



ELECTIONS

Filling Vacancies, Public Initiative and
Changing Form of Government

Today's Presenters'

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TIP

No matter what type of election related issue you are dealing with, the first step is to ALWAYS know your form of government!

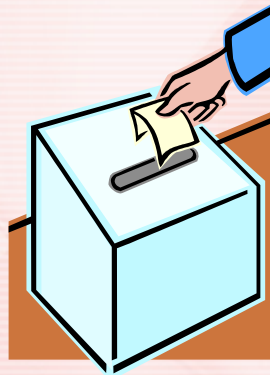
Partisan vs. Non-Partisan

WHO IS INVOLVED?

With the election matters we discuss today, there are three major players involved;

- Municipal Clerk
- County Clerk
- Municipal Attorney

VACANCY OF OFFICE



VACANCY LAW & REASONS

The office of a Mayor or a member of the Governing Body of a municipality shall be deemed vacant for the following reasons:

1. Declared by virtue of a judicial determination;
2. Upon the death of the Mayor or a member of the Governing Body;
3. Upon a determination of the other members of the Governing Body that the Mayor or a member of a Governing Body no longer resides within the corporate limits of a municipality or ward from which they were elected;
4. Upon the refusal of the Mayor or member of the Governing Body to qualify or serve;
5. Upon a judicial determination that the Mayor or member of the Governing Body shall become physically or mentally incapable of serving;
6. Upon the filing of a written resignation with the Municipal Clerk by the Mayor or a member of the Governing Body,

CONTINUED ON NEXT SLIDE....

CONTINUED...VACANCY REASONS

7. **Whenever the Mayor, when required by law to attend meetings of the Governing Body, or a member of the Governing Body, fails to attend and participate in any meetings of the Governing Body for a period of eight (8) consecutive weeks: unless excused from attendance by a majority of the members of the Governing Body, at the conclusion of such period;**
8. **Upon a determination that the office comes within the purview of removal from office (Recall), or nomination or election declared null and void.**
9. **Tie vote creates a vacancy.**

(Some reasons for excused absence: illness, vacation, business trip, tragedy to home, etc.)

VACANCY PROCEDURE-PARTISAN

1. Procedure to be followed to fill vacancy where incumbent was a nominee of a political party. (Partisan)
 - a. If the vacancy occurs prior to September 1 in the next to last year of the term of the officer whose office has become vacant, the office shall be filled for its unexpired term at the next general election to be held not less than sixty (60) days after the occurrence of the vacancy. The Governing Body may fill the position on a temporary basis until that next general.
 - b. If the vacancy occurs on or after September 1 of the next-to-the last year of the term of the officer whose office has become vacant, the office may be filled for its unexpired term by appointment by the Governing Body.

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VACANCY PROCEDURE STEPS:

The Governing Body may fill the PARTISAN vacancy by appointment in the following manner:

- (1) Within 15 days after the occurrence of a vacancy, the municipal committee of the political party shall present to the Governing Body via the Municipal Clerk the names of 3 nominees for the selection of a successor to fill the vacancy.
- (2) The Governing Body shall appoint one of the nominees as the successor to fill the vacancy by resolution at their next ensuing meeting.
- (3) If the Governing Body fails to appoint one of the nominees within the prescribed time, the municipal committee *shall* appoint one of the nominees as the successor to fill the vacancy.
- (4) If the municipal committee fails to submit the names of the nominees within the 15 days after the occurrence, the Governing Body *may* appoint a successor from the same political party which had nominated the incumbent whose office has become vacant.

GOVERNOR TO FILL VACANCY

- a. **Whenever the offices of *all* or a *majority* of the members of a Governing Body shall become vacant, the Municipal Clerk or any *remaining member of the Governing Body* must immediately certify to the Governor the fact that the vacancies have occurred.**
- b. **The Governor shall, within 30 days of the occurrence, fill the vacancies. If the incumbent whose office has become vacant was elected to office other than as nominees of a political party, the Governor shall appoint a successor to fill the vacancy without regard to party.**
- c. **If the incumbent whose office has become vacant was elected to office as the nominee of a political party, the Governor shall fill the vacancy by the appointment of a successor from the same political party which had nominated such incumbent.**

VACANCY FOR NON-PARTISAN

1. **Whenever a vacancy occurs in the office of Mayor or in the membership of the Governing Body of a municipality holding regular municipal elections (NON-PARTISAN), the vacancy shall be filled in the following manner:**
 - a. **If the vacancy occurs subsequent to September 1 of the last year of the term of the officer whose office has become vacant, the office *may be* filled for its unexpired term by appointment by the Governing Body:**
 - b. **If the vacancy occurs at any other time, the vacancy shall be filled for its unexpired term at the next general or regular municipal election, whichever occurs first, to be held not less than 60 days after the occurrence of the vacancy. The Governing Body may fill the vacancy temporarily by appointment.**

