



# **for Georgia Mayors and Councilmembers**

**FIFTH EDITION**

## **Part One: STRUCTURE OF MUNICIPAL GOVERNMENT**

**Municipal Elections**



# Municipal Elections

Elections are perhaps the most fundamental element of representative democracy. Steps, therefore, must be taken to insure that elections comport with requirements of the state and federal Constitution, federal statutes (most prominently the Voting Rights Act), state statutes, and city charters. Because elections are held to so many legal standards, they must be administered by well trained, experienced, and responsible staff. In 1998, state law was changed to incorporate the municipal election code into the state election code applicable to state, county and federal elections. A few distinctions remain between city elections and other elections, however. Most notably, the majority of municipal elections are held in odd numbered years.

## Municipal Election Superintendent

The municipal election superintendent is the administrative person responsible for a host of administrative duties associated with conducting an election.<sup>1</sup> The municipal election superintendent is appointed by the city governing authority in a public meeting, but if the governing authority fails to appoint a superintendent, the city clerk automatically becomes the election superintendent.<sup>2</sup> The superintendent can not be closely related to any municipal candidate.<sup>3</sup> Because a poorly conducted election can bring about litigation, as well as judicial orders to re-hold elections, the importance of properly trained election superintendents and staff can hardly be overemphasized. The Georgia Secretary of State maintains a Georgia Election Official Certification Program that municipal election superintendents should complete in order to assure they have the necessary training.<sup>4</sup>

## Qualifying

There are two key events in most municipal elections, qualifying and then the actual election. Qualifying is the process through which candidates indicate their desire to run for office and the municipal election superintendent confirms that they possess the requisite legal qualifications to be eligible to do so. Candidates for municipal office must pay a qualifying fee or submit a pauper's affidavit indicating that they can not pay the fee.<sup>5</sup> Qualifying fees for nonpartisan municipal offices are 3% of the previous years gross salary for the office and are to be set and published no later than February 1 of each year in which there is a regular election and at least 35 days prior to a special election.<sup>6</sup> The overwhelming majority of municipal elections in Georgia are non-partisan and therefore the election cycle tends to be rather short. Qualifying for most municipal elections takes place over a period of 3 to 5 consecutive days usually beginning on the last Monday in August, but always ending before the following Friday at 4:30 p.m.<sup>7</sup> Qualifying for special elections begins no sooner than the date of the call and must end no later than 25 days prior to the election.<sup>8</sup> Most cities conduct their own qualifying and appoint their own election superintendent for this purpose.

## Write-In Candidates

Georgia does allow for write in candidates, however, write-in candidates must also qualify in order to be eligible to receive votes.<sup>9</sup> Write-in candidates must file a written intention

of candidacy with the municipal election superintendent and publish a notice in the “official gazette of the municipality” no earlier than January 1 of the year in which the election is to be held and no later than 7 days after the closing of the regular qualifying period.<sup>10</sup> On occasions where no candidates have qualified during the regular qualifying period, write-in candidacies have been used to avoid putting the city through the expense of holding for a special election to fill a seat unfilled in a general election.

## Holding Elections

General municipal elections take place on the Tuesday following the first Monday in November in each odd numbered year, must be published in the newspaper 30 days prior to the election and said notice must be transmitted to the Secretary of State.<sup>11</sup> Most city elections follow the traditional rule that a candidate must obtain more than 50% of the votes cast in order to win. Some city charters however, have different methods of electing council members that may allow candidates receiving a plurality to win the office in order to save the city the cost of a runoff.<sup>12</sup> Some charters provide that candidates run simultaneously for multiple posts with the top vote getters filling the seats.<sup>13</sup> Many cities contract with their county government to conduct their municipal election.

## Special Elections

From time to time cities must call special elections to fill vacancies in city elected positions or to put a referendum question authorized by state law before the voters.<sup>14</sup> There are specified election dates on which such elections may be held, with specific timelines for calling the election.<sup>15</sup> At the time of publication, the special election dates were as follows: for odd-numbered years, the third Tuesday in March, the third Tuesday in June, the third Tuesday in September, and the Tuesday after the first Monday in November; and for even numbered years, the third Tuesday in March; unless there is a Presidential preference primary that year, in which case the date the special election must be held in conjunction with the Presidential preference primary, the date of the general primary, and the third Tuesday after the first Monday in November.<sup>16</sup>

## Home Rule

Although there is some room for variation of the means of electing members of a city governing authority, almost all such changes must be made by the state legislature.<sup>17</sup> Any such changes made by the legislature previously required preclearance by the United States Department of Justice under Section 5 of the Federal Voting Rights Act.<sup>18</sup> Preclearance is the term used to describe the Justice Department’s evaluation of whether a change affecting voting made by a covered jurisdiction has the effect of abridging the right to vote of anyone based on race, color, or membership in a language minority group.<sup>19</sup> However, in 2013, the United States Supreme Court held that the formula used by the federal government to determine which jurisdictions were required to submit to preclearance was woefully outdated.<sup>20</sup> As a result, Section 5 of the Voting Rights Act has been rendered inoperable and the State of Georgia and its local governments are no longer required to submit voting changes to the Department of Justice for preclearance.

For more information on local redistricting plans see the [2014 Georgia Municipal Redistricting Guide](#).

## NOTES

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<sup>1</sup> See O.C.G.A. 21-2-70.

<sup>2</sup> O.C.G.A. § 21-2-70.1.

<sup>3</sup> Specifically, a superintendent cannot be a “parent, spouse, child, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law” of a candidate. *Id.*

<sup>4</sup> See <http://elearn.sos.ga.gov/moodle/course/category.php?id=13>.

<sup>5</sup> O.C.G.A. § 21-2-131(b)(5); O.C.G.A. § 21-2-131(d)(3); O.C.G.A. § 21-2-132(g).

<sup>6</sup> O.C.G.A. § 21-2-131(a)(1)(A).

<sup>7</sup> O.C.G.A. § 21-2-132(d)(3).

<sup>8</sup> *Id.*

<sup>9</sup> O.C.G.A. § 21-2-133.

<sup>10</sup> *Id.*

<sup>11</sup> O.C.G.A. § 21-2-9(b).

<sup>12</sup> *See e.g.* St. Marys, City Charter as amended, Ga. Law 1981, p. 4763.

<sup>13</sup> *See e.g.* Chickamauga City Charter as amended, Ga. Law 1913, p. 665.

<sup>14</sup> *See e.g.* O.C.G.A. § 3-4-91, authorizing the sale of distilled spirits by the drink.

<sup>15</sup> *See* O.C.G.A. § 21-2-540.

<sup>16</sup> *Id.*

<sup>17</sup> O.C.G.A. § 36-35-6(a)(1).

<sup>18</sup> 42 U.S.C. § 1973c.

<sup>20</sup> Shelby County, Alabama v. Holder, 133 S.Ct. 2612 (2013).