

## **CHAPTER 40-21 MUNICIPAL ELECTIONS**

### **40-21-01. Qualified electors in municipal election - Restrictions.**

Every resident of a municipality who is qualified to vote therein at general elections may vote at all municipal elections held therein. When elections are held by wards or precincts, a person may not vote in any place other than the ward or precinct of which the person is a resident.

### **40-21-02. City elections - When held - Notice - Polls - Agreements with counties - Judges and inspectors.**

Biennial municipal elections must be held on the second Tuesday in June in each even-numbered year.

1. Thirty days before the filing deadline for candidate names to be printed on the ballot, an official notice of this deadline along with a list of the offices to appear on the ballot must be published in the official newspaper of the city as provided by section 40-01-09.
2. Ten days' notice of the time and place of the election and of the offices to be filled at the election must be given by the city auditor by publication in the official newspaper of the city as provided by section 40-01-09.
3. The governing body of a city shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses.
4. For city elections that are not held under an agreement with any county, the governing body of the city shall appoint one inspector and two judges of election for each polling place in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. In voting precincts in which over three hundred votes are cast in any previous election, the governing body may appoint two election clerks for each polling place. For a city election that is not held under an agreement with any county in a precinct in which seventy-five or fewer votes were cast in the last city election, the governing body of the city may appoint one inspector and one judge for each polling place.
5. When a city enters into an agreement with the county to hold the city election in conjunction with the county election, the deadline for giving notice of the city election along with the offices to be filled at the election may be adjusted in order to meet the publishing requirements of the county. Each city governing body that enters into an agreement with the county must notify the county auditor, in writing, immediately after the candidate filing deadline on the sixty-fourth day before the election of the offices to be filled at the election and any measures to appear on the ballot.

### **40-21-03. Elections in council cities - Polling places - Polls open - Notice - Judges, clerks, and inspectors - Agreements with counties.**

Repealed by S.L. 1995, ch. 390, § 3.

#### **40-21-03.1. Designation of polling places for municipal elections.**

The governing body of any city at the time of calling any general or special municipal election, or prior to the time of registration for said election, if such registration is required by law, when officers of said city are not to be elected by wards or districts, may by resolution designate such voting precincts and polling places for said election as it may deem necessary for the conduct of the same and shall in giving notice of said election designate such voting precincts and polling places.

**40-21-04. Annual election held in villages - Board of trustees to be inspectors.**

Repealed by S.L. 1967, ch. 323, § 285.

**40-21-05. Compensation of inspectors, judges, and clerks at municipal elections.**

Each inspector, judge, or clerk of any regular or special municipal election shall receive compensation as determined for election officials in section 16.1-05-05. The amounts determined to be due election officials at municipal elections shall be paid from the funds of the municipality holding the election. In the event a special municipal election is held on the same date as a statewide, districtwide, or countywide election, and if the same election officials perform services for both elections, the city shall not be required to pay the election officials, except for any extra officials necessary for such special municipal election.

**40-21-06. Reference to party ballot or affiliation in petition of candidate for municipal office prohibited.**

No reference may be made to a party ballot nor to the party affiliation of a candidate in a petition to be filed by or in behalf of a candidate for nomination to a public office in any incorporated city in this state.

**40-21-07. Petition for nomination of elective official in cities - Signatures required - Withdrawal of petition - Contents.**

A candidate for any public office in an incorporated city may be nominated by filing with the city auditor, before four p.m. on the sixty-fourth day before the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election. A candidate shall also file a statement of interests as required by section 16.1-09-02. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that election. Qualified electors who sign a petition must reside within the ward or precinct in and for which that officer is to be elected, if the election is by wards, or within the corporate limits of the city, if the officer is elected at large. In cities operating under the commission system of government the required petition may be signed by the qualified electors at large residing within the city. If a petition is mailed, it must be in the possession of the city auditor before four p.m. on the sixty-fourth day before the holding of the election. However, no more than three hundred signatures may be required and the signatures may be on separate sheets of paper. Petitions must meet the specifications of nominating petitions pursuant to section 16.1-11-16. If a city election is not combined with a state or county election according to section 40-21-02, a candidate may be nominated by filing the required petition with the city auditor before four p.m. on the sixty-fourth day before the holding of the election. A candidate may withdraw the candidate's nominating petition at any time before the applicable deadlines for filing nominating petitions provided for in this section. Nominating petitions required by this section may not be circulated or signed prior to January first preceding the election. Any signatures to a nominating petition obtained before that date may not be counted. A nominating petition for a special election may not be circulated or signed more than thirty days before the time when a petition for a special election must be filed. A candidate for city council may run for either the office of mayor or council member but not both in the same election. A candidate for the city commission may run for either the office of city commissioner or the office of president of the board of city commissioners but not both in the same election. A candidate may run for only one office in a city at any given election.

