




City & Borough of Sitka
Municipal Clerk's Office
100 Lincoln Street, Sitka AK 99835
Telephone: 907-747-1811 Fax: 907-747-4004



Memorandum

To: Mayor and Assembly
Cc: Municipal Administrator Mark Gorman
From: Municipal Clerk Colleen Ingman 
Date: 11-14-14
Subject: **Ordinances resulting from Legal Analysis**

In September of 2014, CBS contracted with Code Publishing to complete a legal analysis of our code. Their attorney recommended items that they felt needed immediate action to bring the code into legal compliance and, where possible, has recommended amending language for this purpose.

We considered doing a single "clean-up" ordinance but quickly learned that one clean up ordinance that addressed all the recommendations would be extremely bulky and difficult to follow. It is still our intent to bring forward as few ordinances as possible, but at the same time keep the amendments concise enough that they can be easily understood. We will combine amendments whenever possible.

The section of the code requiring the most amendments was in Title 2, in part, because I took this opportunity to review and edit our election procedures to bring them up to date.

We will continue over the next several months to bring forward amendments from these recommendations. The majority will be fairly straight forward.

Attachment: Ordinance 2014-34

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2014-34

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING SITKA GENERAL CODE AT 2.40 ELECTIONS, ADDING SECTION 2.40.095 CANDIDATE BIOGRAPHICAL INFORMATION, AMENDING SECTIONS 2.40.110 WITHDRAWAL OR AMENDMENT OF NOMINATION, 2.40.115 WRITE-IN CANDIDATES, RENAMING CHAPTER SECTION VI TO ADD ADVANCED VOTING, AMENDING SECTIONS 2.40.190 ELIGIBILITY, 2.40.200 ASSISTED VOTING, ADDING 2.40.205 VOTING BY ELECTRONIC TRANSMISSION, AMENDING SECTIONS 2.40.220 ISSUANCE OF ABSENTEE OR ADVANCED BALLOTS, 2.40.230 CASTING ABSENTEE OR ADVANCED BALLOTS, 2.40.250 ELECTION OFFICIALS (E) OATH, 2.40.310 BALLOT BOX, 2.40.315 (D)(2) MARKING OF BALLOT, 2.40.315 (G) IMPROPERLY MARKED BALLOTS, ADDING SECTIONS 2.40.315 (H) CLOSING OF POLLS, AND 2.40.316 POLL WATCHERS, AMENDING SECTIONS 2.40.320 REPORTS OF UNUSED AND DAMAGED BALLOTS, 2.40.330 (B), (C), (D) COUNTING BALLOTS – HAND-COUNTED, 2.40.390 (H) COUNTING BALLOTS, 2.40.420 CANVASS BOARD, 2.40.430 ELECTION RESULTS, RENAMING 2.40.440 ASSEMBLY APPROVAL, AMENDING SECTIONS 2.40.460 CERTIFICATE OF ELECTION, 2.40.470 NOTICE OF ELECTION CONTEST, 2.40.500 COSTS, AND 2.40.520 PROHIBITED PRACTICES

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstances shall not be affected.

3. **PURPOSE.** The City and Borough of Sitka wishes to remain current in their municipal election procedures as they evolve with new technology, state procedures, and acceptable verbiage. The following are proposed. Instructions to aid the public in learning about candidates are codified. Procedures are outlined for withdrawal of nominee. A write-in candidate's instructions for application with the municipal clerk are detailed. Section VI allows advanced voting and not just with a requirement of absence. Assisted voting details how voters with special needs may be assisted to vote. Voters are allowed under certain rules to vote by electronic transmission. Advanced or absentee ballots are processed according to specific rules. Election officials' oath is updated to current verbiage. The ballot box is witnessed to be empty before balloting begins. New guidelines are described for use of equipment by hearing or sight impaired voters. Rules are clarified for how improperly marked ballots are counted. Procedures for poll watchers are codified. The disposition of unused ballots is detailed. Hand-counting procedure for ballots is clarified. To write-in a candidate's name on the ballot, specific rules are followed for that vote to count. The duties of the canvass board in counting absentee and questioned ballots are explained. In the event of a tie, the assembly may either toss a coin or draw lots. Assembly

48 approval of canvass board's certification is detailed. Responsible parties for election contest
49 costs are explained. Current law proscribes ramifications of prohibited election practices.

