code were reviewed and all amendments are related to code clean-up and process.

This ordinance:

- Separates the two sections related to election contest and recount into two different chapters.
- Clarifies each step of both the election contest and recount processes.
- Updates the appeal wording for each process.
- Provides general clerical update throughout this chapter.

**Staff Recommendation:** Introduce ordinance and set for public hearing.