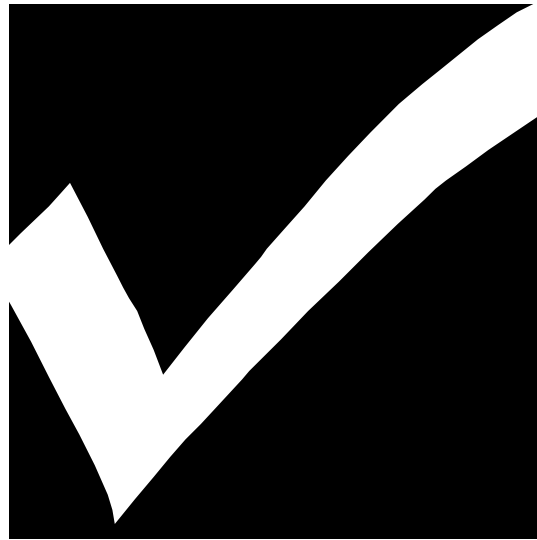


Municipal Election Questions



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Municipal Election Questions

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Introduction

Several weeks prior to the start of each election season (usually mid-September), the local government specialists at the Department of Community and Economic Development (DCED), Division of Community Advocacy (DCA) receive a lot of election questions from city clerks, candidates for municipal or school board office, and concerned citizens. Many of these election questions are routine and fairly easy to answer.

Sometimes, the questions are not so routine and can't be answered with a simple "yes" or "no" response. This document is intended for election questions which we refer to as "stump the monkey."

This election guide won't answer every possible election question, but it can help with some of the more interesting questions posed to department staff over the past few years. Remember if in doubt for local elections, call one of our regional offices, or talk with your fellow city clerks. For questions concerning a state election call staff with the Division of Elections. They might just have the answer to your tough election question because they have worked through the issue before.

This guide book provides an overview of election topics. Additional information is available on the Division of Community Advocacy's website - Local Government OnLine (LOGON) at:

<http://www.dced.state.ak.us/dca/LOGON/home.cfm>

Staff from the Department's field offices have generously contributed to this document by collecting and providing various election anecdotes. The purpose of these stories is to educate, inform, and entertain. They serve to educate by telling the reader about some of the more common and vexing election questions posed to staff. They serve to inform by serving as a staff reference for future election assistance. They serve to entertain by reminding the reader that elections, while very important events in the life of municipalities, can be quite humorous.

I. Voter Registration

Question #1:

Can you vote in a local election if you are a local resident of at least 30 days, but your mailing address and/or resident mailing address are different?

Answer:

No, you must be registered locally to vote on local issues. If you are registered locally but the mailing address is different than the residential address, you may vote a questioned/challenged ballot.

Question #2:

A resident will turn 18 two weeks before the election. Can she vote?

Answer:

Yes. Title 15 allows a person to register to vote 90 days prior to her 18th birthday.

Question #3:

A voter is registered to vote but hasn't lived in the community for a year and wants to file for office. What should you tell the voter?

Answer:

First, check your code of ordinances to determine if residency requirements have been established. If your code is silent on the matter of residency, then you must follow state law, which has a 30 day residency requirement. Voter residency is not based on actual physical residency in the community. For example, a college student, a person in the armed forces, or a union worker away from town on a job might all retain residency. Likewise, a person might be registered to vote in one town but reside in a nearby town because of a housing shortage in their hometown, or perhaps their house has burned down, or they have lost their apartment. Residency is based on the *intent* to reside in or return to a place. The best proof of that intent is a valid voter registration card.

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Question #4:

We held our election, and the city clerk is getting complaints from a family because she refused to send them absentee ballots.

LGS: Why did the clerk refuse to send them absentee ballots?

Caller: Because they aren't living here.

LGS: Have they changed their voter registration?

Caller: No. That's what they say too.

Answer:

First start by checking the master voter registration list provided by the Division of Elections. If the name appears on the list, then the person is a registered voter and should be sent an absentee ballot. If the name does not appear on the list, the person should still be sent an absentee ballot, and the canvass board should determine whether or not to count the ballot. No one should be denied an absentee ballot unless the time permitted for the distribution of absentee ballots has passed.

Question #5:

Caller: People in town are complaining about a couple of families who are voting.

LGS: Why are they complaining?

Caller: Well, they live at 123 Outback Street, which is outside of the city limits.

LGS: Well, I can understand why some people are complaining. To vote in city elections, a person must be a resident.

Caller: They've voted before.

LGS: Did people complain then too?

Caller: Yes.

Answer:

Again, refer to the master voter registration list provided by the Division of Elections for that city. Remember residency is based on the intent to reside or return to a place and not necessarily on actual physical residency.

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Question #6:

(From a corrections officer.) Some prisoners wanted to vote. I told them they couldn't because they were in jail.

Answer:

Wrong. Always allow them to vote. If they have done something that removes their voting privileges, the Division of Elections will make that determination when preparing the master voter registration list for the municipality.

Question #7:

The 30-day voter registration deadline for the October election falls on a Sunday. (It will always fall on a Sunday for a Tuesday election date.) Can the deadline be moved up to Friday?

Answer:

No, the deadline can't be moved to Friday. The assembly or council needs to decide how they will deal with the deadline. The city can open its office for a couple of hours on Sunday, or forms can be made available at public places open on Sunday such as libraries or community centers, or the city can post a notice on the city hall door making the clerk or mayor available to register anyone to vote. If the forms are left in a public place on a Sunday, an official such as a librarian, city employee, etc. must witness the registration form on or before the deadline date in order for the registration to count as being executed on or prior to the cutoff date. If the form is not witnessed, it must be signed and dated by the voter, postmarked on or before the cutoff date, and received by the Division of Elections within five days in order to meet the thirty day registration requirement.

Editor's note: A heavily advertised voter registration drive could be held in the community to register people to vote before the 30 day deadline.

Voter Registration Summary:

- ✓ Residency is based on the intent to reside or return to a place. It is not necessarily based on actual physical residency.
- ✓ The best proof of residency is the current voter registration card.
- ✓ The Division of Elections maintains the master voter registration list.
- ✓ To be eligible to vote, residents must be registered 30 days before the election.
- ✓ Voter registration forms must be signed and dated by the voter on or before the cutoff date, postmarked on or before the cutoff date, and received by the Division of Elections within five days in order to meet the thirty day registration requirement.
- ✓ If an official witness signs the form, it must be witnessed on or before the cutoff date.

II. Candidacy Requirements

Question #8:

A resident wanted to file for all three open council seats. Is this okay?

Answer:

No. A resident may file for only one vacant seat. If the council seats are designated (e.g., A, B, C), the city code typically will require a candidate to declare for which seat they are filing. If the seats are open, the code will ordinarily allow only one declaration of candidacy to be filed. In any case, a candidate cannot hold more than one council seat. So even if these provisions are not spelled out in the code, do not allow anyone to file for more than one seat.

Question #9:

A city employee declared candidacy for a city council seat. Doesn't she have to resign her city job?

Answer:

First, look at your ordinance and see what it has to say. A council by ordinance may allow for elected officials to also be city employees. In this case, the ordinance did not allow a city council member to work for the city. Therefore, in the event the candidate wins, she will need to make a decision to either quit her job or resign her council seat.

Clerk: What if she doesn't want to quit her job?

LGS: She needs to know that if she wins, that is a choice she has to make. She should not declare candidacy if she doesn't want to quit her job.

Clerk: But what if we want to allow her to keep her job and also serve as a council member too?

LGS: It is not an option as long as the city code does not allow a city council member to work for the city. The council can amend the code to permit council members to be city employees. They will need to take a look at the pros and cons for allowing council members to work for the city. This is a decision the council will have to make, and it needs to be enacted as an ordinance. We can send some sample ordinance options.

Editor's Note: See AS 29.20.620, which authorizes elected officials to receive compensation as city employees.

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Question #10:

Would a declaration of candidacy not completed under oath before the city clerk void the candidate's council seat?

Answer:

Yes and No.

Yes. The candidate in question asked his wife to pick-up the declaration of candidacy from the city clerk who was a personal acquaintance of the wife. The declaration of candidacy form was then completed outside of the city office. The candidate indicated on the form that he was filing for Council Seat 'C' and signed the form. The form was filed with the city clerk by the wife within the time frame specified in the city's code of ordinances. Upon receipt of the declaration of the candidacy form, the clerk could not determine that the signature was that of the candidate. Since the candidate did not sign the form in front of the clerk the declaration of candidacy form was not valid. He was not a valid candidate and could not serve if elected.

No. In the above situation, if the candidate had his signature notarized then it would be a valid form and the city clerk could maintain a record of his declaration of candidacy. If he won he could serve on the council.

Question #11:

A city has designated council seats, and a candidate for office picked up a nominating petition for council seat "A". The candidate got all of the signatures she needed, but changed her mind by the time she brought it back, and said she wanted to run for seat "C" instead. Subsequently she crossed out "A" and wrote in "C" on the nominating petition. Is this okay?

Answer:

No. If the candidate changes her mind, a separate petition must be filed for the new seat. It is possible a person may sign a candidate's petition for one seat but not for another. Simply changing the seat on the petition from "A" to "C" could misrepresent a voter's intentions.

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Question #12:

After a candidate for office turned in his nominating petition and had it certified, it was discovered that someone else had actually carried it around to get signatures. Now the filing deadline has closed. What should the clerk do?

Answer:

In this instance, the code required that the candidate personally witness the signatures on the petition. Since someone else obtained the signatures, the petition is invalid.

Editor's Note: Candidates for public office are responsible for meeting candidacy deadlines. Failure to meet the requirements may result in disqualification for office and/or the inability to change seats.

Question #13:

A voter filed nominating petitions for the council and school board. Can he do this?

Answer:

Yes. It is common in some small towns for a person to be on the school board and the city council at the same time. There is no state law that prevents people from holding both offices. The council can pass an ordinance that limits people to holding only one office if it chooses. In Alaska, there are 18 cities in the Unorganized Borough that operate their own school districts and elect both city councils and school boards.

Question #14:

What happens if a candidate who files for a council seat is not a registered voter at the time they file for office? Can you take their name off the ballot?

Answer:

In this case, the city code didn't require that a candidate be registered with the municipality 30 days before the election. The candidate believed himself to be registered up until he received notification from the city clerk. The clerk informed him that his name had been purged from the State voter registration list because he had not voted recently in a state election. The candidate denied ever receiving notification that his name was going to be purged by Division of Elections. Under protest, he immediately registered.

The City Attorney's opinion in this matter stated, "a person may vote only if he is qualified to vote in state elections and has been a resident of the city for 30 days

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immediately preceding the election and who is registered to vote in state elections in their precinct and is not disqualified under Article V of the State Constitution.” In this case the attorney argued that the voter did meet the requirements of residency. To determine whether the candidate is “qualified to vote in state elections” state election law would have to apply:

Voter qualifications are set forth in AS 15.05.010. The voter must be: (1) a citizen of the US; (2) 18 years or older; (3) a resident of the State and of the election district in which the person seeks to vote for at least 30 days just before the election; and (4) registered before the election as required by AS 15.05.1070 and is not registered to vote in another jurisdiction.

The attorney said that, under AS 15.07.040, a qualified voter may register at any time. However, he or she may not vote an election if he or she registered less than 30 days prior to the election. In this situation, the candidate couldn't vote in the municipal election, but is a “qualified voter” immediately after registration. In the attorney's opinion, the Code allowed the candidate in this particular community to run for office even though he would not be able to vote in that election because he did not register 30 days in advance.

Editor's Note: AS 15.15.198 provides that an inactive voter whose name doesn't appear on the master voter registration list can still vote a question ballot, and the vote would be counted if he was registered to vote in one of the last two general elections. If an inactive voter is purged after the second general election, he needs to reregister and would be eligible to vote only if he registered 30 days prior to the election. In this case, it is assumed that the candidate was not registered to vote in one of the two most recent general elections.

Question #15:

(*First class city example.*) During our election, the person receiving the highest number of votes for a school board seat didn't meet the physical residency requirement by a few days. What should I do?

Answer:

LGS: First, look at what your ordinance says.

Clerk: It says he must be a resident. But he used to live here and this person would make a good school board member.

LGS: The ordinance still says he has to meet that residency qualification.

Clerk: What if no one complains?

LGS: What if someone does?

Editor's Note: Residency should be checked when the candidate files for office to avoid this situation from occurring.

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Question #16:

Is a candidate eligible to run for city council who was previously elected to the council but removed because he was convicted for disorderly conduct under the influence of alcohol?

Answer:

If the person in question is qualified as provided in AS 15.05.010 and AS 29.20.140, then the person is eligible to run for city council.

Question #17:

A candidate ran a last minute write-in campaign and was not elected to the city council. Apparently the declaration of candidacy form had a closing date but not a closing time on that day. The candidate wanted to contest the election since there was no closing time on the forms.

Answer:

The city closed the declaration of candidacy filing period on the date specified in their ordinance at the regular close of business hour, and therefore, followed its election procedures. It was recommended that the council add a closing time in the future to avoid this situation; however, the lack of a closing time on the declaration of candidacy form should not void the election.

Question #18:

A school board candidate filled out a declaration of candidacy form for seat 4. No nominating petition is required in this municipality. On the same day (which was also the deadline for filing), the candidate changed his mind and decided to run for seat 1. The clerk's assistant crossed out seat 4 and wrote in seat 1. Did the candidate need to fill out a new declaration of candidacy?

Answer:

In this situation since the candidate filled out the form before the clerk and did not need to get signatures with his declaration, his amended declaration for seat 1 was valid. In the future, we would recommend that the candidate fill out a new declaration of candidacy form.

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Candidacy Requirements Summary:

- ✓ Candidates may file only a single declaration of candidacy for city council or run for a single designated seat.
- ✓ Unless otherwise prohibited in the local code, residents may be elected to both the city council and school board.
- ✓ Under AS 29.20.620, municipalities may adopt code provisions to allow person to be both council members and city employees.
- ✓ A candidate is eligible to run for office if he meets the statutory requirements in AS 15.05.010 and AS 29.20.140 even if he was previously removed from office.
- ✓ It is important to specifically state in the election ordinance what the deadline (day and time) for filing declaration of candidacy forms.

III. Council Seats

Question #19:

Seats A, B, and C are vacant, and two candidates have filed so far, one for seat A and one for seat B. Another person is interested in running and wants to know if any seats are still open. Can I tell him that no one has filed for Seat C yet?

Answer:

Yes, of course.

Question #20:

The filing deadline closed. No candidates filed for the vacant council seats. What should the city clerk do?

Answer:

Leave the ballot open and hope for “write-in’s”. An open ballot has a blank line for voters to write in a candidate’s name for each vacant office and a box to be marked in front of it.

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Question #21:

No one declared candidacy for a vacant seat on the council. There were a bunch of write-in's. However, the person with the most write-in votes declared for another seat and won. What should the clerk do?

Answer:

The candidate with the most votes cannot be considered for two seats and would have to remain on the seat he declared his candidacy for. Unless there is a 40% vote threshold, the next highest vote getter would win the seat.

Post Script: The next highest vote getter didn't want to be on the council and the next three write-in's had the same number of votes. What now? Certify the election results. The reluctant candidate has thirty days to take his oath of office before it can be declared vacant or the candidate can write a letter of resignation to the council who can then declare it vacant and can appoint a replacement.

Question #22:

No one filed for any of the council seats. We had the election, and I have lots of write-ins. Now what do we do?

