

AN ORDINANCE OF THE HAINES BOROUGH AMENDING HAINES BOROUGH CODE TITLE 2 CHAPTER 2.68 TO AMEND AND CLARIFY THE BOROUGH'S ELECTION PROCEDURES.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. In accordance with the Voting Rights Act of 1965, 42 U.S.C. § 1973 et. seq., following submission to the U.S. Department of Justice for preclearance this ordinance shall become effective upon notification of a decision not to object from the U.S. Attorney General, or if the U.S. Attorney General fails to interpose an objection to these changes to the Borough election code, not sooner than sixty (60) days following preclearance submission pursuant to 28 C.F.R. § 51.42.

Section 4. Purpose. This ordinance amends Title 2 Chapter 2.68 to amend and clarify the borough's election procedures. The code is amended as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
STRIKETHROUGH ITEMS ARE DELETED

**Chapter 2.68
ELECTIONS**

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Article I. General Provisions

2.68.010—Applicable law. Scope of Chapter.

A. ~~The general election laws of the state shall apply to the conduct of all borough elections, recounts of the returns therefrom and contests thereof insofar as they are applicable and not inconsistent with the ordinances of the borough.~~

B. ~~All provisions of the Constitution of the United States the Constitution of the State of Alaska and any other laws enacted pursuant to said constitutions affecting borough elections are incorporated into this chapter as if fully set out herein.~~ **This chapter shall govern municipal elections in accordance with the Borough Charter. All provisions of the United States Constitution, the Alaska State Constitution, and the laws enacted pursuant to these constitutions affecting municipal elections are incorporated in this chapter as though fully set out in this chapter. Provisions of Alaska Statutes Title 15 shall not apply to the conduct of municipal elections unless otherwise provided herein and shall be limited expressly to the provision referenced.**

2.68.020 Elections to be nonpartisan.

All elections held by the borough shall be conducted on a nonpartisan basis.

2.68.030 Subjects of elections.

At any general or special election the voters shall vote upon the election of officers to fill vacancies and in addition upon such propositions, referenda or initiatives which may be properly submitted for approval by the voters or for an expression of opinion by them.

2.68.040 Notices of election.

A. Office Vacancies and Nominating Procedures. At least ~~65~~ **75** days before each general or special election, notice of vacancies in borough offices, ~~and the manner of making nominations, and the subject of any proposition, referendum or initiative being presented shall be posted in three public places and published at least once in one or more newspapers of general circulation in the Haines Borough.~~

B. Proposition, Referendum or Initiative. **At least 40 days before each general or special election, notice of the subject of any proposition, referendum or initiative being presented shall be posted in three public places and published at least once in one or more newspapers of general circulation in the Haines Borough.**

C. General Notice. At least ~~20~~ **21** days before any election the clerk shall give notice of the election by posting in three conspicuous places within the borough and by publishing in a newspaper of general circulation within the borough at least twice such notice of election. Notices **of election** must contain the following:

- A. **1.** The date of the election;
- B. **2.** ~~The offices to be filled or the~~ **Candidates for office and any** propositions, referenda or initiatives to be submitted to the voters;
- C. **3.** The time the polling places will open and close;
- D. **4.** The location of each precinct polling place;
- E. **5.** A boundary description of each voting precinct or a reference to the Alaska Administrative Code section establishing the precinct boundaries; and
- F. ~~The procedure for declaring candidacy;~~
- G. **6.** Whether the election is general or special.

Article II. General Elections

2.68.050 Time of election.

There shall be a general annual election in the borough on the first Tuesday in the month of October each year, to fill vacancies in borough offices and for the determination of other matters as may

regularly be placed on the ballot. General elections shall follow the preclearance requirements of the United States Department of Justice.

Article III. Special Elections

2.68.060 Calling of special elections.

Subject to HBC 2.68.070, special elections may be called by the borough assembly at its discretion at any time or times subject only to the requirement of notice, preclearance by the United States Department of Justice, and the applicable laws and ordinances governing the subject of the proposition or the questions submitted at that election.

2.68.070 Scheduling of special elections.

Special elections shall be held in accordance with the following schedule:

A. An election called for by resolution or ordinance of the assembly shall be held more than 45 days following the assembly's adoption of the resolution or ordinance.

B. An election called for by a petition submitted by the voters for an initiative or referendum election, once it has been certified as sufficient by the borough clerk, shall be held on the ninth Tuesday following the date of certification.

C. An election called for by a petition submitted by the voters for a recall election; once it has been submitted to the assembly, such election shall be held on the ninth Tuesday following submission of the petition to the assembly.

D. A special election may not be scheduled if the regular election held each year on the first Tuesday of October occurs within 75 days of assembly adoption of a resolution or ordinance calling for a special election; within 75 days of the date of certification of sufficiency of a petition by voters for an initiative or referendum election; or within 75 days of the date the petition is submitted to the assembly for a recall election.

2.68.10080 Qualifications of voters.

Each voter in a special election must have the qualifications set forth in HBC 2.68.120 **110**.

2.68.105090 By-mail elections.

The borough assembly may authorize, by resolution, a special by-mail election

A. The resolution and notice of election must state that the election is to be conducted by mail and that there will be no polling place open for regular in-person voting on election day. In a by-mail election, election day will be the date designated by the assembly as the deadline by which a voter's ballot must be voted, witnessed, **and delivered by hand or mailed**, and if **mailed, shall bear a postmarked, date-stamped, dated not later than election day** by the post office. **Ballots received after Election Day without a postmark shall require a sworn and notarized voter affidavit in order to be counted. Such affidavit may be faxed.**

B. In each election conducted by mail, the borough office shall serve the precinct in which the election is to be held. The election official shall mail ballots on or before **not later than** the twenty-second day before the election. Absentee voting in person shall be provided not more than 30 days or not less than one day prior to date of election.

C. The election official shall determine and use a method of voter outreach by which voters are informed of a by-mail election, separate from and in addition to the public notice required by statute. Unless in the discretion of the election official an alternative method of outreach is used, where there are more than 30 days between the date of the election order or resolution calling for the election and election day, the election official will send, to each voter whose name appears on the official register, advance notice of the election at the mailing address stated in the voter's current registration record. The notice shall be sent before ballots are mailed, and must include:

1. The date of the election;
2. Disclosure that the election will be conducted by mail and that no polling place will be available for regular in-person voting on election day;
3. Designation of the offices to which candidates are to be nominated or elected, and a statement of the subject of the proposed service area;
4. Designation of the date on which ballots are expected to be mailed to the voters;
5. Instructions to voters who will not be at their current mailing addresses when ballots are to be mailed, or who do not receive their ballots through the mail;
6. A statement of when the ballots may be voted; and

7. Brief general instructions on how the ballots must be voted and how the oath and affidavit envelope must be completed.

D. For each election conducted by mail, the notice of election under HBC 2.68.040 shall include the information specified in subsection (C) (1) through (7) of this section.

E. The provisions of HBC 2.68.350, election hours, shall not apply to elections conducted under the authority of this chapter. This chapter governs procedures for special elections by mail when in conflict with other sections of the borough election code. Otherwise, the provisions of the borough election code apply to special by-mail elections.

Article IV. Initiatives, Referendums and Recalls

2.68.110 Adoption by reference.

Initiatives, referendums and recalls shall be conducted as provided in AS 29.26.100 through 29.26.360 **except as stipulated otherwise in the borough charter.**

Article V. Qualifications and Challenges

2.68.120 Voter qualifications.

A person may vote at any borough election only if the person:

- A. Is a United States citizen who is qualified and was registered to vote in state elections at least 30 days preceding the borough election in the precinct in which that person seeks to vote;
- B. Has been a resident of the borough for 30 days immediately preceding the election;
- C. Is not disqualified under Article V of the State Constitution.

2.68.130 Challenges.

Registration for state elections is prima facie evidence of a voter's qualification. However, it shall be the duty of election officials to challenge any voter they believe is not qualified. An election judge may question any person of doubtful qualification attempting to vote and may require identification of the voter. Any voter may be challenged by any qualified voter of the borough; however, a person who frivolously, maliciously or in bad faith challenges a voter is guilty of a misdemeanor.

Article VI. ~~Nominations of Candidates~~ Candidates - Nominating; Write-In

2.68.140 Candidate Qualifications.

A. To qualify as a candidate for the elected office, a person must meet the following requirements:

1. Be a qualified voter of the borough and state of Alaska; and
2. Must have been a resident of the borough for a continuous period of not less than one year immediately preceding the date of the election, or if filling a vacancy, one year immediately prior to the appointment date. **Establishing and maintaining Haines Borough residency to qualify for elected office shall be as follows:**

(a) An individual's intent to establish residency, remain indefinitely in the Haines Borough, or to return to the Haines Borough and remain indefinitely is demonstrated through the establishment and maintenance of customary ties indicative of Haines Borough residency and the absence of those ties elsewhere. Acts that are required by law or contract or are routinely performed by temporary residents of the Haines Borough are not by themselves evidence of residency. In evaluating whether an individual claiming Haines Borough residency has demonstrated intent to remain indefinitely in the Haines Borough, consideration will be given to whether or not an individual has:

- (1) taken steps to establish Haines Borough residency and sever residency in a location outside of the Haines Borough;**
- (2) ties to a location outside of the Haines Borough that indicate continued residency in the other location; and**
- (3) taken other action during the candidacy qualifying year that is inconsistent with an intent to remain in the Haines Borough indefinitely.**

(b) An individual may not become a resident of the Haines Borough while absent.

(c) Physical presence in the Haines Borough is not, by itself, sufficient to establish residency. Before the start of the candidacy qualifying year, an individual must

have taken at least one step beyond physical presence in the Haines Borough to establish residency.

(d) An individual is not eligible for elected Haines Borough office if, at any time from the start of the candidacy qualifying year through the date of candidacy filing, the individual has

(1) maintained the individual's principal home in another location outside of the Haines Borough, regardless of whether the individual spent a majority of time at that home;

(2) disclosed in a court proceeding, affidavit, or will that the individual is a resident of a location outside of the Haines Borough;

(3) moved from the Haines Borough;

(4) claimed moving expenses as a deduction on the individual's federal income tax return;

(5) registered to vote in a location other than the Haines Borough and provided a physical address outside of the Haines Borough;

(6) purchased a resident hunting, fishing, or trapping license from a location other than the Haines Borough if residency in that location was required as a condition of the license; or

(7) obtained any other benefit or benefits as a result of establishing or maintaining any claim of residency in a location outside of the Haines Borough.

B. A candidate must provide sufficient proof that the candidate is qualified, or shall be qualified by the date of the election, to be nominated as a candidate for any election.

C. A person may not be nominated for or serve in more than one office at the same time, except that the deputy mayor may serve as both deputy mayor and assembly member when necessary.

D. The clerk shall determine whether each candidate for borough 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.

E. In addition to the clerk, Any person may question the qualification of a candidate who has filed a nominating petition with the clerk by filing a complaint with the clerk. A complaint must be received by the clerk no later than 5:00 p.m. on the third borough business day after the last day for the filing of a nomination petition.

F. The complaint must be in writing and include the name, mailing address, electronic mailing address, phone number, signature of the person making the complaint, and a statement in 200 words or less of the grounds, described in particular, on which the candidate's qualification is being questioned.

G. The clerk will review only those issues in the complaint related to candidate qualifications established by the United States Constitution, the Alaska Constitution, the Alaska Statutes, the borough charter, and the borough code.

H. Upon receipt of a complaint, or if the clerk questions the qualification of the candidate, the clerk will send, by mail or electronic mail, written notification to the candidate whose qualification is being questioned that a complaint has been received. The notification will include a copy of the complaint.

I. The clerk will review any evidence relevant to the candidate's qualifications, such as the candidate's voter registration, nominating petition, and other documentation on file with the state and borough. Based on the review of the documentation, the clerk will determine whether a preponderance of evidence supports or does not support the qualification of the candidate.

J. If the clerk determines the preponderance of evidence supports the qualification of the candidate, the clerk will issue a final determination supporting the candidate's qualification.

K. If the clerk determines the preponderance of evidence does not support the candidate's qualification, notice to the candidate will either include the clerk's final determination or, if necessary, identification of 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 qualification no later than three borough business days from receipt of the additional information.

L. If the information requested by the clerk in subsection (K) of this section is not received by the specified deadline, the clerk will issue a final determination regarding the candidate's qualification based on the information initially reviewed.

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

N. The candidate or person making the complaint may file a written protest with the clerk within five business days following the date of notice of the clerk's final determination. The clerk shall present the protest at the next regular meeting of the assembly. The assembly shall hear and decide the protest. The burden of proof shall be on the complainant. The assembly's decision shall be made at that meeting and shall be final.

2.68.150 Declaration of candidacy and nomination petition.

A. Nomination. Any person qualified to serve in an elective office in the borough may have the person's name placed on the ballot as a candidate for elective office by filing a nomination petition and declaration of candidacy on forms prescribed and provided by the borough clerk. The nomination petition must be signed by no fewer than 10 registered voters **qualified to vote in the borough.** Signatures to a nomination petition need not all be appended to one page. To each separate page of a petition shall be attached an affidavit of the person circulating the petition stating that each signature appended thereto was made in his or her presence and is the genuine signature of the person whose name it purports to be. To each nominating petition shall be attached declaration of candidacy stating that the candidate named in the petition consents to serve if elected to the position for which the person is nominated. The nominating petition and declaration of candidacy, must be filed with the borough clerk or a duly authorized representative not more than **65 87** and not less than **40 67** days prior to the general election. The candidate's signature on the declaration of candidacy shall be notarized.

