

City of Houston, Texas, Ordinance No. 2022 - 455

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE I, OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RECOGNIZING AND AFFIRMING THAT CERTAIN PROVISIONS OF ARTICLES VII-a AND VII-b OF THE CITY OF HOUSTON'S CHARTER PERTAINING TO THE QUALIFIED VOTER STATUS OF PETITION CIRCULATORS ARE UNCONSTITUTIONAL AND UNENFORCEABLE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the City of Houston's Charter (the "City Charter") authorizes direct legislation by the public through the initiative and referendum petition process (Article VII-b, Sections 2 and 3) and authorizes the removal from office of any holder of public office in the City by recall petition (Article VII-a); and

WHEREAS, Articles VII-a and VII-b of the City Charter provide that each signature on an initiative, referendum, and recall petition must be acknowledged (notarized) as required by Article IX, Section 3, of the City Charter, or verified with an affidavit by a circulator of the petition; and

WHEREAS, the form of a petition circulator's affidavit for initiative, referendum, and recall petitions is set forth in Article VII-a, Section 3 of the City Charter; and

WHEREAS, Articles VII-a and VII-b of the Charter require all signers of a petition to be qualified voters registered to vote in the City of Houston; and

WHEREAS, in *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 119 S.Ct. 636 (1999) ("Buckley"), the United States Supreme Court held, among other things, that a Colorado statute requiring that initiative-petition circulators be registered voters violated the First Amendment free speech guarantee; and

WHEREAS, the Fifth Circuit, in *Pool v. City of Houston*, 978 F.3d 307 (5th Cir. 2020), opined that absent Houston City Council action, it was not clear that the City had changed its policy and would comply with *Buckley*; and

WHEREAS, in response to the Fifth Circuit's decision, City Council passed City Ordinance 2020-1033 (Dec. 2, 2020), which expressed the City's formal policy to enforce only the requirements relating to petition circulator qualifications that are valid under the U.S. Constitution, as well as codified an alternate petition circulator affidavit for circulators who are not registered to vote in the City of Houston;

WHEREAS, in subsequent proceedings, the United States District Court for the Southern District of Texas, Houston Division, found that City Ordinance 2020-1033 is likely void;

WHEREAS, on February 22, 2022, the United States District Court for the Southern District of Texas, Houston Division, declared Articles VII-a and VII-b of the Charter unconstitutional to the extent they require petition circulators to be qualified voters of the City of Houston, and the Court provided that City Council may now enact a new ordinance in light of the Court’s declaratory judgment; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings of fact contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are hereby adopted as part of this Ordinance for all purposes.

Section 2. That Article I of Chapter 2 of the Code of Ordinances, Houston, Texas, is hereby amended by adding Section 2-3.1, which replaces any prior versions of Section 2-3.1 in their entirety, to read as follows:

“Sec. 2-3.1. Petition circulator affidavits.

- (a) It is the policy of the city to enforce the United States Constitutional requirements relating to petition circulator qualifications.
- (b) The city shall accept the ‘Affidavit for Circulators Who Are Not Registered Voters in the City of Houston or Are Not Residents of the City of Houston,’ in the form set forth below.

STATE OF TEXAS §

COUNTY OF HARRIS §

I, _____, being first duly sworn on oath
depose and say:

I am 18 years of age or older, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I am a circulator who: (a) is not registered to vote in the City of Houston or (b) is not a resident of the City of Houston. I agree to submit myself to the jurisdiction of the courts in Harris County, Texas and waive any challenge to venue and personal jurisdiction in connection with the matters encompassed by this affidavit. I further depose and say that each

signature appearing on this petition was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is a genuine signature of the person whose name it purports to be.

Signature: _____

Printed Name: _____

Address: _____

Contact Number: _____

Email Address: _____

Sworn to and subscribed before me this ____ day of _____
(Month), _____ (Year).

/s/ _____
Notary Public, State of Texas

(c) The city secretary shall post a link to the ‘Affidavit for Circulators Who Are Not Registered Voters in the City of Houston or Are Not Residents of the City of Houston’ on the city secretary’s website.”

Section 3. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other

portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 4 That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this 8th day of June, 2022.

Sylvester Turner _____
Mayor of the City of Houston

Prepared by Legal Dept. _____
DRF:jmb 05/23/2022 Assistant City Attorney
Requested by Arturo Michel, City Attorney
L.D. File No. 0392200145001