

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

June 1, 2009

**CALL TO PODIUM:**

**Fred Felton**  
Assistant City Manager

**RESPONSIBLE STAFF:**

**Fred Felton**  
Assistant City Manager

**AGENDA ITEM:**

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input checked="" type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

Introduced	05/18/09
Advertised	05/13/09
Hearing Date	06/01/09
Record Held Open	06/10/09
Policy Discussion	

<b>TITLE:</b>
An Emergency Ordinance to Amend Chapter 6C Entitled "Elections" of the City Code

<b>SUPPORTING BACKGROUND:</b>
On May 19, 2008 the Mayor and City Council appointed the Ad Hoc Elections Ordinance Review Committee with the charge to review the City's election ordinance and to provide recommendations to improve our elections process.
On April 27, 2009, the staff presented the Ad Hoc Committee's report. During this work session the Mayor and City Council generally concurred with the committee's recommendations and directed staff to bring an ordinance forward for introduction.
The City Council voted to introduce this ordinance on May 18, 2009.

<b>DESIRED OUTCOME:</b>
Staff recommends that the City Council vote to hold the record open until June 10, 2009.

**NOTICE OF PUBLIC HEARING**

The Mayor and City Council of the City of Gaithersburg will hold a public hearing on:

**Monday  
June 1, 2009  
7:30 p.m.**

or as soon thereafter as it can be heard in the Council Chambers at City Hall, 31 South Summit Avenue, Gaithersburg, Maryland on the following:

**AN EMERGENCY ORDINANCE TO AMEND CHAPTER 6C  
ENTITLED "ELECTIONS" OF THE CITY CODE**

Further information may be obtained from the City Managers Office, 31 South Summit Avenue between the hours of 8 a.m. and 5 p.m., Monday through Friday.

Angel L. Jones  
City Manager

(5-13-09)

622301

ORDINANCE No. \_\_\_\_\_

AN EMERGENCY ORDINANCE TO AMEND CHAPTER 6C  
ENTITLED "ELECTIONS" OF THE CITY CODE

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that Chapter 6C entitled "Elections" is amended and shall read as follows:

**Chapter 6C  
Elections**

**ARTICLE I. IN GENERAL**

**Sec. 6C-1. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated unless a contrary meaning is clearly intended from the context in which the term appears:

*Board:* Board of supervisors of elections for the city.

*Candidate:* Individual who seeks nomination for election, or seeks election, to city office.

*Contribution:* A gift, or promise of gift of money, donated to any candidate or his representative.

*Contributor:* Any corporation, business, other legal entity or a person who makes a contribution or expenditure, of cash or in-kind contribution, to or on behalf of a candidate.

*Election:* General, special or recall elections.

*Expenditure:* Any transfer, disbursement or promise of money or valuable thing (in-kind contribution), by a candidate, treasurer, or other agent of such candidate, or political committee to promote or assist in the promotion of the success or defeat of a candidate or proposition submitted to a vote at any election.

*Independent Expenditure:* A cumulative expenditure of \$250 or more by a person to assist in the promotion of the success or defeat of any candidate or slate of candidates for city elective office that is not coordinated with any candidate or group of candidates.

*In-kind contribution:* Any thing of value, other than a gift or promise of money, donated to any candidate or his representative, or a representative of any political committee, to promote or assist any candidate, political committee or proposition submitted to a vote of any election.

*Person:* A corporation, business, other legal entity or an individual.

*Political committee:* Any combination of two (2) or more persons formed in any manner, which independently collects or expends a cumulative amount of \$250 or more to ~~has a principal purpose to~~ assist in the promotion of the success or defeat of any candidate or slate of candidates for city elective office. ~~proposition which is being sought~~

~~to be submitted to a vote at any city election or is in the process of being petitioned to referendum.~~

*Report:* A report of expenditures, loans, and contributions (in-kind or cash) received by any candidate or political committee.

*Surplus campaign funds:* Funds left in a candidate's account after the election is certified and all campaign debts, including all loans, have been paid.

*Treasurer:* Any person appointed by a candidate or political committee to receive or disburse money or other things of value to promote or assist in the promotion of any candidate or proposition.

