

ORDINANCE NO. 526

AN ORDINANCE OF THE VILLAGE OF POTTER AMENDING SECTION 34.04 RELATING TO SPECIAL ELECTIONS; AMENDING SECTION 34.05 RELATING TO CERTIFYING OFFICER TO BE ELECTED; AMENDING SECTION 34.07 RELATING TO CANDIDATE FILING FORMS AND FILING DEADLINES; AMENDING SECTION 34.08 RELATING TO ELECTION FILING FEES; AMENDING SECTION 34.10 RELATING TO GENERAL ELECTION BALLOT PROCEDURES; AMENDING SECTION 34.11 RELATING TO RECALL PROCEDURES OF THE MUNICIPAL CODE OF THE VILLAGE OF POTTER, NEBRASKA, TO HARMONIZE WITH STATE LAW; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CHAIRMAN AND BOARD OF TRUSTEES OF THE VILLAGE OF POTTER, NEBRASKA:

Section 1. That §34.04 of the Municipal Code of the Village of Potter, Nebraska, is amended to read as follows:

§ 34.04 SPECIAL ELECTIONS.

- A. (1) Except as provided in Neb. RS 77-3444, any issue to be submitted to the registered voters at a special election by the village shall be certified by the Village Clerk to the Election Commissioner or County Clerk on or before the eighth Friday prior to the election. A special election may be held by mail as provided in Neb. RS 32-952 through 32-959. Any other special election under this section shall be subject to division (B) of this section.
- (2) In lieu of submitting the issue at a special election, the village may submit the issue at a statewide primary or general election or at any scheduled county election, except that no such issue shall be submitted at a statewide election or scheduled county election unless the issue to be submitted has been certified by the Village Clerk to the Election Commissioner or County Clerk by March 1 for the primary election and by September 1 for the general election.
- (3) After the Election Commissioner or County Clerk has received the certification of the issue to be submitted, he or she shall be responsible for all matters relating to the submission of the issue to the registered voters, except that the Village Clerk shall be responsible for the publication or posting of any required special notice of the submission of the issue other than the notice required to be given of the statewide election issues. The Election Commissioner or County Clerk shall prepare the ballots and issue ballots for early voting and shall also conduct the submission of the issue, including the receiving and counting of ballots on the issue. The election returns shall be made to the Election Commissioner or County Clerk. The ballots shall be counted and canvassed at the same time and in the same manner as the other ballots. Upon completion of the canvass of the vote by the County Canvassing Board, the Election Commissioner or County Clerk shall certify the election results to the Board of Trustees. The canvass by the County Canvassing Board shall have the same force and effect as if made by the Board of Trustees.
(Neb. RS 32-559)
- B. (1) A village that has submitted an issue for a special election under subdivision (A)(1) of this section may cancel the special election if the Secretary of State, Election Commissioner, or County Clerk receives a resolution adopted by the village canceling the special election on or before the fourth Thursday prior to the election. No cancellation shall be effective after such date. If a special election is canceled in such manner, the village shall be responsible for the costs incurred that are related to the canceled election. Such costs shall include all chargeable costs as provided in Neb. RS 32-1202 associated with preparing for and conducting a special election.
- (2) A village that has submitted an issue at a statewide primary or general election or at any scheduled county election under subdivision (A)(2) of this section may withdraw the issue from the ballot if the Secretary of State, Election Commissioner, or County Clerk receives a resolution adopted by the village withdrawing the issue from the ballot no later than March 1 prior to a statewide primary election or September 1 prior to a statewide general election. No withdrawal shall be effective after such date. Any issue withdrawn in this manner shall not be printed on the ballot.
(Neb. RS 32-559)

- C. Any special election under the Election Act shall be held on the first Tuesday following the second Monday of the selected month unless otherwise specifically provided. No special election shall be held under the Election Act in April, May, June, October, November, or December of an even-numbered year unless it is held in conjunction with the statewide primary or general election. (Neb. RS 32-405)

Section 2. That §34.05 of the Municipal Code of the Village of Potter, Nebraska, is amended to reads as follows:

§ 34.05 ELECTION OF OFFICERS; CERTIFICATION.

No later than June 15 of each even-numbered year, the Village Board shall certify to the Secretary of State, the Election Commissioner, or the County Clerk, the name of the village, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office. The Secretary of State, Election Commissioner, and County Clerk shall prescribe the forms to be used for certification to him or her. (Neb. RS 32-404)

Section 3. That §34.07 of the Municipal Code of the Village of Potter, Nebraska, is amended to reads as follows:

§ 34.07 CANDIDATE FILING FORMS; DEADLINES; FILING OFFICER.

