

Chapter 26 - ELECTIONS

Sec. 26-1. - Elections to be by electors at large.

All of the elected officials of the city shall be elected by the qualified electors of the city at large, and there shall be but one official ballot.

(Code 1961, § 10-44; Code 1985, § 8-3; Ord. No. 2011-50, § 3, 4-5-11)

Sec. 26-2. - Proclamation of election.

- (a) Prior to July 1 of any year in which a general election shall occur, the mayor shall issue a proclamation for such election, which shall state the offices and vacancies to be filled at the election in the city, the qualifying dates for such election, the date for any run-off election or elections, if necessary, or any other matter or thing that may be submitted thereat. Such proclamation shall be published at least 30 days prior to the holding of the election.
- (b) In the event of failure, refusal, absence or inability, for any cause, of the mayor to act, the president of the city council shall issue such proclamation and cause the proclamation to be published.

(Code 1961, § 10-21; Code 1985, § 8-4; Ord. No. 2719, § 3, 5-6-97; Ord. No. 5312, § 5, 8-17-04; Ord. No. 2015-26, § 4, 4-21-15)

Sec. 26-3. - Compensation of supervisor of elections.

The expense of any general, runoff or special election under this chapter conducted for the City of Ocala by the Supervisor of Elections for Marion County, Florida, shall receive such compensation as may be set by the supervisor of elections as allowed by law or as agreed to by city council and the supervisor of elections.

(Code 1961, § 10-22; Code 1985, § 8-5; Ord. No. 2719, § 4, 5-6-97; Ord. No. 5312, § 6, 8-17-04; Ord. No. 2011-50, § 4, 4-5-11)

Sec. 26-4. - Qualifying period, qualifying papers and election assessment.

The mode of qualifying and qualifying period for persons for office in the city, and the way in which the names are to be printed or placed on the official ballot, shall be as follows:

- (1) There shall be presented to the city clerk during the qualifying period for an election the qualifying papers required by the Florida Election Code along with the nominating petitions requesting that they become a candidate for such office, such petition to be signed by at least 25 qualified electors of the city. It shall be the duty of each candidate to insure that the petitioning electors are duly qualified electors. Failure to insure that at least 25 petitioning electors are qualified electors shall preclude that candidate from qualifying and having his or her name put on the election ballot.
- (2) In the case of the qualifying papers for councilmember, the qualifying papers shall designate the district in which such candidate for councilmember shall run.
- (3) These qualifying papers and nominating petitions shall be filed with the city clerk, and the names of the persons petitioned and no others shall be printed or placed on the official ballot as the candidates for the respective offices to be filled at such election.
- (4) Prior to filing qualifying papers and nominating petitions with the city clerk, all candidates shall comply with the Florida Election Code concerning appointment of campaign treasurer and designation of campaign depository and have completed all necessary forms required and have filed same with the city clerk.
- (5) Each person upon filing the qualifying papers and nominating petitions shall pay to the city clerk at that time the election assessment fee assessed pursuant to section 26-12.
- (6) The qualifying papers for election must be filed with the city clerk at any time after noon of the 1st day for qualifying, which shall be the 71st day prior to the, but not later than noon of the 67th day prior to the date of the election. Notwithstanding the qualifying period prescribed in this section, the city clerk may accept and hold qualifying papers submitted not earlier than 14 days prior to the beginning of the qualifying period, to be processed and filed during the qualifying period.
- (7) All candidates for office shall be registered and qualified electors of the city at the time of their qualifying as a candidate with the city clerk and a resident as required by this chapter.
- (8) Nothing in this section shall prohibit candidates from engaging in otherwise

lawful campaign activities contemplated by the Florida Election Code.

(Code 1961, § 10-10; Code 1985, § 8-9; Ord. No. 2719, § 8, 5-6-97; Ord. No. 2011-50, § 5, 4-5-11; Ord. No. 2015-25, § 1, 4-21-15)

Editor's note— Ord. No. 2011-50, § 5, adopted April 5, 2011, renamed § 26-4 from "Procedure for nominating candidates" to "Qualifying period, qualifying papers and election assessment."

Sec. 26-5. - Canvassing returns; recording results.

- (a) The city council designates the city clerk, the city attorney and the current elected Marion County, Florida Supervisor of Elections to be the canvassing board of the returns of the city elections and is the local board responsible for certifying the election pursuant to the Florida Election Code and all duties prescribed therein. All rulings by the canvassing board shall be decided by a majority vote. The canvassing board shall at the next regular meeting of the city council after any general, runoff or special election, or at a special meeting held for that purpose, shall deliver to the city council the results of the election and shall declare the results of the election. The results of the election as declared by the canvassing board shall be certified by the city council and shall be recorded in the minutes of the meeting showing in words and figures, written at full length, the whole number of votes given for each elected office, the names of the persons for whom such votes were given and the number of votes given for each person for each elected office.
- (b) If the city clerk is unable to serve on the canvassing board for any reason, then the city council president shall appoint as his substitute replacement the most senior staff member available from the city clerk's office. If the city attorney is unable to serve on the canvassing board for any reason, then the city council president shall appoint as his substitute replacement one of the assistant city attorney's. If the supervisor of elections is unable to serve on the canvassing board for any reason, then the city council president shall appoint as his substitute replacement either the city auditor or the chief of police.
- (c) In elections that coincide with federal, state or county elections, the canvassing board shall be that board as required by the Florida Election Code and Florida law.

(Code 1961, § 10-20; Code 1985, § 8-17; Ord. No. 2719, § 16, 5-6-97; Ord. No. 2011-50, § 6, 4-5-11; Ord. No. 2014-19, § 1, 2-18-14)

Sec. 26-6. - Certificate of election.

The city clerk shall make out and transmit to each person chosen to any city office, immediately after the canvass of election returns and declaration of the results of the election by the city council as provided in this chapter, a certificate showing the result thereof as declared by the council, which certificate shall be prima facie evidence of his election to such office in all contests of investigation before the city council.

(Code 1961, § 10-41; Code 1985, § 8-18; Ord. No. 2011-50, § 7, 4-5-11)

Sec. 26-7. - Early voting.

For those city elections taking place concurrent with other elections conducted by the Marion County Supervisor of Elections, early voting shall be permitted in accordance with F.S. § 101.657 and procedures established by the Marion County Supervisor of Elections. For those elections taking place at times other than those specified in the preceding sentence, early voting shall not be permitted except by absentee voting. Absentee voting shall be permitted in all municipal elections in accordance with the applicable provisions of the Florida Election Code.

(Ord. No. 5425, § 1, 8-16-05)

Sec. 26-8. - Procedure for establishing residency for all candidates.

- (a) Every candidate for office shall present to the city clerk during the qualifying period for an election a sworn affidavit in which the person nominated shall attest under penalty of perjury that he is a resident and qualified voter of the City of Ocala. The residency affidavit shall attest that the candidate is a resident and qualified voter of the City of Ocala currently and shall have been a resident of the City of Ocala for not less than one year prior to his election to office.

- (1) *Form of residency affidavit for mayor.*

Residency Affidavit

State of Florida
County of Marion

Before me, an officer authorized to administer oaths, personally appeared (please print name as you wish it to appear on the ballot), to me well known, who, being sworn, says that he or she is a candidate for the office of mayor;

that he or she is a qualified elector of the City of Ocala, Marion County, Florida; that he or she is qualified under the Constitution and the laws of Florida and the City Charter of the City of Ocala to hold the office of mayor and that he or she is a resident of the City of Ocala currently and shall have been a resident of the City of Ocala for not less than one (1) year prior to his or her election to office.

(Signature of candidate)

(Address)

Sworn to and subscribed before me this _____ day of _____ , (year), at _____ County, Florida.

