2019 Municipal Elections Handbook

- Changes in State Statute and Administrative Rule
- Election Resource List
- Guidelines to Election Process: Before, During, and After
- Frequently Asked Questions and Answers
- Election Notices and Forms
- Special Elections
Introduction

Purposes of the Handbook

The Municipal Elections Handbook has been established as a tool to aid the election official in managing and conducting the annual municipal election as well as other special elections. The intent is to outline the major South Dakota statutory and administrative rule requirements which must be met by the election official when conducting elections as well as provide a list of available resources. This handbook should be considered as merely a guide and it is recommended that your city attorney be consulted on all legal matters regarding elections.

The handbook provides a framework for the election official to follow regarding tasks that must occur before, during and after the election. Each section provides frequently asked questions and answers, followed by references to both SD Codified Law (numbers with dashes, i.e.: 9-13-7) and Administrative Rules of South Dakota (numbers and colons, i.e.: 5:02:08:00.04) as they apply to the topic discussed.

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Chapter 1

Changes in State Statute and Administrative Rule

1.000 Changes in South Dakota Codified Law in 2018

Date to certify ballot language to county auditor – 9-20-11.2 – Amended
If a municipality submits a question to the electors at the next general election pursuant to § 9-20-11, the municipality shall certify the ballot language to the county auditor by the first Tuesday in August of the year of the general election. However, the county auditor may extend the certification deadline for the municipality, if the county auditor determines that the extension will not prevent absentee ballots from being available by the date to begin absentee voting.

Contract by political subdivision with county for use of system – 12-17B-4 – Amended
The governing body of a political subdivision may contract with any county for the use of an automatic tabulating or electronic ballot marking system for elections within the political subdivision.

1.050 Changes in Administrative Rules of South Dakota in 2018

Guidelines for acceptance of petitions – 5:02:08:00 – Amended
When a petition is presented for filing, the person or governing board authorized to accept the petition for filing shall determine if it meets the following requirements for acceptance:

1. The petition is in the form required by this chapter;
2. The petition contains the minimum number of valid signatures, counted according to § 5:02:08:00.01. One or more invalid signatures on a petition section do not disallow other valid signatures on the section;
3. Each sheet of the petition contains an identical heading and is verified by the circulator. The circulator may add the addresses of the petitioners and the dates of signing before completing the verification. The circulator may also add the printed name of the signer and the county of voter registration. Residence addresses may be abbreviated. The verification was completed and signed before an officer authorized to administer oaths;
4. The declaration of candidacy contains the original signature of the candidate.

Additional sheets may have an original or photocopied signature of the candidate;

5. If a petition is for a ballot question to be voted on statewide, the signatures were obtained after a copy of the text of the petition was filed with the secretary of state;

5a. If a petition is for a ballot question to be voted on statewide, the sponsor(s) must submit the affidavit of completed petition along with the information required for each petition circulator when the petition sheets are submitted to the secretary of state;

6. The governing board or person authorized by statute to accept the petition shall, if requested, allow a petition circulator the opportunity to add missing information on the signature lines or circulator's verification on his or her petition provided the filing deadline has not passed; and
(7) Following the presentation of the petition for filing, names may not be removed from the petition;

(8) The declaration of candidacy on a candidate petition cannot include a professional title with the candidate's name.

Except for petitions to nominate candidates for school boards and statewide campaigns, the person who is authorized to accept petitions for filing need not check for voter registration of the signers. Petitions containing signatures in excess of the minimum number may be filed, but the excess signatures will be disregarded, unless there is a challenge to that petition. But the excess signatures will not be considered by the filing office unless the excess signatures are needed to validate the petition.

**Instructions to Absentee Voters – 5:02:10:04 – Amended**

All ballots mailed or delivered to absentee voters shall include instructions that read as follows:

**TO THE VOTER:**

§ Mark your ballot privately.
§ (insert a statement regarding whether and how many times the ballot should be folded).
§ Place your ballot in the return envelope and seal it securely.
§ Complete the statement on the back of the return envelope and (bold) **SIGN IT** (unbold).
§ Mail the ballot (voter must pay for postage to mail the ballot unless the voter is covered under the UOCAVA act), deliver it in person, or have someone deliver it for you to the person in charge of the election. (bold) **Do not return absentee ballot to your polling place** (unbold).
§ The ballot must be received by the person in charge of the election in time to transmit it to your precinct polling place before the polls close on election day.
§ Additional information on absentee voting is available at www.sdsos.gov.

