

CONDUCT OF ELECTIONS

The county election authority is responsible for the conduct of the election. However, several very important responsibilities are left to the city clerk.

General Duties

The governing body calls for the election usually by ordinance. Only certain dates may be selected except in the case of bond elections caused by emergency, contested elections, tie-vote runoffs or dates specifically provided by the city charter. The authorized dates are the first Tuesday after the first Monday of February, August (non-primary years), November and the first Tuesday after the first Monday in April (§115.123 RSMo). Election calendars are available from the Secretary of State's office (www.sos.state.mo.us.gov) or the county election authority.

Generally the ordinance calling for the election includes the time and date of the election and the purpose of the election. Also, it instructs the city clerk to give notice of the election as prescribed by law (§115.125 RSMo). State statute has established a uniform filing period that opens 16 Tuesdays before Election Day and closes 11 Tuesdays before Election Day (§115.127(5) RSMo).

The following procedures are suggested as a guideline:

a) Notify the County Election Authority of the Election

The city clerk should notify the county election authority (either the county clerk or board of election commissioners) of the election date established by the governing body. This notification must be made no later than 5 p.m. on the tenth Tuesday prior to the election (§115.125 RSMo). The notice must be in writing, specify the name of the officer or agency calling the election and include a certified copy of the legal notice. The notice may, with prior notification to the election authority, be sent by facsimile transmission prior to 5:00 p.m. on the tenth Tuesday prior to the election, provided the original copy of the notice and a certified copy of the legal notice is received by the election authority within three business days from the date of the facsimile transmission (§115.125(1) RSMo). The county election authority will be responsible for conducting the election upon receipt of the notice.

b) Advertises filing dates

The legal notice must be published in at least one newspaper of general circulation in the political subdivision prior to the opening of filing. Such notice must include which offices are to be filled, the opening filing date, location to file at, and the closing date for filing (§115.127(5) RSMo).

c) Accepts filing of candidates for city office

Filing must begin at 8:00 a.m. the sixteenth Tuesday prior to the election and the closing date must be 5:00 p.m. on the eleventh Tuesday prior to the election (§115.127(5) RSMo).

d) City clerk provides and has each candidate sign a written notice of the obligation to file a personal financial interest (ethics disclosure) statement (§105.487(1) RSMo).

e) Remits estimated costs of election

The county election authority will estimate the cost of conducting the election no later than the fifth Tuesday prior to the election. The estimated costs must be deposited with the county election authority no later than the third Tuesday prior to the election (§115.077(2) RSMo);

f) At first meeting of the governing body after election, the city clerk should present the canvass of votes as prepared by county election authority;

g) City clerk issues the certificates of election and commissions to elected officials;

h) In case of tie vote, city clerk issues a proclamation calling for a run-off election or determines the winner by the drawing of lots (§115.517(3) and §115.517(4) RSMo); and

i) The total cost of the election is figured with additional payment or a reimbursement to the city made as quickly as possible by the election authority.

Filing of Candidates.

The city clerk accepts filing of candidates for city office. There is a standard form prescribed in §115.349 RSMo for filing for state and county office. The city clerk may want to use this form with some modification for those filing for city office. If possible a deputy should be appointed to accept candidate filing in case of absence of the city clerk.

The order that a candidate's name appears on the ballot is often very important to the candidate. State law requires that the political subdivision responsible for the oversight of the filing shall clearly designate where candidates shall form a line to file. The law also gives the municipality the option of allowing candidates who file on the first day to determine by random drawing the order in which such candidates' names shall appear on the ballot (§115.124(2) RSMo).

State law requires that persons with unpaid city taxes or municipal user fees on the last day to file a declaration of candidacy shall not be certified as a candidate for a municipal office, nor shall the person's name appear on the ballot as a candidate for such office (§115.346 RSMo). In third and fourth class cities state law also prohibits the election or appointment of individuals who are in arrears for municipal taxes (§79.250 RSMo §77.380 RSMo).

There are mixed opinions as to whether or not the city clerk must be assured that candidates filing for a particular office meet the eligibility requirements set out in the state statutes. A recent St. Louis County circuit court ruled that §115.346 RSMo was unconstitutional. However, officials with the Missouri Secretary of State's office and the Missouri Attorney General's office have stated that this circuit court decision carries no precedential weight and that §115.346 RSMo should still be considered valid.

An opinion has been released by the Office of the Attorney General that states that the county clerk may refuse to place on the ballot the name of a candidate he believes to be ineligible (Attorney General Opinion No. 87, April 11, 1972). The Secretary of State, Elections Division, has stated that this opinion is applicable to municipal elections as well. The city clerk may wish to seek legal counsel on this matter.

Candidates may challenge qualifications of opposition by filing a petition with the appropriate court (§ 115.526 RSMo).

Office Qualifications

Fourth Class Cities

No person shall be mayor unless he or she is at least twenty-five years of age, a citizen of the United States and a resident of the city at the time of and for at least one year next preceding his election (§ 79.080 RSMo).

No person shall be an alderman unless he or she is at least twenty-one years of age, a citizen of the United States, and an inhabitant and resident of the city for one year next preceding his or her election, and a resident, at the time he or she files and during the time he or she serves, of the ward from which he or she is elected (§79.070 RSMo).

All officers elected to offices under the city government shall be voters under the laws and constitution of this state and the ordinances of the city. No person shall be elected or appointed to any office who shall at the time be in arrears for any unpaid city taxes, or forfeiture or defalcation in office (§79.250 RSMo).

Third Class Cities (Mayor-Council Form)

No person shall be mayor unless he or she is at least thirty years of age, a citizen of the United States and a resident of such city at the time of and for two years next preceding his election. (§77.230 RSMo).

No person shall be councilman unless he is at least twenty-one years of age prior to taking office, a citizen of the United States, and an inhabitant of the city for one year next preceding his election, and a resident of the ward from which he is elected six months next preceding his election. (§77.060 RSMo).

Third Class Cities (Council-Manager Form)

In third class cities, with the manager form of government, the five council members are elected at large and must meet the same qualifications as council members in regular third class cities, except for the ward requirement (§78.460 RSMo). The mayor is chosen by the council from among its members.

Villages

No person shall be a trustee who has not attained the age of twenty-one years; who is not a citizen of the United States; who is not an inhabitant of the town at the time of his election, and has not resided therein for one whole year next preceding the time of his election. (§80.050 RSMo).

Residency

State law requires that candidates for municipal office must be residents of the municipality for which they seek office (see above for references). However, a recent court case has questioned what role the municipal clerk should play in determining whether a candidate is indeed a resident. The case, from the Southern District Court of Appeals, held that the municipal clerk did not have the authority to refuse to certify a candidate for office solely based on the clerk's belief that the candidate was not a resident. In light of this case, clerks would be advised to seek their city attorney's advice before considering residency as reason not to certify a candidate.

Financial Interest (Ethics Disclosure) Statements

In cities with an annual operating budget in excess of one million dollars, candidates for elective office must file a personal financial disclosure statement with the city clerk and the Missouri Ethics Commission within the prescribed time period, unless the municipality adopts an ordinance, order or resolution pursuant to §105.485(4) RSMo, establishing its own method of disclosing potential conflicts of interest and substantial interests (§105.483(11) and §105.485 RSMo). The clerk must keep the disclosure reports available for public inspection and copying during normal business hours. Personal financial disclosure calendars and other forms are available from the Missouri Ethics Commission at 1-800-392-8660 or on the Ethics Commission's website at www.moethics.state.mo.us

At the time of filing, the city clerk must provide the candidate written notice of the candidate's obligation to file a financial interest statement, which must be signed by the candidate. (§105.487(1) RSMo). The notice must set out the requirement, deadline and consequences for failing to comply. The Ethics Commission has a draft notice available, although no particular form is required to provide notice. In 2000 the Court of Appeals determined that the "Summary of Conflict of Interest and Campaign Finance Laws" published by the Missouri Ethics Commission did not satisfy the local election officer's obligation to notify a candidate of his or her duty to file a financial interest statement (Jackson County Bd. of Election Commissioners v. Paluka, 13 S.W.3d 684/Mo. App. W.D. 2000); therefore, the Commission urges local election officials to review the court opinion and consult with their local attorneys to determine whether local policies and procedures for giving notice comply with the statutory requirement and standards set by the appeals court.

Campaign Finance Disclosure

The Missouri Ethics Commission will send the "Summary of Conflict of Interest and Campaign Finance Laws" booklets to the clerk before the candidate filing period opens. The booklet is a summary of the laws contained in Chapters 105 and 130 RSMo. Candidates must

sign the acknowledgement form attached to the front of the booklet at the time of filing, verifying that the candidate received the summary when filing for office (§105.973 RSMo). When the date for candidate filing has ended, the city clerk mails the yellow copy of the signed form to the Missouri Ethics Commission and retains the white copy in the clerk's files. The law and campaign finance reporting forms are available from the Missouri Ethics Commission, P. O. Box 1370, Jefferson City, MO 65102, 573-751-2020 or 1-800-392-8660.

Certificates of election, or the issuing of an oath of office to any candidate, should be withheld until any required campaign finance disclosure forms are submitted to the city clerk by the winning candidate (§130.071 RSMo). The campaign finance disclosure forms should be filed immediately upon receipt and made available for public inspection (§130.056 RSMo). All candidates for election in a city election must file the applicable campaign finance disclosure forms.

** Note: Nonpartisan candidates for municipal office in cities of 100,000 or less are not required to file an exemption statement to form a committee and file disclosure reports if the aggregate of contributions received or expenditures made does not exceed \$1,000 and the aggregate of contributions from any one contributor does not exceed \$250 (§130.016(6) RSMo).

Write-In Candidate

To be eligible to be a write-in candidate, a declaration of intent to be a write-in candidate has to be filed. This declaration must be filed with the proper election authority prior to 5 p.m. on the second Friday immediately preceding the Election Day (§115.453(4) RSMo). This, however, does not apply when no candidate has filed for the office or if the number of candidates filed is fewer than the number of positions to be filled. When no candidate has filed, or if fewer candidates filed than the number of offices to be filled, write-in votes are counted regardless of whether a declaration of intent has been filed. An opinion has been released by the Office of the Attorney General relating to write-in candidates (Attorney General Opinion 110-01).

Voter Registration

For a person to be eligible to vote, he must be registered on or before the fourth Wednesday prior to the election. The county election authority should have the opportunity to close the registration books at the proper time and all potential city voters should be given the opportunity to register (§115.135 RSMo).

The First Meeting of the Governing Body

Once the city receives the certified election returns from the county the city clerk must issue the certificates of election (RSMo 115.523) and oath of office to successful candidates, the mayor then must sign all commissions of officers elected (§79.190 RSMo - fourth class cities; §77.320 RSMo -- third class cities). Various other procedures should take place following the certification of the election depending on the class of the municipality.

In villages, the board of trustees must assemble within 20 days and choose a chairman from among the board (§80.060 RSMo).

In fourth class cities, the board must select one of their own to be the acting president of the board of alderman (§79.090 RSMo). The alderman with this designation will have the full power of the Mayor when the Mayor is absent (§79.100 RSMo).

In third class cities, the procedures vary depending on the form of the government. Those with city manager governments must elect one of the council to be mayor and another councilmember to serve as chairman pro tem (§ 78.560). Mayor-Council cities have until the fourth Tuesday in April to select one of their members to serve as president pro tem (§77.070 RSMo).

An election may be contested in circuit court within 30 days after the official announcement of the election results (§115.577 RSMo) or within five days for a primary election (§115.531 RSMo).

Duties of City Clerks in St. Louis, Clay and Jackson Counties

St. Louis County, Clay County and Jackson County have a Board of Election Commissioners. However, the city clerk is responsible for the following:

- Notification of the county election board of the date of the election and provision of issue and/or certificate of candidates for election.
- Accepting all candidates' filings for office and provision of the list to the Board of Election Commissioners in the order of time of filing.
- Issuance of certificates of election after acceptance by the governing body of the canvass of votes by the county board of election commissioners. Certificate of election, or the oath of office, may not be given to candidates until they have filed all the required campaign finance disclosure forms.
- Receipt and maintenance of the campaign finance disclosure and personal financial disclosure (ethics) reports, and assuring that those reports are available for public inspection. All candidates, whether they won or lost, who have filed for office in a city election must file the applicable campaign finance disclosure and financial disclosure forms with the city clerk.

Conclusion

If any question concerning the election process should arise, the city clerk may want to contact the city attorney, county clerk or board of election commissioners. Also, the Secretary of State, Elections Division, is a good source of information. They can be reached at 573-751-2301 or 1-800-669-8683.

GENERAL ELECTION CHECKLIST

Important Dates and Offices

ELECTION DATE (1ST TUES. AFTER 1ST MON. IN APRIL)	
OFFICES TO BE FILLED:	
LEGAL PUBLICATION (WEEK BEFORE & OF FILING OPENS, WEEK BEFORE FILING CLOSSES)	
FILING OPENS (16TH TUESDAY BEFORE ELECTION)	
FILING CLOSSES (11 TH TUESDAY BEFORE ELECTION)	
CERTIFICATION DUE (10TH TUESDAY BEFORE ELECTION)	
FINANCIAL DISCLOSURE DUE (14TH DAY AFTER FILING CLOSSES)	
FINAL FINANCIAL DISC. DUE (21ST DAY AFTER FILING CLOSSES)	
ORGANIZATIONAL MEETING (AFTER ELECTION)	

Election Checklist:

TASK DESCRIPTION	DUE DATE
<input type="checkbox"/> REVIEW ELECTION LAWS FOR APPLICABLE CHANGES	OCTOBER 1
<input type="checkbox"/> REVIEW CITY ORDINANCES FOR POSSIBLE REVISIONS	OCTOBER 1
<input type="checkbox"/> REVISE ORDINANCES AS REQUIRED BEFORE CALLING ELECTION	NOVEMBER 1
<input type="checkbox"/> DETERMINE FILING DATES & OFFICES	OCTOBER 1
<input type="checkbox"/> PREPARE ORDINANCE CALLING ELECTION	NOVEMBER 1
<input type="checkbox"/> REVIEW & REVISE PACKET FORMS	DECEMBER 1
<input type="checkbox"/> ORDINANCE CALLING ELECTION TO BOA	DECEMBER 1 (MTG:)
<input type="checkbox"/> COPY APPROVED ORDINANCE TO ELECTION BOARD (COURTESY)	AFTER ORDINANCE
<input type="checkbox"/> PREPARE LEGAL NOTICE FOR ADVOCATE	DECEMBER 1
<input type="checkbox"/> POST LEGAL NOTICE ON BULLETIN BOARD	AFTER ORDINANCE
<input type="checkbox"/> ASSEMBLE CANDIDATE PACKETS	DECEMBER 1
<input type="checkbox"/> LEGAL NOTICE TO ADVOCATE	DECEMBER 1
<input type="checkbox"/> ETHICS—CANDIDATE LIST & VERIFICATION FORMS	AFTER FILING CLOSSES ()
<input type="checkbox"/> TAX COMPLIANCE CHECKS DONE	AS RECEIVED
<input type="checkbox"/> FILING FEES TO CUSTOMER SERVICE FOR RECEIPT	AFTER FILING CLOSSES
<input type="checkbox"/> CERTIFICATION TO ELECTION BOARD W/ORD. & LEGAL (CERTIFIED)	7 DAYS AFTER FILING CLOSSES
<input type="checkbox"/> SCHOOL & WATER DISTRICT CANDIDATES: REQUEST ADDRESSES & SEND SIGNAGE LETTERS	AFTER FILING CLOSSES
<input type="checkbox"/> PREPARE PURCHASE ORDER FOR DEPOSIT (ATTACH ORD. COPY)	MID-FEBRUARY
<input type="checkbox"/> MAIL DEPOSIT CHECK W/LETTER TO ELECTION BOARD ()	3 RD TUESDAY BEFORE ELECTION
<input type="checkbox"/> CALL ELECTION BOARD FOR TALLY/CHECK WEBSITE	MORNING AFTER ELECTION
<input type="checkbox"/> PREPARE ORDINANCE DECLARING RESULTS	BOA MEETING AFTER ELECTION
<input type="checkbox"/> LETTERS TO SUCCESSFUL CANDIDATES	AFTER ELECTION
<input type="checkbox"/> ORIENTATION PACKETS FOR NEW ELECTED OFFICIALS	AFTER ELECTION
<input type="checkbox"/> LETTERS TO UNSUCCESSFUL CANDIDATES	AFTER ELECTION
<input type="checkbox"/> OATHS OF OFFICE FOR ALL NEWLY ELECTED OFFICIALS	AFTER ELECTION
<input type="checkbox"/> COMMISSIONS FOR ALL NEWLY ELECTED OFFICIALS	AFTER ELECTION
<input type="checkbox"/> RBA, OATH OF OFFICE & ACTING PRESIDENT OF BOA	AFTER ELECTION
<input type="checkbox"/> ORDER PLEXIGLASS NAMEPLATES FOR NEW OFFICIALS	AFTER ELECTION
<input type="checkbox"/> UPDATE MEMORIAL BOARD FOR ELECTED OFFICIALS	AFTER ELECTION
<input type="checkbox"/> UPDATE ELECTED OFFICIALS HISTORY FILE/NOTEBOOK	AFTER ELECTION
<input type="checkbox"/> UPDATE PUBLIC OFFICIALS LISTING	AFTER ELECTION
<input type="checkbox"/> UPDATE HISTORICAL COMMUNITY PROFILE	AFTER ELECTION
<input type="checkbox"/> PREPARE ROLODEX CARDS FOR CLERK & ASSISTANT/CC: ACCTG.	AFTER ELECTION
<input type="checkbox"/> PAYROLL & WITHHOLDING FORMS FOR NEW OFFICIALS	AFTER ELECTION
<input type="checkbox"/> BOA SALARY INCREASES MEMO (CREDENZA FILE 3-CC)	AFTER ELECTION
<input type="checkbox"/> UPDATE BOA PROFILES FOR NEW BOARD MEMBERS	AFTER ELECTION