The nominating petition shall be in substantially the following form:

Nominating Petition

*We, the undersigned qualified voters of the Haines Borough, in the State of Alaska, hereby nominate and sponsor _____, who resides in the Haines Borough, for the office of _____, and ask that his/her name be placed on the October ____, 20__ General Election ballot.
We individually certify that we are qualified to vote in the named election.*

*Name Residence Address Date Signed
(Followed by at least 10 lines for signatures.)*

The declaration of candidacy shall be in substantially the following form:

Declaration of Candidacy

*I, _____, declare that I reside at _____ in the Haines Borough, Alaska; that I am a registered voter in the borough; that I have resided in the borough continuously for a period of at least one year **immediately** preceding the date of the election for which I am being nominated **and meet the definition of resident in Borough Charter 18.09(J) and the residency standards in HBC 2.68.130(A)(2).***

I declare myself a candidate for the office of _____ for a term of _____ years, and request that my name be printed upon the official ballot for the borough election to be held on the _____ day of _____, 20__.

*SIGNATURE: _____
FOLLOWED BY A NOTARIZATION BLOCK.*

2.68.150 Write-In Candidates.

A. If a candidate does not appear on the election ballot and wishes to be a candidate in the election, the candidate may file as a write-in candidate. Votes for a write-in candidate may not be counted unless that candidate has filed a letter of intent with the borough clerk stating the following:

- 1. the full name of the candidate;**
- 2. the full residence address of the candidate;**
- 3. the full mailing address of the candidate;**

4. the office that the candidate seeks;
5. the date of the election at which the candidate seeks election;
6. the name of the candidate as the candidate wishes it to be written on the ballot by the voter;
7. that the candidate meets the residency requirements of the office for which the person is a candidate;
8. that the candidate is a qualified voter as required by law; and
9. that the candidate is not a candidate for any other office to be voted on at the general election and that the candidate is not a candidate for this office under any other nominating petition or declaration of candidacy.

B. A letter of intent under (A) of this section must be filed not later than five calendar days before the general election.

2.68.160 Other propositions and petitions.

All other matters which may be properly filed for inclusion on the ballot, including propositions and petitions, shall be filed **certified** not more than **65 75** days and not less than **35 42** days prior to the election with **by** the clerk or a duly authorized representative.

2.68.170 Review by borough clerk.

The clerk shall make a record of the exact time at which each petition is filed and preserve the name and address of the person by whom it is filed. If the petition for any candidate is not signed by the required number of qualified electors or is insufficient in any particular, the clerk shall return it immediately to the person who filed it certifying in writing wherein the petition is insufficient and send a copy of the certification to the candidate. Such deficient petition may be amended and filed again as a new petition for the same candidate within the regular time for filing nomination petitions.

2.68.180 Notification and acceptance of nomination.

The clerk shall notify a qualified person of the person's nomination by registered, certified or other special mail, and such person shall file with the clerk the person's written acceptance of nomination, in such form as the assembly may require, within five days of receipt of notification of nomination. Upon receipt of such acceptance of nomination, the clerk shall cause the nominee's name to be printed on the ballot. The petition of nomination for a successful candidate at an election shall be preserved in the office of the clerk until the term of office for which the candidate is elected expires.

2.68.190 Withdrawal of nominating petition.

Any person nominated for office may withdraw that person's nomination, **by submitting written notice to the borough clerk** in writing within 72 hours of the closing of candidate filing or at any time before the ballot has been submitted by the clerk for printing. After the clerk has submitted the ballot for printing, no nominating petition may be corrected, amended or withdrawn.

Article VII. Ballots

2.68.200 Form of ballot.

~~A. Conformance with State Law. Ballots shall be prepared as provided by state law (AS 15.15.030) except that the clerk shall prepare ballots and be governed by this title where in conflict with the state law and provisions of state law which are not appropriate for borough elections shall be disregarded.~~ **The 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.**

~~B. Headings and Instructions. The official ballot shall contain, at the top thereof, the words "Official Ballot" and the date of the election, whether such election is a general borough election or a special borough election, and such instructions to the voters as will enable them intelligently to mark their ballots for the candidates for whom they desire to vote, and to intelligently vote upon the questions which are submitted.~~

C. The clerk shall determine the size of the ballot, the type of print, necessary additional instruction notes to voters, and other similar matters of form not provided by law. The ballots shall be numbered in series to ensure simplicity and secrecy and to prevent fraud.

D. The names of all offices and candidates to be voted upon shall be printed on the ballot. The title of each office to be filled shall be followed by the printed names of the candidates for such office, below which shall be blank lines equal in number to the candidates to be elected to such office, upon which the voter may write the names of persons not listed on the ballot. The words "Vote for _____ only" with the appropriate number replacing the blank shall be placed before the list of candidates for each office. The names of candidates shall be printed as they appear upon the nomination petitions filed with the borough 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. The names of candidates shall be arranged alphabetically. Provision shall be made for voting for a write-in candidate for each seat.

E-G. Following the offices and candidates there shall be placed on the ballot or on separate ballots as the clerk may determine, all propositions or questions to be voted upon. The words "Yes" and "No" shall be placed with the statement of each proposition or question for selection.

2.68.210 Sample ballots.

In addition to the official ballots as described, there shall be printed under the direction of the clerk, on paper of any color except white, ~~not less than 100 ballots,~~ which shall be marked as "Sample Ballots." ~~and may be distributed to the candidates for office~~ **Sample ballots shall be posted in three conspicuous places and may be distributed as needed** by the clerk, ~~in such quantities as may be reasonably required.~~

2.68.220 Distribution of ballots.

The clerk shall have the ballots in the clerk's possession at least 10 days before each election. Sufficient ballots for the registered voters of the borough shall be delivered to the election board. A receipt shall be taken from the election board member to whom ballots are delivered, said receipt to be preserved with other records of the election for one year. No ballots may be taken from the polling place before the closing of the polls except under the direction of the clerk.

Article VIII. Instructions to Voters

2.68.230 Printing and posting.

Instructions to voters shall be printed under the direction of the clerk, on ~~cardboard~~ **cardstock** or heavy paper, in large, clear type, and one copy of such instructions shall be posted in each room where polling booths are located and in each of the voting booths provided for the election. Sample ballots shall also be provided for voters to review.