50

51 4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City
52 and Borough of Sitka that the following sections of Title 2 are amended as follows:

53

54

**Title 2
ADMINISTRATION**

55

56 Chapter

57 2.40 Elections.

58

* * *

59

IV. Nomination of Candidates

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61

62 2.40.095 Candidate biographical information

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64 **2.40.095 Candidate biographical information.**

65 **A candidate for elected office shall provide the municipal clerk with biographical**
66 **information of not more than 150 words, a recent photo of the candidate, and a**
67 **candidate's advocacy statement of not more than 250 words for publication on the**
68 **municipal website. All information is to be turned in at the time of filing and must**
69 **be received by the municipal clerk no later than ten working days after submittal of**
70 **a completed candidate packet. A candidate may not make a change to the**
71 **candidate's biographical information or advocacy statement after the deadline. A**
72 **candidate's biographical information and advocacy statement must be submitted**
73 **typewritten or, preferably, transmitted electronically. An article (i.e. a, and, the) will**
74 **be counted as one word. Any words included in the candidate's biographical**
75 **information or advocacy statement beyond the allowed word counts will not be**
76 **published. The municipal clerk can provide the candidate with acceptable topics for**
77 **the biographical information and advocacy statement. The municipal clerk may**
78 **reject any portion of a candidate's biographical information or advocacy statement**
79 **containing obscene, libelous, profane, slanderous or defamatory material.**

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81

82 2.40.110 Withdrawal or amendment of nomination

83

84 Any candidate nominated may withdraw their nomination **not later than 5:00 p.m. on**
85 **the 46th day before the election** at any time by appropriate written notice to the
86 municipal clerk. **The municipal clerk will notify the media and public of the**
87 **withdrawal. However, the ballots will not be modified to reflect the change unless**
88 **the ballots have not yet been programmed and/or ordered.**

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91 2.40.115 Write-in candidates

92

93 **2.40.115 Write-in candidates.**

94 **If a qualified elector wishes to be a candidate in an election, but failed to properly**
95 **file before the deadline, that person may file as a write-in candidate by following**
96 **rules established by the municipal clerk. The write-in candidate must register with**
97 **the municipal clerk and complete a form of intent not later than five days before the**
98 **election. Votes for a write-in candidate will not be counted unless that candidate has**
99 **properly filed with the municipal clerk and the ballot is marked in accordance with**
100 **this chapter.**

101 * * *

102 VI. Absentee or Advanced Balloting

103
104
105 2.40.190 Eligibility

106 Any qualified voter who expects to be absent from their election precinct or who will be
107 unable to go to the polling place of that precinct for reasons of physical disability on the
108 day of election may cast an absentee ballot on or after the day the ballots are available
109 **from the municipal clerk up to and including election day in a location and at times**
110 **determined by the municipal clerk. An absentee ballot may also be referred to as an**
111 **advanced ballot.** The provisions of this chapter effectuating absentee or advanced
112 voting rights shall be liberally construed.

113
114
115 *Remark: Current Section 2.40.200 first paragraph A will be moved above the heading for*
116 *Assisted Voting and into Section 2.40.190, as it refers to all absentee or advanced voting,*
117 *not just assisted voting. That second paragraph will be amended to read as follows:*

118
119 Any qualified voter shall ... apply to the municipal clerk for an absentee or advanced
120 ballot. The application must be signed by the applicant and must make clear the
121 applicant's reason for requesting an absentee ballot and specify the election for which a
122 ballot is requested. A separate request must be made for each subsequent election.

