

1 CITY OF HOMER  
2 HOMER, ALASKA

Aderhold/Smith/  
Hansen-Cavasos

3  
4  
5 ORDINANCE 21-35  
6

7 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA  
8 AMENDING HOMER CITY CODE 4.10.040 REVIEW OF CANDIDATE  
9 QUALIFICATIONS, 4.35.040 CERTIFICATION OF ELECTION, 4.45  
10 ELECTION RECOUNT AND 4.50 ELECTION CONTEST.  
11

12 WHEREAS, Elections are the cornerstone of our representative form of government; and  
13

14 WHEREAS, Individuals interested in running for office in the City of Homer should have  
15 a clear understanding of the qualifications to be a candidate; and  
16

17 WHEREAS, The process the Homer City Clerk uses to determine the eligibility of  
18 candidates should be transparent; and  
19

20 WHEREAS, The process for a person to question the eligibility of a candidate by filing a  
21 complaint and the Homer City Clerk's process for evaluating the complaint should be clear and  
22 transparent; and  
23

24 WHEREAS, The process for applying for a recount, the deposit required to apply for a  
25 recount, and the apportionment of recount expenses should be clear to candidates and  
26 qualified voters; and  
27

28 WHEREAS, The process for contesting an election and conducting an election contest  
29 investigation should be clear and transparent.  
30

31 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:  
32

33 Section 1. Homer City Code 4.10.040 is hereby amended as follows:  
34

35 4.10.040 ~~Review of candidate qualifications.~~ **Determination of eligibility of candidate.**  
36

37 The Clerk shall determine whether each candidate for municipal office is qualified as provided  
38 by law. ~~At any time before the election the Clerk may disqualify any candidate whom the Clerk  
39 finds is not qualified and immediately notify that candidate by certified mail. A candidate who  
40 is disqualified may request a hearing before the Clerk within five days of receiving the notice.  
41 The hearing shall be held no later than five days after the request unless the candidate agrees  
42 in writing to a later date.~~

- 43
- 44 **a. In determining residence within the city for the purposes of this chapter, the clerk**
- 45 **shall apply the following rules:**
- 46 **1. A person establishes residence within the city by:**
- 47 **(a) actual physical presence at a specific location within the city; and**
- 48 **(b) maintaining a habitation at the specific location;**
- 49 **2. A person may maintain a place of residence at a specific location within the city**
- 50 **while away from the location for purposes of employment, education, military**
- 51 **service, medical treatment or vacation if the person does not establish**
- 52 **residency at another location; and**
- 53 **3. A qualified voter loses residence by voting in another district or in another**
- 54 **state's election.**
- 55 **b. At any time before the election the clerk may disqualify any candidate whom the clerk**
- 56 **finds is not qualified. A candidate who is disqualified may request a hearing before the**
- 57 **clerk. The hearing shall be held no later than 5 business days after the request unless the**
- 58 **candidate agrees in writing to a later date.**
- 59
- 60 **c. Any person may question the eligibility of a candidate who has filed a declaration of**
- 61 **candidacy by filing a complaint with the clerk. A complaint regarding the eligibility of a**
- 62 **candidate must be received by the clerk not later than the close of business on the tenth**
- 63 **day after the filing deadline for the office for which the candidate seeks election.**
- 64
- 65 **1. The complaint must be in writing and include the name, mailing address, contact**
- 66 **phone number, signature of the person making the complaint, a statement**
- 67 **describing the grounds on which the candidate's eligibility is being questioned,**
- 68 **along with relevant evidence to support the allegations.**
- 69
- 70 **2. The clerk will review only those issues in the complaint related to candidate**
- 71 **qualifications.**
- 72
- 73 **3. Upon receipt of a complaint the clerk will send notification in writing to the**
- 74 **candidate.**
- 75
- 76 **d. The clerk shall review any evidence relevant to the candidate's qualifications,**
- 77 **including, but not limited to, the candidate's residency, voter registration, declaration of**
- 78 **candidacy, and any other document of public record or as required by HCC 4.10.020.**
- 79 **Based on the review of the evidence, the clerk will determine by a preponderance of**
- 80 **evidence if the candidate is qualified for the office.**
- 81