- A. Any candidate for the Board of Trustees may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in division (B). If a candidate is an incumbent of an elective office, the filing period for filing the candidate filing form shall be between January 5 and July 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office between January 5 and August 1 prior to the date of the general election. (Neb. RS 32-606)
- B. Candidate filing forms shall be filed in the office of the Election Commissioner or County Clerk. (Neb. RS 32-607)

Section 4. That §34.08 of the Municipal Code of the Village of Potter, Nebraska, is amended to reads as follows:

§ 34.08 FILING FEE.

- A. (Except as provided in division (D) or (E) of this section, a filing fee shall be paid to the Cheyenne County Election Commissioner or County Clerk. The Election Commissioner or County Clerk shall remit the fee to the county treasurer. No candidate filing forms shall be filed until the proper payment or the proper receipt showing the payment of such filing fee is presented to the filing officer.
- B. Except as provided in division (D) or (E) of this section, the filing fee shall be a sum equal to 1% of the annual salary as of November 30 of the year preceding the election for the office for which he or she files as a candidate.
- C. All declared write-in candidates shall pay the filing fees that are required for the office at the time that they present the write-in affidavit to the filing officer.
- D. No filing fee shall be required for any candidate filing for an office in which a per diem is paid rather than a salary or for which there is a salary of less than \$500 per year.
- E. (1) No filing fee shall be required of any candidate completing an affidavit requesting to file for elective office in forma pauperis.
- (2) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AVAILABLE RESOURCES. Includes every type of property or interest in property that an individual owns and may convert into cash except:

- (a) Real property used as a home;
- (b) Household goods of a moderate value used in the home; and
- (c) Assets to a maximum value of \$3,000 used by a recipient in a planned effort directed towards self-support.

PAUPER. A person whose income and other resources for maintenance are found under assistance standards to be insufficient for meeting the cost of his or her requirements and whose reserve of cash or other available resources does not exceed the maximum available resources that an eligible individual may own.

- F. If any candidate dies prior to an election, the spouse of the candidate may file a claim for a refund of the filing fee with the Cheyenne County Election Commissioner or County Clerk prior to the date of the election. Upon approval of the claim by the county, the filing fee shall be refunded.
(Neb. RS 32-608)

Section 5. That §34.10 of the Municipal Code of the Village of Potter, Nebraska, is amended to read as follows:

§ 34.10 PETITION, WRITE-IN, AND OTHER CANDIDATES FOR GENERAL ELECTION BALLOT; PROCEDURES.

- A. (1) Any registered voter who was not a candidate in the primary election and who was not registered to vote with a party affiliation on or after March 1 and before the general election in the calendar year of the general election may have his or her name placed on the general election ballot for a partisan office by filing petitions as prescribed in this section and Neb. RS 32-621 or by nomination by political party convention or committee pursuant to section 32-627 or 32-710.

(2) Any candidate who was defeated in the primary election and any registered voter who was not a candidate in the primary election may have his or her name placed on the general election ballot if a vacancy exists on the ballot under Neb. RS 32-625(2) and the candidate files for the office by petition as prescribed in divisions (B) and (C) of this section, files as a write-in candidate as prescribed in section 32-615, or is nominated by political party convention or committee pursuant to Neb. RS 32-710.
(Neb. RS 32-616)
- B. Petitions for nomination shall conform to the requirements of Neb. RS 32-628. Petitions shall state the office to be filled and the name and address of the candidate. Petitions for partisan office shall also indicate the party affiliation of the candidate. A sample copy of the petition shall be filed with the filing officer prior to circulation. Petitions shall be signed by registered voters residing in the village and shall be filed with the filing officer in the same manner as provided for candidate filing forms in § 34.07. Petition signers and petition circulators shall conform to the requirements of Neb. RS 32-629 and 32-630. No petition for nomination shall be filed unless there is attached thereto a receipt showing the payment of the filing fee required pursuant to Neb. RS 32-608. The petitions shall be filed by September 1 in the year of the general election.
(Neb. RS 32-617)
- C. (1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be at least 10% of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the village in which the officer is to be elected, not to exceed 2,000;

(2) The number of signatures of registered voters needed to place the name of a candidate for an office upon the partisan ballot for the general election shall be as follows:
 - (a) For each partisan office to be filled by the registered voters of the entire state, at least 4,000, and at least 750 signatures shall be obtained in each congressional district in the state;
 - (b) For each partisan office to be filled by the registered voters of a county, at least 20% of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the county, not to exceed 2,000, except that the number of signatures shall not be required to exceed 25% of the total number of registered voters voting for the office at the immediately preceding general

election; and

(c) For each partisan office to be filled by the registered voters of the village at least 20% of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the village, not to exceed 2,000.

Section 6. That §34.10 of the Municipal Code of the Village of Potter, Nebraska, is amended to read as follows:

§ 34.11 RECALL PROCEDURE.

- A. For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

FILING CLERK. The Election Commissioner or County Clerk.
(Neb. RS 32-1301)

- B. (1) Any member of the Board of Trustees may be removed from their office by recall pursuant to this section.
(Neb. RS 32-1302)
- C. (1) A petition demanding that the question of removing a member of the Board of Trustees be submitted to the registered voters shall be signed by registered voters equal in number to at least 35% of the total vote cast for that office in the last general election, except that for Board of Trustees office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least 35% of the number of votes cast for the person receiving the most votes for such office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.
- (2) Petition circulators shall conform to the requirements of Neb. RS 32-629 and 32-630.
- (3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, a recall petition filing form shall be signed and filed with the filing clerk by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The filing form shall state the name and office of the official sought to be removed, shall include in concise language of 60 words or less the reason or reasons for which recall is sought, and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the official sought to be removed by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the filing form at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in concise language of 60 words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within 20 days after the official receives the copy of the filing form. The filing clerk shall prepare the petition papers within 5 business days after receipt of the defense statement. The principal circulator or circulators shall gather the petition papers within 20 days after being notified by the filing clerk that the petition papers are available. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within 30 days from the date of issuing the petitions.
- (4) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.
- (5) Petition signers shall conform to the requirements of Neb. RS 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.
(Neb. RS 32-1303)
- D. Each petition paper shall conform to the requirements of Neb. RS 32-1304.

- E. (1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing clerk within 30 days after the filing clerk issues the initial petition papers to the principal circulator or circulators as provided in division C of this section.
- (2) Within 15 days after the filing of the petition, the filing clerk shall ascertain whether or not the petition is signed by the requisite number of registered voters. No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the filing clerk receives an affidavit signed by the person requesting his or her signature be removed before the petitions are filed with the filing clerk for signature verification. If the petition is found to be sufficient, the filing clerk shall attach to the petition a certificate showing the result of such examination. If the requisite number of signatures has not been gathered, the filing clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.
(Neb. RS 32-1305)
- F. (1) If the recall petition is found to be sufficient, the filing clerk shall notify the Trustee whose removal is sought and the Board of Trustees that sufficient signatures have been gathered. Notification of the Trustee may be by any method specified in Neb. RS 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in Neb. RS 25-505.01, by leaving such notice at the Trustee's usual place of residence and mailing a copy by first-class mail to the Trustee's last-known address.
- (2) The Board of Trustees shall, within 21 days after receipt of the notification from the filing clerk pursuant to subsection F (1) of this section, order an election. The date of the election shall be the first available date that complies with section 32-405 and that can be certified to the Election Commissioner or County Clerk at least 50 days prior to the election, except that if any other election is to be held in village within 90 days after such notification, the Board of Trustees of the village shall provide for the holding of the recall election on the same day.
- (3) All resignations shall be tendered as provided in section 32-562. If the official whose removal is sought resigns before the recall election is held, the governing body may cancel the recall election if the governing body notifies the Election Commissioner or County Clerk of the cancellation on or before the fourth Thursday prior to the election, otherwise the recall election shall be held as scheduled.
- (4) If a filing clerk is subject to a recall election, the Secretary of State shall conduct the recall election.
(Neb. RS 32-1306)
- G. The form of the official ballot at a recall election held pursuant to division (F) of this section shall conform to the requirements of Neb. RS 32-1307.
- H. (1) If a majority of the votes cast at a recall election are against the removal of the Trustee named on the ballot or the election results in a tie, the Trustee shall continue in office for the remainder of his or her term but may be subject to further recall attempts as provided in division (I) of this section.
- (2) If a majority of the votes cast at a recall election are for the removal of the Trustee named on the ballot, he or she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the Trustee is deemed removed, the removal shall result in a vacancy in the office which shall be filled as otherwise provided in this section and Neb. RS 32-567 to 32-570 and 32-574.
- (3) If the election results show a margin of votes equal to 1% or less between the removal or retention of the Trustee in question, the Secretary of State, Election Commissioner, or County Clerk shall order a recount of the votes cast unless the Trustee files a written statement with the filing clerk that he or she does not want a recount.
- (4) If there are vacancies in the offices of one-half or more of the members of Board of Trustees at one time due to the recall of such members, a special election to fill such vacancies shall be conducted as expeditiously as possible by the Secretary of State, Election Commissioner, or County Clerk.

(5) No Trustee who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his or her removal or the removal of any other member of the Board of Trustees during the remainder of his or her term of office.

(Neb. RS 32-1308)


- I. No recall petition shall be filed against an elected Trustee within 12 months after a recall election has failed to remove him or her from office or within 6 months after the beginning of his or her term of office or within 6 months prior to the incumbent filing deadline for the office.


(Neb. RS 32-1309)

Section 7. That any other ordinance or section passed and approved prior to the passage, approval, and publication of this ordinance and in conflict with these provisions of this ordinance, is hereby repealed.

Section 8. This ordinance shall go into force and effect from and after its passage, approval and publication or posting as required by law.

Passed and approved this 12th day of June 2023.





Village Clerk



Chairman of the Board of Trustees