

Elections, Salaries, and Oaths, Oh My!

When spring turns to summer, for many living in the cities, towns, and counties of this state, interest turns to elections and other related issues. This *MRSC Focus* article addresses a potpourri of issues, from elections to salaries to swearing-in ceremonies, that may require attention from now to the new year.

When exactly are municipal general elections held? Election rules, including those determining when elections are held, are established by state statute. Different rules apply, depending on whether a city, town, or county is involved. And, as to counties, there are differences based upon whether the positions are partisan, that is, where candidates are selected according to political party designation, or nonpartisan, or whether the county has a charter. All county elective offices, except for judicial positions and those positions designated otherwise by a county charter, are partisan. All city elective offices are nonpartisan.

The dates for city and town municipal general elections are set by RCW 29.13.020(1), which provides in part:

All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd- numbered years.

For counties with charters, the municipal general election is set by charter and may be held in November of odd-numbered years. RCW 29.13.010. For most counties, however, the election of officers is held in November of even-numbered years. *Id.* (If there is a vacancy in a county partisan office or in a superior court judgeship, a person is appointed to fill the vacancy until a successor is elected at the *next general election*, whether the election is in an even or odd year. *Id.* and article 2, section 15, and article 4, section 5 of the state constitution.)

When is a primary election required? Candidates for county offices, with two exceptions, are nominated at a primary election. RCW 29.18.010(3). The two exceptions are judicial offices and county positions governed by home rule charters. *Id.* A primary is required for the position of superior court judge only if more than one person has filed for office. Article 4, section 29 of the state constitution. District court judgeships follow the rules applicable to city and town officials. RCW 29.21.010. If there is a county charter, the charter should be reviewed to determine whether a primary is required.

For city, town, and district court judge positions, no primary is held unless more than two people file for a particular position. RCW 29.21.015.

Primary elections, if required, are held on the third Tuesday of September preceding the November general election or on the seventh Tuesday preceding the general

election, whichever occurs first. RCW 29.13.070. The 2001 primary election will be held September 18.

If a jurisdiction wants its new officers to be paid a new, presumably higher, salary, when must action on the salary occur? If a new salary (higher or lower) is to be paid to the new officers, *now* probably is the time to begin work on enacting the implementing ordinance.

Officers who set their own salaries, such as county commissioners and city, town, and county councilmembers, may not have their salaries increased, or decreased, after their election or during their term of office. Article 11, section 8 of the state constitution. (The date a person is “elected” is the date the county auditor issues a “certificate of election.” See RCW 29.27.100 and AGO 63-64 No. 27. Election results are to be certified within fifteen days of the general election. RCW 29.62.020(2). In 2001, election results should be certified by November 21.) Thus, it is crucial to determine when a salary ordinance can go into effect and how that date compares to the date when certificates of election are issued.

In second class cities and in code cities without the powers of initiative and referendum, ordinances go into effect five days after passage. RCW 35.23.211 and 35A.12.130. If a code city has the powers of initiative and referendum, the ordinance cannot go into effect before thirty days have elapsed. RCW 35A.11.090. In towns and noncharter counties, there is no delay, so ordinances can go into effect after they are passed, signed and, if required, published. Accordingly, to insure that newly-elected officers will receive the new salary, a salary ordinance or, in the case of counties, resolution must be approved so that its effective date, after applying the above rules, will occur on or before the officers’ certificates of election are issued.

Some jurisdictions, however, may have additional rules governing the passage of ordinances, and these rules may add procedural steps that delay final passage. For example, a city may require two readings of an ordinance before final passage can occur, with each reading taking place at a different council meeting.

Putting all these procedural steps together, a jurisdiction might have to begin the process to change salaries as early as October 9, 2001 for the new salary to be in effect for those candidates elected at this year’s general election on November 6. In an old attorney general opinion, it was *suggested* that new salaries be in place by the time candidates file for office, so they will know what salary will be paid during their term. In 2001, filing begins July 23.

(The salaries for elective offices who do not set their own salaries can be increased at any time. New legislation allowing for the creation of a local salary commission will soon enable others to receive mid-term salary increases. See Chapter 73, Laws of 2001, effective July 22, 2001. If a salary commission is created, officers who set their own salaries – city, town, and county councilmembers or commissioners – will be able to receive salary increases approved by the salary commission during their term of office. Salaries may be *decreased* only before the positions are filled by election, to be effective during the new term. Article 30, section 1 of the state constitution.)