\* \* \* \* \*

### **Sec. 6C-3.1. Powers and duties of the board of supervisors of elections.**

In addition to any power, duty or responsibility provided in the City Charter or Chapter 6C of the elections code, the board of supervisors of elections shall be in charge of all city elections. The board shall:

- (1) Issue and maintain all election records in a separate filing system provided by the city.
- (2) Provide for the nominations for elected city officers and verify the eligibility of election candidates, which includes reviewing and certifying petitions for office ~~and all ballot questions and issues~~ as outlined in this chapter, and verifying that such candidates are residents of the City of Gaithersburg.
- (3) Make recommendations to the mayor and city council concerning the number and location of election polling places.
- (4) Provide, receive, review and certify that campaign reports from candidates are timely and complete as outlined in the elections code.
- (5) Coordinate city staff, with the approval of the city manager, to assist and support the board in its official duties.
- (6) Provide for voting by absentee ballot.
- (7) Validate the authenticity of returned absentee ballots.
- (8) Provide a form for the certificate of polling place challengers and watchers.
- (9) Select and train election judges to assist in the operation of the polling places on election day. The board shall also oversee the operations of the polling places.
- (10) Issue the official election ballot.
- (11) Certify all election results.
- (12) Provide for recount of ballots.
- (13) Administer and enforce all election laws.
- (14) Administrative review. The board shall investigate, conciliate complaints, hold hearings and make determination on any alleged violations of the elections provisions of the Charter or elections ordinance of the City Code in accordance with section 6C-3.2 through section 6C-3.8 of the elections ordinance of the City Code. The board, when conducting administrative review, shall be granted the following powers to:
  - a. Investigate complaints filed with the board of matters of election practices or other matters within the jurisdiction of the board.
  - b. Dismiss complaints.
  - c. Conciliate complaints.
  - d. Summons concerned parties to hearings.
  - e. Conduct hearings.
  - f. Adopt rules and procedures for the conduct of hearings.

g. Implement enforcement actions, which include cease and desist orders, and the ability to make recommendations to the city manager to impose civil penalties not to exceed one thousand dollars (\$1,000.00). The board shall have the power to seek judicial enforcement of its decisions by application to courts of competent jurisdiction for injunctions, mandamus and other appropriate judicial review when conducting an administrative review. The board may also refer complaints to the office of the state's attorney for prosecution as the circumstance may warrant.

h. Hearings conducted by the board ~~The hearing~~ shall be open to the public; except, that either the complaining party or the respondent may request, in writing, a ~~private~~ closed hearing which may be granted ~~at the discretion of~~ by the board if allowed by the Maryland Open Meetings Act. The board shall have the power to summon all witnesses it deems necessary. The hearing shall be held not less than seven (7) days, unless the board determines that emergency circumstances require an earlier hearing, and not more than thirty (30) days after service of the statement of charges and summons. The summons so issued must be signed by the chairperson of the board or a designee and shall require the attendance of named persons and the production of relevant documents and records. Failure to comply with a summons shall constitute violation of this chapter. The complaining party or parties and the respondent may, at their option, appear before the board in person or by duly authorized representative(s) and may have the assistance of an attorney. The parties may present testimony and evidence which shall be given under oath, or by affirmation. The board shall keep a full record of the hearing. If the hearing is public, the record shall be open to inspection by any person, and, upon request by any principal party to the proceeding, the board shall furnish such party a copy of the hearing record, if any, at such charges as are necessary to meet costs. The board may extend the time for any hearing and the issuance of any finding, opinion and orders. The board has the power to adopt rules and procedures with reference to the conduct and manner of these proceedings.

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**Sec. 6C-3.8. Board action when violation of chapter found.**

If, at the conclusion of a hearing, the board determines, upon the preponderance of the evidence of the record, that the respondent has violated this chapter or any applicable election law, the board shall state and publish its findings and issue an order. Such order shall require the respondent to cease and desist from such unlawful conduct, and may require the respondent to take corrective action. ~~In addition, and may include the board may~~ recommending to the city manager the imposition of civil penalties not to exceed one thousand dollars (\$1,000.00) as defined in this chapter.

Any order of the board may be appealed to the Circuit Court of Maryland within 14 days of issuance. Failure to comply with an order of the board shall constitute a violation of this chapter subject to the penalties outlined in Section 6C-17.