**40-21-08. Ballots in municipalities - Arrangement.**

The auditor of the city shall place only the names of the persons nominated upon the ballot. The auditor shall arrange the offices upon the ballot in the order in which they are named in the statutes. The auditor shall determine the arrangement of the names of the candidates upon the ballot by conducting a drawing immediately after the candidate filing deadline on the sixty-fourth

day before the election. The city auditor shall set the date, time, and location for conducting the drawing and shall give advance notice of the drawing to the candidates involved.

**40-21-09. Election districts in council cities - Division and consolidation by ordinance - Ballots to be kept separate by wards.**

Each city operating under the council form of government in which council members are elected at large constitutes an election district or voting precinct, and in all other cities each ward constitutes an election district or voting precinct. Whenever the number of electors in any two or more contiguous wards does not exceed one hundred as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate those two or more wards into one precinct for voting purposes. In any city containing less than four hundred electors as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate all the wards of the city into one precinct for voting purposes. An ordinance dividing or consolidating wards must be passed and takes effect before the time of giving notice of the election. Wards and precincts established under this section constitute election districts for all state, county, and city elections. In city elections, separate ballot boxes and pollbooks must be provided and kept for each precinct. The terms "wards", "precincts", and "election districts" have the same meaning except where two or more wards are consolidated into one precinct for voting purposes or where one ward is divided into more than one precinct for voting purposes. This section does not prohibit the use of one building as the election polling place for more than one ward or the installation of electronic voting systems from separate wards in one building.

**40-21-10. Registration of voters.**

The governing body of any city may require the registration of voters in any election held or conducted within the municipality at such time and place or places as the governing body may designate.

**40-21-11. Clerks appointed to fill vacancies - Oath, powers, and duties of judges and clerks of municipal elections.**

When necessary, the judges of election at a municipal election shall appoint clerks to fill vacancies. The judges and clerks of a municipal election shall take the same oath and have the same powers and authority as judges and clerks of general state elections.

**40-21-12. Counting ballots - Returns - Canvass of returns by governing body of municipality.**

Repealed by S.L. 2005, ch. 185, § 18.

**40-21-13. Municipal elections to be governed by rules applicable to county elections - Absent voting.**

The manner of conducting, voting at, keeping poll lists, and canvassing votes at municipal elections, recounts, and contests of the results of the elections is governed, as nearly as possible and except as otherwise provided in this chapter, by the laws of this state applicable to elections and contests in the case of county officers. Absent voters' ballots must be available in municipal elections in accordance with chapter 16.1-07.

**40-21-14. City auditor to notify of election or appointments.**

The city auditor, within five days after the result of an election is declared or the appointment of an officer is made within the municipality, shall notify each person elected or appointed to municipal office of that person's election or appointment. Within the same period of time, the city auditor shall also notify the state supreme court of the election or the appointment of any municipal judge or alternate judge.

**40-21-15. New election upon failure to elect.**

If there is a failure to elect an officer required to be elected, the governing body of the municipality may order a new election.

**40-21-16. Special elections conducted in same manner as general elections.**

Special municipal elections to fill vacancies or for any other purpose must be held and conducted by the inspectors and judges of election of the several polling places in the same manner and the returns must be made in the same form and manner as at regular municipal elections.

**40-21-16.1. City canvassing board - Composition.**

For any city election not held in conjunction with a county election, the city canvassing board must be composed of the city auditor, city attorney, mayor or commission president, and two members of the city commission or council, or appointed replacements for any of these officials. An individual who served on an election board during the election may not serve as a representative on the canvassing board for that same election. The city canvassing board must be comprised of at least five members.

**40-21-17. Highest number of votes elects in municipal election - Procedure on tie vote.**

The person having the highest number of votes for any municipal office shall be declared elected to such office. In case of a tie vote in the election of any municipal officer, a recount must be conducted pursuant to section 16.1-16-01. If a recount results in a tie vote, the choice must be determined by a drawing of names in the presence of the governing body of the municipality and in a manner it directs. A candidate involved in a tie vote may withdraw the candidate's name from consideration if the candidate is willing to sign a statement to that effect in the presence of and witnessed by the filing officer of the election. If no candidates remain, the office is to be filled according to the rules for filling an office when a vacancy exists.