- 82        **1. If the clerk determines the preponderance of evidence supports the eligibility of**  
83        **the candidate, the clerk will issue a final determination supporting the candidate's**  
84        **eligibility.**
- 85
- 86        **2. If the clerk determines the preponderance of evidence does not support the**  
87        **candidate's eligibility, notice to the candidate will identify any additional**  
88        **information or evidence that must be provided by the candidate. The clerk must**  
89        **receive the requested information no later than three calendar days from the date**  
90        **of notice. The clerk will consider any additional information provided and issue a**  
91        **final determination as to the candidate's eligibility no later than three calendar**  
92        **days from receipt of the additional information.**
- 93
- 94        **3. If the information requested by the clerk in subsection (d)(1) of this section is not**  
95        **received by the specified deadline, the clerk will issue a final determination**  
96        **regarding the candidate's eligibility based on the information initially reviewed.**
- 97
- 98        **4. The clerk will send notice of final determination in writing to the person making**  
99        **the complaint, if applicable, and to the candidate. The determination of the clerk**  
100       **is final.**

101

102        Section 2. Homer City Code 4.35.040 Certification of an election is hereby amended as  
103 follows:

104

105        4.35.040 Certification of election.

106

107        ~~a. Unless a contest has been previously filed, the~~ council shall certify the results of the  
108 election at the next regular council meeting following completion of the canvass by the  
109 canvass board.

110

111        **b. If a contest has been filed pursuant to HCC 4.50.020, the council shall certify election**  
112 **results not in question.**

113

114        Section 3. HCC 4.45. Election Recount is amended as follows:

115

116        Chapter 4.45  
117        ELECTION RECOUNT  
118        Sections:  
119        4.45.010    Recount initiation.  
120        4.45.020    Form of application.  
121        4.45.030    Deposit.  
122        4.45.040    Date of recount – Notice.  
123        4.45.050    Procedure for recount.

~~Strike out~~ is deleted language, **bold underline** is new language

- 124 4.45.060 Certification of recount result.  
125 4.45.070 Return of deposit and apportionment of recount expenses.  
126 4.45.080 Appeal.

127  
128 4.45.010 Recount initiation.

129  
130 a. A defeated candidate for an office may apply for a recount of the votes for that office, and 10  
131 qualified voters may apply for a recount of the votes for any office or proposition. A recount  
132 application must be in writing and either filed with the Clerk before 5:00 p.m. on the day of the  
133 certification of the election results. The date and time of the Clerk's receipt of a recount  
134 application, and not the date of mailing or transmission, determines whether the application  
135 is timely.

136  
137 b. If ~~two or~~ more candidates ~~than are to be elected to an office~~ tie in having the highest number  
138 of votes for the same office, or if there is a tie between votes in favor of and opposed to a  
139 proposition, the Clerk shall initiate a recount. [Ord. 14-15 § 2, 2014].

140  
141 4.45.020 Form of application **and deposit**.

142  
143 a. A recount application shall state in substance the basis of the belief that a mistake has been  
144 made and shall identify the particular office or proposition for which the recount is to be held,  
145 and shall state that the application is made by a defeated candidate for the office or by 10  
146 qualified voters. The candidate or qualified voters making the application shall designate by  
147 full name and mailing address two persons who shall represent the applicant during the  
148 recount. Any person may be named representative, including the candidate or any person  
149 signing the application. An application by 10 qualified voters shall also designate one applicant  
150 as their point of contact. The application shall include each applicant's signature, and printed  
151 full name and mailing address. [Ord. 14-15 § 2, 2014].

