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Special Elections and Referenda Municipal Clerks and Treasurers Institute

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**Municipal Association
of South Carolina**

Special Elections and Referenda



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Definitions

- **Elector:** Someone who meets the required qualifications and can vote in an election.
- **Election:** The act or process of choosing someone for a public office by voting.
- **Freeholder:** Any person over 18, and any firm or corporation, who owns a 1/10th interest or greater in real estate and whose name appears on the county tax records as an owner.
- **Referendum:** Public vote for or against a proposal that deals with a specific issue.



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Special Election Dates

- Special elections must be held on one of the following dates:
 - The fourth Tuesday in January
 - The first Tuesday after the first Monday in April
 - The second Tuesday in June in even-numbered years only, and for only primaries for special elections (partisan elections)
 - The fourth Tuesday in August
 - The first Tuesday after the first Monday in November, for only those elections other than primaries for special elections



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Non-partisan Special Elections

- Vacancy as a result of death, resignation, or removal.
- No special election if vacancy occurs within 180 days or less of general election.
- Filing opens at noon on the 3rd Friday after the vacancy and closes 7 days later.
- Special election would be held on the first eligible date that is on or following the 11th Tuesday after vacancy occurs.
- Run-off would be held two weeks later.



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Partisan Special Elections

- Vacancy as a result of death, resignation, or removal.
- No special election if vacancy occurs within 180 days or less of general election.
- Filing opens at noon on the 3rd Friday after the vacancy occurs and closes 7 days later.
- Primary held on the first eligible date that is on or following the 11th Tuesday after vacancy occurs
- Runoff, if necessary, held two weeks after primary.
- Special election on first eligible date following date of the primary.



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Other Special Elections

- Change the number of council seats.
- Change the method of representation.
- Change the form of government.
- Change the name of the municipality.
- Reduce the corporate limits.
- Consolidate two or more municipalities.
- Dissolve a municipality.
- 25% petition and election annexation.



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Change the Form of Government

- May be implemented only with approval of the voters in an election.
 - Ordinance Method: The municipal council initiates election by ordinance.
 - Petition Method: Requires the signatures of at least 15% of the municipality's qualified electors.
- Another FOG election may not be held for another four years regardless of the outcome.



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Change the Name of Municipality

- May be implemented only with approval of the voters in an election.
 - Ordinance Method: The municipal council initiates election by ordinance.
 - Petition Method: Requires the signatures of at least 15% of the municipality's qualified electors.
- No limitation on frequency and no required wait time between elections.



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Reduce the Corporate Limits

- May be implemented only with approval of the voters in an election.
- Must be initiated by petition with the signatures of a majority of resident freeholders.
- If vote is favorable, council must remove property from municipality by ordinance.
- Property owned by municipality or by county may be removed by ordinance.



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Municipal Consolidation & Boundary Adjustments

- Consolidation of two or more municipalities:
 - Consolidation by 5-3-30
 - Ordinances adopted by municipalities involved.
 - Election held on question in the municipalities.
 - Boundary Adjustment by 5-3-40
 - Ordinances adopted by municipalities involved following a public hearing held by each (but probably still requires an election).
- No limitation on frequency and no required wait time between elections.



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Municipal Trivia!

Two neighboring municipalities in western Lexington County were known as the "friendly but separate twins" for more than a century. After sharing schools, business organizations, and community services, voters approved a merger in the early 1990s to create a single town.

What is the name of that town today?



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County-Municipal Consolidation

- Initiated by county ordinance or 10% petition.
- 18-member commission formed.
- One-year to prepare consolidation charter.
- Election held on one of the eligible dates per Section 7-13-190.
- Approved by majority of county electors or by majority of electors in municipalities & SPDs.
- A municipality / SPD may opt to be excluded.
- Election may not be held again for 4 years.



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Municipal Dissolution

- Three ways for a municipality to be dissolved:
 1. Municipal charter automatically forfeited if population falls below 50.
 2. If the municipality no longer provides services, collects no taxes, and has not held an election for four years.
 3. If majority of electors petition council to surrender municipal charter, an election is held. If it passes by a 2/3 margin, the Secretary of State revokes charter.
- No limitation on frequency and no required wait time between elections.



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25% Petition-Election Annexation

- Petition signed by 25% of electors in area to be annexed causes a special election. If majority of electors within the area to be annexed vote to approve, results are published.
- Council may approve annexation unless 5% of municipal electors petition for an election to be held within municipality. Municipal special election is binding.
- “Opt-out” provision for freeholders owning 25% of assessed value of property to be annexed or those owning ten acres of agricultural real property.
- If election fails, may not be held for another 24 months.



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Types of Referenda

- Advisory referendum.
- Utility system referendum or issuance of an exclusive franchise.
- Petition initiative referendum.
- Debt limit for general obligation bonds.
- Sunday alcohol sales.
- Incorporation.
- Local option tourism development fee.
- Capital project sales tax.
- Local option sales tax.



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Advisory Referenda

- Council can call for an advisory referendum on an issue facing the city or town.
- Council is not bound by the results of the advisory referendum.
- There are advantages and disadvantages to using an advisory referendum.



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Utility System Referenda

- Referendum required before a city or town may construct, purchase, or otherwise acquire a utility system (going into the business).
- Requirement applies to acquisition and operation of electric, gas, water, sewer, transportation, or any other public utility system or facility.