## ARTICLE II. FINANCIAL CONTRIBUTIONS AND EXPENDITURES

### Sec. 6C-4. Reporting of contributions and expenditures-candidates.

Every candidate for election to any elective office provided for in the City Charter shall file with the board of supervisors of elections written reports ~~under oath~~ in accordance with this article of all cash contributions received ~~by him~~, or by any other person acting on ~~his~~ the candidate's behalf and known to ~~the candidate~~ him, for use in connection with ~~his~~ the candidate's campaign for election, and any expenditures made ~~by him~~, or known to ~~him~~ to have been made by any person other than ~~himself~~ the candidate on ~~his~~ the candidate's behalf, in connection with such election. If actual costs for an expenditure are not available when a report is due, this must be documented on the report and an estimate must be provided. The board may require such reports to be filed electronically utilizing software specified by the board. All expenditures, and any contribution or in-kind contribution shall include all items as defined in section 6C-1 of the elections code.

### Sec. 6C-5. Time and manner of reporting-candidates.

(a) The first report of a candidate in a general election shall be filed at the offices of the city board of supervisors of elections on or before the last day to file for elected office.

(b) The second report of such a candidate shall be filed with the board 29 days before the election ~~on the last Thursday prior to such general election.~~

(c) The third report of such a candidate shall be filed with the board 15 days before the election.

(d) The fourth report of such a candidate shall be filed with the board eight days before the election.

~~(e)~~(e) The next report of every candidate in a general election, whether elected or not, shall be filed on the last day of the month following the month in which the general election was conducted.

~~(d)~~(f) Thereafter, every candidate shall annually file by December 31<sup>st</sup> ~~on the last day of the fourth month following the reporting period specified in subsection (c),~~ a report of any contributions received or expenditures made by ~~him~~ the candidate or any other person on ~~his~~ the candidate's behalf from the day of filing of ~~his~~ the last prior report and any balance remaining in the account. No report shall be required after either: ~~(1) all receipts and disbursements have been entirely accounted for and no balance shall remain in the account. or (2) after the expiration of six (6) months following the general election, whichever shall occur first.~~

~~(e)~~(g) The first report filed by any candidate shall include any balance remaining at the expiration of the last reporting period from any prior election and any contributions received and any expenditures made since the date of this last prior report, through the day immediately preceding the date of the filing of such first report. Each subsequent report by any candidate shall include all contributions received and expenditures made from the day of the filing of the last prior report through the day preceding the filing of the subsequent report.

~~(f)~~(h) Every such report shall be available for inspection by any person at the city offices during regular business hours.

(g)(i) If the last day of the month on which any report is due shall fall on a Saturday, Sunday or a legal holiday, then such report shall be required to be filed on the next following day when city offices are open for regular business.

### **Sec.6C-6 Reporting of contributions and expenditures-political committees.**

Any political committee making independent expenditures in excess of \$250 as defined in section 6C-1 to assist in the promotion of the success or defeat of any candidate or slate of candidates for city elective office shall file with the board of supervisors of elections reports in accordance with this article of all monetary and in-kind contributions received and expenditures made. If actual costs for an expenditure are not available when a report is due, this must be documented on the report and an estimate must be provided. The Board of Supervisors of Elections may require such reports to be filed electronically utilizing software specified by the board. This report shall also identify the members of the political committee. Expenditures by a political committee may not be coordinated with any candidate or group of candidates.

### **Sec. 6C-7. Time and manner of reporting-political committees**

(a) The first report of a political committee shall be due within three days of collecting or expending the first \$250 or more to assist in the promotion of the success or defeat of any candidate or slate of candidates for city elective office.

(b) The second report of such a political committee shall be filed with the board 29 days before the election.

(c) The third report of such a political committee shall be filed with the board 15 days before the election.

(d) The fourth report of such a political committee shall be filed with the board eight days before the election.

(e) The next report of such political committee shall be filed on the last day of the month following the month in which the general election was conducted.

(f) Thereafter, every such political committee shall annually file by December 31<sup>st</sup> a report of any contributions received or expenditures made to assist in the promotion of the success or defeat of any candidate or slate of candidates for city elective office. No report shall be required after all receipts and disbursements have been entirely accounted for and no balance shall remain in the account.

(g) The first report filed by any such political committee shall include any balance remaining at the expiration of the last reporting period from any prior election and any contributions received and any expenditures made to assist in the promotion of the success or defeat of any candidate or slate of candidates for city elective office since the date of this last prior report, through the day immediately preceding the date of the filing of such first report. Each subsequent report by any political committee shall include all contributions received and expenditures made from the day of the filing of the last prior report through the day preceding the filing of the subsequent report.

(h) Every such report shall be available for inspection by any person at the city offices during regular business hours.

(i) If the last day of the month on which any report is due shall fall on a Saturday, Sunday or a legal holiday, then such report shall be required to be filed on the next following day when city offices are open for regular business.

**Sec.6C-8. Reporting of individual expenditures.**

Any individual that expends a cumulative total of \$250 or more to assist in the promotion of the success or defeat for any candidate or slate of candidates for city office shall file reports of such expenditures with the board of supervisors of elections in accordance with this article. If actual costs for an expenditure are not available when a report is due, this must be documented on the report and an estimate must be provided. The board may require such reports to be filed electronically utilizing software specified by the board.

**Sec. 6C-9. Time and manner of reporting-individuals.**

(a) The first report of an individual shall be due within three days of collecting or expending the first \$250 or more to assist in the promotion of the success or defeat of any candidate or slate of candidates for city elective office.

(b) The second report of such an individual shall be filed with the board 29 days before the election.

(c) The third report of such an individual shall be filed with the board 15 days before the election.

(d) The fourth report of such an individual shall be filed with the board eight days before the election.

(e) The final report of such an individual shall be filed on the last day of the month following the month in which the general election was conducted.

(f) Each report shall include each expenditure made since filing the previous report through the day immediately proceeding the date of the report.

(g) Every such report shall be available for inspection by any person at the city offices during regular business hours.

(i) If the last day of the month on which any report is due shall fall on a Saturday, Sunday or a legal holiday, then such report shall be required to be filed on the next following day when city offices are open for regular business.

**Sec. 6C-810. Failure to file report.**

Any candidate who shall fail to file the first report required by this article on or before the last day to file for elected office shall not be eligible for election and his or her name shall not appear on the ballot for such election.

Any candidate elected to the office to which he or she seeks, who shall fail to file any report required by this article to be filed before a general election shall not be

**Sec. 6C-911. Custody of reports.**

All reports required by this article shall be retained by the city and maintained by the board of supervisors of elections in a separate filing system as provided by the city for not less than five (5) years after the election to which they pertain.

**Sec. 6C-4012. Limitations on campaign contributions.**

No candidate may accept, in connection with any election, a contribution in cash in excess of five hundred dollars (\$500.00) or an in-kind contribution, or combination thereof, the value of which is in excess of five hundred dollars (\$500.00) from any one person. No person may contribute or promise to contribute in the aggregate, more than five hundred dollars (\$500.00) in cash, or in-kind contributions, valued at more than five hundred dollars (\$500.00), to any one candidate in connection with any one election. No person may contribute or promise to contribute in the aggregate, more than five hundred dollars (\$500.00) in cash ~~per candidate~~, or in-kind contributions, or combination thereof, valued at more than five hundred dollars (\$500.00) ~~per candidate~~, to any one political committee. No person may contribute more than a total of \$1,500 in connection with any one election. ~~appointed by more than one candidate.~~ No candidate shall accept any contribution in excess of twenty-five dollars (\$25.00) in cash unless it be by check, money order or other written instrument. No candidate or political committee shall accept any anonymous contributions in excess of five dollars (\$5.00) in cash nor shall he accept more than three hundred dollars (\$300.00) in anonymous contributions in connection with any election. Any anonymous contribution received by a candidate or a political committee ~~in excess of the limits stated herein~~ shall be promptly paid over to the city to be used for any lawful purpose.

**Sec. 6C-13. Prohibition on use of campaign contributions**

No candidate or political committee may pay a fine issued for violations of this chapter with campaign contributions.

**Sec. 6C-4114. Definition of election.**

For the purposes of the prior two sections, a run-off election, if required, shall not be deemed as an election separate and apart from the general election which it follows.

