

ARTICLE II. MUNICIPAL ELECTION CANVASSING BOARD

Sec. 33.15. Establishment of board; composition.

The city municipal election canvassing board shall be established by the city council and shall be composed of the supervisor of elections, the city clerk, and the city attorney, who shall act as chairperson, or his substitute who shall act as chairperson.

('78 Code, § 6-21; Res. 79-8, passed 3-5-79)

Sec. 33.16. Substitute members.

- (a) If the supervisor of elections is unable to serve or is disqualified, the mayor shall appoint as a substitute member a qualified elector who is not a candidate with opposition in the election being canvassed, and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. The supervisor, however, shall act in an advisory capacity to the canvassing board.
- (b) If the city clerk is unable to serve or is disqualified, the mayor shall appoint as a substitute member a qualified elector of the city, who is not a candidate with opposition in the election being canvassed, and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.
- (c) If the city attorney is unable to serve or is disqualified, the mayor shall appoint as a substitute member a qualified elector who must not be an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

('78 Code, § 6-21; Res. 79-8, passed 3-5-79)

Sec. 33.17. Canvassing procedure.

At the close of the polls, or as soon thereafter as practicable, but not later than noon on the day following any primary, general, special, or other election, the municipal canvassing board shall meet in a building accessible to the public in St. Lucie County at a time and place to be designated by the supervisor of elections. It shall then proceed to publicly canvass the absentee electors' ballots as provided for in section 33.28. Public notice of the time and place of which the canvassing board shall meet to canvass the absentee elector's ballots shall be given by the supervisor of elections at least 48 hours prior thereto by publication once in one or more newspapers of general circulation in the city. As soon as the absentee electors' ballots are canvassed, the board shall proceed to publicly canvass the vote given each candidate, nominee, or other measure submitted to the electorate of the city, as shown by the returns then on file in the office of the supervisor of elections.

('78 Code, § 6-22; Res. 9-8, passed 3-5-79; Am. Ord. 92-11, passed 4-13-92)

Sec. 33.18. Canvass to be made from returns; procedure in case of error.

- (a) The canvass, except the canvass of absentee electors' returns, shall be made from the returns and certificates of the inspectors as signed and filed by them with the supervisor of elections, and the municipal canvassing board shall not change the number of votes cast for a candidate, nominee, or other measure submitted to the electorate of the city, respectively, in any polling place, as shown by the returns. All returns shall be made to the board on or before noon of the day following any primary, general, special, or other election.
- (b) If the returns from any precinct are missing, if there are any omissions on the returns from any precinct, or if there is an obvious error on any returns, the canvassing board shall order a recount of the returns from that precinct. Before canvassing the returns, the canvassing board shall examine the tabulation of the ballots cast in the precinct and determine whether the returns correctly reflect the votes cast. If there is a discrepancy between the returns and the tabulation of the ballots cast, the tabulation of the ballots cast shall be presumed correct and the votes shall be canvassed accordingly.

('78 Code, § 6-23; Res. 79-8, passed 3-5-79; Am. Ord. 92-11, passed 4-13-92)

Sec. 33.19. Recount procedure.

If the tabulation for any office reflects that a candidate was defeated or eliminated by 0.5 percent or less of the votes cast for that office, or that a measure appearing on the ballot was approved or rejected by 0.5 percent or less of the votes cast on that measure, the canvassing board certifying the results of the vote on that race or measure shall order a recount of the votes cast with respect to that office or measure. A recount need not be ordered with respect to the tabulation for any office, however, if the candidate or candidates defeated or eliminated from contention for that office by 0.5 percent or less of the votes cast for that office request in writing that a recount not be made. Each canvassing board responsible for conducting a recount shall examine the tabulation of the ballots cast in each precinct in which the office or issue appeared on the ballot and determine whether the tabulation correctly reflects the votes cast. If there is a discrepancy between the returns and the tabulations of the ballots cast, the tabulation of the ballots cast shall be presumed correct and those votes shall be canvassed accordingly.

('78 Code, § 6-24; Res. 79-8, passed 3-5-79; Am. Ord. 92-11, passed 4-13-92)

Sec. 33.20. Clerical assistance.

The canvassing board shall be supplied by the city with any clerical help to assist with the work of the board, as it deems necessary, with at least one member of the board present at all times until canvass of the returns is completed. The clerical help shall be employees of the city.

('78 Code, § 6-25; Res. 79-8, passed 3-5-79)

Sec. 33.21. Canvassing board to issue certificates; clerk to give notice to department of state.

The canvassing board shall make and sign triplicate certificates containing the total number of votes cast for each person nominated or elected, the names of persons for whom such votes were cast, and the

number of votes cast for each candidate or nominee, the identification of each issue placed upon the ballot and the number of votes cast for each position on each issue. One such certificate shall be immediately transmitted by the city clerk to the department of state and the second copy filed in the supervisor's office.