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Exclusive Franchise

- Cities may grant exclusive franchises for electric (SC Code § 58-27-410) or water and or sewer (SC Code 5-31-50) services by ordinance, if:
 - Proposed franchise is approved by a 2/3 vote of council; **and**
 - A referendum is held in which a majority of electors vote in favor of the franchise.
 - Water and sewer term may not exceed 40 years; no term limit for electricity.



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Petition Initiative Referenda

- Initiated by 15% petition under SC Code § 5-17-10.
- May be used to propose any lawful ordinance except one to appropriate funds, levy a tax, or amend zoning.
- Also, within 60 days, electors may petition to repeal any ordinance issuing bonds, notes, or other debt backed by full faith and credit except TANs or bonds approved by referendum.
- If council fails to pass or repeal an ordinance as petitioned, or passes one substantially different, the city must conduct a referendum no sooner than 30 days and not later than 1 year after.



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Exceed the 8% Cap on GO Debt

- SC Constitution limits the amount of outstanding general obligation debt a municipality may have at any one time to 8% of the total assessed value within the municipality.
- However, debt limit may be exceeded by referendum.
- Bonds approved by referendum do not count against the 8% limit.



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Exceed the 8% Cap on GO Debt

- Lease-purchase financing does not count toward the limit, unless the lease-purchase is for real property or fixtures.
- Revenue bonds do not count toward the limit.
- The referendum question must ask if council should be allowed to issue general obligation bonds for a specific purpose that would exceed the 8% debt limit.
- Must be specific as those bonds proceeds may be used only for the designated projects.



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Sunday Alcohol Sales

- SC Code § 61-6-2010: Approved by referendum initiated in one of two ways: (a) by council by ordinance; or (b) by petition of 10% of the city's qualified electors or by 7,500 qualified electors, whichever is less.
- Referendum may ask for approval of off-premise consumption sales of beer and wine; -or- on-premise consumption sales of alcoholic liquor drinks; -or- both on-premise liquor and off-premise beer and wine.
- Must be held with next general election of the municipality or county (if no municipal election in that year).
- If it fails, may not be revisited for four years.



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Incorporation Referenda

- Proposed area must meet following criteria:
 - population density of >300 people per square mile;
 - area not within 5 miles of an existing municipality, unless area (a) has been refused annexation within past 6 months; (b) has a population of 7,000; (c) is within 5 miles of 2 different cities in 2 separate counties other than the home county of the area; or (d) is within a county with a population less than 51,000.
- Must develop a feasibility study for delivering law enforcement services as well as three other services on the first day of the third fiscal year following incorporation.



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Incorporation Referenda

- Joint Legislative Committee on Municipal Incorporations reviews study/proposal.
- If favorable, SC Secretary of State appoints an election commission with three or more members to hold a referendum within 20 to 90 days.
- Electors within the area vote on incorporation, municipal name, form of government, method of representation, method of election (non-partisan or partisan), and terms of office (two or four years).



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Incorporation Referenda

- If approved by voters, Secretary of State issues certificate of incorporation and election commission schedules election of mayor and council.
- Certificate of incorporation not effective until the municipal council is elected and qualified.
- A suit to challenge the incorporation may be brought within 60 days of the issuance of the incorporation certificate



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ACTIVITY	SPECIAL ELECTION	REFERENDUM	HOW INITIATED	FREQUENCY	STATUTE REFERENCE
Advisory Referendum		X	As Needed	N/A	§ 5-7-30
Annexation by 25% Petition & Election	X		25% Petition	2 Yrs.	§ 5-3-300
Change form of Government	X		Council Vote or 15% Petition	4 Yrs.	§ 5-15-20
Change the Number of Council Seats	X		Council Vote or 15% Petition	2 Yrs.	§ 5-15-30
Capital Project Sales Tax		X	Co. Council Vote	8 Yrs.	§ 4-10-300
Change Method of Election	X		Council Vote or 15% Petition	2 Yrs.	§ 5-15-30
Change Name of Municipality	X		Council Vote or 15% Petition	N/A	§ 5-15-20
Consolidation	X		Co. Council Vote or 10% Petition	4 Yrs.	§ 4-8-20
Dissolution of Municipal Charter	X		Majority of Voters sign Petition	N/A	§ 5-1-100
Fill vacancy in office	X		As Needed	N/A	§ 7-13-190
Incorporation		X	15% Petition	As Needed	§ 5-1-40
Issuance of an Exclusive Franchise		X	2/3 Vote by Council	N/A	§ 5-31-50
Local Option Sales Tax		X	Co. Council Vote	1 Yr.	§ 4-10-30
Local Option Tourism Development Fee		X	2/3 Vote of Council	2 Yrs.	§ 4-10-910
Petition Initiative Referendum		X	15% Petition	N/A	§ 5-17-10
Raise Debt Limit / Issue GO Bonds		X	As Needed	N/A	§ 5-21-250
Reduction of Corporate Limits	X		Petition by Majority of Freeholders		§ 5-3-280
Sunday Alcohol Sales		X	Petition of 10% of voters or 7,500	4 Yrs.	§ 61-6-2010
Utility System Referendum		X	As Needed	N/A	Art. VII 16 of St. Const.

Resources

S.C. Election Commission
www.scvotes.org

Municipal Association of South Carolina
www.masc.sc
Keyword: elections

Special thanks to the SC Election Commission for furnishing much of the information and data referenced in this presentation.



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