2.68.240 Contents.

The printed instructions referenced in HBC 2.68.230 shall state the following:

A. When entering a polling place give your name and, if required, your residence to the judge of the election.

B. If your name is found on the registration list and your right to vote is not challenged, one of the judges or a member of the election board will hand you a ballot. If your name is not on the ballot register, or if your right to vote is challenged, you can vote by the challenged **questioned** ballot method.

C. A voter who is not recognized by a member of the election board and cannot exhibit a required form of identification shall be allowed to vote a questioned ballot.

D. When you have received your ballot, retire at once, alone, into one of the voting booths and prepare your ballot for the ballot box by marking it.

E. At the top of the ballot you will find instructions for marking the ballot, and below the instructions you will find the names of all the candidates for respective offices to be filled, and/or the proposition or question to be voted upon under the appropriate titles. Do not mark your ballot in any way except as directed below and do not make any erasures.

F. To vote for a candidate or question; completely fill in the oval adjacent to the name of the person or to the question.

G. Do not vote for more candidates to any office than there are to be elected to such office. If you do so this portion of your ballot will be rejected.

H. If you should mismark or otherwise spoil your ballot, return the ballot to the election worker who issued it to you and you will be issued a new ballot. You may receive only two ballots for this purpose in addition to your original ballot.

I. Before leaving the booth, cover your ballot or place it in the secrecy sleeve provided so as to conceal marks you made on it. Upon leaving the voting booth, please proceed directly to the ballot box and slide your ballot into the Accu-Vote machine. This shall protect the secrecy of the ballot.

J. You must deposit the ballot in the ballot box yourself in the presence of the election judge unless you request the election judge to deposit the ballot on your behalf. Separate ballot boxes may be used for separate ballots.

Article IX. Absentee Voting

2.68.250 Absentee voting; eligible persons; permanent absentee voters.

A. At any election, a qualified voter may vote an absentee ballot for any reason.

B. The borough clerk may designate a person as a permanent absentee voter if the person is a qualified voter, and if the voter is registered with the State of Alaska Division of Elections as a permanent absentee voter within the borough.

C. A person designated as a permanent absentee voter under subsection (B) of this section will be sent an application for an absentee-by-mail ballot at the permanent mailing address stated on the voter's current registration record on the following schedule:

1. In January each year;
2. At least 45 days before a special election;
3. At a time specified by the borough clerk before any election, to voters defined in

subsection (A) of this section who registered to vote after the last mailing of absentee-by-mail ballot applications.

D. The voter may submit the application and vote by mail. However, nothing in this section limits the voter's eligibility to vote in person at a precinct, in person before an absentee voting official, or absentee through a personal representative.

2.68.260 Absentee voting procedure.

A. The application for an absentee ballot shall show the applicant's place of residence, clearly indicate the applicant's right to an absentee ballot, state the election date, and be signed by the applicant.

1. Application for Absentee-by-Mail Ballot. Beginning on January 1st of each election year, a qualified voter entitled to cast an absentee ballot may in person or by mail, **electronic mail**, or by facsimile machine, file a written, **signed** application for an absentee-by-mail ballot with the election official **borough clerk**. Application for a by-mail ballot must be received in the office of the borough clerk not less than 10 days before the election for which the absentee ballot is sought. If a voter fails to provide a specific ballot mailing address on an absentee-by-mail ballot application, the ballot will be mailed to the mailing address on the voter's record, ~~or, if no address is provided, to the fax, e-mail, or other electronic transmission acceptable to the borough clerk.~~

2. Application for Absentee-by-Fax Ballot. A qualified voter may vote by fax beginning 15 days before and through the close of the polls on election day. The voter must submit a written, **signed** request **application** for a fax ballot to the borough clerk's office no later than 5:00 p.m. the day before election day. An absentee ballot that is completed and returned by the voter by fax must contain the following statement: "I understand that by using fax transmission to return my marked ballot, I am voluntarily waiving a portion of my right to a secret ballot to the extent necessary to process my ballot, but expect that my vote will be held as confidential as possible."

3. Absentee Voting in Person **and early voting**. A qualified voter may vote **early or** absentee-in-person on or after the fifteenth day before an election up to and through the day before election day, in a location and at places and times determined by the borough clerk.

~~4. Early Voting. A qualified voter may vote early on or after the fifteenth day before an election up to and through the day before election day, in a location and at places and times determined by the borough clerk.~~

~~5.~~ 4. Absentee Voting by Personal Representative. A qualified voter who is unable to go to the polling place on election day due to age, illness or disability, may appoint a personal representative to obtain a ballot for the voter on or after the fifteenth day before an election, up to and including election day.

B. Upon timely receipt of an application for an absentee ballot, the borough clerk or other election official shall deliver to the applicant personally, or by mail at the mailing address given in the application, or by fax to the fax number listed on the application, or to the voter's personal representative, if application is made by a personal representative, an official ballot for the election, a ~~secrecy sleeve~~, and if required, **a secrecy sleeve and** an addressed return envelope.

C. The borough clerk shall provide ballots for use as absentee ballots. The borough clerk shall issue rules and instructions to absentee voters to aid them in casting their ballots. The borough clerk shall prescribe the form of and prepare the voter's certificate, envelopes, and other materials used in absentee voting. The voter's certificate shall include an oath, that the voter is a qualified voter, a blank for the voter's signature, a certification that the affiant properly executed the marking of the ballot and gave the voter's identity, blanks for the attesting official or witness, and a place for recording the date the envelope was sealed and witnessed.

D. Upon issuing an absentee ballot, the borough clerk shall record the date of delivering or mailing the ballot.

E. Any voter issued an absentee ballot, may, at any time prior to the closing of the polls on the day of the election for which it is issued, appear at the office of the borough clerk, or such other place as the borough clerk may designate, and there cast a ballot in the following manner: The voter first shall show the borough clerk or other election official that the ballot has not been marked, then shall mark the ballot, **as indicated by the instructions on the ballot**, in the presence of the borough clerk or election official, in such a manner that the borough clerk or election official cannot see how it is marked. ~~The voter shall fold the ballot and place it in the secrecy sleeve, then place the secrecy sleeve in the return envelope. Then the voter shall complete and swear to the affidavit printed on the return envelope.~~ The borough clerk or other election official shall **secure the ballot and** deliver the return envelope **it** to the appropriate place for counting.

F. At any time on or before the day of the election, any voter issued an absentee ballot may appear before any person authorized by law to administer oaths, and in the presence of such officer cast the voter's ballot in the same manner the voter would cast it under this section in the office of the borough clerk or other place designated under this section. After executing the affidavit printed on the return envelope, the officer shall return the envelope to the voter who shall mail it to the borough clerk **according to HBC 2.68.320**.

2.68.270 Special needs voting. Repealed by Ord. 06-08-149.

2.68.280 Absentee voting by mail or electronic transmission. Repealed by Ord. 06-08-149.

2.68.290 Examination of absentee ballot application and issuance thereof. Repealed by Ord. 06-08-149.

2.68.300 Absentee voting by electronic transmission. Repealed by Ord. 06-08-149.

2.68.310 Casting absentee ballots. Repealed by Ord. 06-08-149.

2.68.320 Counting of absentee ballots.

A. To be counted in the election, absentee ballots must be received by the borough clerk before closing of the polls on the day of the election, if voted in the office of the borough clerk or other place designated by the borough clerk, or postmarked not later than the day of the election and received by the borough clerk before the canvass of election returns under HBC 2.68.470. ~~The borough clerk shall mark return envelopes received after such time.~~

B. Absentee ballots received without an executed voter affidavit certificate (see HBC 2.68.260(C)) shall be marked as "Invalid," and the time and date of receipt by the borough clerk shall be noted thereon.

C. Absentee ballots received after election day, and postmarked on a day later than the election, shall be marked as "Invalid," and the time and date of receipt by the borough clerk shall be noted thereon. The ballot of a voter that is received after election day without a postmark will not be counted unless the voter submits a sworn and notarized affidavit. Such affidavit may be faxed.

D. Absentee ballots received before the closing of the polls may be reviewed at any time for voter qualification and may be processed through the Accu-Vote system or counted by hand by one or more counting teams appointed by the borough clerk, commencing at the time the polls close on Election Day.

E. Invalid Absentee ballots shall not be counted. Such envelopes shall be retained with other election records and destroyed with them according to the borough's retention schedule and the destruction procedure in HBC 2.64.030.

Article X. Conduct of Elections

2.68.330 Election officials.

A. Election Supervisor. The borough clerk shall be the election supervisor. The clerk shall **have authority to** conduct the **all** election **proceedings** and have authority to carry out the intent of this chapter. The clerk may authorize an assistant to perform the functions set out in this chapter as election official. Such assistant shall be administered the election officials' oath.

B. Judges. Prior to each election, the mayor **borough clerk**, with the approval through a resolution of the assembly, shall appoint at least three judges of election for each polling place. One judge shall be designated chair and shall be primarily responsible for administering the election in that precinct. If a judge is not able or refuses to serve on election day, the clerk may appoint a replacement.

C. Election Clerks. The borough clerk may appoint up to three election clerks at any polling place where they are needed to conduct an orderly election and to relieve the election judges of undue hardship.

D. Election Officials to Be Qualified Electors. Each election official serving at a polling place must be a qualified voter and reside within the borough.

E. Oath. Each election official shall take or subscribe to the following oath delivered to the official by the borough clerk:

I, _____, do solemnly swear (or affirm) that I will honestly and faithfully perform the duties of judge of the election according to law; and that I will endeavor to prevent fraud, deceit, or abuse in conducting the election, to the best of my knowledge and ability.

F. Training Session. All election officials must attend a training session unless excused therefrom by the borough clerk. Any appointed official who fails to attend a training session without being excused will be subject to dismissal by the clerk who is authorized to make an appointment to fill the vacancy caused by such dismissal.

G. Compensation. The judges and clerks of election shall be paid such compensation for their services as is determined by resolution of the assembly, ~~and in accordance with the most current rates established in the state compensation schedule for election officials.~~

2.68.340 Voting precincts.

Voting precinct names and boundaries shall be determined and defined by the Alaska State Division of Elections. Names and boundary descriptions of voting precincts shall be kept on file at the borough clerk's office. The polling places for the borough shall be the American Bald Eagle Foundation Building and the Klehini Valley Fire Department unless changed by circumstances. In the case of a polling place change, a notice shall be posted clearly on the main entrance of the primary polling place giving directions to the alternate polling place.

2.68.345 Sales of alcohol on election day.

The provisions of AS 04.16.070(2) do not apply in the borough, and intoxicating liquor may be sold, bartered, given, consumed or otherwise disposed of in licensed premises while the polls are open on election day.

2.68.350 Dates and hours for elections.

A. General and Special Elections. General and special elections may be held as prescribed in HBC 2.68.050 and 2.68.060, respectively.

B. Polls – Opening and Closing. On election day, precinct polls shall open for voting at 8:00 a.m. and shall remain open continuously until 8:00 p.m.; except on those election days when borough and state elections are held concurrently in which case the precinct polls shall be open for voting at 7:00 a.m. Immediately after the opening of the polls and before receiving any ballots, one of the judges of the election shall proclaim from the door of the polling place that the polls of such election are open. Thirty minutes before the closing of the polls, an election judge shall proclaim to any persons present the time remaining before the polls close. When the polls are closed that fact shall be similarly proclaimed and thereafter no ballot shall be accepted except those of qualified voters already present at the polls and waiting to vote when the polls are closed.

2.68.360 Election supplies and equipment.

The borough clerk shall cause to be erected in the polling place(s) a sufficient number of booths, which shall be furnished with such supplies and conveniences as will enable the voter to mark the ballot for voting and in which the voter may prepare the ballot screened from observation. The ballot boxes shall be within the polling place, outside of the booths.

2.68.370 Voting procedures at the polls.

A. 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 borough clerk or designee will ensure that the ballot box is empty. The ballot box then shall be closed and shall not be opened again or removed from the polling place until the polls have closed.

B. The voter shall give the election officials the voter's name and address. The election official may require proof of identification as required by AS 15.15.225. If it is determined that the voter is a qualified voter of the precinct, the voter then shall place the voter's signature on the appropriate line in the registration book provided by the borough clerk. If any election official present believes the voter is not qualified, that official shall immediately challenge the voter.

C. A person whose right to vote has been challenged may be issued a ballot if the voter first completes and subscribes to an affidavit of his qualification. When the marked ballot is returned to the election officials, it shall be placed in an envelope to permit segregation before being cast in the ballot box. The clerk shall provide forms and materials for this procedure. All envelopes containing **challenged questioned** ballots shall be returned to the clerk for delivery, unopened, to the assembly at the time of canvass.

D. If the voter is not challenged, or if the voter has complied with the **challenged questioned** ballot procedure, the election officials will issue to the voter the ballot or ballots to which the voter is entitled.

E. Each voter shall retire alone to a booth or to a private area to mark the voter's ballot, **as indicated by the instructions on the ballot**. If a voter is blind or otherwise physically unable to mark the ballot alone, the voter may request assistance, and it will be provided by two election officials. When the voter has marked the ballot, upon leaving the booth the voter shall deposit it in the Accu-Vote ballot box in the presence of the election judge unless the voter requests the election judge to deposit the ballot in the voter's behalf.