Printers Note: Use correct return time designation in sixth bullet point.
Chapter 2

Links to Additional Election Resources

- **Voter registration forms** can be printed from the Secretary of State’s website. Go to [www.sdsos.gov](http://www.sdsos.gov) and click on Register to Vote under the Elections and Voting tab.

- An electronic version of the **Election code** can be found at the Secretary of State’s website. Go to [www.sdsos.gov](http://www.sdsos.gov) and click on Election Resources under the Elections and Voting tab. The Secretary of State’s office keeps this updated with all statute and administrative rule changes.

- The following resources can be printed from the Secretary of State’s website. Go to [www.sdsos.gov](http://www.sdsos.gov) and click on Election Resources under the Elections and Voting tab.
  - South Dakota Election Day Precinct Manual
  - Recounts Manual
  - Poll Watcher and Observer Guidelines
  - Polling Place Voter Key

- To find the following information, go to [www.sdsos.gov](http://www.sdsos.gov) and click on Election Resources under the Elections and Voting tab and then click on City/School Resources tab.
  - 2019 Municipal Election Calendar
  - Petitions and Petition Information
  - How to Circulate a Municipal Nominating Petition
  - Municipal Initiative and Referendum Information
  - Link to administrative rules for Forms of Notices
  - Municipal Recall Election Guidelines
  - Municipal and School Recount Manual
  - Municipal/School Election Workshop Powerpoint

- The **2015 Election Worker Training Powerpoint** that you could use to train your election workers from the Secretary of State’s office can be downloaded by going to [www.sdsos.gov](http://www.sdsos.gov) and clicking on Election Resources under the Elections and Voting Tab.

- **South Dakota Legislative Research Council (LRC)** where you can find state law and administrative rules: [http://www.sdlegislature.gov/](http://www.sdlegislature.gov/)

- The following additional resources and links can be found on the SDML website by going to [http://www.sdmunicipalleague.org/](http://www.sdmunicipalleague.org/) and click on the Library tab, then Elections.
  - Guidelines for Absentee Voting Process
  - Absentee Ballot Log (Sample)
  - Elections Supplies List (Sample)
  - Election Day Checklist for Municipal Election Board (Sample)
  - Oath of Office (Sample)
Chapter 3

Before the Election

3.000 Election Date
3.050 Vacancies
3.100 Publishing Notices
3.150 Petitions and Filing
3.200 Petition Challenging
3.250 Campaign Finance
3.300 Candidate’s Withdrawal
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3.000 Election Date

1. What is the procedure for combining elections with the school district or county?

With School District: The members of the governing body of a municipality may choose to hold a general municipal election in conjunction with a regular school district election. The combined election is subject to approval by the governing body of the school district. The combined election shall be held on the regular date set for either the general municipal election or the school district election and all dates associated with either election pursuant to chapters 9-13 and 13-7 shall be adjusted accordingly. Expenses of a combined election shall be shared in a manner agreed upon by the governing bodies of the municipality and the school district. All other governmental responsibilities associated with holding elections under the provisions of chapters 9-13 and 13-7 shall be shared as agreed upon by the governing bodies (SDCL 9-13-1.1).

With County: The members of the governing body of a municipality may choose to hold a municipal election in conjunction with the regular June primary election. The combined election is subject to approval by the county commissions of the counties in which the municipality is located. Expenses of a combined election shall be shared in a manner agreed upon by the governing body of the municipality and the county commissions involved. All other governmental responsibilities associated with holding elections under the provisions of chapter 9-13 and Title 12 shall be shared as agreed upon by the governing bodies. The finance officer shall publish the notice required in SDCL 9-13-6 between February fifteenth and March first. No nominating petition may be circulated for signatures until March first. Nominating petitions shall be filed under the provisions of SDCL 9-13-7 by the last Tuesday in March. The finance officer shall certify to the appropriate county auditor the candidate names and ballot language to be voted on by the first Friday after the first Tuesday in April (SDCL 9-13-7).

