



Advocacy. Service. Innovation.

Special Elections and Referenda

Bill Taylor
Field Services Manager
Municipal Association of South Carolina

Definitions

Elector: *noun* \i-'lek-tôr/: someone who meets the required qualifications and can vote in an election

Election: *noun* \i-'lek-shən/: the act or process of choosing someone for a public office by voting

Freeholder: *noun* \frē-'hōl-dər/ any person eighteen years of age, or older, and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights, and future interests) and who owns, at the date of the petition or of the referendum, at least an undivided one-tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate.

Referendum: *noun* \re-fə-'ren-dəm/: an event in which the people of a county, state, etc., vote for or against a law that deals with a specific issue: public vote on a particular issue



Special Elections

Types:

- To Fill a Vacancy in Office
- To Change the Form of Government
- To Change the Number of Council Seats
- To Change the Method of Election (at-large, single-member districts, or some combination)
- To Change the Name of the Municipality
- Annexation by the 25% Petition and Election Method
- Consolidation
- Reduction of Corporate Limits
- Dissolution of Municipal Charter





Filling a Vacancy in Office

Partisan Elections:

- Vacancy as a result of death, resignation or removal
- Filing opens on the 3rd Friday after the vacancy & closes 10 days later
- Primary would be held on 11th Tuesday after vacancy
- Runoff would be held on the 13th Tuesday
- Special election would be held on the 18th Tuesday. If this date is within 60 days of the general election then it would be held on the same day of the general election.





Non-Partisan Elections:

- Filing opens on the 3rd Friday after the vacancy & closes 10 days later
- Special election would be held on the 13th Tuesday after the vacancy occurs
- Any run-off election would be held on the 15th Tuesday



Special election to fill a vacancy is **not** required if:

- Only one individual has filed for the vacant seat, and
- No one has "filed" to run as a write-in candidate

In this case the candidate who filed is deemed as "elected" and will take office on the Monday following certification of the election.



How to Call for the Other Special Elections

- Can be initiated by an ordinance approved by council, or
- Can be requested by a petition signed by 15%* or more of the qualified electors of the municipality

* Varies in some different circumstances.



Special Notes about the Other Special Elections

To Change the Form of Government:

- In SC municipalities operate under either the council, mayor-council, or council-manager forms of government
- An election to change the form of government can be held only every 4 years

To Change the Method of Election:

- Members are typically elected under an at-large, single-member district or some combination of the two



To Change the Number of Council Seats:

- Council form requires 5, 7, or 9 members (which includes the mayor)
- Mayor-Council form requires a mayor and no less than 4 members
- Council-Manager form requires a mayor and 4, 6, or 8 members
- Largest council is Charleston's with 13 members (a mayor-council form)
- Most operate with 5 or 7 members
- Can hold every 2 years

To Change the Name of the Municipality:

- This has been a rarity
- Has typically been a part of a consolidation referendum (i.e., Batesburg-Leesville)



Annexation:

The 25% elector petition and election method

- Requires a petition signed by 25%* of the qualified electors in an area being proposed for annexation
- Once the petition is certified, the county election commission orders an election
- If approved in the election the municipal council will publish the results and define the area being annexed. Council will approve the annexation unless a petition signed by 5% of more of the electors in the municipality call for an election to be held within the municipality.
- If such a petition is received and certified, council must delay final reading of annexing the property and call for a special election for the electors in the city. If there is a positive vote in favor then council will approve the annexation. If there is a negative vote then another annexation election can not be held within that specific territory for 24 months.
- There is an "opt-out" provision for freeholders owning 25% of assessed value of property to be annexed or those owning 10 acres of agricultural real property



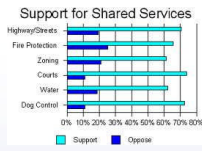
Consolidation:

Municipal – Municipal

Each municipality wanting to consolidate would approve an ordinance calling for an election on the subject.

Municipal – County

- Upon request of the county's governing body or a petition signed by 10% of the registered voters in the county an 18-member consolidated government charter commission is established and includes members from municipalities and special purpose districts.
- Within 12 months the commission submits a proposed consolidated government charter
- Within 30 days of receiving the charter the county governing body must set an election on the issue within 60 – 90 days. The commission can decide if the consolidation must be approved by a majority of the county electors or by a majority of those in the cities and the special purpose districts
- If the vote fails it cannot be considered for another 4 years.
- A municipality or special purpose district may elect to be excluded from the consolidation.



Reduction of Corporate Limits:



- A majority of resident freeholders in the municipality must sign a petition to reduce the corporate limits
- A majority of the registered voters in the city must vote in a special election on the issue. If the vote is favorable then the council must adopt an ordinance declaring the area as no longer being a part of the town.
- Property owned by the municipality or jointly owned by the county and city may be removed from the corporate limits by ordinance.
- US Justice Department and state agencies should be notified of any reduction in the municipal boundaries



Dissolution of a Municipality:

There are three ways that a municipality can be dissolved:

- The municipal charter is automatically forfeited if the population falls below 50
- If the municipality no longer provides municipal services, collects no taxes or other revenues, or has not held an election for 4 years.
- If a majority of registered voters sign a petition with the council requesting that the charter be surrendered then the council must call for a special election on the subject. If 2/3 of the voters approve dissolution then, once the election result is certified, the Secretary of State will cancel the charter.



Types of Referenda

- Advisory Referendum
- Utility System Referendum
- Petition Initiative Referendum
- Issuance of an Exclusive Franchise
- Debt Limit/GO Bonds
- Capital Project Sales tax
- Local Option Sales Tax
- Local Option Tourism Development Fee
- Sunday Alcohol Sales
- Incorporation



Advisory Referendum:

- Council can call for an advisory referendum on issues facing the municipality
- Council is not bound by the results of the advisory referendum
- Should not be used too often as council can be seen as trying to skirt key issues

Utility System Referendum:

Municipality must hold a referendum before it can acquire, by initial construction or purchase, and operate gas, water, sewer, electric, and transportation or any other public utility system or facilities.