SPECIAL ELECTION REQUIRED

(For Non-Partisan)

1. **If the Governing Body shall fail to fill a vacancy in the office of the Mayor or Governing Body Member within the prescribed time, the Municipal Clerk shall fix the date for a special election to fill the vacancy.**
2. **If the date fixed for a special election shall fall within 20 days prior to the holding of any general election, regular municipal election or any other election within the municipality, the vacancy shall be filled at that election.**
3. **If the date fixed for a special election shall fall within 29 days after the holding of any general election, regular municipal election or any other election within the municipality, then the special election to fill the vacancy shall be held not less than 20 days nor more than 25 days from the date of the election.**

***Remember when faced with a special election the Municipal Clerk should work closely with their Municipal Attorney and County Clerk!**

QUALIFICATIONS

Every person appointed to fill a vacancy, for either an unexpired term or temporarily, shall have the qualifications required by statute to permit the appointee to qualify for election to office.

VACANCY OF MAYOR

1. **Vacancy occurs in final 6 months of term of office.**
 - a. **If a vacancy in the office of the Mayor occurs in the final 6 months of the term of the Mayor, *NO SPECIAL ELECTION SHALL BE HELD TO FILL THE VACANCY.***
 - b. **No appointment shall be made by a Governing Body to fill a vacancy occurring in the office of the Mayor after the fixing of a date for a special election to fill the vacancy.**

WHEN TO TAKE OFFICE

All persons elected to serve for the unexpired term of an office shall take office immediately upon certification of the results of the election.

All persons elected to serve for a full term of office shall take office on the date fixed for the commencement of the term of office. (Usually at the reorganization meeting)

VACANCY=PRIMARY/GENERAL

Withdrawal of Candidate/Vacancy between Primary and General Elections

If a candidate changes their mind and declines a nomination after the petitions have been certified or after having been elected at the Primary Election, notification of such withdrawal is submitted to the County Clerk by the Municipal Clerk immediately.

When an equal number of votes shall have been given to 2 or more persons to fill any office for which they shall by law be qualified, the office shall be deemed to be vacant. (Tie Vote)

Should these scenarios occur, the political party committees will submit replacement candidates of the same political party to run on the General Election ballot.

PUBLIC INITIATIVE

INITIATIVE
LEADS TO
REFERENDUM



INITIATIVE

Initiative - The power of the voters to propose and enact legislation themselves is known as the initiative.

(Layman's Terms: Basically initiative forces the Governing Body to either enact an ordinance proposed by the public and if they don't, it forces the ordinance to be put on a ballot to be voted on by the public)

A group of voters known as the "**Committee of the Petitioners**" is responsible for circulating and filing the initiative petition.

Note: If a Municipal Clerk receives an Initiative Petition, it is highly recommended that you work closely with your Municipal Attorney throughout the process – you do not want to make any errors on any matter the public is so passionate about!

You may also wish to be in contact with your County Clerk to confirm your time line if a special election is sought by the petitioners.

TIP

DO NOT GET CONFUSED BETWEEN
INITIATIVE VS. REFERENDUM

Initiative - power of voters to enact legislation themselves (via petition)

Referendum – power of voters to approve or reject a proposition/ordinance at the polls (ballot question)

KNOW THE DIFFERENCE!

SIGNATURE REQUIREMENTS

The difference between the following two (2) sets of numbers is that the first provides an opportunity for the ordinance to be placed on the ballot in a special election, while the second does not – it will be at a General or Municipal election as a referendum question:

1. If the petition contains a number of signatures equal to at least 15% of the total votes cast in the municipality at the last election which the members of the General Assembly were elected - the ordinance will be put on the ballot in a special election if there is no general or regular municipal election occurring not less than 40 days after the final date for withdrawal of the petition.
2. If the petition contains a number of signatures equal to at least 10% but less than 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected the ordinance will be submitted to the voters at the next general or regular municipal election occurring not less than 40 days after the final date for withdrawal of the petition.

In either scenario the Municipal Clerk will be working very closely with the Municipal Attorney and their County Clerk.

ORDINANCE INITIATED

- 1. The Municipal Clerk will determine whether the petition is legally correct in its form and signatures of qualified voters. The Municipal Clerk may at this point should be in contact with their attorney and County Clerk to keep them in the loop.**
- 2. The Municipal Clerk certifies as to the acceptance of this petition to the Governing Body at their next regular meeting.**
- 3. The Governing Body has 20 days following submission of a certified initiative petition by the Municipal Clerk to pass an ordinance in substantially the same form.**
- 4. If the Governing Body fails or refuses to pass such an ordinance within the 20 days, the Municipal Clerk shall submit the ordinance to the voters of which the Municipal Clerk will be working very closely with their attorney and County Clerk.**

PETITION AMENDMENTS

If the Municipal Clerk finds defects in the petition, the Municipal Clerk should seek clarification from their attorney and then proceed to alert the Committee of Petitioners of the defects giving them 10 days to bring conformance to the petition.

WITHDRAWAL OF PETITIONS

The Committee of the Petitioners may file with the Municipal Clerk a request signed by at least four of the five members of the Committee asking that the petition be withdrawn.

Upon the filing of this request for withdrawal, the original initiative petition shall cease to have any force or effect.

PUBLICATION

Whenever an initiative ordinance is to be submitted to the voters of the municipality the Municipal Clerk shall have the proposed ordinance published in at least 2 newspapers that are either published or circulated in the municipality.

The publication of the proposed ordinance shall not be more than 20 days nor less than 5 days before the election at which the ordinance will be voted on.

REFERENDUM

DEFINITION OF REFERENDUM: The power of the voters to approve or reject at the polls any ordinance submitted to them by the Governing Body or any ordinance passed by the Governing Body against which a referendum petition (initiative) has been filed.

ELECTION RESULTS

- 1. If a majority of the votes are in favor of the proposed ordinance, it becomes a valid and binding ordinance of the municipality and shall be published as in the case of other adopted ordinances. It shall not be amended or repealed within 3 years immediately following the date of adoption by the voters.**
- 2. The Governing Body may within 3 years submit a proposition for the repeal or amendment to this ordinance to the voters at any general or regular election held during that period.**
- 3. If a proposition is so submitted and receives a majority of the votes cast at that election, the ordinance shall be repealed or amended accordingly.**

REPEAL OF ORDINANCE

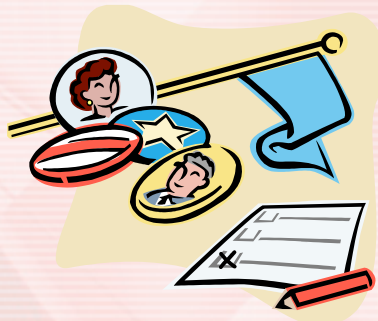
1. The Governing Body has 20 days following the submission of a certified referendum petition by the Municipal Clerk to repeal the ordinance in question.
2. If within 20 days the Governing Body fails to act on the petition or refuses to repeal the ordinance in question, the MUNICIPAL CLERK shall submit the question to the voters in a referendum election.

NO INITIATIVE or REFERENDUM

MATTERS NOT SUBJECT TO INITIATIVE & REFERENDUM:

1. The annual municipal budget;
2. Matters which would permanently tie the hands of the Governing Body;
3. Matters over which the Governing Body has no control.

NON-BINDING REFERENDA



NON-BINDING REFERENDA

A. PURPOSE:

All municipalities have the right to non-binding referenda.

If the Governing Body of any municipality **desire to ascertain the sentiment of the legal voters** of the municipality upon any question or policy pertaining to the government or internal affairs thereof and there is no statute by which the sentiment can be ascertained, the Governing Body can adopt at any regular meeting an ordinance or resolution requesting the Clerk of the County to print upon the official ballot to be used at the next ensuing General Election a certain proposition to be formulated and expressed in the ordinance or resolution.

The Municipal Clerk when faced with non-binding referenda should run this by your Municipal Attorney and County Clerk to confirm your time lines and procedures are correct!

FILING DEADLINE

The request, certified by the Municipal Clerk, shall be filed with the County Clerk not later than eighty-one (81) days prior to the election.

This is a strict deadline! – Be sure to work with your County Clerk and Attorney.

ELECTION RESULTS

- The results of such an election shall **not bind** the Governing Body nor shall it be construed as other than expression of sentiment by the voters to be followed or disregarded by the Governing Body in its discretion.

CHANGE FORM OF GOV'T.

CHARTER STUDY
COMMISSION



CHARTER STUDY COMMISSION

Forming a Charter Study Commission is not required in order to change the municipality's form of government. It may be done through a Direct Petition, however, the formation of a Charter Study Commission provides for an opportunity to research, compare, and consider a new Charter or changes to the present Charter; it gives the public an opportunity to be informed of all the information obtained and the recommendations of the Commission Members.