152  
153 ~~4.45.030~~ ~~Deposit.~~

154  
155 ~~b. Unless exempted by subsection (b) of this section, the application shall include a deposit in~~  
156 ~~cash or by cashier's check in the amount of \$250.00.~~ **The application shall include a deposit**  
157 **for the amount listed in the most current City of Homer Fee Schedule.**

158  
159 ~~b.c.~~ No deposit is required and the City shall bear the cost of the recount if:

160  
161 1. The recount applicant is a defeated candidate and the difference between the number of  
162 votes cast for the defeated candidate and any elected candidate was 20 or less; or

163  
164 2. The recount applicants are 10 qualified voters, and the recount is of votes for either an office  
165 where the difference between the number of votes cast for an elected candidate and a

166 defeated candidate was 20 or less, or a proposition where the difference between the number  
167 of votes cast in favor of and in opposition to the proposition was 20 or less. [Ord. 14-15 § 2,  
168 2014].

169  
170 4.45.040 Date of recount – Notice.  
171 If the Clerk determines that a recount application is substantially in the required form, the  
172 Clerk shall fix the date for the recount, which shall be within seven calendar days after the  
173 receipt of the recount application. The Clerk shall give each recount applicant and any directly  
174 interested candidate or proposition sponsor notice of the time and place of the recount by  
175 certified mail, electronic mail, or telephone. [Ord. 14-15 § 2, 2014].

176  
177 4.45.050 Procedure for recount.  
178 a. The canvass board shall perform the recount. In conducting the recount, the canvass board  
179 shall review all ballots to determine which ballots or parts of ballots were properly marked,  
180 and which ballots are to be counted in the recount, and shall check the accuracy of the original  
181 count and all documentation provided by the election officials. The canvass board shall check  
182 the number of ballots and questioned ballots cast against the registers and shall check early  
183 and absentee ballots voted against the number of early and absentee ballots that were  
184 distributed. The rules incorporated in HCC 4.25.090 shall be followed in counting hand-marked  
185 ballots in the recount.

186  
187 b. The ballots and other election materials shall remain in the custody of the Clerk during the  
188 recount and the highest degree of care shall be exercised to protect the ballots against  
189 alteration, mutilation or loss. The recount shall be completed within 10 calendar days. [Ord.  
190 14-15 § 2, 2014].

191  
192 4.45.060 Certification of recount result.  
193 Upon completing the recount, the canvass board shall provide a report of the results of the  
194 recount for submission to the Council, and the Council shall issue a certificate of the election.  
195 [Ord. 14-15 § 2, 2014].

196  
197 4.45.070 Return of deposit and apportionment of recount expenses.  
198  
199 ~~a. If the recount results in certification of election of a different candidate for an office or a~~  
200 ~~different outcome of approval or rejection of a proposition than originally was certified, the~~  
201 ~~entire deposit shall be refunded to the recount applicant.~~

202  
203 ~~b. If the requirements in subsection (a) of this section for a total deposit refund are not met,~~  
204 ~~the Clerk shall refund any excess of the deposit over the cost of the recount. If the cost of the~~  
205 ~~recount exceeds the amount of the deposit, the City may recover the excess from any recount~~  
206 ~~applicant, each of whom shall be individually liable for the amount of the excess. The cost of~~

207 the recount includes the compensation that the city pays to election officials and city staff for  
208 working on the recount. [~~Ord. 14-15 § 2, 2014~~].