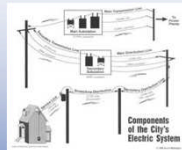
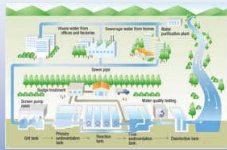
Petition Initiative Referendum:

- Can be initiated by a petition signed by 15% of the registered voters.
- Electors can proposed any lawful ordinance, except appropriation of funds, levying of taxes, or changing the zoning
- Within 60 days, electors may ask to repeal any ordinance authorizing the issuance of bonds, notes, or other debt backed by the full faith & credit of the municipality except bonds approved by referendum or tax anticipation notes.
- If council fails to pass or repeal an ordinance as petitioned or passes one substantially different from what's petitioned, the municipality must conduct a referendum election not later than 30 days nor more than 1 year of the council's vote on the adoption or repeal.



Exclusive Franchises:

- Municipalities may grant exclusive franchises for furnishing water . Sewer and electric services to the municipality,
 - If proposed franchise is approved by 2/3 vote of council **and**
 - There is a positive vote of the majority of the voters on the question



Increase the Debt Limit / Issue GO Bonds:



- The SC Constitution limits the amount of General Obligation (GO) bonds a municipality can issue without voter approval to 8% of the total assessed value of all taxable property in the city.
- Bonds approved by referendum do not count against the 8% limit.
- Lease-purchase agreements for real property or permanent improvements are subject to the 8% debt limit.
- The referendum question must ask if the council should be allowed to issue GO bonds for a specific purpose that would exceed the 8% debt limit.
- Must be specific as those bonds proceeds can only be used for the designated projects.



Local Option Sales Tax:



- Can only be conducted by the county
- Provides a credit against a taxpayers' municipal and county ad valorem tax liability on real and personal property and a portion can be used for municipal and county operations.
- If the measure fails it can be placed back on the ballot after 1 year.
- Establishes two separate funds: Property Tax Credit Fund (to be used for property tax relief) and the County/Municipal Revenue Fund (which can be used for local operations).
- Currently being used in 31 counties



Local Option Tourism Development Fee:



- Only available in a county (Horry) where the State Accommodations Tax revenues are at least \$14 Million
- Can be approved by ordinance of 2/3 majority of municipal council or a majority of qualified electors in a referendum requested by the council
- Allows for a tax of no more than 1% on all gross proceeds of sales subject to the sales and user fee and can be in place for no more than 10 years
- This is imposed specifically for tourism advertisement & promotion purposes directed at non-South Carolina residents
- A referendum to rescind the fee can be held 2 years after it has been imposed. If it passes the municipality may not impose it for 2 years. If it fails it can not be brought back up for another 2 years.



Capital Project Sales Tax:



- A 1 cent sales tax on items purchased in the county except on unprepared foods
- Is currently only available to the county council to pass county-wide
- Specific projects must be identified that will be funded through the new tax
- Must be approved by county ordinance and passed by majority vote of voters in a referendum
- It has a sunset clause of a maximum of 8 years but can be extended with another voter referendum



Sunday Alcohol Sales:



- Municipality may pass an ordinance calling for a referendum to be held or it can be held after a petition of at least 10%, but not more than 7,500 qualified electors is submitted to the municipal council.
- Referendum will ask one of the following:
 - Shall DOR issue temporary permits for a period not to exceed 24 hrs. to allow the possession, sale, & consumption of alcoholic liquors to non-profits and business establishments otherwise licensed for consumption-on-premise sales?
 - Shall they be authorized to issue such permits to allow liquor by the drink to non-profits & business establishments otherwise licensed for consumption-on-premise sales and to allow the sale of beer & wine at permitted off-premises locations without regard to the days and hours of sales? Or
 - Shall DOR issue temporary permits for a period not to exceed 24 hours to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?
- Referendum must be held at the next general election or, if no election is required by the city, it would be held at the next county general election
- If it fails it can not be brought back for another vote for 4 years.



Incorporation:



- Requires petition signed by 15% of qualified electors in the area proposed for incorporation to be filed with the SC Secretary of State
- Petition is reviewed by the Joint Legislative Committee on Municipal Incorporation
- Proposed area must meet certain criteria including:
 - Has a population density of at least 300 people per square mile
 - Is not within 5 miles of another municipality unless the area has been refused annexation by the adjoining city within the past 6 months; if it has a population of 7,000; if the boundaries of the area are within 5 miles of the boundaries of two different cities in two separate counties other than the county where the property is located; or if the area is within a county with a population less than 51,000.
 - Must have developed a feasibility study for service delivery and demonstrated at least three services that will be provided within 1 year of incorporation including a minimum level of law enforcement services.
- If criteria is met then the Joint Commission will appoint an election commission to conduct an election within 20 days nor more than 90 days after the report.



Incorporation (Continued):

- Registered electors in the proposed area for incorporation will vote on the following questions:
 - Whether to approve the incorporation or not
 - The name of the new municipality
 - The form of government
 - The method of election
 - Whether the election will be partisan or nonpartisan, and
 - The terms of the mayor and council
- If a majority vote in favor then the Secretary of State will issue a certificate of incorporation and the election commission schedules an election of the municipal officers
- The certificate of incorporation is not effective until the new mayor and councilmembers are elected and qualified.
- A suit challenging the incorporation must be brought within 60 days after the issuance of the incorporation certificate.