(Signature and title of officer administering oath)

(2) *Form of residency affidavit for city council.*

Residency Affidavit

State of Florida

County of Marion

Before me, an officer authorized to administer oaths, personally appeared (please print name as you wish it to appear on the ballot), to me well known, who, being sworn, says that he or she is a candidate for the office of city councilman, district _____ ; that he or she is a qualified voter of the City of Ocala, Marion County, Florida; that he or she is qualified under the Constitution and the laws of Florida and the City Charter of the City of Ocala to hold the office of city councilman for that district; that he or she is a resident of the City of Ocala currently and shall have been a resident of the City of Ocala for not less than one (1) year prior to his or her election to office and that he or she is currently a resident of the district for which election is sought.

(Signature of candidate)

(Address)

Sworn to and subscribed before me this _____ day of _____ , (year), at _____ County, Florida.

(Signature and title of officer administering oath)

- (b) In the case of nominations for council members, the affidavit shall also designate the district in which such candidate for councilman is seeking election and that the candidate is currently a resident of that district.
- (c) It shall be unlawful for any person to falsely file an affidavit with the city clerk attesting to that person's residency as citizen of the City of Ocala for purposes of seeking to become a candidate for the Office of Mayor or City Councilman. Any person convicted of violating this section shall be punished as provided in section 1-9 of the Code of Ordinances for each violation.
- (d) Any citizen who believes that a candidate fails to meet the residency requirements of City Charter sections 2.01 for councilman or 3.01 for the Office of Mayor may upon the filing of a protest with the city clerk and the payment of a \$250.00 filing fee contest the residency of any candidate. Any protest to be considered shall be filed against any candidate after such candidate qualifies for election, but in no case more than ten days after the close of qualifying.
- (e) City council shall conduct an expedited hearing within ten days of any such challenge to determine whether the candidate has been and currently is a resident of the City of Ocala and eligible to be placed on the ballot as a candidate for office as required by the City Charter.
- (f)
 - (1) The protest hearing shall be open to the public and minutes shall be kept by the city clerk of the hearing. Additionally, a court reporter, paid for by the city, shall be present for the hearing and record all testimony of witnesses, cross-examination of witnesses and comments and deliberations of the city council.
 - (2) The citizen challenging the residency of any candidate shall present to city council any evidence supporting that citizen's contention that the candidate is not a legal resident of the City of Ocala as required by City Charter. The protesting citizen shall be allowed to use an attorney to present the citizen's protest, but that attorney shall be paid for by the protesting citizen. Likewise, the candidate may also be represented by an attorney paid for by that candidate.
 - (3) At the hearing city council shall proceed to hear the case first from the protesting citizen, who shall have the burden of proof, and then from the candidate or his legal representative. All testimony shall be under oath and

shall be recorded. City council shall take testimony from the complaining citizen, the candidate and other witnesses presented by either party. Any witness testifying shall be subject to cross examination by the city council and any interested party. City council may also subpoena any witness it believes is necessary to fully and fairly decide the issue. The city council shall also consider all other relevant evidence to include, but not limited to, documents, letters, video or other recordings. The formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

- (4) The city attorney shall act as legal advisor to the city council as to the law to be followed by city council in its determination, but shall not act as an advocate for either party.
 - (5) The issue of non-residency shall be proved by the protesting citizen by the preponderance of the evidence presented.
 - (6) At the conclusion of the hearing, city council shall issue formal written findings of fact, based on evidence of record and conclusions of law as to the candidates residency, and shall issue a written order reciting the findings and conclusions. The findings shall be by motion approved by a majority of those members present and voting. A quorum shall be necessary for city council to hold the hearing.
- (g) Should city council determine that the candidate is not a resident of the City of Ocala as required by the City Charter the city clerk shall immediately take steps to remove that candidate's name from the ballot, if possible. If it is not possible to actually remove the candidate's name from the ballot, the supervisor shall take appropriate steps to inform potential voters that a vote for that candidate would be a nullity and of no effect given the determination on non-residency. The candidate may, however, immediately appeal the determination of city council to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the city council. Any appeal shall be filed within ten days of the city council's determination so as to timely certify to upcoming ballot.

(Ord. No. 5662, § 1, 5-1-07)

Editor's note— Ord. No. 5662, § 1, adopted May 1, 2007, provided for a new section 26-7.

Inasmuch as Ord. No. 5425, § 1, adopted Aug. 16, 2005 was codified as § 26-7, the provisions of Ord. No. 5662 have been included as § 26-8 at the discretion of the editor.

Charter reference— City Council, Art. II et seq.; mayor, art. III et seq.

Sec. 26-9. - Duty of candidates.

It is the duty of every candidate seeking election as mayor or to city council to understand and comply with the City's Charter and ordinances concerning elections and the applicable provisions of the Florida Election Code.

(Ord. No. 2011-50, § 8, 4-5-11)

Sec. 26-10. - Nonpartisanship required.

Municipal elections shall be nonpartisan and the offices of mayor and city council shall be elected without reference to their registration status.

(Ord. No. 2011-50, § 9, 4-5-11)

Sec. 26-11. - Registration of voters.

Voters in a municipal election shall be registered in the manner provided for by the Florida Election Code governing registration of voters. By the foregoing provision of this section it is intended to require that a voter be registered in accord with the requirements of the permanent registration system heretofore adopted by the Marion County Supervisor of Elections, in order to participate as a voter in the municipal elections herein provided.

(Ord. No. 2011-50, § 10, 4-5-11)

Sec. 26-12. - Election assessment fee.

All candidates for city council and for mayor, qualifying as provided in this chapter, shall pay an election assessment fee of one percent of the annual salary for the office sought. The election assessment fee shall be paid to the city clerk and deposited into the general fund. The city clerk shall collect and disburse any other sums as required by the Florida Election Code.

(Ord. No. 2011-50, § 11, 4-5-11)

Sec. 26-13. - Oath and registration certificate.

The oath required by law to qualify as an elector for federal, state and county elections and the voter confirmation issued to voters within the city by the Marion County Supervisor of Elections, as required by the Florida Election Code, shall be sufficient as an oath and registration certificate for the municipal elections provided for in this chapter.

(Ord. No. 2011-50, § 12, 4-5-11)

Sec. 26-14. - Voting places.

Voting places for municipal elections shall be as designated by the Marion County Supervisor of Elections. To the extent possible those voting places shall be the same as used by the Marion County Supervisor of Election for federal, state and county elections within the city.

(Ord. No. 2011-50, § 13, 4-5-11)

Sec. 26-15. - Closing of registration books.

The registration of voters for municipal elections provided for in this chapter shall be in the same manner as the registration of voters for the federal, state or county elections, and the registration books shall close as provided for by [the] Florida Election Code.

(Ord. No. 2011-50, § 14, 4-5-11)

Sec. 26-16. - Voting system.

The voting system used for voting in the municipal elections provided for in this chapter shall be the same systems as are used for voting in state and county elections. The city clerk is authorized to represent the city in whatever pre-election preparation that may be necessary to ensure that city candidates, referendums or issues are properly placed on the ballot as may be prescribed by the Florida Election Code. The city clerk shall ensure that a form of certificate of returns is completed which shall comply substantially with the form of certificate prescribed by the Florida Election Code conforming such form to the municipal elections provided for in this chapter and shall distribute said certificate as required by Florida Election Code or this chapter.

(Ord. No. 2011-50, § 15, 4-5-11)

Sec. 26-17. - Florida Election Code applicable.

At elections held under this chapter, where any questions shall arise which are not settled by Florida Election Code applicable to municipalities, the City Charter or this chapter, then and in such event the Florida Election Code applying to like situations involving county elections shall govern, so far as the same may be applicable. In the application of such general laws, the city clerk shall be substituted in lieu of the county supervisor of election and the city council shall be substituted in lieu of the board of county commissioners whenever such substitution would give sense and meaning to such statutes insofar as the same would otherwise be applicable to municipal elections.

(Ord. No. 2011-50, § 16, 4-5-11)

Sec. 26-18. - Additional duties of city clerk.

The city clerk is authorized and directed to have prepared such forms and perform such ministerial duties as are required by this chapter by necessary implication in order to accomplish the objectives of this chapter and the intent of the city council in adopting it.

(Ord. No. 2011-50, § 17, 4-5-11)