(Ord. 92-11, passed 4-13-92)

Sec. 33.22. Protest of election returns; procedure; venue.

- (a) Any candidate for nomination or election, or any elector qualified to vote in the election, shall have the right to protest the returns of the election as being erroneous by filing with the city clerk a sworn, written protest.
- (b) Such protest shall be filed with the city clerk prior to the time the canvassing board adjourns or within five days after midnight of the date the election is held, whichever last occurs.
- (c) Before canvassing the returns of the election, the canvassing board shall examine precinct returns and election tabulations. If there is a clerical error, such error shall be corrected by the canvassing board. If there is a discrepancy which could affect the outcome of an election, the canvassing board may recount the ballots on the automatic tabulating equipment.
- (d) (1) Any candidate whose name appears on the ballot or any political committee that supports or opposes an issue which appeared on the ballot may file a written request with the canvassing board for a manual recount. The written request shall contain a statement of the reason the manual recount is being requested.
 - (2) Such request must be filed with the city clerk prior to the time the canvassing board adjourns or within 72 hours after midnight of the date the election was held, whichever occurs later.
 - (3) The canvassing board may authorize a manual recount. If a manual recount is authorized, the canvassing board shall make a reasonable effort to notify each candidate whose race is being recounted of the time and place of such recount.
 - (4) The manual recount must include at least three precincts and at least one percent of the total votes cast for such candidate or issue. In the event there are less than three precincts involved in the election all precincts shall be counted. The person who requested the recount shall choose three precincts to be recounted, and, if other precincts are recounted the canvassing board shall select the additional precincts.
 - (5) If the manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the canvassing board shall:
 - a. Correct the error and recount the remaining precincts with the vote tabulation system;
 - b. Request the department of state to verify the tabulation software; or
 - c. Manually recount all ballots.
 - (6) Any manual recount shall be open to the public.
 - (7) Procedures for a manual recount are as follows:

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- a. The canvassing board shall appoint as many counting teams of at least two electors as is necessary to manually recount the ballots. A candidate involved in the race shall not be a member of the counting team.
 - b. If a counting team is unable to determine a voter's intent in casting a ballot, the ballot shall be presented to the canvassing board for it to determine the voter's intent.
- (8) If the canvassing board determines the need to verify the tabulations software, the canvassing board shall request in writing that the department of state verify the software.
- (9) When the department of state verifies such software, the department shall:
- a. Compare the software used to tabulate the votes with the software filed with the department of state pursuant to F.S. § 101.5607; and
 - b. Check the election parameters.
- (10) Any candidate for nomination or election or any elector qualified to vote in the election shall have the right to protest the returns of the election or the practices intended thereto as being fraudulent by presenting to any circuit judge of the Nineteenth Judicial Circuit in and for St. Lucie County a sworn written protest.
- a. The protest shall be presented to a circuit judge prior to the time the canvassing board adjourns or within five days after midnight of the date the election occurs, whichever last occurs.
 - b. The circuit judge to whom the protest is presented shall have authority to fashion such orders as he may deem necessary to ensure that such allegation is investigated, examined, or checked; to prevent or correct such fraud; or to provide any relief appropriate under such circumstances. Any candidate or elector presenting such a protest to a circuit judge shall be entitled to an immediate hearing thereon or to any appropriate relief.

(Ord. 92-11, passed 4-13-92)

Sec. 33.23. Form of protest of election returns.

- (a) The form of the protest of election returns to canvassing board shall be as follows:

PROTEST OF ELECTION RETURNS TO
CANVASSING BOARD

Port St. Lucie, Florida
_____, 19__

As provided in § 33.22, Port St. Lucie Code, I, _____, of the City of Port St. Lucie, Florida, believe the election returns from Precinct No. _____ in the _____ election 19__ are erroneous.

I hereby protest the canvass of such returns by the City of Port St. Lucie Canvassing Board, and request that said returns be investigated, examined, checked, and corrected by the said Canvassing Board. The basis for this protest is

Under penalties of perjury, I swear (or affirm) that I have read the forgoing and that the facts alleged are true to the best of my knowledge and belief.

Signature of person protesting returns

(b) The form of the protest of election returns to circuit judge shall be as follows:

PROTEST OF ELECTION RETURNS TO
CIRCUIT JUDGE

City of Port St. Lucie, Florida
_____, 19__

As provided in § 33.22, Port St. Lucie City Code, I, _____, of City of Port St. Lucie, Florida, being a qualified elector in Precinct No. _____ of St. Lucie County, Florida, believe the election returns from Precinct No. _____ in the _____ election of _____, 19__ are fraudulent.