123 * * *

124
125
126 2.40.200 Assisted Voting ~~Application by physically disabled voters~~

127
128 A. Application for Assisted Voting ~~B. Application by physically disabled voters.~~

- 129 1. A qualified voter who is unable to go to the polls ~~physically disabled~~ due to age,
130 serious illness or disability may apply
- 131 2. The municipal clerk ... shall provide the ballot ... to the disabled voter's personal
132 representative
- 133 5. A personal representative may not be a candidate for office at that election,
134 may not be your employer, an agent of your employer, or an officer or agent of
135 your union. ~~A candidate for office at that election may not act as a personal~~
136 ~~representative.~~

137
138 2.40.205 Voting by electronic transmission

139
140 2.40.205 Voting by electronic transmission.

141 Although this should be considered a last alternative, voters may cast a ballot by
 142 electronic transmission with the municipal clerk (if other choices are unavailable to
 143 the voter). The voter submits an application form to the municipal clerk which also
 144 certifies that they are a qualified voter and that they recognize they are voluntarily
 145 waiving a portion of their right to a secret ballot when voting using electronic
 146 transmission. Voted ballots by electronic transmission must be submitted according
 147 to municipal clerk's instructions and received no later than 8:00 pm on Election
 148 Day.

149 * * *

150
151 2.40.220 Issuance

152
153 ~~A. An envelope which shall have ... certificate of voter eligibility ... and shall have on~~
 154 ~~the front ... in the City and Borough of Sitka, Alaska, I am an elector qualified to vote,~~
 155 ~~and that I have herein enclosed my ballot for such election, duly marked in the presence~~
 156 ~~of no other person.~~

157 Signed: _____ Witness: _____

158 A. An envelope with notations for a certification of voter eligibility and
 159 qualification, date of municipal election, that the ballot is enclosed, that it was
 160 properly marked with no undue influence, signature line, date of voting, and witness
 161 signature line, and a note on the front of the envelope that a ballot is enclosed.

162
163 2.40.230 Casting absentee or advanced ballot

164
165 A qualified voter may vote early, as soon as the ballots are available from the
 166 election official up to and including election day, in a location and at places and
 167 times determined by the municipal clerk. ~~Except for ballots issued under an application~~
 168 ~~by physically disabled voter, ballots must either be personally delivered to the municipal~~
 169 ~~clerk before the opening of the polls on election day or postmarked not later than election~~
 170 ~~day. Ballots issued under an application by a physically disabled voter must be delivered~~
 171 ~~to the municipal clerk or the appropriate election official not later than the hour set forth~~
 172 ~~closing the polls on election day.~~

173
174 VII. Conduct of Elections

175 2.40.250 Election officials.

176
177 E. Oath. The election officials shall take or subscribe to the following oath:

178 "I ~~do~~ solemnly swear (or affirm) that I "State your name" will honestly, faithfully, and
 179 promptly perform the duties of election board member according to law; and **I will make**
 180 **every effort to prevent the violation of any provision of law in conducting the**
 181 **election.** that I will strive to prevent fraud, deceit, or abuse in conducting the election to
 182 the best of my ability, so help me God."

183 * * *

184
185 2.40.310 Ballot box.

186
187 Before issuing any ballots, the election official officials must, in the presence of at least

188 **one other election official** ~~any persons assembled at the polling place,~~ open and exhibit
189 the ballot box

190
191 2.40.315 (D)(2), (G), (H) Voting procedure at polls.

192
193 D. Marking of Ballot. Each voter shall retire alone to a booth or private area

194 **2. Voters with special needs that do not require assistance will be routed to a**
195 **special "ADA" apparatus and special booth that will allow voters to hear the**
196 **contents of the ballot and make selections on their own. Once the voter has made all**
197 **selections, the voter's ballot will be printed out on a printer. This will enable the**
198 **voter to vote and cast his or her ballot unassisted.**

199
200 * * *

201 Section 2.40.315, Item G Closing of Polls is re-lettered to Item H. Insert new Item G, to
202 read as follows:

203 **G. Improperly marked ballots.**

204 **If the voter marks more names than there are persons to be elected to an office, that**
205 **race shall not be counted. If a voter marks more than one choice on a ballot issue,**
206 **that issue shall not be counted. A failure to properly mark a ballot in a candidate**
207 **race or issue shall not invalidate the entire ballot. If the voter mismarks a ballot in**
208 **this fashion, the voter will be advised that they can receive a replacement ballot,**
209 **spoiling the mis-marked one.**

210 **H. Closing of Polls.**

211 * * *

212
213 2.40.316 Poll watchers.

214
215 **2.40.316 Poll watchers.**

216 **A registered poll watcher may observe election set-up, general conduct throughout**
217 **election day, and after polls close. A poll watcher has no duties in conducting an**
218 **election and may not interfere with the orderly conduct of elections. One poll**
219 **watcher may be registered for any candidate for elective office or advocate for or**
220 **against a ballot proposition per precinct. The poll watcher must register with the**
221 **municipal clerk prior to election day and agree to rules established by the municipal**
222 **clerk. Poll watchers may not closely observe signatures on precinct registers, but**
223 **may sit close enough to hear an election official say the voter's name. Poll watchers**
224 **may check polling booths after each voter leaves to ensure that no campaign**
225 **material has been left behind. The poll watcher may utilize the municipal clerk's**
226 **complaint form to report problems.**

227 * * *

228
229 2.40.320 Reports of unused and damaged ballots.

230
231 The numbers of ballots not issued shall be recorded, and ~~all such ballots shall be~~
232 ~~destroyed by tearing off and discarding the lower portion of the unvoted ballots~~ **all**
233 **unused, unmarked ballots will be destroyed according to the election law. After**
234 **recording the ballot stub numbers of the unvoted ballots, election workers will**

235 **return the stubs of used ballots to the municipal clerk with other election materials.**
236 The numbers of ballots damaged by voters

237
238 2.40.330 (B), (C), (D) Counting ballots—Hand-counted.

239
240 B. For purposes of counting During transportation, the ballot boxes containing the
241 ballots **shall be locked and registration books secured.** ~~and registration books shall be~~
242 ~~locked.~~ When the polls

243
244 C. Though the public may not be excluded...the public may be kept behind a guardrail or
245 other natural barrier ~~in the same room~~ to prevent interference with the election
246 officials....

247
248 D. The ballots, after having been counted...read aloud the name of each person voted for
249 **and/or Yes or No on issues,** provided that no more ballots

250
251 * * *

252
253 2.40.390 Counting ballots.

254
255 H. In order to vote for a write-in candidate, the voter must write in the candidate's name
256 **as it appears on the write-in declaration of candidacy and** mark the oval **next to the**
257 **right of the written-in name. Write-in votes will be counted when the oval is marked**
258 **and the name as it appears on the write-in declaration of candidacy are written in**
259 **these manners: first and last name or any reasonable spelling of the first and last**
260 **name are used; first and last names with or without the suffix (e.g. Jr., Sr., III); last**
261 **names with correct initial for the first name is used; commonly known nicknames**
262 **with correct last name are used; or when the candidate's name is already printed on**
263 **the ballot. Write-in votes will be rejected in these circumstances: fictional names are**
264 **used (e.g. Mickey Mouse, None of the Above); only initials are used; only first name**
265 **is used; correct last name is used, but an incorrect first name or incorrect initial is**
266 **used; or the oval next to the candidate's name is not marked.**

267
268 * * *

269
270 2.40.420 Canvass Board. [Renamed]

271
272 2.40.420 **Canvass Board** ~~Counting absentee and questioned ballots.~~
273 **There will be a canvass board consisting of an election board of at least up to two**
274 **qualified voters and the municipal clerk. The canvass board is responsible for**
275 **meeting in a public session to declare which absentee, advanced, questioned, special**
276 **needs, and write-in ballots are valid. The canvass board will review, tally, and**
277 **officially report the results of the ballots. No later than its next regular assembly**
278 **meeting after the municipal clerk submits the Certification of Election, the assembly**
279 **shall receive and adopt the Certification. This meeting may be rescheduled by a**
280 **majority vote of the assembly. If the assembly determines that the election was**
281 **validly held, the assembly shall approve the Certification of Election.**

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2.40.430 Election results.