F. If a voter improperly marks or otherwise damages a ballot, the voter shall return it to the election officials, concealing the manner in which it is marked from view, and shall request a new ballot. The election officials shall destroy the damaged ballot after having recorded its number and shall issue a new ballot to the voter. A voter may request replacement of a damaged ballot no more than two times.

G. During the hours that the polls are open, no judge or clerk may discuss any political party, candidate or issue while on duty.

~~H. Thirty minutes before the closing of the polls, the time remaining before such closure shall be proclaimed. When the polls are closed for the purpose of voting, the fact shall likewise be proclaimed and thereafter no ballot shall be issued except to those voters who were present and waiting their turn to go through the voting procedure at the time prescribed for closing the polls.~~

2.68.380 Unused and damaged ballots.

The numbers of all ballots not issued shall be recorded and then all such ballots shall be segregated and removed from the area in which the counting is to take place before the ballot box is opened. The numbers of ballots damaged by voters and replaced pursuant to HBC 2.68.370(F) shall also be recorded. The record of ballots not issued and ballots damaged as well as the ballots themselves shall be delivered to the borough clerk with the other election materials and shall be preserved for six months.

2.68.390 Counting of ballots.

A. The opening of the ballot box and the counting of the ballots shall be accomplished in full view of any persons present. The public may not be excluded from the area in which ballots are counted. However, the chair of the election board shall not permit anyone present to interfere in any way or to distract the appointed officials from their duties and no one other than appointed election officials may handle the ballots. **The ballots shall not be marked in any way by anyone during the tallying.**

B. Immediately following the closing of the polls and the disposition **removal** of unused ballots pursuant to HBC 2.68.380, the election officials shall print out the tally of all ballots on the Accu-Vote

machine, comparing the results with the signature register. With necessary adjustment to account for the number of ballots required to present to each voter all of the offices and propositions on which the voter is entitled to vote, the number of ballots issued shall agree with the number of signatures on the signature register. If a discrepancy exists which cannot be resolved, the election officials shall explain the discrepancy to the best of their ability in writing for delivery to the borough clerk.

C. Ballots not counted shall be retained and with counted ballots be delivered to the borough clerk.

D. Hand Count. In the case of an election where ballots are counted by hand, the election officials shall follow the same procedures as for machine counting, except as follows: Ballots shall be removed from the ballot box and separated into stacks of 25. Election officials shall then tally the votes **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 placed within 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 or propositions does not itself invalidate the entire ballot.

3. 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.

4. An erasure or correction invalidates only that section of the ballot in which it appears, unless the intent of the voter is clear.

5. One official shall read the votes, with another official watching.

6. Two officials shall tally votes with officials watching to assure proper tallying, comparing tallies each time they finish a group of 25 ballots.

7. The results shall be transferred onto a final report, showing votes received by each candidate and for each question, and recording write-in votes cast.

8. The report shall be signed by all election officials present.

9. In the event a mark on any ballot is questionable, it shall be decided by the election officials whether the intent of the voter is clear by the manner they ~~the ballot is~~ marked ~~the ballot~~. **If the intent of the voter is not clear, the vote shall not be counted.**

E. Write-In Votes. Write in votes shall be counted pursuant to the rules set forth in this section and according to the following additional rules.

1. Write-in votes are not invalidated by writing in the name of a candidate whose name is printed on the ballot unless the election board determines, on the basis of other evidence, that the ballot was so marked for the purpose of identifying the ballot.

2. In order to vote for a write-in candidate, the voter must write-in the candidate's name in the space provided and fill in the oval opposite the candidate's name in accordance with (1) of this subsection.

3. A vote for a write-in candidate shall be counted if the oval is filled in or marked for that candidate and if the name, as it appears on the write-in declaration of candidacy, of the candidate or the last name of the candidate is written in the space provided. Write-in votes are not invalidated by misspelling the name of the candidate if the election officials determine that the intent of the voter is clear.

4. Hand counting individual write-in votes in a borough election will only be done if the aggregate of all votes cast for all write-in candidates for the particular office, as shown on the machine tally, meets one of the following requirements:

(a) the number is the highest of votes received by any candidate for the office; or

(b) the number is high enough to conceivably affect the outcome of the race when all outstanding votes are counted.

If the election officials determine that one of these requirements has been met, the ballots shall be hand-tallied on election night following poll closure.

F. The rules set out in this section are mandatory and there are no exceptions to them. A ballot may not be counted if it is not in compliance with these rules.

2.68.395 Stickers Prohibited.

Affixing stickers on a ballot in a municipal election is prohibited.

2.68.400 Certificate of returns.

When the tally of votes is completed and the printout received from the Accu-Vote, it must be signed by the election board. After completion of the certificate of returns, the counted ballots shall be placed in an envelope **boxes** provided by the borough clerk and shall be delivered to the borough clerk by noon of the day following, together with the rejected ballots to be preserved for six months, after which they shall be destroyed.

Article XI. Prohibited Practices

2.68.410 Election offenses and corrupt practices.

The following acts are declared to be election offenses and corrupt practices and are prohibited:

- A. Inducing, compelling, or attempting to induce or compel any person to vote or refrain from voting for any candidate in any election or for or against any election proposition or question by directly or indirectly using or threatening to use force, coercion, violence or restraint or inflicting or threatening to inflict damage, harm or loss upon or against the person;
- B. Giving, promising to give, or offering any money or other valuable thing to any person with the intent of inducing him or her to vote for or refrain from voting for any candidate or for or against any election proposition or question;
- C. Writing, printing or circulating, or causing to be written, printed or circulated, any letter, circular, bill, placard or poster or other publication relating to any election or to any candidate at any election or to any election proposition or question without the same bearing on its face, the name and address of the author, printer, and publisher thereof;
- D. Writing, printing or circulating, or causing to be written, printed or circulated, any letter, circular, bill, placard or poster, or causing any paid advertising to be placed in a newspaper or any other publication, or paying or contributing to the payment for such advertisement, or making any radio broadcast, with knowledge that the letter, circular, bill, placard or broadcast contains any false statement, charge or comment relating to any candidate at any election or to any election proposition or question;
- E. Possessing an official ballot outside of the voting room if not authorized by law to do so;
- F. While the polls are open, opening any ballot received from a voter, or marking a ballot by folding or some other manner so as to be able to recognize it, or otherwise attempting to learn how any voter marked the voter's ballot;
- G. Publishing or causing to be published any letter, circular, poster, bill, publication or placard, knowing that it contains any false statement or false charges reflecting on the character, morality, or integrity of any candidate at any election;
- H. Voting or attempting to vote in the name of another person or in any name other than the person's own;
- I. By force, threat, intimidation or offer of reward, inducing or attempting to induce any election judge or clerk to fail in their duty;
- J. Willfully changing or causing to be changed any official election documents including ballots, tallies and returns, or attempting to do so;
- K. Willfully delaying or causing to be delayed the election returns, or attempting to do so;
- L. Willfully voting or attempting to vote more than once at the same election;
- M. Willfully making a false affidavit or swearing falsely under the oath required by this chapter;
- N. Willfully failing to perform any election duty or knowingly doing any unauthorized act with the intent to affect the election or its results, by any election judge or clerk;
- O. Willfully permitting, making or attempting to make any false count of the election returns by an election judge or clerk;
- P. Willfully concealing, withholding or destroying election returns or attempting to do so;
- Q. Electioneering on election day within the polling place or within 200 feet of the building wherein the polling place is located.

2.68.420 Improper subscription to petition.

Any person who signs any name other than the person's own to a petition proposing an initiative, referendum or recall, or who knowingly signs the person's name more than once for the same

proposition or question at one election, or who signs the petition knowing the person is not a qualified voter, shall be guilty of a misdemeanor.

2.68.430 Penalty.

Any person convicted of a violation of any of the sections of this article shall be subject to punishment as provided in this code.

Article XII. Canvass of Returns

2.68.470 Canvass of returns.

Not later than seven days after the election the assembly shall meet and canvass the election returns. ~~The canvass may be postponed from day to day but not exceeding three postponements.~~ **If the assembly is unable to complete the canvass on its first meeting, the assembly may recess its deliberation for not more than 24 hours. The meeting may not be recessed more than twice, and absentee ballots received after the first meeting will not be considered.**

2.68.480 Adjudication and counting of absentee and challenged questioned ballots.

A. The borough clerk shall provide such evidence as may be required to assist the assembly in judging the qualifications of those voters who cast challenged **questioned** ballots, or whose absentee ballots were in some way questionable. In full view of those present the assembly shall make a determination upon each of these ballots. To be counted in the election an absentee ballot must be received by the clerk before the date and hour of the canvass and, if mailed, postmarked no later than the day of the election or, if electronically transmitted, the electronically generated time must be no later than 8:00 p.m. Alaska time on the day of the election. An absentee ballot may **shall** not be counted if:

1. The voter has failed to properly execute the certificate;
2. An official or the witnesses authorized by law to attest the voter's certificate fail to execute the certificate;
3. The ballot is not attested to on or before the date of the election; ~~or~~
4. The ballot **return envelope**, if postmarked, ~~is not on or before the a~~ date **after** of the election; ~~or~~

5. A voter has not submitted an affidavit in support of an unpostmarked ballot received in the mail after the election.

B. Accepted challenged **Questioned** and absentee ballots **judged to be valid** shall be counted in the following manner. The ballots shall be removed from the identifying outer envelopes and shuffled thoroughly. The envelopes shall also be shuffled thoroughly and delivered to the borough clerk to be preserved with other records of the election. The votes cast on these ballots shall then be tallied by hand count and/or Accu-Vote.

C. The rules set out in this section are mandatory and there shall be no exceptions to them. A ballot shall not be counted unless in compliance with these rules.

2.68.490 Manner of canvass.

The canvass of all election returns shall be made in public by examining the election board's certificates of returns and compiling these along with the tally of valid absentee and challenged **questioned** ballots, or, at the discretion of the assembly, an actual recount may be undertaken under usual counting procedures and after due notice to candidates.

2.68.500 Certification and Record of results.

A. At the first regular meeting of the assembly following the canvass, unless the assembly orders an investigation or unless a contest has been previously filed pursuant to HBC 2.68 Article XIII, the assembly shall declare the election valid and certify the election results.

B. The assembly shall certify results not in question immediately and shall complete an investigation or contest procedures as soon as practicable to assure prompt certification.

C. In the case of a recount, the certification of the recount may be postponed until the next regular assembly meeting following the recount.

D. The certification shall be by motion duly made, seconded and passed and the results of all ~~the~~ elections shall be noted in the record of the proceedings of the assembly. The record shall contain **include** a statement of: A. ~~The~~ the total number of votes cast at each **during the** election; **and** B. ~~The~~ the votes cast for each person and for and against each proposition; ~~and~~

~~C.E.~~ Upon certification of the election by the assembly, the clerk shall deliver to each person elected a copy of the assembly's certificate of election. ~~A certificate of election shall be issued in the name of each person elected to office and the office to which elected; except that, in the event of a tie or if no candidate receives in excess of 40 percent of the vote cast for the respective office, a certificate shall be issued to the two persons receiving the highest number of votes for the office, stating the number of votes received by each and certifying them as candidates in a runoff election under HBC 2.68.510.~~ **The certificate so made shall be prima facie evidence of the truth of the statements contained in it.**

2.68.510 Votes required to elect – Runoff elections.

If in a borough election no candidate receives in excess of 40 percent of the votes cast for the respective office, the assembly shall hold a runoff election between the two candidates receiving the greatest number of votes for the office on the fourth Tuesday of October **first Tuesday in November** following the canvass and certification as in HBC 2.68.520 **500**. If a state of Alaska general election is scheduled for the first Tuesday in November, the borough runoff election may be postponed to coincide with it. Notice of the runoff election shall be published at least five **ten** days before the election date. The person receiving the highest number of votes shall be elected to the seat following canvass and certification of the election as provided in HBC 2.68.520 **500**.

Article XIII. Contested Elections

2.68.530 Notice of election contest.

A defeated candidate or 10 qualified voters who voted in that election may contest election of any person or the approval or rejection of any question or proposition upon one or more of the following grounds: (1) mistake, misconduct, fraud, or corruption on the part of an election official sufficient to change the result of the election; (2) when the person certified as elected or nominated **the candidate certified by the election board under HBC 2.68.400** is not qualified as required by law; (3) any corrupt practice as defined by law sufficient to change the results of the election (4) errors in the conduct of a recount. The notice of election contest shall be submitted, **in writing,** to the borough clerk **before 5 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 signatures of the candidate or qualified voters bringing the contest. The notice shall be** in approximately **substantially** the following form:

NOTICE OF ELECTION CONTEST

(I)(we), the undersigned, believe(s) that the following prohibited practices occurred at the election held on ___(date)__. (I)(We) also hereby state that the violation was committed by the following person(s):

*List prohibited practice(s) _____
List person(s) alleged to have committed the violation:*

Signature of Person(s) Contesting
SUBSCRIBED and SWORN to before me this _____ day of _____, 20 __
by: _____.

Notary Public

The notice must be submitted to the clerk before the assembly meets to canvass the election returns. The borough clerk shall apprise the assembly of receipt of a notice before the canvass of returns is commenced.

2.68.540 Investigation of ~~protests~~ election contest.

Upon receiving a notice of election contest and subject to HBC 2.68.550, **per HBC 2.68.530**, the assembly shall order an investigation to be made by the **borough attorney,** clerk and manager. All investigation proceedings shall be conducted publicly. The authority to investigate includes the authority to order the appearance of witnesses, to administer oaths, and to compel the production of books, records, paper and electronic documents, and other evidence. Following completion of the investigation, a written report shall be prepared and presented to the assembly.

2.68.545 Assembly action following investigation.

If, following completion of the investigation, the assembly concludes: (1) a mistake, misconduct, fraud, or corruption on the part of an election official sufficient to change the result of the election occurred; (2) the person canvassed as elected or nominated is not qualified as required by law; ~~or~~ (3) any corrupt practice as defined by law sufficient to change the results of the election occurred ~~or~~ (4) errors in the conduct of a recount sufficient to change the results of the election occurred, the assembly shall, to the extent of such proof, either: (1) purge the invalid or improperly counted votes and, after a recount, certify the amended returns; (2) decline to certify the election of the person not qualified by law and order another election for that office; or (3) decline to certify the results of the election and order another election.

2.68.550-Recount. Expenses of contested election.

If the contestant demands only a recount of the ballots cast at the election, the investigation to be conducted in accordance with HBC 2.68.540 shall be limited in its scope to a recount of the ballots by the election board which allegedly made the error. All expenses incurred by the borough pursuant to an election contest or a demand for a recount shall be paid by the candidate or voters contesting the election and each of them shall be individually liable for the whole amount of such expenses, unless: 1) the results of the election are changed by the a recount, or (2) the difference between the winning and losing vote on the result contested is changed by more than two percent, or (3) the assembly determines that the election was invalid, or (4) otherwise ordered by the assembly.

2.68.560 Election Contest Appeal, Judicial Review.

After the assembly has made its final determination of the votes cast for each candidate and for and against each proposition, such determination shall be final. A person may not appeal or seek judicial review of an election for any cause unless the person is a voter, has exhausted all administrative remedies before the assembly, and has commenced, within 10 days after the assembly has declared the election results, an action in the superior court for the first judicial district. If court action is not commenced within the 10 day period, the election and election results are conclusive and valid. **A person qualified to file an election contest may not appeal or seek judicial review of an election for any cause unless the person is qualified to vote in the borough, exhausted all administrative remedies before the clerk and the assembly, and has commenced an action in the superior court within ten calendar days after the assembly has finally certified the election results. An appeal under this section shall be brought in the Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska. The appeal shall be heard by the court sitting as an appellate court and shall be governed by the applicable rules of procedure for appeals to the superior court in civil matters. Upon order of the court, the clerk shall furnish a record of the contested election, including ballots, registers, and other election material and papers as the court may demand. If an action under this section is not commenced within the ten-day period, the election and the election result shall be conclusive, final, and valid in all respects.**

Article XIV. Election Recount

2.68.570 Mandatory Recount.

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.

2.68.580 Recount Application.

A. A candidate or 10 qualified voters who believe a mistake has been made in the counting of the votes in that election, and who voted in that election, may 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 an application with the clerk before 5 p.m. on the third calendar day following the canvass of 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. A recount application shall identify the particular office, proposition or question for which the recount is to be held, and shall state that the person making the application is a candidate or that the 10 persons making the application are qualified voters who voted in that election. The candidate or persons 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 application. Applications by 10 qualified voters shall also include the designation of one of the number as a contact person. The candidate or person making the application shall sign the application and shall print or type the candidate's full name and mailing address.

C. The application shall include a deposit in cash or by certified check. The amount of the deposit shall be \$100.

2.68.590 Date of Recount; Notice.

A. If the clerk determines that the application is substantially in the required form, the clerk shall fix the date of the recount to be held not later than five calendar days after the receipt of an application requesting a recount of the votes in a borough election.

B. The clerk shall provide at least twenty-four hours public notice of the time and place of the recount by posting in at least three conspicuous places Notice shall be provided to the recount applicant, designated contact person and all candidates of the time and place of the recount by either certified mail, electronic mail, facsimile, or by telephone.

2.68.600 Procedure for Recount.

A. For a recount of ballots, the clerk shall appoint an election board.

B. A recount shall be limited in its scope to a recount of the ballots by the election board.

C. In conducting the recount, the 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 documentation provided by the election officials. The 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 HBC 2.68.390 governing the counting of hand-marked ballots shall be followed in the recount.

D. 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 calendar days after the receipt of an application requesting a recount of the votes in a borough election. The clerk may employ additional personnel necessary to assist in the recount.

E. The clerk shall have the authority to set rules governing the intent of this section.

2.68.610 Certification of Recount Result.

Upon completing the recount, the clerk shall provide a report of the results of the recount for submission to the assembly. The assembly shall issue a certificate of election.

2.68.620 Return of Deposit and Apportionment of Expenses Upon Recount.

A. If, upon recount, a different candidate or position on a proposition or question is certified, or if the vote on recount is two percent or more in excess of the vote originally certified for the candidate or position on a proposition or question supported by the recount applicant, the entire deposit shall be refunded to the recount applicant.

B. If none of the requirements of subsection (A) are met, the clerk shall refund any money remaining after the cost of the recount has been paid from the deposit. If the deposit is insufficient to cover the costs, the borough 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 the expenses.

2.68.630 Recount Appeal; Judicial Review.

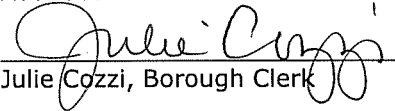
A person qualified to request a recount may not appeal or seek judicial review of a recount for any cause unless the person is qualified to vote in the borough, exhausted all administrative remedies before the clerk and the assembly, and has commenced an action in the superior court within ten calendar days after the assembly has finally certified the election results. An appeal under this section shall be brought in the Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska. The appeal shall be heard by the court sitting as an appellate court and shall be governed by the applicable rules of procedure for appeals to the superior court in civil matters. Upon order of the court, the clerk shall furnish a record of the election recount, including ballots, registers, and other election

material and papers as the court may demand. If an action under this section is not commenced within the ten-day period, the election and the election result shall be conclusive, final, and valid in all respects. the election and the election result shall be conclusive, final and valid in all respects.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS 14th DAY OF DECEMBER , 2010.


Janice Hill, Mayor

ATTEST:


Julie Cozzi, Borough Clerk

Referred to Committee:	05/07/10
Date Introduced:	10/26/10
Date of First Public Hearing:	11/09/10
Date of Second Public Hearing:	11/30/10
Date of Third Public Hearing:	12/14/10

