

ORDINANCE NO. 2187

INTRODUCED BY: Edwards

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING SECTION 2-4-10. ELECTION OF MEMBERS AND TERM OF THE BRIGHTON MUNICIPAL CODE BY THE ADDITION OF A NEW SUBPARAGRAPH (C) RELATED TO THE FILING AND CONSIDERATION OF PROTESTS AS TO THE NOMINATION AND QUALIFICATIONS OF THE MAYOR AND MEMBERS OF THE CITY COUNCIL; AND, SETTING FORTH DETAILS IN RELATION TO THE FOREGOING.

WHEREAS, Section 4.7 Qualifications of the Charter of the City of Brighton sets forth the qualifications for eligibility of a person to be elected or appointed to the office of Mayor or member of the City Council; and

WHEREAS, Section 3.1. Colorado Municipal Election Laws Adopted of the Charter of the City of Brighton provides that City elections shall be governed by the Colorado Municipal Election Code, except as otherwise provided by the Charter or by ordinance in conflict with the Charter; and

WHEREAS, the Colorado Municipal Election Code provides for the filing and considerations of election protests and controversies including the determination of the City Clerk of any protest as to the form of a petition nominating a person to the position of Mayor or Councilmember; and

WHEREAS, Subsection 4.7(E) of the Charter provides. *“The Council shall be the judge of the elections and qualifications of its own members, subject to judicial review”*; and

WHEREAS, the City Council finds and determines that the receipt and processing of protests and challenges to the qualifications of the Mayor or any Councilmember to be elected or appointed to the City Council is of paramount concern and the same should be clearly articulated to meet the requirements of the Charter and the Municipal Election Code and which should also provide the necessary protections of the constitutional rights to due process and full and open consideration of the protest or controversy.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

SECTION 1. Section 2-4-10. **Election of members and term** of the Brighton Municipal Code is amended by the addition of a new subparagraph (c) to read as follows and the amendment of the title of Section reflecting the same:

Section 2-4-10. **Election of members, term and challenges to qualifications**

(c) (1) All petitions of nomination and affidavits which are in apparent conformity with the provisions of C.R.S §31-10-302, as determined by the City Clerk, are valid unless objection thereto is duly made in writing within three (3) business days after filing of the same. In case objection is made, notice thereof shall be forthwith mailed to any candidate who may be affected thereby. The Clerk shall decide objections within forty-eight (48) hours after the same are filed, and any objections sustained may be remedied or defect cured upon the original petitions, by an amendment thereto, or by filing of a new petition within three (3) business days after the objection is sustained, but in no event later than the eighteenth (18) day before the day of election. The Clerk shall pass upon the validity of all objections as to form, and the Clerk's decisions upon matters of form shall be final.

(2) Any registered elector of the City may file with the City Clerk a verified written notice of protest challenging the qualifications of the Mayor or any member of the City Council as set forth in Section 4.7 Qualifications of the Charter, which notice of protest shall include a statement of the grounds upon which such protest is based, the name, address, e-mail address, telephone number and signature of the protestor (if the protestor is represented by legal counsel, include the counsel's name, address, e-mail address, telephone number and signature along with the name, address, e-mail address, telephone number and signature of the protestor), and documentation or other evidence supporting the allegation that is the subject of the protest.

(a) No protest shall be filed prior to the date of appointment or the date of issuance of the certificate of election of the Mayor or the Councilmember, whichever is applicable, nor shall any such protest, other than a protest as provided in (b) below, be filed more than fifteen (15) days after said date.

(b) A verified written notice of protest challenging the qualifications of the Mayor or any member of the City Council to continue to serve in the office of Mayor or Councilmember on the grounds that the Mayor or Councilmember is no longer qualified to serve because the Mayor or Councilmember is not a resident of the City or of his or her respective ward, has been convicted of a felony, or is an employee of the City, may be filed with the City Clerk after the fifteen (15) day limitation provided in (2)(a) above. A protest pursuant to this subsection (2)(b) shall be filed with the City Clerk within fifteen (15) days of the removal of the Mayor or Councilmember from the City or from his or her ward, being convicted of a felony, or the acceptance of a position as an employee of the City. If the Mayor or Councilmember has failed to disclose his or her disqualification as provided herein, the period for filing the protest may be extended upon the approval of the City Council.

(3) Within five (5) business days of the date of the City Clerk's receipt of any verified written protest challenging the qualifications of the Mayor or Councilmember, the City Clerk shall set a date for a hearing of such protest by the City Council in accordance with subsection 4.7(E) of the Charter as expeditiously as possible; and shall mail, by

certified mail, return receipt requested, a notice of the time, date and place of such hearing, together with a copy of the notice of protest and the statement of the grounds upon which such protest is based, to all members of the City Council including the Mayor and to the person filing the notice of protest and the protestor's legal counsel, if any.

(4) The City Council shall adopt and incorporate by amendment into the City Council Rules of Procedure, written rules for consideration of protests that create a process that is fair both to the person who submitted the protest and the person who is the subject of the protest, which rules may include, by way of illustration and not limitation, the following:

(i) Allow the City Council, at its discretion, to make a finding solely on the basis of the documents submitted and written arguments without holding a hearing, if it determines that there is no significant discrepancy in the facts as presented by the protestor and the person who is the subject of the protest; and the City Council determines that no additional information is required in order to render a decision. Notwithstanding the foregoing, the person against whom the protest is filed retains the right to request a hearing, which shall be open to the public.

(ii) Require the City Council to hold hearings on protests at meetings which are open to the public, which protests have not been dismissed pursuant to subparagraph (c)(4)(i) above.

(iii) Allow any person who is the subject of a protest to designate legal counsel if he or she wishes to be represented, to present evidence, and to cross-examine witnesses.

(iv) Provide that the City Council deliberations on protests may be conducted in executive session.

(v) Allow the City Council to dismiss a protest if the person who submitted it does not appear at the hearing scheduled therefor, provided, the rules shall require the City Council to schedule the hearing at a time that is reasonably convenient to both the person who submitted the protest and the subject of the protest.

(vi) Require the City Council to base a finding that the Mayor or Councilmember is not qualified to serve as required by the Charter, upon clear and convincing evidence.

(vii) Require that findings be made only by a majority of the participating members of the City Council, including the Mayor.

(5) *The City Council shall appoint and retain special counsel to provide legal advice to the City Council in relation to the hearing and consideration of the protest and for the preparation of all findings and decisions of the City Council.*

(6) *The City Council may appoint and, if necessary, retain, an investigator to undertake such tasks as may be required to facilitate the City Council's consideration of the protest. Depending upon the nature of the protest, said investigation may be conducted by the Brighton Police Department.*

(7) *In order to resolve any protest filed under the provisions of this Section, the City Council shall have the power to subpoena witnesses pursuant to Rule 4 of the Colorado Rules of Civil Procedure, administer oaths and require the production of evidence. At the hearing on the protest, the City Council shall receive such evidence as may be offered by the Councilmember(s) affected by such protest and the person(s) filing the protest, and such other evidence the City Council may consider relevant and necessary to a determination of the protest. Within no more than forty-five (45) days from the date of filing of the notice of protest, the City Council shall mail, by certified mail, return receipt requested, written findings to all members of the City Council and to the person filing the protest. The City Council shall pass upon the validity of all objections and protests, whether of form or substance, and the City Council's decisions upon matters of form shall be final. The City Council's decisions upon matters of substance shall be open to review if prompt application is made to the district court of Adams County, as provided in C.R.S. §31-10-1401, but the remedy in all cases shall be summary, and the decision of the district court shall be final and not subject to review by any other court; except that the supreme court, in the exercise of its discretion, may review any proceeding in a summary way.*

(8) *The Mayor or Councilmember(s) who is the subject of the protest challenging the qualifications of the Mayor or Councilmember shall not participate or vote in the hearing and decisions made regarding the protest, except as a respondent and witness therein.*

(9) *If the City Council upholds any such protest and determines that the Mayor or any Councilmember lacks one (1) or more qualifications for office required by the Charter, the affected Mayor or Councilmember(s) shall be so notified in writing and the Mayor or said Councilmember shall immediately, upon the mailing of such notice, forfeit his or her office, whether or not he or she has taken the oath of office, and the vacancy thereby created shall be filled in the manner described in Article IV, Section 4.8 **Vacancies**, of the Charter.*

(10) *Unless the provisions of this Section 2-4-10 specify "business days" as applicable to any act or filing hereunder, the computation of time shall be determined in accordance with C.R.S §31-10-103, of the Municipal Election Code.*

Section 2. Validity. If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 3. Interpretation. This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 25th DAY OF November, 2014.

CITY OF BRIGHTON, COLORADO

Kirby Wallin, Mayor Pro Tem

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

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PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY THIS 16th DAY OF December, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

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