This is yet another matter that consultation with your municipal attorney and County Clerk will be key! Time lines are critical!

INITIATED BY ORDINANCE

The Governing Body may adopt an ordinance on their own requesting that a question be placed on the ballot for the creation of a Charter Study Commission and for the election of five (5) registered voters to serve on the Charter Study Commission.

INITIATED BY PETITION

A proposal to change the form of government may also be done by the public through the “initiative” process using the petition process of which we just discussed.

PLACEMENT ON BALLOT

Whether desire for a change of government study is requested directly by the Governing Body or through the public initiative petition process, the Election of five (5) Charter Commission Members will be placed on the ballot as a referenda question at the same time the public question is submitted, the question should read:

“Shall a Charter Commission be elected to study the charter of (town name) and to consider a new Charter or improvements in the present Charter and to make recommendations thereon?”

ELECTION OF COMMISSION

Charter Study Commission members are elected at the same time the public question is voted on.

1. The voters shall choose five (5) members to serve on the Charter Study Commission.
2. If two (2) or more candidates shall receive an equal number of votes, they shall draw lots to determine which one shall be elected

CANDIDATES

Candidates for the Charter Study Commission shall be registered voters of the Municipality.

CANVASS OF ELECTION

The result of the votes cast for and against the adoption of the public question shall be returned by the Municipal Clerk to the County. The County Clerk certifies the official election results for Partisan elections and the Municipal Clerk certifies the official election results for non-partisan elections.

The five (5) candidates receiving the greatest number of votes shall be elected and shall constitute the Charter Study Commission.

If the public question is defeated, none of the candidates shall be elected.

ORGANIZATION

1. No later than fifteen (15) days after its election, the Charter Study Commission shall organize and hold its first meeting. A majority of the members shall constitute a quorum.
2. The Commission is subject to the Open Public Meetings Act.
3. They shall:
 - a. Elect one of its members as chairman
 - b. Fix its hours and place of meeting
 - c. Adopt such rules for the conduct of its business

VACANCY of Commission Member

In case of a vacancy, the remaining members of such commission shall fill it by appointing thereto some other properly qualified citizen.

DUTIES of Commission

1. Study the form of government of the municipality.
2. Compare it with other available forms under the laws of the State.
3. Determine whether or not in its judgment, the government of the municipality could be strengthened, made more clearly responsive or accountable to the people.
4. Determine whether a changed form of government would be more economical or efficient.

COMPENSATION/EXPENSES

1. Members shall serve without compensation.
2. Members shall be reimbursed by the Municipality for their expenses incurred in the performance of their duties.
3. Within the limits of their appropriations, the Charter Study Commission may appoint one or more consultants and clerical and other assistants to serve at the pleasure of the commission and may fix a reasonable compensation to be paid such persons.

PUBLIC HEARING

The Charter Study Commission shall hold public hearings, may hold private hearings and sponsor forums and generally shall provide for the widest possible public information and discussion and are subject to the Open Public Meetings Act.

CONCLUSIONS AVAILABLE

The Commission has five (5) alternative decisions/conclusions that may consider and recommend:

1. It can recommend that the form of government be changed to one of the four (4) plans available under the Faulkner Act;
2. It can recommend that the Governing Body petition the Legislature for a special charter or more specific amendments to the current charter;
3. It can recommend that the current form of government remain unchanged;
4. If the municipality is already under a Faulkner Act form of government, it may recommend adopting any of the alternative provisions authorized under the current Faulkner form of government;
5. Such other action as it may deem advisable consistent with its functions.

REPORT

1. The Commission shall report its findings and recommendations to the citizens of the municipality within nine (9) calendar months from the date of its election.
2. It shall file with the Municipal Clerk an original signed copy of any final report containing said findings and recommendations made by any member of the commission.
3. It shall also deliver to the Municipal Clerk sufficient copies of any such report to permit distribution to any interested citizen.
4. The Municipal Clerk shall distribute copies to the Governing Body.

NEW GOVERNMENT

1. On July 1 next following the first election of officers for plans with non-partisan elections.
2. On January 1 next following the first election of officers for plans with partisan elections.

OUTCOME

IF NO CHANGE RECOMMENDED

Charter Study Commission is discharged upon filing of official report.

IF AN OPTIONAL PLAN IS RECOMMENDED

REFERENDUM ON OPTIONAL PLAN MUST BE HELD:

at the next general election or regular municipal election at least 60 days after filing of report

OR

At a special election from 60 to 120 days after filing of report.

Follow the Referendum procedure to do this, again working closely with your Municipal Attorney and County Clerk.

QUESTIONS?

ANY QUESTIONS?

Thank you for your
time today!