Answer:

First, make sure the top vote getting write-ins are, according to your ordinance, qualified to be council members. The council should certify the election results. The newly elected council members who do not wish to serve can either fail to take office or take office and resign. The council can then appoint individuals to the vacant seats to serve until the next regular election.

Question #23:

One of our council seats was filled by a write-in candidate who said he didn't want to serve in the office. What should the clerk do?

Answer:

Get your election ordinance out and review it. Go ahead and declare this person the winner. He has the option of not accepting the council seat. At that point, the council declares the seat vacant and fills the seat by appointment.

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Question #24:

What options are available if a municipality missed a deadline and can't hold the municipal election in October as they are scheduled?

Answer:

The city must hold a special election at its earliest opportunity while following its special election procedures. An option would be to reschedule the election for November and hold it concurrently with the State election if it is a State election year. The new election date would still have to be precleared with the USDOJ with an expedited request. Voters would have to sign both the municipal and State election registers and separate ballot boxes must be used as well.

Question #25:

How many seats should be on the ballot? Two council members had resigned mid-year, and two people were appointed to those seats. Additionally, the vice-mayor resigned and was appointed back to his original seat since no one else wanted to take it.

Answer:

The three vacant seats plus the regular seats normally up for election would be on the ballot. Since the council approved the vice-mayor's resignation, and he was appointed back to his vacant seat, his seat is up for election in October. This seat along with the two others that were vacated mid-year brings the total to three vacant seats up for election.

Question #26:

What is the procedure for filling a vacant council seat if no one is elected to it?

Answer:

If no one is elected to the council seat, the election is certified and the new council members fill the vacancy. This means that the remaining council members appoint someone to serve until the next regular election when the balance of the term of that seat is up for election.

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Question #27:

What happens if a sitting council member who is running for mayor wins?

Answer:

In this case, the city is a first class city where the mayor is not part of the council. The successful mayoral candidate would have to decide which seat she/he wishes to hold. If the candidate chooses to be mayor, she/he would need to resign the council seat. The council would then fill the vacancy according to procedures established in ordinance. If the candidate wished to remain on the council, she/he would have to refuse to take office as mayor. Then the mayor vacancy would have to be filled according to state law or home rule charter.

Question #28:

When do successful candidates take office?

Answer:

Successful candidates are sworn in and take office at the first regular council meeting after certification of the election unless a different date has been prescribed by local ordinance.

Council Seats Summary:

- ✓ Municipal elections must be held whether or not there are declared candidates for office.
- ✓ Write-in candidates who win council seats and do not want to serve will still be certified as the winner of the council seat. After certification, the reluctant incumbent can then fail to take office or resign.
- ✓ If a city can't hold its regular election as scheduled, it must hold a special election. If it is a State election year, the municipality can hold a special municipal election on the same day as the State election. Remember, the special election must be precleared.
- ✓ Since State and Municipal elections are separate elections, the ballots need to be handled separately and kept in a separate ballot box.
- ✓ Council members are only appointed to their seats until the next regular election. If a council member is appointed to a seat, the clerk needs to put that seat on the ballot for the next regular election.
- ✓ Write-ins must be accepted if they meet the candidacy qualifications even if they didn't campaign for office

IV. Preclearance Requirements

Question #29:

The city built a new community hall and moved the election site from the school to the community hall. Do they have to get a preclearance from the U.S. Department of Justice (USDOJ)?

Answer:

Yes. Any change that effects or has the potential to effect voting rights must be precleared with the USDOJ. Examples of changes requiring preclearance are polling place, special election date, or change of regular election date.

Question #30:

The city clerk failed to follow the local ordinance and post a sample ballot for five days. The council ordered a new election. Do they have to have preclearance from the U.S. Department of Justice (USDOJ)?

Answer:

Yes. By law, the U.S. Department of Justice is allowed a full sixty (60) days to review a preclearance request. Therefore, a city should submit its request as soon as possible. In a case like the one described above, the city should submit its preclearance request on an “expedited review” basis.

❖ ❖ ❖ ❖ ❖ **Notes** ❖ ❖ ❖ ❖ ❖

V. Rescheduling Elections

Question #31:

(One week before elections.) The clerk quit last month and nothing was done about the election. Can you help me prepare for the election next week?

Answer:

No. We can work on rescheduling the election, but it is too late to go ahead with the regular October election.

Question #32:

About two weeks before the regular election the mayor (of a first class city) resigned over the phone stating that he was living in another city and would not be back. What do we do?

Answer:

Request the resignation in writing, have the council accept the resignation, declare the seat vacant, and schedule a special election to elect a new mayor. Follow the same procedures as for the regular election allowing sufficient time for preclearance.

Editor's Note: Be sure to check your code for specific requirements for filling vacancies.

Question #33:

The mayor decided to change the Election Day because a lot of people were going to be out of town. Is this okay?

Answer:

No.

*Editor's Note: The mayor does **not** have the power to arbitrarily change election dates. The City's election ordinance must be followed. The clerk is responsible for reminding residents of the absentee ballot procedures and encouraging people who are going to be out of town to take advantage of this way of voting.*

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Question #34:

We were supposed to have our election on election day (the first Tuesday of October), but there weren't very many voters in town so we decided to hold the election in a couple of weeks' time when folks come back. Is this okay?

Answer:

No. Elections must be held in accordance with the provisions of the city code. In this case, since the date of the election has passed, the city would have to schedule a special election. Remember that the U.S. Department of Justice must preclear special elections.

Question #35:

We forgot to hold our election. (*Actually the city clerk went out of town and missed the key dates.*) What do we do?

Answer:

Hold a meeting with the council as soon as possible. Have the council set a date for a special election according to the provisions of the city ordinance. Write a letter to the U.S. Department of Justice Civil Rights Division requesting preclearance stating with specificity what happened.

Post Script: This particular city did this two years in a row! Now the regional office routinely gives them a "wake up call" as a reminder.

Question #36:

The clerk wants to go to an all mail election and will only mail ballots to people she know live in town. Can she do this?

Answer:

Maybe, there are several issues to this question.

- ◆ Elections must be held in accordance to the provisions of the city code. If the code does not allow voting by mail elections, the code must be changed.
- ◆ Since the code must be changed to allow voting by mail, the U.S. Department of Justice must preclear it.
- ◆ Once the U.S. Department of Justice has precleared the change, ballots must be mailed to every registered voter listed on the master voter registration list provided by the Alaska Division of Election.

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Rescheduling Elections Summary:

- ✓ Regular municipal elections must be held annually on the date prescribed by State law or local ordinance.
- ✓ Failure to meet notice and other requirements for the regular election requires that a special election be scheduled and precleared by the U.S. Department of Justice.
- ✓ Notice and other requirements for a regular election can not be shortened.

VI. Polls

Question #37:

How late must the polling place be kept open on election day? Can you close early?

Answer:

Check your city election code. Typically, the polling place is open from 8:00 a.m. until 8:00 p.m. **Don't close the polling place early or turn off the lights.**

Question #38:

The mayor wants to change the polling place. Is this okay?

Answer:

A change in the polling place needs to be coordinated with the Division of Elections. When a polling place is changed, the voters must be notified. If the change is permanent, the Division of Elections will notify the voters. If the change is temporary for the municipal election only, then the clerk will need to notify the voters. In any case, changing the polling place needs to be "precleared" by the U.S. Department of Justice (USDOJ). This usually takes between 60-90 days. Remember that **any change** that **affects** or has the **potential to affect** voting rights must be precleared.

VII. Ballots

Question #39:

The clerk received several absentee ballots in the mail that had not been properly certified. What should the clerk tell the city council?

Answer:

The clerk should forward the absentee ballots to the canvass committee and recommend that the absentee ballots not be counted since the absentee voting procedures were not followed.

Question #40:

A council member told a voter that she could fax a ballot to local voters who were out of town on business. Is this okay?

Answer:

No. First of all, the clerk is the local elections official. A member of the council is *not* authorized to act on behalf of the clerk. Secondly, the council member has no business giving official advice or instructions to voters. In addition, the code contains (or *should* contain) specific procedures for absentee voting.

Editor's Note: The State of Alaska now has procedures for accepting faxed ballots (AS 15.20.066). Municipalities may also adopt procedures for accepting faxed ballots. If a state statute is adopted by reference, it will change when state law is amended without a local public hearing and sometimes without anyone's knowledge. In any case, the voter should be made aware that by faxing his ballot, he is waiving his right to a secret ballot.

Question #41:

The City and IRA Council have their elections on the same day. The clerk decided to let the IRA Council use the same ballot box. Is this okay?

Answer:

No. The city ballot box is for *city elections only*. Placing other ballots in the city ballot box could lead to charges of tampering and to a contest of election being filed with the city council. The IRA council has its own rules and procedures to follow so that its elections are free from allegations.

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Question #42:

Is there a state requirement for printing sample ballots on yellow paper?

Answer:

No, but check local code. In this case, the local code required that sample ballots be printed on yellow paper.

Editor's note: This question highlights the importance of reviewing the local code for all election requirements. Not all election requirements are state requirements

Question #43:

The Borough has a confusing proposition on the ballot. Can the election judges explain the proposition or can written handouts be prepared?

Answer:

No, election judges should not explain the ballot proposition, but written handouts can be prepared. The clerk should do everything s/he can to make sure the ballot proposition is understandable. The municipality prepares an official written ballot explanation. The written material should be neutral and should be available prior to the election so that the voters are prepared before they vote.

Editor's note: Explaining ballot propositions should not be confused with translating ballot propositions. Bilingual information and assistance must be provided at every stage of the election process including assistance at the polling place.

Question #44:

The clerk received a request for an absentee ballot by fax from a couple living in a remote village in Taiwan. The clerk checked the voter registration list and mailed the absentee ballot. The voters wanted to know if they could fax their ballot because they didn't think it would make it back before the canvassing committee counts the ballots if they mailed it.

Answer:

Under AS 15.20.066, the State allows voters to fax their ballots for State elections. The local governing body must decide if it will accept faxed ballots as well. However, it is the voter's responsibility to apply for an absentee ballot in time to have it returned before the ballots are counted. When the actual ballot is mailed, the deadline to receive the ballot back should be included in the cover letter.

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Editor's note: Some municipalities have adopted State elections procedures by referencing the appropriate State statutes. This is convenient and saves time and energy when writing the ordinance. However, problems occur when the State changes those laws and the municipality is not aware of the changes. The result is a change in the ordinance that the municipality may not want. For example, many election ordinances adopted the State's absentee balloting procedures by referencing the appropriate State statute in the ordinance. Those municipalities now have fax voting whether they know it or not! If your municipality prefers to adopt State law by reference, make sure the State law and your ordinance are reviewed yearly.

Ballots Summary:

- ✓ Municipalities may amend their ordinances to accept ballots by fax. The voter needs to be aware that he is waiving his right to a secret ballot. A signed statement by the voter can accomplish this if it is included as part of the absentee ballot. See AS 15.20.066.
- ✓ Be sure to review local ordinances for election requirements.
- ✓ Election material can be prepared by municipalities to explain ballot propositions as long as the language is neutral and doesn't promote one side of the issue.

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VIII. Questioned Ballots

Question #45:

A person at city hall insisted on being allowed to vote in the municipal election even though his name does not appear on the voter registration list. What should the election judge do? Can the voter be allowed to vote?

Answer:

Don't argue with a person who wants to vote. Let him or her cast a questioned ballot. The canvass board will decide whether or not to count the vote.

Question #46:

There is a person who wants to vote, but I know he committed a crime that would remove his voting rights. What should I do?

Answer:

If he's on the voter registration list, the Division of Elections either has not yet removed his name or has restored his voting rights. Allow him to vote a questioned ballot and check with the Division of Elections to find out if you should count his ballot.

Question #47:

Should a voter residing outside the city limits be allowed to vote in a special municipal election? The voter insisted on voting at the polling place.

Answer:

The election judges were correct in allowing the voter to cast a ballot. However, since the voter was not on the municipal voter registration list, the ballot must be cast as a questioned ballot. If, upon investigation, the municipal clerk determines that the voter doesn't meet all the voting requirements, then the canvassing board wouldn't count the ballot.

Question #48:

The election judge mistakenly allowed four people who were not on the voter registration list to vote regular ballots instead of questioned ballots. The judge could not find their names on the list and had them sign the back of the list. Later the clerk was informed and

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checked on the voters. Three of the people appear to be eligible to vote, but the fourth doesn't appear to be eligible. What should the clerk do?

Answer:

We recommend tallying the votes. The ballots should then be recounted to make sure that the results remained the same. If there is a one vote difference between any candidates or propositions, the clerk should seek legal advice if the code is not clear on what procedures to take. One option would be to hold a second election for the candidates or propositions that had only a one vote difference. If there is a wide margin between candidates or propositions, then the vote cast from the ineligible voter would not change the outcome of the election.

Editor's Note: Election judges should be instructed to always have a person who is not on the voter registration list vote a questioned ballot. It is better to follow all election laws than to have an election contested by not following the laws.

Question #49:

The ballot says vote for no more than seven candidates. One voter marked eight candidates. One candidate that was marked was indistinguishable since the voter didn't mark junior or senior. Can the judges just not count that name and count the other seven names on the ballot?

Answer:

The ballot should be considered an invalid ballot. Anytime a ballot has more candidates marked than allowed; the ballot can't be counted. The clerk should recommend to the canvassing board that the ballot not be counted since more than seven candidates' names were marked.

Questioned Ballots Summary:

- ✓ Everyone has the right to vote. If a voter is challenged, he may vote a questioned ballot. The canvass committee will decide whether or not to count the ballot.
- ✓ The Division of Elections maintains the master voter registration list and, therefore, makes the final determination as to whether or not a person is a qualified voter.
- ✓ All voters should be allowed to vote. If the voter's name doesn't appear on the voter registration list, he should vote a questioned ballot.
- ✓ Any time a ballot has more candidates marked than allowed, the ballot can't be counted.

*Editor's note: When a voter makes a mistake on his ballot and asks for a new ballot, the first ballot is called a **spoiled** ballot. When a ballot is being reviewed for counting, it is called a **valid** ballot if it can be counted. It is called an **invalid** ballot if it can't be counted.*

IX. Electioneering and Election Offenses

Question #50:

We think we might have a problem. During the election someone wrote “Vote for Sonny Boy” on the ballot box. Is this electioneering?

Answer:

Yes, it is considered electioneering, which is illegal. The Local Government Specialist (LGS) recommended to the council that they invalidate and reschedule the election.

Question #51:

It is Election Day and the election judges are letting people know the names of the two people who would like to be “write-in” candidates for the two seats that no one declared for. Is that okay?

Answer:

No. The judges should not give out the names of individuals as write-in candidates. This is electioneering and could cause the election to be contested and declared void.

Question #52:

A voter is complaining that when she came in to vote, the election judges told her who was running as a “write-in” candidate for a seat that no one declared for. Should we be concerned about this?

Answer:

Yes. This is electioneering. Election judges can not tell voters who is running as a write-in candidate.

Question #53:

The mayor is threatening community members running against him in the upcoming election.

Answer:

Threatening other candidates is a violation of Alaska election laws, and should not be tolerated by the community. In this case, the city called the State Troopers and requested a trooper be present to monitor the election.

Electioneering and Election Offenses Summary:

- ✓ Electioneering is an illegal campaign practice violating both federal and state laws.
- ✓ It is important to properly train election judges to recognize and prevent electioneering.
- ✓ Election offenses, such as threatening other candidates, are a serious matter and should not be tolerated.

X. Miscellaneous

Question #54:

If everyone in the city has voted, can the polls be closed early?

Answer:

No. The U.S. Department of Justice precleared your city election code. The code states the time of opening and closing of the polls, which is usually 8 AM to 8 PM. Any change that affects voter rights (closing early) must be done by ordinance and precleared by the U.S. Department of Justice.

Question #55:

Can alcohol be sold on Election Day?

Answer:

Check your code. AS 04.16.070 prohibits the sale of alcohol on Election Day while the polls are open unless the city council has an ordinance that allows it.

Question #56:

When does an elected official's term of office start?

Answer:

The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or ordinance (AS 29.20.150(c)). Check your city code. It may state that the term begins upon certification of the election or at the organizational meeting at the next regular council meeting if the meeting is held more than seven days following the election. However, the official must be sworn in and sign an oath of office before beginning their term of office.

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Question #57:

A council member called to say she thinks there might be a problem with the election because “someone who is not a very happy or nice person” was elected and she doesn’t want to do council business with someone of such a disposition!

Answer:

Tell the council member to review the election ordinance and find out what she thinks the problem might be. Advise the council member that the election results are the will of the electorate, and she must abide by their decision.

Question #58:

Can a city council, working on contract negotiations with a city manager, finish working on contract negotiations before certifying a municipal election?

Answer:

The certification of election date is specified in statute and code and should be a special meeting with the only agenda item being the acceptance or rejection of the election results. The contract negotiations should be finished at another special meeting.

Question #59:

What happens if the clerk can’t get anyone to serve as an election judge?

Answer:

The clerk should have everyone vote an absentee ballot. The ballots are counted using the absentee ballot counting procedures established in local ordinance.

Editor’s note: The community could adopt an ordinance that allows for an election to be held using ballots sent and received through the mail or using absentee voting procedures

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Question #60:

The clerk called to double check how to calculate the 40% requirement. There was only one seat open for school board. For the council, there were two undesignated seats.

Answer:

Because the school board only had one seat open, the clerk totals all votes for that seat and multiplies by 40%.

Since the council had two undesignated seats, the clerk divides the total number of votes for the two council seats by two and then multiplies by 40%. The clerk was happy to hear that. They forgot to divide by two on election night for the council seats.

Question #61:

Can the 40% requirement be changed to 50%? A council member is concerned that members are being elected to the council without majority support.

Answer:

Yes, the 40% requirement can be changed. The enabling statute in Title 29 says, “unless otherwise provided...”

Editor’s note: Increasing the 40% requirement could cause more runoff elections for the city and an increased cost to the municipal election budget.

40% Requirement Summary:

- ✓ To determine the 40% requirement for undesignated seats, the total number of votes is divided by the number of seats and then multiplied by 40%.
- ✓ State statute (AS 29.26.060) permits municipalities to modify or waive the 40% requirement. Any changes to the election ordinance need to be precleared by the U.S. Department of Justice (DOJ).

XI. Local Options

Question #62:

The clerk is worried that she may receive another request for a change in the local option law and is afraid that the petition won't be done in time for the October election. The city can't afford a special election.

Answer:

There is no time line for local option elections in statute. AS 04.11.507(b) gives the municipality the leeway to either have the local option election at the regular election or hold a special election. So if the petition is not ready for the October election, she can wait until the next regular election to put the local option question on the ballot. In either case, the local option question must be on a separate ballot.

Local Option Summary:

- ✓ The local option election may be held either in conjunction with the regular election or at a special election. There is no timeline for the election after receipt of a petition signed by registered voters equal to 35% or more of the number of votes cast at the last regular election.
- ✓ Remember, the local option question must be on a separate ballot.

XII. Tie and Run-off Elections

Question #63:

We held an election, and no one signed up. We ended up with a lot of write-ins, but nobody came up with a 40% majority, as our code requires. What should I do?

Answer:

AS 29.26.060 states that if no candidate receives over 40% of the votes, a run-off election is held between the two candidates receiving the highest number of votes. In this case, because the seats are at-large and not designated the number of write-in candidates placed on the run-off ballot must be twice the number of open seats.

Editor's Note: Check the municipal code for provisions relating to the 40% requirement since it may be waived by local ordinance.

Question #64:

Four write-in candidates for Seat "B" each get four votes. In this particular village the election code requires a 40% vote to win the seat. How does the clerk decide which two candidates get to be in a run-off election?

Answer:

AS 29.26.060(c) states that a runoff election is held between the top two vote getters for a given seat. The four candidates should draw straws, flip coins, or use some other neutral means of selecting two of the four to run as finalists for the seat. If all four were able to run again, the election could end up with the same result.

Question #65:

A city clerk called to ask if the run off requirement could be waived in a tie vote.

Answer:

In this case, both candidates met the 40% requirement and were tied. The winner should be decided by drawing straws or tossing a coin. If none of the candidates met the 40% threshold, then a run off election would be necessary between the top two candidates.

Editor's Note: Check the municipal code for run-off election requirements.

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Question #66:

The city held a runoff election because two candidates did not get 40% of the vote for that seat. In addition, the city placed a sales tax initiative on the runoff ballot. Is it legal for a runoff ballot to also contain a sales tax initiative question?

Answer:

There is no requirement prohibiting the placement of a sales tax initiative question on a runoff ballot; however, sales tax questions must have proper notice which is at least 20 days.

Post Script: In this case the city held the runoff election with the sales tax question past the three week deadline for the runoff.

Question #67:

(*Second class city example.*) Following the election, we had a re-organization meeting to elect the new mayor. Three council members were nominated for mayor and each received two votes apiece. After the vote, two council members declined so the third candidate was nominated with only two votes. Is this okay?

Answer:

It depends. Was a motion made, and did the third candidate receive a majority of votes to take the mayor's position? If not, ask for a revote or repeat nominations if necessary.

Tie and Run-off Elections Summary:

- ✓ The 40% requirement is calculated differently depending on whether the seats are designated or at-large.
- ✓ Run-off elections are held only if one candidate does not receive 40% of the total votes for that seat. The ballot for a run-off election does not provide for write-in candidates.
- ✓ A run-off election is not held in case of a tie unless the candidates did not meet the 40% requirement. In case of a tie, the winner is determined by lot (drawing straws, flipping coins, or pulling a name out of a hat).

XIII. Canvassing and Certifying Elections

Question #68:

The judges always lock the door during the counting of election ballots so that people can't distract them. Are they supposed to do that?

Answer:

No! The judges need to let the public be there during the count. They can certainly ask that people not get in their way or be noisy, but they can't lock them out.

Editor's Note: No one other than the election judges should be allowed to handle the ballots.

Question #69:

The council would like to certify the election but we need clarification on three questions. First, the election judges didn't fill out the second page of the ballot for propositions and questions. Can they do that now? Second, did the judges have to cut off the number in the corner of the ballot? And third, one of the election judges is a current council member. Is that all right? The council member wasn't running for office.

Answer:

First, if there weren't any propositions or questions up for election, then it won't matter. If there were ballot propositions, they should have been tallied by the election judges and approved by the canvass committee before being certified. Second, elections in Alaska are held by secret ballot. The purpose of tearing off the ballot identification number is to assure secrecy. Failure to tear off the ballot number could invalidate the election. Third, it is not good policy to have a seated council member also serving as an election judge.

Post Script: The recommendation in this case was to re-do the election.

Question #70:

The old council is out of town. Our ordinance states we are supposed to meet tonight to certify the election. I think I'll have a quorum next Monday. What should I do? If we don't certify it, do I have to hold a new election? The old council was all voted off, and they don't care anymore.

Answer:

You won't need a new election you just need the council. Reschedule the meeting and keep bugging them so they won't forget. It can be a short meeting, and then they are free. *Editor's Note: Keep in mind that the clerk could schedule a teleconference if*

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everyone agreed. That way, if members are out of town on business, they can still certify the election. The certification of the election is a public meeting, and members of the public may be present at the teleconference site.

Question #71:

Can a municipal election be certified if the City Council refuses to certify the results?

Answer:

You must look at the reason the council is refusing to certify the election. In this case, the local government specialist recommended to the city clerk that she certify the results of the election. The LGS noted that the city council had acted upon the validity of all the ballots including the absentee and questioned ballots. It was only after the final vote tally, upon which the incumbent mayor was defeated by one vote, did the city council refuse to certify the election. There were three absentee ballots that had been voted on that were not accepted because of lack of proper witnesses. As it turned out, those three ballots belonged to the children of the incumbent mayor and would most likely have changed the results of the election.

Question #72:

Do election judges need to be present at the canvassing committee meeting?

Answer:

It depends on local ordinance. Typically, the election judges' duties are done on election night after the ballots are tallied. If not required by local ordinance, the council may request the election judges or head election judge to be present at the canvassing committee. Remember, the election judges should be compensated for all their time.

Question #73:

What happens if the canvassing committee meeting is postponed more days than is allowed in the code? Will the State step in and order the council to canvass the election?

Answer:

No, the State will not step in and order the election to be canvassed. However, someone could contest the election and file suit that the city is not following its election code. Even though the State will not step into this matter unless a significant state interest is at issue, it is still a good idea for the City to follow its code of ordinances. If the meeting cannot be held on the assigned date, it should be held as

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soon as possible after that date. This maintains public trust and upholds the integrity of the election process.

Question #74:

The clerk still has outstanding absentee ballots and the canvassing committee is meeting tomorrow.

Answer:

The local code says that the deadline for receipt of absentee ballots is prior to the canvassing committee meeting and that the canvassing committee is to meet on Friday. Any ballots not received by then should not be counted. When the municipality receives late ballots, a letter should be written to the voters notifying them that their ballots were not counted.

Question #75:

The election certification is scheduled for tomorrow. The clerk still has one outstanding absentee ballot out. The mail plane didn't come in today due to bad weather, and today is the deadline for absentee ballots. If the ballot comes on the mail plane tomorrow, can it be counted?

Answer:

Yes, if the election code allows for extenuating circumstances. However, it should be left up to the canvassing committee to make that determination.

Canvassing and Certifying Elections Summary:

- ✓ The public has the right to observe the ballot count but may not participate in the count or interfere with the election judges.
- ✓ Canvassing votes must be done within the time frame established in the local ordinance.
- ✓ The questioned and absentee ballots should be accepted or rejected before they are opened. Rejected ballots should never be opened.
- ✓ To maintain the public trust and the integrity of the election, election procedures outlined in local ordinances should be strictly followed.
- ✓ Local ordinance should be reviewed to determine the deadline for the receipt of absentee ballots. Remember absentee ballots must be postmarked on or before Election Day.

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