


SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING TITLE 25 OF THE MATANUSKA-SUSITNA BOROUGH CODE TO REQUIRE BALLOTS BE COUNTED BY HAND ONLY, DIRECT THAT COUNTING HAPPEN AT PRECINCTS, AND ALLOW FOR OBSERVATION BY POLL WATCHERS AND CANVASS BOARD OBSERVERS; ALL TO BE EFFECTIVE BEGINNING IN 2023.



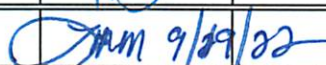

AGENDA OF: September 27, 2022.

ASSEMBLY ACTION:

Adopted without objection
10-4-22 

MANAGER RECOMMENDATION: Introduce and set for public hearing.

APPROVED BY MICHAEL BROWN, BOROUGH MANAGER: 

Route To:	Department/Individual	Initials	Remarks
	Originator	NS/LM	for Assemblymember Bernier
	Finance Director		
	Borough Attorney		
	Borough Clerk		

ATTACHMENT(S): Fiscal Note: YES X NO
Ordinance Serial No. 22-119 (6 pp)

SUMMARY STATEMENT: This ordinance is sponsored by Assemblymember Bernier to mandate a hand-count of all ballots in all Borough elections. The objective of this ordinance is to make all changes necessary to Borough code to prohibit the use of voting tabulation machines, require hand count of all ballots, and also preserve the flexibility granted to the clerk to conduct an orderly election. These changes will also direct that the hand count of ballots occur at the precincts on election night and allow for observation of counting by poll watchers. For absentee, and questioned voters, the counting cannot occur on election night as they require canvassing of ballots before the count. However, after canvassing, the hand counting of absentee and question votes may be observed by a person who meets the qualifications to be a canvass board observer.

As it pertains to observers, the changes here preserve the current limitation that only one person at a time for each candidate, ballot proposition, or group as per MSB 25.30.025 and/or MSB 25.35.105(A), can be present to observe counting. In other words, no candidate or sponsor or political group may have more than one person to observe a ballot counting team.

Since the November 8, 2022 regular election is less than six weeks away, these changes will not apply to the November 2022 election. The chance that changes just before an election will disrupt an orderly election is too great. There is a legal doctrine called the Purcell Principle in which the US Supreme Court has established that courts should not change election rules during the period of time just prior to an election because doing so could confuse voters and create problems for officials administering the election. See Purcell v. Gonzalez, 549 U.S. 1 (2006). That same reasoning applies to the delayed effective date of this ordinance.

Preparations for this election are virtually complete and all the systems are in place, officials have been selected, manuals are complete, and there is a great risk of inadequate time to properly prepare for a change of this magnitude if thrust upon the election officials just before the November 2022 election. In addition, on September 6, 2022, after several hours of public testimony and Assembly debate, the Borough Assembly adopted Resolution Serial No. 22-072 titled "A Resolution Directing the Clerk to Verify Election Results by Performing a Hand Count." This resolution directs a hand count of all ballots in addition to the tabulators being used. For all the reasons noted above, this ordinance will take effect on January 1, 2023.

An important note for this ordinance is that it does not affect the ability of the Matanuska-Susitna Borough to provide voting equipment for those voters who need assistance due to blindness, disability, or inability to read or write. The Matanuska-Susitna Borough has equipment to provide for voter assistance in these cases and this ordinance does not affect or restrict the use of that equipment. However, as with all other votes, the ballot will be hand counted.

The following is a sectional analysis and discussion of changes by section.

MSB 25.20.060(F)

This amendment removes the reference to voting machines while retaining the ability for the clerk to make arrangements with the State of Alaska to use equipment and supplies, if necessary. The clerk would still be able to use tables, chairs, booths, etc. to the extent needed.

MSB 25.20.090

This amendment mandates that all precincts are hand count and removes the ability for machine count.

MSB 25.30.025

This amendment allows qualified poll watchers to observe the hand count of regular poll votes cast at the precincts so they may clearly see and hear all the activities taken to hand count the ballots. This will include any discussion amongst counting officials regarding how a vote should count in the event they have such a discussion. In addition, it allows for the appointment of a poll watcher to observe the early vote count locations since it is processed as a precinct.

MSB 25.30.120

This amendment directs that ballots be hand counted in view of poll watchers on election night after the polls close. After opening the ballot box and separating out questioned, absentee, and personal representative ballots, the precinct election officials will proceed to hand count regular ballots voted at the election and record the results.

MSB 25.30.130

This amendment removes references to machine count precincts and requires that all sealed ballot containers are delivered to the clerk.

MSB 25.35.012(A)

This amendment removes the ability of the clerk to select a vote tabulation system and mandates a hand count. The manner of the hand count is to be determined by the clerk.

MSB 25.35.030

This section is deleted to remove the ability to use machines for counting.

MSB 25.35.040

This section is deleted because it pertains to testing the tabulating machines and tabulating machines will no longer be allowed.

MSB 25.35.070

This amendment mandates a hand count at all precincts. Since machines will not be allowed, the amendment also removes references to machine tapes and printouts as valid counts of ballots.

MSB 25.35.081

This amendment pertains to early ballots and mandates that they are hand counted in the same manner as all other ballots. The hand count of early votes is to begin promptly after polls close at

8p.m. on Election Day. The amendment also removes all references machines, tapes, and memory cards because machines will no longer be allowed.

MSB 25.35.107

This amendment is a new Borough code section to direct a hand count for all ballots after the canvass board has concluded their work. This amendment also allows for an observer to observe the count so they may clearly see and hear all the activities taken to hand count the ballots. This will include any discussion amongst counting officials regarding how a vote should count in the event they have such a discussion.

RECOMMENDATION OF ADMINISTRATION: Introduce and set for public hearing.

MATANUSKA-SUSITNA BOROUGH FISCAL NOTE

Agenda Date: September 27, 2022

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ORIGINATOR: NS for Assemblymember Bernier

FISCAL ACTION (TO BE COMPLETED BY FINANCE)	FISCAL IMPACT YES NO
AMOUNT REQUESTED XX	FUNDING SOURCE <i>Areawide operating</i>
FROM ACCOUNT # <i>100.100.105.4XX.XX</i>	PROJECT
TO ACCOUNT: <i>100.100.105.4XX.XX</i>	PROJECT #
VERIFIED BY: <i>Chapenne Bernier</i>	CERTIFIED BY:
DATE: <i>9/19/22</i>	DATE:

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026
Personnel Services						
Travel						
Contractual						
Supplies						
Equipment						
Land/Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING			<i>XX</i>			

CAPITAL						
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REVENUE						
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FUNDING:

(Thousands of Dollars)

General Fund			<i>XX</i>			
State/Federal Funds						
Other						
TOTAL			<i>XX</i>			

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

XX Cost cannot be determined with 15 Time

PREPARED BY:

PHONE:

DEPARTMENT:

DATE:

APPROVED BY:

DATE: