



Municipality of Anchorage

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Office of the Municipal Clerk

TO: Anchorage Municipal Assembly
FROM: Jamie Heinz, Election Administrator
THROUGH: Barbara A. Jones, Municipal Clerk
DATE: May 16, 2023
SUBJECT: Clerk's Report regarding May 4, 2023, Notice of Election Contest

A Notice of Election Contest was filed at the Municipal Clerk's Office on Thursday, May 4, 2023, (referred to throughout as "Notice") by the requisite ten qualified voters.¹

The Municipal Clerk's Office and MOA Elections Team offers the following regarding this Notice:

Background: It is unclear from the Notice what information is being referred to that would factually support the statement that "36,143 registered voters (15% of registered voters) who were not mailed an "election announcement" postcard or ballot package," because the list of voters who were not mailed a ballot package, created in response to a record request, contains 35,974 voters. All voters on that list are in the condition code of UN, LM, or LU. The number reported in the Notice is 169 more than the number on the list that was provided.

The Law

The Assembly's role in an election contest is detailed in the code. First, the code provides the following regarding Assembly certification:

¹ The Notice alleges disenfranchisement of 36,143 registered voters who were not mailed an "election announcement," postcard or ballot package. The contest is based on the following: (1) the Municipality of Anchorage recognized that there were 235,564 eligible active registered voters for the April 4, 2023, municipal election, (2) on or about January 31, 2023, only 199,421 of these registered voters were mailed an "election announcement," postcard from the MOA. 36,143 registered voters were deprived of the notice of an upcoming election, (3) on or about March 14, 2023, the actual ballot packages were sent to 201,029 registered voters in the MOA. There is a discrepancy between those who received an "election announcement," postcard and those that received a ballot package, and (4) 1,193 registered voters did not receive a ballot by mail for the 2023 MOA election but had successfully voted in the State of Alaska, November 8, 2022, General Election. No citations indicating which provisions of law were violated were provided nor were grounds for Election Contest provided.

“28.85.040 Certification of election.

- A. The election commission and the municipal clerk shall report the results of the commission's ballot review and election results at an assembly meeting as soon as practicable.***
- B. If, after considering the information, the assembly determines that the election was validly held, the assembly shall certify the results of the election in accordance with the reports of the election commission and municipal clerk.***
- C. The certification shall be subject to the outcome of any recount under chapter 28.90 and any election contest under chapter 28.100. Certification of the election is not subject to an assembly motion to reconsider. [Emphasis added]”***

In this posture, an election contest is a challenge to the Assembly's certification decision.

Next, the code provides the following regarding an election contest:

“28.100.010 Grounds for Election Contest.

- A. A candidate or ten qualified voters may contest the election of any person or the approval or rejection of any question or proposition upon one or more of the following grounds:***
 - 1. Malconduct, fraud or corruption on the part of an election official sufficient to change the result of the election.***
 - 2. The person certified as election is not qualified as required by law.***
 - 3. Any corrupt practice as defined by law sufficient to change the result of the election.***

28.100.020 Contest Procedure.

- A. Notice of contest of an election shall be submitted in writing to the municipal clerk within nine days after the certification of the election.***
- B. The notice of contest shall:***
 - 1. Specify the election being contested,***
 - 2. The grounds of the contest,***
 - 3. Shall bear the notarized signatures of the candidate or the qualified voters bringing the contest,***
 - 4. Shall contain the printed or typed names and residence addresses of the candidate or qualified voters, and***
 - 5. Shall designate two persons as representatives and include the phone numbers, mailing addresses, and residence addresses of the representatives.***
- C. The assembly shall vote whether to hear the contest or to certify the results of the contested election at a meeting held pursuant to AMC 28.85.040B. in accordance with the reports of the election commission and municipal clerk. If the assembly decides to hear the contest, it may appoint one or more persons to take evidence concerning the grounds for the contest and report to the assembly. [Emphasis added]”***

The following provisions of code related to the specific allegations in the Notice:

Anchorage Municipal Code (AMC) 28.40.020C states, *“Voting by mail. The municipal clerk shall cause an official ballot to be mailed to voters at least 21 days before the regular or special election day and seven days before a runoff election day. **The municipal clerk is not required to mail ballots to any voter that does not have a valid residence address, or is in the condition of purge notice (PN), undeliverable (UN), list maintenance (LM), or list maintenance undeliverable (LU), as described in AS 15.07.130 [emphasis added].**”*

- Voters who are in the condition code of UN have had mail sent to them by the Division of Elections returned as undeliverable.
- Voters who are in the condition code of LM have not voted in any municipal, state, or regional education attendance area (REAA) election in at least four years.
- Voters who are in the condition code of LU have not voted in any municipal, state, or REAA election in at least four years and mail sent to them by the Division of Elections is being returned as undeliverable.
- Voters who are in the condition code of PN have not voted in any municipal, state, or REAA election in at least eight years.

There is no requirement in the code that requires an “election announcement” postcard be sent to notify voters of an upcoming election. In the past, postcards were sent for the purpose of obtaining undeliverable information to help clean up the voter rolls prior to an MOA election; however due to the State of Alaska conducting a by-mail primary election, a primary election, and a general election, we felt that the voter rolls were likely in good shape and that it was important to notify voters that their district may have changed during the redistricting process in 2022. For these reasons, a postcard was mailed on approximately February 1st notifying voters that their Assembly District may have changed due to reapportionment. These postcards were not mailed to voters with condition codes UN, LM, LU condition. Given the postcard indicated that “ballots will be mailed on March 14, 2023,” and that recipients could track their ballots, for someone not being mailed a ballot pursuant to AMC 28.40.020C, neither of those statements would be true. See postcard attached as Exhibit A.

An appeal related to voters who were not sent a ballot package was submitted to the Election Commission at their April 20th Public Session of Canvass meeting and a motion was passed to, “resolve the complaint by thanking the Election Administrator for committing to work with the complainant and the vendor in time for the complainant to contest the election.” On May 1st, another Election Commission meeting was held for the purpose of presenting how MOA Elections processes the voter file in order to comply with AMC 28.40.020C. At that meeting, a list of voters who were not mailed a ballot, created in response to a record request, was provided to the complainant.

The statement that 1,193 registered voters did not receive a ballot by mail for the 2023 MOA election but had successfully voted in the State of Alaska, November 8, 2022, General Election is irrelevant to an election contest. First, it is irrelevant because the State of Alaska and the Municipality of Anchorage do not conduct elections in the same way nor at the same time. Second, the number of registered voters in Anchorage changes daily with voters registering and cancelling their registration and logically was different between November 8, 2022, and March 5, 2023, (the deadline to register for the April 4, 2023, Regular Municipal Election).

Additional Information in Response to the Contest:

- Two signature challenges were received and granted. The voters who received the cure letters cured and their ballots were counted; two signature challenges are not sufficient to change the outcome of the election.
- One adjudication challenge was received; one adjudication challenge is not sufficient to change the outcome of the election.
- There were zero, “ballot not properly cast or improperly rejected,” challenges submitted.
- There were zero, “voter challenges,” submitted.

- The State of Alaska, in their June 11, 2023, Special Primary By-Mail Election, did not mail ballots to UN or LU voters.

The Anchorage Vote at Home/Vote by Mail Election System provides many options for voters to vote. Voters are encouraged to vote their mailed ballot. Voters who did not receive a mailed ballot package by Tuesday, March 21 were encouraged through official Notices of Election and radio ads, to call the MOA Voter Hotline and request a replacement ballot package; the replacement ballot packages are mailed the following business day. Voters have until 7 days before Election Day, or Tuesday, March 28 to request a replacement ballot package to be mailed and the Elections Team processed all those requests. Voters who called after March 28 and stated they did not receive a ballot package were offered other options to vote: The Anchorage Voter Centers opened on Monday March 27 and were open for nine days, until 6:00 p.m. each day, except Saturdays and Sundays, when they were open, but had more limited hours, and on Election Day, April 5 when the Vote Centers were open from 7:00 a.m. – 8:00 p.m. Voters are also informed that they may vote by email or vote by fax and voters are provided that information. Finally, voters who are hospitalized, home bound, or disabled are offered the option to vote a Special Needs ballot package on or before Election Day. Although there were numerous articles in the local media on the election and how to vote, the MOA Elections Team made the following announcements specifically regarding options for voting, including in-person voting:

- **January 2023 - MOA Elections webpage** at www.muni.org/elections, bright yellow button and yellow banner link to the webpage directly from on the MOA Homepage at www.muni.org
- **February 12 - Notice of Election** published in the Anchorage Daily News and the Municipal Website, including vote center hours. This notice satisfies AMC 28.20.040A1a and B and complies with AMC 28.20.020.
- **February 26 – Notice of Special Election** published in the Anchorage Daily News and the Municipal Website, including vote center hours. This notice satisfies AMC 28.20.040A1b and B and complies with AMC 28.20.020.
- **March 14 – League of Women Voters Ballot Review** – delivered to every household in Anchorage.
- **March 17 and other dates – Social Media posts** reminding voters of dates Vote Centers open.
- **March 27 - Press Release** announcing the Anchorage Vote Centers Open beginning Monday, March 27th and detailing hours.
- **March 31 - Press Release** announcing the options to vote at home, by mail and in-person.
- **April 2 - Notice of Election** published in the Anchorage Daily News and on the Municipal website, including vote center hours. This notice satisfies AMC 28.20.040A2 and B and complies with AMC 28.20.020.
- **April 4 - Press Release** reminder to vote on Election Day, at home or in person at a vote center.

Conclusion:

In conclusion, the Assembly should decline to further hear the May 4, 2023, Notice of Election Contest. The Notice does not include any citation to any provision of federal, state, or municipal law that was violated in the April 4, 2023, Municipal Election nor does it include Grounds for Election Contest as required by AMC 28.100.010. The Assembly should also decline to hear the Notice for the following additional reasons: 1) postcards are not required to be mailed at all under the code and is not a basis for an election contest; 2) the code allows the Municipality not to send ballots to certain voters based on policy and practical reasons established by the Assembly detailed in AMC 28.40.020C; 3) all eligible voters received the code required notice of the election based on the Assembly policy detailed in the code; 4) all eligible voters – including all 235,564 registered voters in Anchorage or the 36,143 aggregate number of voters mentioned in the Notice - are entitled to vote at an Anchorage Vote Center or are entitled to request a replacement ballot; and 5) the response to allegations in the Notice do not include any basis to conclude that these practices, whether required in code or not, affected

the outcome of any election. MOA Elections followed approved policies and procedures and the municipal code when conducting the 2023 Municipal Election; there were no findings of any failure to comply with the provision of law or any apparent discrepancy in the returns as previously noted in the Municipal Clerk's report and the Election Commission's report provided to the Assembly in the certification document, AM 324-2023, dated April 25, 2023, which are incorporated here by reference. For these reasons, this May 4, 2023, Notice of Election Contest should be denied.