I hereby protest against the canvass of such returns by the City of Port St. Lucie Canvassing Board, and request that said returns be investigated, examined, checked, and corrected. The basis for this protest is

Under penalties of perjury, I swear (or affirm) that I have read the foregoing and that the facts alleged are true, to the best of my knowledge and belief.

Signature of person protesting election returns

(Ord. 92-11, passed 4-13-92)

Sec. 33.24. Contest of election.

The certification of election or nomination of any person to office, or of the result on any question submitted be referendum, may be contested in the circuit court by any unsuccessful candidate for such office or nomination thereto, or by any taxpayer, respectively. Such contestants shall file a complaint, together with the fees prescribed in F.S. ch. 28, with the clerk of the circuit court within ten days after midnight of the date the canvassing board adjourns, and the complaint shall set forth the grounds on which the contestant intends to establish his right to such office or set aside the result of the election on a submitted referendum. The canvassing board shall be the proper party defendant and the successful

candidate shall be an indispensable party to any action brought to contest the election or nomination of a candidate.

(Ord. 92-11, passed 4-13-92)

Sec. 33.25. Judgment of ouster; revocation of commission; judgment setting aside referendum.

- (a) If the contestant is found to be entitled to the office, if on the findings a judgment to that effect is entered, and if the adverse party has been commissioned or has entered upon the duties thereof or is holding the office, then a judgment of ouster shall be entered against such party. Upon presentation of a certified copy of the judgment of ouster to the governor, the governor shall revoke such commission and commission the person found in the judgment to be entitled to the office.
- (b) If a judgment is entered setting aside a referendum, the election shall be void.

(Ord. 92-11, passed 4-13-92)

Sec. 33.26. Venue.

The venue for contesting a nomination or election or the results of a referendum shall be in St. Lucie County.

(Ord. 92-11, passed 4-13-92)

Sec. 33.27. Quo warranto not abridged.

Nothing in this Code shall be construed to abrogate or abridge any remedy that may now exist by quo warranto, but in such case the proceeding described in F.S. § 102.168 shall be an alternative or cumulative remedy.

(Ord. 92-11, passed 4-13-92)

Sec. 33.28. Canvassing of absent elector's ballot.

- (a) The supervisor of elections shall receive the voted absentee ballot, at which time the supervisor may compare the information on the voter's certificate on the back of the envelope with the information and the signature of the elector in the registration books to determine whether the elector is duly registered in the city and may record on the elector's registration certificate that the elector has voted. The supervisor shall safely keep the ballot unopened in his office until the canvassing board canvasses the vote according to law. The canvassing board may begin the canvassing of absentee ballots at 7:00 a.m. on the day of the election, but not later than noon on the day following the election; however, the counting of votes on absentee ballots shall begin no earlier than 7:00 p.m. on the day of the election. The canvassing board shall compare the ballots presented to it by the Supervisor for canvass with the record required by F.S. 101.62(3), so as to compare the number of ballots in its possession with the number of requests for ballots received to be counted according to the supervisor's file or list, to ensure that all the absentee ballots to be counted by the canvassing board are accounted for. The canvassing board shall, if the supervisor has not already done so,

compare the information on the back of the envelope and the signature of the elector with the registration book to see that the elector is duly registered in the city and has not voted on election day and to determine the legality of the absent elector's ballot. If it is determined by the canvassing board that any vote is illegal, then some member of the board shall, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The envelope and the ballot contained therein shall be preserved in the manner that official ballots voted are preserved.

- (b) If an elector or candidate present believes that any absentee ballot is illegal due to any defect apparent on the voter's certificate, he may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of such ballot, specifying the precinct, the ballot, and the reason he believes such ballot to be illegal. No challenge based upon any defect in the voter's certificate shall be accepted after the ballot has been removed from the mailing envelope.
- (c) The canvassing board shall then record the ballot upon the proper record, unless the ballot has been previously recorded by the supervisor of elections. The mailing envelope shall be opened and the secrecy envelopes shall be mixed so as to make it impossible to determine which secrecy envelope came out of which signed mailing envelope; however, when an electronic or electromechanical voting system is used, the ballots may be sorted by ballot styles and the mailing envelopes may be opened and the secrecy envelopes mixed separately for each ballot style. The votes on absentee ballots shall included in the total vote of the city.
- (d) The supervisor of the chairman of the canvassing board shall, after the board convenes, have custody of the absent electors' ballots until a final proclamation is made as to the total vote received by each candidate or on each issue.

(Ord. 92-11, passed 4-13-92)

Sec. 33.29. State election code adopted.

All elections shall be held in accordance with the provisions of the state election code, except as otherwise provided by the City Charter or by ordinance adopted by the city.

(Ord. 92-11, passed 4-13-92)