209  
210 **a. If, upon recount, a different candidate or position on a proposition or question is**  
211 **certified or if the vote on recount is 2 percent or more in excess of the vote originally**  
212 **certified for the candidate or position on a proposition or question supported by the**  
213 **recount application, the entire deposit shall be refunded to the recount application.**

214  
215 **b. If the requirements in subsection (a) of this section for a total deposit refund are not**  
216 **met, the Clerk shall refund any excess of the deposit over the cost of the recount. If the**  
217 **cost of the recount exceeds the amount of the deposit, the City may recover the excess**  
218 **from any recount applicant, each of whom shall be individually liable for the amount of**  
219 **the excess. The cost of the recount includes the compensation that the city pays to**  
220 **election officials and city staff for working on the recount.**

221  
222 4.45.080 Appeal.  
223 A candidate, proposition sponsor or recount applicant who is aggrieved by the result of a  
224 recount or decision not to grant a recount may appeal the recount result or decision not to  
225 grant the recount to the Superior Court. The appeal shall be filed within 10 calendar days of  
226 final Council action certifying the election. If an appeal is not commenced within the 10-day  
227 period, the election and the election result is conclusive and valid. [~~Ord. 14-15 § 2, 2014~~].

228  
229 Section 4. Homer City Code 4.50 Election contest – Liability for expense is hereby  
230 amended as follows:

231  
232 4.50. Election Contest—Liability for expense

233  
234 Sections:

235  
236 4.50.010 ~~Grounds for election contest~~ **Grounds for election contest.**

237 **4.50.020 Notice of contest procedure**

238 **4.50.030 Appeal or judicial review**

239  
240 4.50.010 ~~Contest of election—Liability for expense.~~ **Grounds for election contest.**

241  
242 Any candidate or 10 qualified voters who were qualified to vote on the election day may contest  
243 the election ~~of any person or approval or rejection of any question or proposition.~~ Contest of  
244 election shall be **on** one or more of the following grounds:

- 245  
246 1. Malconduct, fraud, or corruption by an election official sufficient to change the  
247 results of the election;  
248 2. The person elected is not qualified under the law or the Homer City Code;

249 ~~3. Existence of a corrupt election practice as defined by the laws of the State. **Any**~~  
250 ~~**corrupt practice as defined by law sufficient to change the results of the election.**~~

251  
252 **4.50.020 Notice of contest procedure.**

253  
254 **a. Notice of contest of an election shall be submitted in writing to the clerk by 5:00 p.m.**  
255 **on the day of the certification of the election and shall include payment by cash, certified**  
256 **check, or credit card for the amount listed in the most current City of Homer Fee**  
257 **Schedule.**

258  
259 **b. The notice of contest shall be filed in person and contain:**

260  
261 **1. The election to be contested;**

262 **2. The specific grounds of the contest;**

263 **3. Documentation or evidence supporting the contest, if any;**

264 **4. The contact information of the representative who will receive communications**  
265 **from the city regarding the contest; and**

266 **5. The legal name, residence address, contact information, and notarized**  
267 **signature of each candidate or city voter who is an applicant.**

268  
269 ~~b. The candidate or voters initiating a contest shall file a written affidavit with the City Clerk~~  
270 ~~prior to certification of the election or shall appear before the City Council at the meeting held~~  
271 ~~to certify the election returns and deliver a written notice of contest. The notice of contest shall~~  
272 ~~specify the election being contested, shall state the grounds of the contest in detail, and shall~~  
273 ~~bear the notarized signature of the candidate or the qualified voters bringing the contest.~~

274  
275 **c. The notice shall include a deposit for the amount listed in the most current City of**  
276 **Homer Fee Schedule.**

277  
278 **d. Upon receipt of the notice to contest an election, the clerk shall submit it to the council.**  
279 **The council shall order an investigation to be conducted. The clerk and city attorney shall**  
280 **investigate the grounds of the contest and submit a report of findings to the council. The**  
281 **clerk may request the canvass board, or additional personnel as necessary, assist with**  
282 **the investigation. The council shall defer the certification of the contested election**  
283 **results pending receipt of the report, but shall proceed with certification of all election**  
284 **results that are not contested. Those contesting the election, those whose election is**  
285 **contested and the public shall be allowed to attend all investigation proceedings.**

286  
287 ~~e.~~ **ed.** Upon receiving a valid notice of contest, the City Council shall order such investigative  
288 action as it deems appropriate. If the contest involves voter eligibility, the Clerk and the City  
289 Attorney shall be ordered to investigate the allegations and report their findings to the City  
290 Council. If other illegal or irregular election practices are alleged to have occurred, the City

291 Council shall order an investigation to be made by the City Manager with the assistance of the  
292 Clerk and the Attorney. If the Clerk and Manager are both named in the contest, the Council  
293 shall appoint an investigating board to conduct the required investigation. Those contesting  
294 the election, those whose election is contested and the public shall be allowed to attend all  
295 investigation proceedings.

296  
297 **e. If the contest involves the eligibility of voters the council shall direct the clerk to**  
298 **recheck the most current state registration lists. After considering the reports of the**  
299 **investigating officials and any other proof, the council shall determine whether any**  
300 **illegally cast votes could have affected the election results. If they could not have, the**  
301 **council shall so declare and determine the election valid.**

302  
303 **f. If the contest involves other prohibited election practices which are shown to have**  
304 **taken place, the council, in certifying the election returns, shall exclude the vote of the**  
305 **precincts where such practices occurred. If it is determined that such exclusion could not**  
306 **affect the election results, the council shall declare the election valid and certify the**  
307 **results pursuant to this title.**

308  
309 **g. If the investigation determines election misconduct has occurred sufficient to change**  
310 **the results of an election, a recommendation for remedy will be included in the**  
311 **investigation report to the council.**

312  
313 ~~d. After considering the reports of the investigating officials and any other evidence presented,~~  
314 ~~the City Council shall determine whether the grounds for contest were valid and whether any~~  
315 ~~illegally cast votes could have affected the election results. If they could not have, the City~~  
316 ~~Council may so declare and uphold their previous action in declaring the election validly held.~~

317  
318 ~~e~~ **h. Any person contesting an election as provided herein shall post a cash bond in the amount**  
319 ~~of \$750.00 guaranteeing payment of the cost of contest as surety for such costs. If the recount~~  
320 ~~fails to reverse a result of the election or the difference between the winning and losing vote~~  
321 ~~on the result contested is more than two percent, the candidate or voters contesting the~~  
322 ~~election shall be individually and collectively liable for the whole amount of the expenses~~  
323 ~~incurred by the City in its investigation and deliberation of the election contest; otherwise, the~~  
324 ~~bond shall be refunded in full. [Ord. 95-1(S), 1995; Ord. 90-42(A) §§ 4, 5, 1990; Ord. 82-6 § 23,~~  
325 ~~1982].~~ **Should the contestant prevail with the election contest, the payment will be**  
326 **refunded to the contestant. If the contest results in a recount, the contestants shall pay**  
327 **all costs and expenses incurred in a recount of an election as provided by HCC 4.45.070.**

328  
329 **4.50.030 Appeal or judicial review.**

330  
331 **No person may appeal or seek judicial review of an election for any cause unless the**  
332 **person has exhausted the administrative remedies before the council, and has**



333 **commenced an action in the Superior Court for the State of Alaska, Third Judicial District**  
334 **at Homer, within 10 calendar days after the council has certified the election results. If**  
335 **court action is not commenced within the 10-day period, the election and the election**  
336 **results shall be conclusive, final, and valid.**  
337

338 Section 5. This ordinance is of a permanent and general character and shall be included  
339 in Homer City Code.

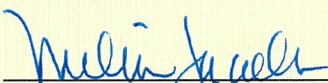
340  
341 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 28<sup>th</sup> day of June, 2021.

342  
343 CITY OF HOMER

344 

345  
346 KEN CASTNER, MAYOR

347  
348 ATTEST:

349   
350  
351 MELISSA JACOBSEN, MMC, CITY CLERK

352  
353 YES: 6

354 NO: 0

355 ABSENT: 0

356 ABSTAIN: 0

357

358 First Reading: 6-14-21

359 Public Hearing: 6-28-21

360 Second Reading: 6-28-21

361 Effective Date: 6-29-21