If salaries are increased for an elective office before the election, will all the covered offices be paid the new, higher salary? No; as stated above, a salary increase for a current officer who sets his or her own salary may not take effect during the present term of office or after his or her election. Thus, on a city council or county board of commissioners, only those councilmembers or board members elected at this fall's election can take the new, higher salary when their new terms begins; the other council or board members will need to wait until they are next elected to receive the increase.

What if a person is appointed to the council or board of commissioners; will he or she be able to take the new salary? No. The prohibition in article 11, section 8 of the constitution, provides that an officer's salary "shall not be increased except as provided in Section 1 of Art. XXX or diminished after his election, or during his term of office." *This constitutional prohibition applies to the term of office rather than to the individual who is holding the office.* Consequently, if a person is appointed to fill an unexpired term, that individual receives the same compensation as his or her predecessor.

When are vacancies in office filled by election? When a vacancy occurs during an officer's term of office, someone will, in most instances, be appointed to fill the vacancy. This does not mean, however, that the person appointed will serve throughout the remainder of the unexpired term. For city council and other nonpartisan offices, the person appointed serves "until a qualified person is elected at the next election at which a member of the governing body normally would be elected." RCW 42.12.070(6). So, for example, if a person is appointed to fill a vacant city council position in the first year of the term, that person would serve only until the next general election in an odd-numbered year, when a person (perhaps the same person) would be elected to fill the remaining two years of the term.

For partisan county offices, a person is appointed to fill a vacancy until a successor is elected at the next general election, whether in an odd- or even-numbered year. RCW 42.12.040.

When does a person elected to a short term take office? A "short term" is the brief period that begins when election results are certified and ends with the start of the "full" term. RCW 29.01.180. There is a short term only if an elective office has been filled by appointment following a vacancy. While normally the person elected at a general election will not take office until the following January, the person elected to fill an office that had been filled by appointment takes office as soon as the election results are certified, a certificate of election issued, and any required bond is posted. RCW 42.12.070(6). The person elected thus serves during both the short term and the succeeding full term.

If a person is elected to both a short and a long term, does he or she need to take an oath of office twice? Yes. The officer-elect is sworn in and assumes office for the short term as soon as the election results are certified and again for the full term that begins in January. RCW 29.15.140 and 29.04.170.

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When may the oath of office be given; when do new terms begin? The term of an incumbent ends and the term of the successor begins after the successor is elected and qualified, with the new term beginning on January 1 following the election. RCW 29.04.170(2). (The winner of an election becomes “qualified” after the election results are certified, a certificate of election issued, any required bond posted, and the oath of office is taken. RCW 29.01.135.) The oath of office may be taken up to ten days prior to January 1, or at the last regular meeting of the council or board held before January 1. *Id.*

Who can swear officers in? RCW 29.01.135(4) provides that the “oath or affirmation shall be administered and certified by any officer or notary public authorized to administer oaths.” An oath of office may be administered by the following, among others: a notary public, a judge, a justice of the peace, a city or town clerk, a city or town mayor, a court commissioner, every judicial officer, every court, a clerk of the court, a county auditor or deputy auditor, or a county legislative authority.

May officers-elected participate in meetings, executive sessions, etc.? Obviously a newly elected person may attend public meetings of the body into which he or she has been elected, just as any citizen may. Until the successful candidate has been sworn in and assumes office, however, he or she has no special rights that are not shared by members of the public in general. Of course, present office holders may want to involve the newly elected person in some issues that will need to be addressed during the person’s term of office. In that regard, it may be desirable to provide the newly-elected officer a full packet of materials, including code books, comprehensive plans, budgets, organization charts, department lists, thus helping the general orientation process. While the elected official would not be able to attend an executive session as a matter of right, nothing would prohibit a governing body from specifically inviting his or her attendance. Until assuming office, the person will have no vote. Municipal Research & Services Center welcomes questions on the issues raised above. We also encourage the reader to review the above answers with the city or town attorney or the county prosecutor before acting upon advice provided in these paragraphs.