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To: Honorable Mayor and City Council  
From: Daniel J. Fluegel, City Attorney   
Date: April 15, 2020  
Item: Election Candidate Filing Questions

### Questions:

1. Can the City Council extend the date by which candidates need to file for the upcoming City Council election due to the COVID-19 pandemic and resulting declared emergencies?
2. Can the filing fee for City Council election candidates be waived?

### Short Answers:

1. The period during which candidates for a City Council election must file their Affidavit of Candidacy is governed by state law and that filing period cannot be changed by the City Council.
2. The City Council by the normal ordinance amendment process could reduce the applicable filing fee for municipal elections from \$5.00 to a lower amount.

### Analysis:

A person eligible to hold elective office may file an Affidavit of Candidacy and pay the required filing fee at any time during the two-week period established for this purpose in Minn. Stat. §205.13, Subd. 1a (attached). The statute provides that in a city nominating candidates at a primary, an Affidavit of Candidacy for a city office voted on in November must be filed no more than 84 days nor less than 70 days before the city primary (from May 18, 2020 to June 2, 2020). The Hastings City Charter does provide for a primary election but a primary election shall only be called in the event that three or more qualified persons have filed for the same ward council seat or the Mayor's position.

The statute also provides that a candidate for municipal office who will be absent from the state during the filing period may submit a properly executed Affidavit of Candidacy and the appropriate filing fee along with a written statement stating the reason for being unable to submit the Affidavit during the normal filing period. This must be done during the 7 days immediately preceding the candidate's absence from the state.

Any candidate may file their Affidavit of Candidacy by mail, in person or by email with payment delivered with the filing or called in with a credit card payment provided that the filing and payment must be received in the City Clerk's office during the two-week filing period (or the period applicable to candidates who are out of the state during that time). Post-marked applications during the filing period are not sufficient.

The City Clerk is required to publish notice stating the first and last dates on which Affidavits of Candidacy may be filed in the clerk's office and the closing time for filing on the last day of filing. The Clerk must also post a similar notice at least 10 days before the first day to file Affidavit's of Candidacy. Nothing in the statute allows a City Council to modify the filing dates.

Minn. Stat. §205.13, Subd. 3 sets the filing fee for a municipal office in a second class city at \$5.00 provided that a home rule charter or statutory city may adopt, by ordinance, a filing fee of a different amount not to exceed \$40.00. The City of Hastings currently has a \$5.00 filing fee for municipal offices. Based on the foregoing, the City Council could, by ordinance, reduce the filing fee from the current \$5.00 filing fee imposed by the City. It is my opinion that such an ordinance amendment would have to be completed using the normal ordinance adoption procedures as I do not believe this action would satisfy the requirements for adoption of an emergency ordinance which requires that the ordinance be necessary for the immediate preservation of the public peace, health, morals, safety, or welfare.

**Attachment:**

Minn. Stat. §205.13

DAN/has

## Office of the Revisor of Statutes

## 2019 Minnesota Statutes

Authenticate  PDF

205.13 MS 1957 [Repealed, 1959 c 675 art 13 s 1]

## 205.13 CANDIDATES, FILING.

Subdivision 1. **Affidavit of candidacy.** An individual who is eligible and desires to become a candidate for an office to be voted for at the municipal general election shall file an affidavit of candidacy with the municipal clerk. Candidates for a special election to fill a vacancy held as provided in section 412.02, subdivision 2a, must file an affidavit of candidacy for the specific office to fill the unexpired portion of the term. Subject to the approval of the county auditor, the town clerk may authorize candidates for township offices to file affidavits of candidacy with the county auditor. The affidavit shall be in the same form as that in section 204B.06. The municipal clerk shall also accept an application signed by not less than five voters and filed on behalf of an eligible voter in the municipality whom they desire to be a candidate, if service of a copy of the application has been made on the candidate and proof of service is endorsed on the application being filed. Upon receipt of the proper filing fee, the clerk shall place the name of the candidate on the official ballot without partisan designation.

Subd. 1a. **Filing period.** In a city nominating candidates at a primary, an affidavit of candidacy for a city office voted on in November must be filed no more than 84 days nor less than 70 days before the city primary. In municipalities that do not hold a primary, an affidavit of candidacy must be filed no more than 70 days and not less than 56 days before the municipal general election held in March in any year, or a special election not held in conjunction with another election, and no more than 98 days nor less than 84 days before the municipal general election held in November of any year. The municipal clerk's office must be open for filing from 1:00 p.m. to 5:00 p.m. on the last day of the filing period.

Subd. 1b. **Absent candidates.** A candidate for municipal office who will be absent from the state during the filing period may submit a properly executed affidavit of candidacy, the appropriate filing fee, and any necessary petitions in person to the filing officer. The candidate shall state in writing the reason for being unable to submit the affidavit during the filing period. The affidavit, filing fee, and petitions must be submitted to the filing officer during the seven days immediately preceding the candidate's absence from the state. In cities of the first class, and in any city where the use of nominating petitions is permitted under the city's charter, a nominating petition for a candidate who will be absent from the state during the filing period may be signed during the 14 days immediately preceding the date when the affidavit of candidacy is filed.

Subd. 2. **Notice of filing dates.** At least two weeks before the first day to file affidavits of candidacy, the municipal clerk shall publish a notice stating the first and last dates on which affidavits of candidacy may be filed in the clerk's office and the closing time for filing on the last day for filing. The clerk shall post a similar notice at least ten days before the first day to file affidavits of candidacy. The notice must separately list any office for which affidavits of candidacy may be filed to fill the unexpired portion of a term when a special election is being held to fill a vacancy as provided in section 412.02, subdivision 2a.

Subd. 3. **Filing fees.** (a) Except as otherwise provided in this section, the filing fee for a municipal office is as follows:

- (1) in first class cities, \$20;
- (2) in second and third class cities, \$5; and
- (3) in fourth class cities and towns, \$2.

(b) A home rule charter or statutory city may adopt, by ordinance, a filing fee of a different amount not to exceed the following:

- (1) in first class cities, \$80;
- (2) in second and third class cities, \$40; and
- (3) in fourth class cities, \$15.

(c) A home rule charter city that sets filing fees by authority provided in city charter is not subject to the fee limits in this section.

Subd. 4. **Petition in place of fees.** A candidate for municipal office may file a petition in place of the filing fees specified in subdivision 3. The petition shall meet the requirements of section 204B.11, subdivision 2.

Subd. 5. **Nominating petition; cities of the first class.** A nominating petition filed on behalf of a candidate for municipal office in a city of the first class shall be signed by eligible voters who reside in the election district from which the candidate is to be elected. The number of signers shall be at least 500, or two percent of the total number of individuals who voted in the municipality, ward, or other election district at the last preceding municipal general election, whichever is greater.

Subd. 6. **Withdrawal.** A candidate for a municipal elective office may withdraw from the election by filing an affidavit of withdrawal with the municipal clerk no later than 5:00 p.m. two days after the last day for filing affidavits of candidacy. Thereafter, no candidate may file an affidavit of withdrawal.

**History:** 1959 c 675 art 6 s 13; 1976 c 44 s 8; 1978 c 572 s 3; 1981 c 29 art 7 s 10; 1983 c 62 s 5; 1985 c 72 s 4; 1987 c 62 s 8; 1994 c 646 s 10,11; 1997 c 147 s 43; 2000 c 467 s 26,27; 1Sp2001 c 10 art 18 s 35; 2010 c 184 s 28; 2010 c 201 s 61,62; 2011 c 65 s 6; 2013 c 131 art 2 s 55; 2014 c 264 s 23; 2015 c 70 art 1 s 49

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