

**CITY OF GUSTAVUS
ORDINANCE FY23-03**

**AN ORDINANCE FOR THE CITY OF GUSTAVUS PROVIDING FOR AMENDMENT OF CITY
ORDINANCE TITLE 5 ELECTIONS, CHAPTER 5.40 – ABSENTEE VOTING, SECTIONS
5.40.100 AND THE REPEAL AND REPLACEMENT OF, CHAPTER 5.60 – CONTEST OF
ELECTION, SECTIONS 5.60.010, 5.60.020**

BE IT ENACTED BY THE GUSTAVUS CITY COUNCIL AS FOLLOWS:

- Section 1. Classification. This ordinance is of general and permanent nature and shall become a part of the City of Gustavus Municipal Code.
- Section 2. Severability. If any provisions of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and its application to other persons, or circumstances shall not be affected thereby.
- Section 3. Enactment. Now therefore, it is enacted by the Gustavus City Council that Title 5 Elections, Chapter 5.40 – Absentee Voting, Sections 5.40.100, and Chapter 5.60 – Contest of Election, Sections 5.60.010, 5.60.020 be amended, repealed, and replaced as follows:

Bold and Underlined items are additions. ~~Strikeout~~ items are deletions.

Title 5 – ELECTIONS

Chapter 5.40.100 – ~~Reserved~~ **Personal-representative voting**

Section 5.40.110 – Personal-representative voting; eligible persons

A qualified voter who, due to age, illness, or disability, is unable to go to a polling place to vote may vote with the assistance of a personal representative.

Section 5.40.120 – Personal-representative voting; requests

The voter, or the voter's personal representative, may request a ballot from:

- (a) An election official at an early voting location designated by the Clerk at a time when the voting location is in operation; or**
- (b) An election official at a polling place on election day.**

Section 5.40.130 – Personal-representative voting; ballot and envelope form

The ballot provided to personal representative voters shall be identical to the ballots prepared for regular voters and used on election day. The ballot secrecy sleeve and the oath of affidavit envelope shall be smaller than the return envelope so they may be easily enclosed in the return envelope. The ballot secrecy sleeve shall be marked "Ballot Envelope" and have no other marks upon it. The oath of affidavit envelope shall have printed upon it the oath and affidavit. The ballot envelope and the return envelope shall be of heavy opaque paper.

Section 5.40.140 – Personal-representative voting; procedures

(a) The clerk shall provide each eligible personal representative voter with an official ballot prepared in accordance with Section [5.20].040 of Chapter 5.20 together with a ballot envelope, an oath of affidavit envelope, and a return envelope.

(b) Upon issuing a personal representative ballot to a voter, the clerk shall enter in the blank register the following information:

- (1) The number of the ballot issued;**
- (2) The name of the voter to whom it was issued;**
- (3) And the date on which the ballot was issued.**

(c) The personal representative shall deliver the ballot and other voting materials to the voter as soon as practicable.

(d) The voter shall mark the ballot in secret, place the ballot in a secrecy sleeve, and place the secrecy sleeve in the envelope provided.

(e) The voter shall enter the voter's name and the name of the personal representative on the envelope and shall sign the voter's certificate in the presence of the personal representative.

(f) The personal representative shall witness the voter's signature, and sign and date the personal representative's certificate, as provided on the envelope.

(g) Before the opening of the polls on election day, the clerk shall deliver to the election officials a list of the voters who have requested to vote by personal representative.

(h) To be counted, a personal representative voter's ballot must be received by the clerk no later than closing of the polls on election day.

(i) No city official may charge for any services rendered to any voter under the provisions of this chapter.

(j) If a voter's disability precludes the voter from performing any of the requirements of subsection (d) of this section, the personal representative may perform those requirements, except making the voting decision and signing the certificate on the ballot envelope on the voter's behalf.

(k) The Clerk shall deliver the voted special needs ballot to the Canvass Board for canvassing.

(l) The following materials are used to conduct personal representative voting:

- (1) Personal representative register (sign-in-sheet)**
- (2) Personal representative oath and affidavit for voter (printed on the outside of the personal representative ballot envelope)**

(3) Personal representative oath and affidavit for representative (printed on the outside of the personal representative ballot envelope)

(4) Ballot

(5) Secrecy sleeve

(6) Outer envelope for personal representative voting

(m) No person who is a candidate for office at the election, an immediate family member of the candidate, the voter's employer, an agent of the voter's employer, or an officer or agent of the voter's union may act as a personal representative for a voter.

~~Section 5.60.010—Contest of election; contestant.—~~

~~(a) Any qualified voter may contest the election of any person and the approval or rejection of any question or proposition.~~

~~(b) Any qualified voter who believes that prohibited practices occurred at an election may contest the election by:~~

~~(1) Filing a written affidavit with the city clerk specifying with particularity the provisions of the law which the voter believes were violated and the specific acts he believes to be misconduct;~~

~~(2) This affidavit must be filed with the city clerk before or during the first meeting of the election review committee on the Friday following the election. The city clerk shall acknowledge the date and time the affidavit is received on its face and make a photocopy of the affidavit which shall be given the contestant.~~

~~(Ord. No. FY21-15, § 3, 2-8-2021)~~

~~Section 5.60.020—Contest of election; council.~~

~~The city council may order an investigation or a recount of the ballots or, declare the election invalid and order a new election, or declare the affidavit of election contest without merit and certify the results of the election.~~

Section 5.60.010 Contest of election.

(a) Any candidate or qualified voter may contest the election of any person and the approval or rejection of any question or proposition by filing a notice of election contest with the election official before noon prior to certification of the election.

(b) The notice of election contest shall state the following grounds of the contest in detail and shall be signed under oath by the candidate or each of the voters filing it:

(1) Misconduct, fraud, or corruption on the part of an election official, sufficient to change the result of the election.

(2) The person certified as elected or nominated is not qualified as required by law;

(3) Any corrupt practice as defined by law, sufficient to change the results of the election.

Section 5.60.020 Notice of contest and procedure.

(a) The candidate or voters who seek to contest an election shall submit a written notice of contest, which shall conform to the requirements of subsection (b) of this section, to the Clerk before noon prior to certification of the election.

(b) The notice of contest shall be filed in person and shall contain:

- (1) A statement identifying the election being contested;**
- (2) A summary of the grounds for the contest;**
- (3) The legal name, residence address, contact information, and notarized signature of each candidate or City voter bringing the contest; and**
- (4) The contact information for a representative designated by the applicants to receive communications from the City regarding the contest.**

(c) Upon receipt of a valid notice of contest, the Clerk shall submit the contest to the Council. The Clerk and City Attorney shall investigate the grounds of the contest and submit a report of findings to the Council. The Clerk may request that the Canvass Board or additional personnel assist with the investigation as necessary. The Council shall defer the certification of the contested election results pending receipt of the report but shall proceed with certification of all election results that are not contested.

(d) If the Council determines that the grounds of the contest are valid and would change the results of the election, the Council shall proceed in a manner that is consistent with its determination. If the Council finds that the grounds for contest are not sufficient to change the election results, it shall declare the election valid and certify the contested election results.

Section 4. Effective Date. This ordinance becomes effective upon its adoption by the Gustavus City Council.

Date Introduced: August 8, 2022

Date of Public Hearing: September 19, 2022

PASSED and APPROVED by the Gustavus City Council this __th day of September 2022

Mike Taylor, Mayor

Attest: Karen Platt CMC, City Clerk