**Sec. 6C-4215. Requirements concerning advertising.**

Any broadcasting, publication or printing, including sample ballots, paid for by a candidate must purport on its face to be a paid political advertisement, and the candidate or candidates who paid therefor shall be identified in the broadcast, publication or printing.

**Sec. 6C-4316. Restrictions.**

No person other than a candidate, treasurer or other agent of such candidate, or political committee, shall make an expenditure to aid or promote the success or defeat of a candidate. No person may avoid the limitations on permitted campaign contributions, defined in section 6C-8, by making an expenditure to aid or promote the success or defeat of a candidate. However, any ~~natural person~~ individual may pay for the cost of publishing his or her own personal views as to a candidate. A person ~~or entity~~ shall be identified if campaign materials are prepared or authorized by a candidate, treasurer of the candidate, political committee or done in coordination with a candidate, a candidate's treasurer or political committee.

**Sec. 6C-1417. Contributors.**

Any corporation, business, other legal entity or a natural person shall have the right to make any contribution to or expenditure on behalf of a candidate, and any candidate may accept a contribution from the above named sources in accordance with Chapter 6C of the City Code.

**Sec. 6C-1418.1. Disposition of surplus funds.**

After an election, a candidate or political committee may retain surplus funds or surplus funds may be disposed of as follows:

~~Prior to the time of filing the final report required by section 6C-5(d), any surplus funds remaining after payment of all campaign expenditures shall be:~~

- (1) Returned, pro rata, to the contributors by the treasurer; or
- (2) Paid to a charitable organization registered pursuant to Article 41, Section 103B, of the Annotated Code of Maryland, as amended, or to a charitable organization exempt from such registration pursuant to Article 41, Section 103 of the Annotated Code of Maryland, as amended; or
- (3) Paid to a local board of education or to a recognized nonprofit organization providing services or funds for the benefit of pupils or teachers; or
- (4) Paid to any public or private institution of higher education in the state for scholarship or loan purposes.

**Sec. 6C-1418.2. Financial disclosure and ethics statements filed.**

Candidates for elective office shall file a financial disclosure statement consistent with the requirements of section 7A-5(a) of the City Code at the time they file their certificates of candidacy.

All city officials and candidates for elective office subject to Chapter 7A of the City Code, shall file a conflict of interest statement with the ethics commission disclosing any interest or employment, the holding of which would require disqualification from participation pursuant to section 7A-4, sufficiently in advance of any anticipated action to allow adequate disclosure to the public. Disclosure statements filed pursuant to this section shall be maintained by the ethics commission as public records available for public inspection and copying.

**Sec. 6C-1519. Violations; injunctive relief.**

Any person who willfully violates Section 6C-3.8 of this chapter shall be guilty of a misdemeanor. Any person who willfully violates any other provision of this chapter any of the provisions of this chapter, unless otherwise specified in the City Charter or elections ordinance, shall be guilty of a municipal infraction and upon conviction may be fined in an amount not to exceed one thousand dollars (\$1,000.00). Any officer or employee of the city government who is convicted of a misdemeanor under the provisions of this chapter shall immediately upon conviction thereof cease to hold such office or employment.

In addition thereto, the city may institute injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this chapter or to correct violations of this chapter, any court of competent jurisdiction shall have the right to issue restraining order, temporary or permanent injunctions or mandamus or other appropriate form of remedy or relief.

## **ARTICLE III. ABSENTEE VOTING**

### **Sec. 6C-1420. Who may vote.**

Any qualified voter may choose to vote by absentee ballot rather than appear in person at the polls on election day.

### **Sec. 6C-1521. Time for providing absentee ballots.**

The board shall have on hand, at least thirty (30) days prior to each election, for distribution to qualified absentee voters, an adequate supply of absentee ballots, envelopes and instructions for casting absentee ballots.

### **Sec. 6C-1622. Absentee ballots.**

(a) Absentee ballots may be cast by a qualified voter up to and including the time of closing of the polls on election day, in person or by mail or, when the voter is physically disabled, by an authorized agent who is a qualified voter, at the offices of the city board of supervisors of elections, pursuant to the provisions of this article.

(b) All applications for absentee ballots shall contain the signature, the printed name, the current legal residential address within the incorporated limits of the city, any mailing address different from the residential address of the applicant and, if applicable, his authorized agent; and further, such applications shall contain clearly expressed reasons by the applicant for obtaining an absentee ballot in compliance with the reasons stated in section 6C-14 of this article.

(c) Upon receipt of the application, the board, or its designee, upon confirming that the applicant is a qualified voter, shall issue to the applicant, either in person or by mail, or in the case of a voter who is physically disabled, to his authorized agent, an absentee ballot, together with a ballot envelope on which the voter's name shall be written or typed, a return envelope and printed instructions for the casting of absentee ballots. In the event that such ballots, envelopes and instructions have not been printed at the time of receipt of such application, they shall be delivered or mailed to the applicant promptly after they become available.

(d) Any absentee ballot that is not secured in person by the absentee voter or his authorized agent making application therefor shall be sent by first class mail to the approved applicant as expeditiously as possible, but not later than the close of business on the sixth day before the election.

(e) Printed form applications for absentee ballots shall be maintained by the board and shall be provided by the board or its designee to any qualified voter upon approval of a request for an absentee ballot.

(f) No absentee ballot shall be mailed to an applying absentee voter until the application is received with the signature of such applying absentee voter or if the applicant is physically unable to read and write his signature, then the applicant shall affix his mark to the application together with the signature of a witness to the act.

(g) An absentee voter who is physically disabled may designate an authorized agent who is a registered voter in the city to secure an absentee ballot for the absentee voter in the event such voter is unable to secure an absentee ballot due to such physical disability. The authorized agent acting hereunder shall complete the absentee ballot application and also sign the application for the absentee ballot, certifying that he is acting as the authorized agent for the absentee voter for this purpose.

**Sec. 6C-1723. Procedure for casting absentee ballots.**

(a) An absentee voter shall cast his ballot by marking the ballot in accordance with instructions supplied pursuant to section 6C-16, placing the ballot within the ballot envelope, signing the ballot envelope on the outside thereof and returning the ballot envelope to the office of the board of supervisors of elections prior to the closing of the polls.

(b) Any otherwise qualified voter who is physically disabled and is unable to mark his absentee ballot and sign the required oath, due to his disability, may be assisted in executing the absentee ballot by any person who is also a qualified voter. Any person rendering assistance pursuant to this subsection shall execute a certification on the absentee ballot which shall include the signature of such person, the person's current address and telephone number and the statement that the person has assisted the voter in the preparation of the absentee ballot according to the voter's stated intention and with his consent.

**Sec. 6C-1824. Record of applications.**

The board or its designee shall keep a record of each application for an absentee ballot showing the date and time of the receipt of the application and the name and address of the applicant. Such records shall also show the date and time of the delivery or mailing of the absentee ballot to the applicant or his agent and the date of the return of the ballot to the board office.

**Sec. 6C-1925. Procedure for counting absentee ballots.**

(a) The board may designate a time while the polls are open or promptly after the closing of the polls, on the day of an election, to examine each absentee ballot envelope and shall determine from its records whether the person whose name is shown thereon is a qualified voter of the city and whether or not he has voted in person prior to the opening of the absentee ballots. If he is a qualified voter and has not voted in person on that day, the board shall open the ballot envelope and enter the votes of the absentee voter on a ballot and place the ballot in the ballot box. The board shall cause to be entered in its voters' register the fact that the voter whose name appears on such ballot envelope has voted, using the initials "A.B." to indicate that the vote has been by absentee ballot. If the board shall conclude that the person whose name is shown on such envelope is not a qualified voter, or that he has voted in person on that election day, such ballot shall not be placed in the ballot box and shall not be counted. If the board shall receive more than one absentee ballot from the same voter, neither ballot shall be counted.

(b) A vote on an absentee ballot for a person who has ceased to be a candidate shall not be counted, but such vote shall not invalidate the balance of such ballot.

(c) Whenever the board shall determine, prior to the opening of a ballot envelope, that the person whose name is written or typed thereon has died before election day, the board shall not open such ballot envelope. The discovery by the board of the death of an absentee voter after his ballot has been placed in the ballot box, shall not invalidate the ballot cast by such deceased person or the election at which the ballot was cast.

**Sec. 6C-2026. Contests.**

Any contest concerning eligibility for an absentee ballot or validity of an absentee ballot shall be decided by the board.

**Sec. 6C-2127. Penalty.**

Any person who shall cast or attempt to cast an absentee ballot in the name of any person other than himself shall, upon conviction thereof, be subject to the penalty set forth in section 38 of the city Charter.

**ARTICLE IV. POLL-WATCHERS AND CHALLENGERS**

**Sec. 6C-2228. Authorization and designation.**

Each candidate or a body of voters having a principle or proposition appearing on the ballot shall have the right to designate one individual at given periods of time as a challenger and watcher at each place of registration and election. Such persons shall be assigned to such position near the election judges, inside the registration or polling room, as to enable them to see each person as he offers to register to vote. They shall be protected in the discharge of their duty by the election judges.

**Sec. 6C-2329. Base certification and form of certificate.**

The form for the certificate of a challenger and watcher shall be on forms prescribed and supplied by the board of supervisors of elections for the city. A certificate signed by any candidate or the authorized representative of a body of voters having a principle or proposition appearing on the ballot shall be sufficient evidence of the right of such challenger or watcher to be present in the registration or polling room.

**Sec. 6C-2430. Rights; unlawful acts, challenges and appeals.**

(a) A challenger or a watcher has the right to enter the polling place one-half hour before the opening of the polls. However, if a majority of the election judges present find that the presence of the watchers or challengers in a polling place before it opens will prevent the timely opening of the polling place, the judges may direct all challengers or watchers to leave the polling place. Election judges are not required to admit to a polling place before the opening of the polls any challenger or watcher who was not present at the polling place at least one-half hour before its opening. A challenger or watcher has the right to enter or be present at the polling place at any time the polls are open, and may remain in the polling place until the returns are completed.

(b) The rights and functions of poll-watchers and challengers shall be limited to challenging the identity, residence or other voter or registration qualification of a voter. The election judges shall promptly rule upon all such challenges. The decision of the election judges shall be subject to appeal to the board of supervisors of elections for the city and such appeal shall be noted in writing with the board within ten days of the date of the election or decision of the election judges, whichever shall occur last.

(c) It is unlawful for any challenger to inquire or ascertain for which candidate any voter intends to vote, or has voted, or to converse in the polling place with any voter or to assist any voter in the preparation of his ballot or in the operation of the voting machine. Any challenger who violates the restrictions of this article may lawfully be ejected by the judges and is subject to the punishment provided for in section 6C-13.

**Sec. 6C-24.430.1. Voter assistance.**

(a) *Assistance.* In addition to their other duties, election judges shall provide assistance to voters who have difficulty in voting due to a disability and request assistance. The city shall make appropriate provisions to make the polls accessible to disabled voters; and pursuant to procedures established by the board, provisions shall be made to permit disabled persons to vote from their vehicles at an accessible location designated at the polls.

(b) *Instructions.* With the aid of diagrams and a voting device, the election judges, if requested by the voter, shall instruct each such voter, before he enters the voting booth, on how to use the voting device, and shall give the voter opportunity to personally operate a voting device.

(c) *Assistance to certain persons.* Any voter who requires assistance to vote by reason of disability, or inability to read the English language, or write, may be given assistance by a person of the voter's choice, not to include the voter's employer or agent of that employer or officer or agent of the voter's union.

(d) *Manner of giving assistance; further instructions.*

(1) Assistance in marking their ballots or operating a voting machine shall be given to voters who shall declare in a written affidavit, sworn to under oath, to the judges that by reason of disability, or inability to read the English language, or write, they are unable without assistance to mark their ballots or operate the voting machine. No ballot shall be marked under this section, or voting machine operated, until a majority of the judges shall be satisfied of the truth of the fact stated in such affidavit. Upon making and filing with the judges such affidavit, the voter shall retire to one of the booths or voting machines with any person of the voter's choice, not to include the voter's employer or agent of that employer or officer or agent of the voter's union, or with two (2) election judges. Then and there the person whom the voter has selected, or in case the voter has selected no one, one of the judges in the presence of the other, shall mark the ballot or operate the voting machine as such voter shall direct. The only assistance which it shall be lawful for such person or for the judges to give the voter is to mark the ballot or operate the voting machine, as the voter shall direct, without prompting or suggestion from them or the judges.

