

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO APPROVING AN AMENDMENT TO THE *CITY COUNCIL RULES OF PROCEDURE GOVERNING MEETINGS* BY THE ADDITION TO RULE 2 CITY COUNCIL MEETING PROCEDURE OF A NEW SUBSECTION (P) IMPLEMENTING THE PROVISIONS OF ORDINANCE NO. 2187 SETTING FORTH THE PROCESS FOR CONSIDERATION OF CHALLENGES TO THE QUALIFICATIONS OF THE MAYOR/COUNCILMEMBERS TO HOLD OFFICE; AND AUTHORIZING THE MAYOR TO EXECUTE SAID RESOLUTION ON BEHALF OF THE CITY.

RESOLUTION NO. 2015-11

WHEREAS, at its regular meeting on December 16, 2014 the City Council adopted Ordinance No. 2187 approving an amendment to 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 to the nomination and qualifications of the Mayor and members of the City Council; and

WHEREAS, Subsection (4) of said Ordinance No. 2187 provides, in pertinent part, that *“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”*, and sets forth by illustration, and not by limitation, certain procedures; and

WHEREAS, the City Council finds and determines that the procedures set forth in Subsection (4) of Ordinance No. 2187 are reasonable and that the same should be incorporated into the City Council Rules of Procedure Governing Meetings.

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

1. The City Council *Rules of Procedure Governing Meetings* are hereby amended by the addition of a new subsection (P) to Section Rule 2 City Council Meeting Procedure to read as follows:

(P) PROCESS FOR CONSIDERATION OF CHALLENGES TO THE QUALIFICATIONS OF THE MAYOR/COUNCILMEMBERS TO HOLD OFFICE.

Upon the receipt of a protest or other challenge under §2-4-10(C) of the Brighton Municipal Code, the City Council shall implement the following procedures, or any modifications thereof as deemed appropriate under the circumstances and approved by a majority of the City Council prior to the initiation of the consideration:

(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.*

(viii) *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.*

(ix) *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.*

(x) *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.

(xi) 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.

RESOLVED THIS 6th DAY OF JANUARY, 2015.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney