

## CHAPTER 34: ELECTIONS

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### ***Cross-reference:***

*Qualifications of Mayor, City Council, see Chapter 30*

### **§ 34.01 GENERALLY.**

(A) (1) All city issues and offices shall be combined on the statewide primary and general election ballots whenever possible. The issuance of separate ballots shall be avoided in a statewide election if city offices or issues can reasonably be combined with the nonpartisan ballot and state law does not require otherwise.

(2) All city elections involving the election of officers shall be held in accordance with the Election Act, Neb. RS 32-101 et seq., and in conjunction with the statewide primary or general election. (Neb. RS 32-556)

(B) When the city holds an election in conjunction with the statewide primary or general election, the election shall be held as provided in the Election Act, Neb. RS 32-101 et seq. Any other election held by the city shall be held as provided in the Election Act unless otherwise provided by the charter, code, or bylaws of the city.

(C) The city shall furnish to the Secretary of State and Election Commissioner or County Clerk any maps and additional information which the Secretary of State and Election Commissioner or County

Clerk may require in the proper performance of their duties in the conduct of elections and the certification of results.

(Neb. RS 32-404)

### § 34.02 NOTICE.

The notice of election required to be published by the Election Commissioner or County Clerk pursuant to Neb. RS 32-802 shall serve as the notice requirement for all city elections which are held in conjunction with the statewide primary or general election.

### § 34.03 REGISTERED VOTERS; QUALIFICATIONS.

(A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**REGISTERED VOTER.** An elector who has a current voter registration record on file with the election commissioner or county clerk in the county of his or her residence.

(Neb. RS 32-115)

(B) All registered voters residing within the corporate limits of the city on or before election day shall be entitled to vote at all city elections.

(Neb. RS 17-602)

**Statutory reference:**

*Definition of elector, see Neb. RS 32-110*

### § 34.04 SPECIAL ELECTIONS.

(A) (1) Except as provided in Neb. RS 77-3444, any issue to be submitted to the registered voters at a special election by the city shall be certified by the City Clerk to the Election Commissioner or County Clerk on or before the eighth Friday prior to the election. A special election may be held by mail as provided in Neb. RS 32-952 through 32-959. Any other special election under this section shall be subject to division (B) below.

(2) In lieu of submitting the issue at a special election, the city may submit the issue at a statewide primary or general election or at any scheduled county election, except that no such issue shall be submitted at a statewide election or scheduled county election unless the issue to be submitted has been certified by the City Clerk to the Election Commissioner or County Clerk by March 1 for the primary election and by September 1 for the general election.

(3) (a) After the Election Commissioner or County Clerk has received the certification of the issue to be submitted, he or she shall be responsible for all matters relating to the submission of the issue to the registered voters, except that the City Clerk shall be responsible for the publication or posting of any required special notice of the submission of the issue other than the notice required to be given of the statewide election issues. The Election Commissioner or County Clerk shall prepare the ballots and issue ballots for early voting and shall also conduct the submission of the issue, including the receiving and counting of ballots on the issue.

(b) The election returns shall be made to the Election Commissioner or County Clerk. The ballots shall be counted and canvassed at the same time and in the same manner as the other ballots. Upon completion of the canvass of the vote by the County Canvassing Board, the Election Commissioner or County Clerk shall certify the election results to the City Council. The canvass by the County Canvassing Board shall have the same force and effect as if made by the City Council.

(B) (1) A city that has submitted an issue for a special election under division (A)(1) above may cancel the special election if the Secretary of State, Election Commissioner, or County Clerk receives a resolution adopted by the political subdivision canceling the special election on or before the fourth Thursday prior to the election. No cancellation shall be effective after such date. If a special election is canceled in such manner, the city shall be responsible for the costs incurred that are related to the canceled election. Such costs shall include all chargeable costs as provided in Neb. RS 32-1202 that are associated with preparing for and conducting a special election.

(2) A city that has submitted an issue at a statewide primary or general election or at any scheduled county election under division (A)(2) above may withdraw the issue from the ballot if the Secretary of State, Election Commissioner, or County Clerk receives a resolution adopted by the city withdrawing the issue from the ballot not later than March 1 prior to a statewide primary election or September 1 prior to a statewide general election. No withdrawal shall be effective after such date. Any issue withdrawn in this manner shall not be printed on the ballot.  
(Neb. RS 32-559)

(C) Any special election under the Election Act, Neb. RS 32-101 et seq., shall be held on the first Tuesday following the second Monday of the selected month unless otherwise specifically provided. Except as otherwise specifically provided, no special election shall be held under the Election Act in April, May, June, October, November, or December of an even-numbered year unless it is held in conjunction with the statewide primary or general election. No special election shall be held under the Election Act in September of an even-numbered year except as provided in Neb. RS 32-564 and except for a special election by a political subdivision pursuant to Neb. RS 13-519 or 77-3444 to approve a property tax levy or exceed a property tax levy limitation.  
(Neb. RS 32-405)

**§ 34.05 ELECTION OF OFFICERS; CERTIFICATIONS REQUIRED.**

Not later than January 5 of each even-numbered year, the City Council shall certify to the Secretary of State, the Election Commissioner, or the County Clerk the name of the city, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of the remaining terms, and the number of votes to be cast by a registered voter for each office. The Secretary of State, Election Commissioner, and County Clerk shall prescribe the forms to be used for certification to him or her.

(Neb. RS 32-404)

**§ 34.06 PARTISAN BALLOT; WHEN ALLOWED; REQUIREMENTS.**

All elective city officers shall be nominated and elected on a nonpartisan basis unless the city provides for a partisan ballot by ordinance. No ordinance providing for nomination and election on a partisan ballot shall permit affiliation with any party not recognized as a political party for the purposes of the Election Act, Neb. RS 32-101 et seq. Such ordinance providing for nomination and election on a partisan ballot shall be adopted and effective not less than 60 days prior to the filing deadline.

(Neb. RS 32-557)

**§ 34.07 CANDIDATE FILING FORMS; DEADLINES; FILING OFFICER; SPECIAL ELECTION REQUIREMENTS.**

(A) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in division (B) below. If a candidate is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between January 5 and February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office between January 5 and March 1 prior to the date of the general election.

(Neb. RS 32-606)

(B) Candidate filing forms shall be filed in the office of the Election Commissioner or County Clerk.

(Neb. RS 32-607)

(C) (1) Except as provided in Neb. RS 32-564, any candidate in a special election to fill a vacancy for an office of a political subdivision may have his or her name placed on the special election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in Neb. RS 32-607 and this division (C).

(2) The filing period for filing the candidate filing form shall be:

(a) On or before March 1 for a special election to be held in conjunction with the statewide primary election;

(b) On or before August 1 for a special election to be held in conjunction with the statewide general election; and

(c) Between the eighth Friday prior to the election and the fifth Friday prior to the election for all other elections.

(3) A candidate filing form for such special election shall meet the requirements of Neb. RS 32-607, except that the form shall contain the following statement: "I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the special election, that I am a registered voter and qualified to be elected, and that I will serve if elected."

(4) A candidate filing form for such special election shall be filed with the filing officer specified in Neb. RS 32-607(2).

(Neb. RS 32-606.01)

***Statutory reference:***

*Filling of vacancy on ballot, see Neb. RS 32-625 and 32-627*

*Withdrawal after filing, see Neb. RS 32-622*

**§ 34.08 FILING FEE.**

(A) Except as provided in division (D) or (E) below, a filing fee shall be paid to the City Treasurer by or on behalf of each candidate for city office prior to filing for office. The fee shall be placed in the General Fund of the city. No candidate filing forms shall be filed until the proper payment or the proper receipt showing the payment of such filing fee is presented to the filing officer. On the day of the filing deadline, the City Treasurer's office shall remain open to receive filing fees until the hour of the filing deadline.

(B) Except as provided in division (D) or (E) below, the filing fee shall be a sum equal to 1% of the annual salary as of November 30 of the year preceding the election for the office for which he or she files as a candidate.

(C) All declared write-in candidates shall pay the filing fees that are required for the office at the time that they present the write-in affidavit to the filing officer.

(D) No filing fee shall be required for any candidate filing for an office in which a per diem is paid rather than a salary or for which there is a salary of less than \$500 per year.

(E) (1) No filing fee shall be required of any candidate completing an affidavit requesting to file for elective office in forma pauperis.

(2) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AVAILABLE RESOURCES.** Includes every type of property or interest in property that an individual owns and may convert into cash except:

1. Real property used as a home;
2. Household goods of a moderate value used in the home; and
3. Assets to a maximum value of \$3,000 used by a recipient in a planned effort directed towards self-support.

**PAUPER.** A person whose income and other resources for maintenance are found under assistance standards to be insufficient for meeting the cost of his or her requirements and whose reserve of cash or other available resources does not exceed the maximum available resources that an eligible individual may own.

(F) If any candidate dies prior to an election, the spouse of the candidate may file a claim for refund of the filing fee with the City Council prior to the date of the election. Upon approval of the claim by the City Council, the filing fee shall be refunded.

(Neb. RS 32-608)

#### **§ 34.09 PETITION, WRITE-IN, AND OTHER CANDIDATES FOR GENERAL ELECTION BALLOT; PROCEDURES.**

(A) (1) Any registered voter who was not a candidate in the primary election and who was not registered to vote with a party affiliation on or after March 1 and before the general election in the calendar year of the general election may have his or her name placed on the general election ballot for a partisan office by filing petitions as prescribed in this section and Neb. RS 32-621 or by nomination by political party convention or committee pursuant to Neb. RS 32-627 or 32-710.

(2) Any candidate who was defeated in the primary election and any registered voter who was not a candidate in the primary election may have his or her name placed on the general election ballot if a vacancy exists on the ballot under Neb. RS 32-625(2) and the candidate:

- (a) Files for the office by petition as prescribed in divisions (B) and (C) below;

(b) Files as a write-in candidate as prescribed in Neb. RS 32-615; or

(c) Is nominated by political party convention or committee pursuant to Neb. RS 32-710.  
(Neb. RS 32-616)

(B) (1) Petitions for nomination shall conform to the requirements of Neb. RS 32-628. Petitions shall state the office to be filled and the name and address of the candidate. Petitions for partisan office shall also indicate the party affiliation of the candidate. A sample copy of the petition shall be filed with the filing officer prior to circulation. Petitions shall be signed by registered voters residing in the city, if candidates are chosen at large, or in the ward in which the officer is to be elected, if candidates are chosen by ward, and shall be filed with the filing officer in the same manner as provided for candidate filing forms in § 34.07. Petition signers and petition circulators shall conform to the requirements of Neb. RS 32-629 and 32-630.

(2) No petition for nomination shall be filed unless there is attached thereto a receipt showing the payment of the filing fee required pursuant to § 34.08. The petitions shall be filed by September 1 in the year of the general election, and all signed petitions not filed with the Secretary of State by such date shall become invalid.  
(Neb. RS 32-617)

(C) (1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be at least 10% of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the city or in the ward in which the officer is to be elected, not to exceed 2,000.

(2) The number of signatures of registered voters needed to place the name of a candidate for an office upon the partisan ballot for the general election shall be as follows:

(a) For each partisan office to be filled by the registered voters of the entire state, at least 4,000, and at least 750 signatures shall be obtained in each congressional district in the state;

(b) For each partisan office to be filled by the registered voters of a county, at least 20% of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the county, not to exceed 2,000, except that the number of signatures shall not be required to exceed 25% of the total number of registered voters voting for the office at the immediately preceding general election; and

(c) For each partisan office to be filled by the registered voters of a political subdivision other than a county, at least 20% of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the political subdivision, not to exceed 2,000.

(Neb. RS 32-618)

**§ 34.10 RECALL PROCEDURE.**

(A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

***FILING OFFICER.*** The Election Commissioner or County Clerk.  
(Neb. RS 32-1301)

(B) (1) The Mayor, any member of the City Council, and any other elected official of the city may be removed from office by recall pursuant to this section.

(2) The recall procedure and special election provisions of this section shall apply to members of the City Council who are elected by ward. Only registered voters of such member's ward may sign a recall petition or vote at the recall election. The recall election shall be held within the member's ward. When a member of the City Council is nominated by ward in the primary election and elected at large in the general election, the recall provisions shall apply to the registered voters at the general election.  
(Neb. RS 32-1302)

(C) (1) A petition demanding that the question of removing the Mayor, a member of the City Council, or any other elected official be submitted to the registered voters shall be signed by registered voters equal in number to at least 35% of the total vote cast for that office in the last general election, except that for City Council office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least 35% of the number of votes cast for the person receiving the most votes for such office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall conform to the requirements of Neb. RS 32-629 and 32-630.

(3) The petition papers shall be procured from the filing officer. Prior to the issuance of such petition papers, a recall petition filing form shall be signed and filed with the filing officer by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The filing form shall state the name and office of the official sought to be removed, shall include in concise language of 60 words or less the reason or reasons for which recall is sought, and shall request that the filing officer issue initial petition papers to the principal circulator for circulation.

(4) After receiving the filing form, the filing officer shall notify the official sought to be removed by any method specified in Neb. RS 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in Neb. RS 25-505.01, by leaving a copy of the filing form at the official's usual place of residence and mailing a copy by first-class mail to the official's last known address. If the official chooses, he or she may submit a defense statement in concise language of 60 words or less for inclusion on the petition. Any such defense statement shall be submitted to the



filing officer within 20 days after the official receives the copy of the filing form. The filing officer shall prepare the petition papers within five business days after receipt of the defense statement. The principal circulator or circulators shall gather the petition papers within 20 days after being notified by the filing officer that the petition papers are available. The filing officer shall notify the principal circulator or circulators that the necessary signatures must be gathered within 30 days from the date of issuing the petitions.

(5) The filing officer, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The filing officer shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing officer may distribute such petitions to persons who may act as circulators of such petitions.

(6) Petition signers shall conform to the requirements of Neb. RS 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.

(Neb. RS 32-1303)

(D) Each petition paper shall conform to the requirements of Neb. RS 32-1304.

(E) (1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing officer within 30 days after the filing officer issues the initial petition papers to the principal circulator or circulators as provided in division (C) above.

(2) Within 15 business days after the filing of the petition, the filing officer shall ascertain whether or not the petition is signed by the requisite number of registered voters. No new signatures may be added after the initial filing of the petition papers. Any person may remove his or her name from a petition as provided in Neb. RS 32-632. If the petition is found to be sufficient, the filing officer shall attach to the petition a certificate showing the result of such examination. If the requisite number of signatures has not been gathered, the filing officer shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

(Neb. RS 32-1305)

(F) (1) If the recall petition is found to be sufficient, the filing officer shall notify the official whose removal is sought and the City Council that sufficient signatures have been gathered. Notification of the official sought to be removed shall be by any method specified in Neb. RS 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in Neb. RS 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last known address.

(2) The City Council shall, within 21 days after receipt of the notification from the filing officer pursuant to division (F)(1) above, order an election. The date of the election shall be the first available date that complies with Neb. RS 32-405 and that can be certified to the Election Commissioner or County Clerk at least 50 days prior to the election, except that if any other election is to be held in the city within 90 days after such notification, the City Council shall provide for the holding of the recall election on the same day.

(3) All resignations shall be tendered as provided in Neb. RS 32-562. If the official whose removal is sought resigns before the recall election is held, the City Council may cancel the recall election if the City Council notifies the Election Commissioner or County Clerk of the cancellation on or before the fourth Thursday prior to the election; otherwise, the recall election shall be held as scheduled.

(4) If a filing officer is subject to a recall election, the Secretary of State shall conduct the recall election.

(Neb. RS 32-1306)

(G) The form of the official ballot at a recall election held pursuant to division (F) above shall conform to the requirements of Neb. RS 32-1307.

(H) (1) If a majority of the votes cast at a recall election are against the removal of the official named on the ballot or the election results in a tie, the official shall continue in office for the remainder of his or her term but may be subject to further recall attempts as provided in division (I) below.

(2) If a majority of the votes cast at a recall election are for the removal of the official named on the ballot, he or she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the official is deemed removed, the removal shall result in a vacancy in the office, which shall be filled as otherwise provided in this section and Neb. RS 32-567 through 32-570, 32-574, and 32-606.01.

(3) If the election results show a margin of votes equal to 1% or less between the removal or retention of the official in question, the Secretary of State, Election Commissioner, or County Clerk shall order a recount of the votes cast unless the official named on the ballot files a written statement with the filing officer that he or she does not want a recount.

(4) If there are vacancies in the offices of one-half or more of the members of the City Council or any other governing body at one time due to the recall of such members, a special election to fill such vacancies shall be conducted as expeditiously as possible by the Secretary of State, Election Commissioner, or County Clerk. Candidates for the special election shall file a candidate filing form pursuant to § 34.07(C).

(5) No official who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his or her removal or the removal of any other member of the same governing body during the remainder of his or her term of office. (Neb. RS 32-1308)

(I) No recall petition filing form shall be filed against an elected official within 12 months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office. (Neb. RS 32-1309)

### **§ 34.11 EXIT POLLS; POLL WATCHERS.**

(A) No person shall conduct an exit poll, a public opinion poll, or any other interview with voters on election day seeking to determine voter preference within 20 feet of the entrance of any polling place or, if inside the polling place or building, within 100 feet of any voting booth.

(B) (1) No poll watcher shall interfere with any voter in the preparation or casting of such voter's ballot or prevent any election worker from performing the worker's duties.

(2) A poll watcher shall not provide assistance to a voter as described in Neb. RS 32-918 unless selected by the voter to provide assistance as provided in Neb. RS 32-918.

(3) A poll watcher shall not do any electioneering or disseminate any information or materials advertising or advocating for or against any ballot measure while engaged in observing at a polling place.

(4) A poll watcher shall maintain a distance of at least eight feet from the sign-in table, the sign-in register, the polling booths, the ballot box, and any ballots which have not been cast, except that if the polling place is not large enough for a distance of eight feet, the judge of election shall post a notice of the minimum distance the poll watcher must maintain from the sign-in table, the sign-in register, the polling booths, the ballot box, and any ballots which have not been cast. The posted notice shall be clearly visible to the voters and shall be posted prior to the opening of the polls on election day. The minimum distance shall not be determined to exclude a poll watcher from being in the polling place. (Neb. RS 32-1525) Penalty, see § 10.99