(2) If, however, any voter, after entering the voting machine booth, shall ask for further instructions concerning the manner of voting, then two (2) of the judges shall give him such instructions, but no such judge shall, in any manner, request or suggest, or seek to persuade or induce, any such voter to vote for or against any particular question. After giving such instructions, the judges shall retire and the voter shall forthwith vote.

(e) *Person accompanying voter into booth or machine.* A voter may not be accompanied into a voting booth or voting machine by any person over the age of five (5) years unless the affidavit required by subsection (d) of this section has been accepted by the election judges.

## **ARTICLE V. RECALL OF ELECTED OFFICIALS**

### **Sec. 6C-2531. Procedures.**

The mayor or a member of the city council may be recalled and removed from office in accordance with the following procedure:

(a) A petition signed by at least twenty percent of the registered and qualified voters of the city must be presented to the mayor and city council at a regular city council meeting stating a desire to have the named elected official subjected to a reaffirmation by a vote of the qualified city electorate. A petition shall contain the name of only one elected city official. The qualified registered voters signing such petition shall sign the same as their names appear on the city's election records and under each signature shall be typed or printed each petitioner's name, current address and approximate length of residency in the city. At the bottom of each page of the petition, the individual circulating the petition shall sign the same and make an affidavit before a notary public that he circulated the petition and saw each individual whose name appears thereon sign the same in his presence.

(b) The petition shall state specifically the justification for recall of the mayor or, as the case may be, a councilman, for one or more of the reasons set forth in section 6C-26.

(c) Upon receipt of a petition, the mayor and council shall forthwith refer the petition to the board of supervisors of elections for the city for verification of the appropriate number of qualified registered voters' signatures and addresses. The board of elections shall return such petition with their written findings as to required voters' signatures and addresses by certification to the mayor and council at its next regular meeting; and at their meeting, if the petition is authenticated and certified by the board, the mayor and city council shall announce that (1) within thirty days, a public hearing will be held on the petition, and that (2) within forty-five days a special election shall be held in order to allow all qualified registered voters of the city to vote on the petition.

(d) The voting ballot will contain the official's name and the choice of "reaffirm" or "remove"; In order for the official to be removed a majority of those voting must vote "remove."

The voting shall be conducted in the same manner as prescribed in the city Charter for regular city elections; and, if removal results, the vacancy will be filled as provided in section 35 of the city Charter.

### **Sec. 6C-2632. Grounds for recall.**

The justification for the recall of the mayor or, as the case may be, a councilman, shall be for one or more of the following:

(a) Failure to uphold the oath of office.

(b) Conviction of a criminal offense of a felony category.

(c) Engaging in illegal conduct involving moral turpitude, fraud, deceit or intentional material misrepresentation.

(d) Engaging in conduct involving mismanagement or misappropriation of public funds, a gross abuse of public authority or a substantial and specific danger to public health, safety or welfare.

- (e) The coercion of any city employee into taking an illegal or improper action or taking any retaliatory action against any city employee because of that employee's disclosure of information relating to illegal and improper action in city government.
- (f) The inability to properly perform public duties due to a permanent or chronic physical or mental ailment or other incapacitating defect.
- (g) Gross negligence or incompetence in the performance of public duties.
- (h) Engaging in personal conduct injurious to the reputation and well-being of the government of this city and its citizens.
- (i) Failing or refusing to perform, or acting contrary to, an official duty or obligation imposed by the Charter or duly enacted law or ordinance.

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2009, by the City Council of Gaithersburg Maryland.

\_\_\_\_\_  
 SIDNEY A. KATZ, MAYOR and  
 President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this \_\_\_ day of \_\_\_\_\_, 2009. APPROVED by the Mayor of the City of Gaithersburg, this \_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
 Sidney A. Katz, Mayor

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_ day of \_\_\_\_\_, 2009, and that the same was approved/vetoed by the Mayor of the City of Gaithersburg on the \_\_\_ day of \_\_\_\_\_, 2009. This Ordinance will become effective immediately

\_\_\_\_\_  
 Angel L. Jones, City Manager