Following canvass board review, the candidates receiving the greatest number of votes shall be certified elected to office by the **municipal clerk and approved by the** assembly. In case of a tie, the election shall be determined by **coin toss or** by lot from among the candidates tying at a meeting of the assembly

* * *

VIII. Certification of Election

2.40.440 Assembly **Approval Certification.**

At the first regular meeting of the assembly after the election, the assembly shall meet and **approve the municipal clerk and canvass board's certification of returns.** certify the returns. The **approval of** certification may be postponed for cause as determined by the assembly from day to day, but not exceeding three postponements. The **approval of** certification shall be by motion duly made, seconded and passed and the results shall be set forth in the minutes of the meeting. In the case of a recount, the **approval of** certification of the recount may be postponed until the next regular assembly meeting following the recount. Upon **approval of** certification, the **municipal** clerk may issue a written certificate of election to the winning candidates.

The initial election returns shall be announced in public on election night. The certification of all election returns shall be made ~~in public~~ by examining the judges' certificates of returns and compiling these along with the count of valid **advanced or** absentee and challenged ballots **by the municipal clerk and canvass board.** ~~At or,~~ at the discretion of the assembly, an actual recount may be undertaken after due notice to candidates.

* * *

2.40.460 Certificate of election.

Immediately after the **assembly's approval of** ~~assembly's~~ **municipal clerk's** certification is completed, the municipal clerk

IX. Contested Elections

2.40.470 Notice of election contest.

SUBSCRIBED AND SWORN to before me this ___ day of ___, **20**. ~~19~~.

The municipal clerk shall apprise the assembly of receipt of the notice before **approval of** certification of the returns has commenced.

* * *

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329
330 2.40.500 Costs.

331 * * *

- 332 B. If, upon investigation or recount, the contentions of the person filing the notice are
333 proven to be correct, the entire deposit shall be refunded. ~~If the contentions of the~~
334 ~~person filing the notice are proven to be incorrect, the municipal clerk shall refund~~
335 ~~any money remaining after the costs have been paid.~~
336 C. The contestant shall pay all costs and expenses incurred in a recount of an election
337 demanded by the contestant if the recount fails to reverse any result of the election or
338 if the difference between the winning and a-losing vote on the position or
339 proposition result contested is more than two percent after recount. If the entire
340 deposit is not refunded, the municipal clerk shall refund any money remaining
341 after the cost of the recount has been paid from the deposit.

342 * * *

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344 X. Prohibited Practices

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346 2.40.520 Prohibited practices.

347 * * *

348 B. Under Influence by Force. Any person who ~~directly or indirectly~~ uses or threatens
349 to use force, coercion ... is guilty of a Class C felony misdemeanor.—

350
351 C. Undue Influence by Offer. ~~4.~~ Any person who promises to give or offers money or
352 a valuable thing to any persons ... is guilty of a Class C felony misdemeanor.

353 ~~2.— The providing of refreshments of any nature on election day by any candidate,~~
354 ~~political party, or those acting for them or identified with them shall be within the~~
355 ~~above stated prohibition.~~

356 ~~3.— The providing of refreshments of any nature by any person seeking to induce~~
357 ~~others to sign or not to sign any petition for initiative or referendum shall be within~~
358 ~~the above stated prohibition.~~

359
360 D. Improper Subscription to Petition. Any person who signs any name other than
361 their own ... shall be guilty of a Class B misdemeanor.

362
363 E. Under Influence of Election Official. Any person who by force, threat,
364 intimidation ... shall be guilty of a Class C felony misdemeanor.

365 (A.S. 15.56.060(a)(1))
366

367
368 **5. EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of
369 its passage.

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371 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of
372 Sitka, Alaska this 23rd day of December, 2014.

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ATTEST:

Sara Peterson, CMC
Acting Municipal Clerk

Mim McConnell, Mayor