9-13-1. Date of annual municipal election--Hours of voting. In each municipality an annual election for the election of officers shall be held on the second Tuesday of April of each year, at a place in each ward of the municipality as the governing body shall designate. If the governing body of the municipality chooses a different election day as provided in this chapter, the governing body shall establish such election day by January fourteenth of the election year. The polls at the election shall be kept open continuously from seven a.m. until seven p.m.
9-13-37. **Municipal elections held in conjunction with June primary elections.** Any other provision of this chapter notwithstanding, the members of the governing body of a municipality may choose to hold a municipal election in conjunction with the regular June primary election. The combined election is subject to approval by the county commissions of the counties in which the municipality is located. Expenses of a combined election shall be shared in a manner agreed upon by the governing body of the municipality and the county commissions involved. All other governmental responsibilities associated with holding elections under the provisions of chapters 9-13 and Title 12 shall be shared as agreed upon by the governing bodies. The finance officer shall publish the notice required in § 9-13-6 between February fifteenth and March first. No nominating petition may be circulated for signatures until March first. Nominating petitions shall be filed under the provisions of § 9-13-7 by the last Tuesday in March. The finance officer shall certify to the appropriate county auditor the candidate names and ballot language to be voted on by the first Thursday after the last Tuesday in March.

9-13-40. **Municipal elections held on first Tuesday after first Monday in June--Notice--Nominating petitions.** Any other provision of this chapter notwithstanding, the members of the governing body of a municipality may choose to hold a municipal election on the first Tuesday after the first Monday in June. The finance officer shall publish the notice required in § 9-13-6 between February fifteenth and March first. No nominating petition may be circulated for signature until March first. Nominating petitions shall be filed under the provisions of § 9-13-7 by the last Tuesday in March. All other governmental responsibilities associated with holding elections under the provisions of chapter 9-13 shall be met by the municipality.

### 3.050 Vacancies

*If electing a person to fill the remainder of an unexpired term at an annual municipal election, the vacancy shall have occurred prior to the publication required by 9-13-6.*

Publish notice of vacancies and time and place for filing petitions each week for two consecutive weeks.

5:02:04:06. **Notice of vacancy for municipal election.** The notice of vacancy for a municipal election shall be in the following form:

```
NOTICE OF VACANCY
MUNICIPALITY OF ____________

The following offices will become vacant due to the expiration of the present term or due to the resignation of office of the elective officer:
(HERE LIST THE OFFICES TO BE FILLED)

Mayor, ______ year term
City Commission, City Council, Alderman-Ward (list ward), Trustee, ______ year term
City Commission, City Council, Alderman-Ward (list ward), Trustee, ______ year term
City Council at Large, ______ year term

Circulation of nominating petitions may begin on ______________ and petitions may be filed in the office of the finance officer located at ______________ between the hours
```
Section 3

of ______ a.m. and ______ p.m., (mountain or central) time not later than the ______ day of __________, 20_____.
_______________________________________
Finance Officer

3.100 Publishing Notices

*The Municipal Elections Calendar, which gives a complete list of Municipal Election Publication dates for notices, can be found at https://sdsos.gov/elections-voting/upcoming-elections/municipal-school-information/default.aspx

1. What if I miss a Notice?
Do not panic! Be sure to inform your attorney and follow his/her advice. Have the paper publish the missed notice if there is still time before the deadline. Post the notice in areas within your jurisdiction. Mail notice to all residents or registered voters. 
**Note:** The election may be challenged due to the missed or incorrect notices.

Municipal officials are required to make the following legal publications in the official newspaper in conjunction with municipal elections:

1) Two notices identifying which vacancies will occur by termination of the terms of office of elective officers, stating the time and place where nominating petitions may be filed. For elections held the second Tuesday in April, the notices are to be published once each week for two consecutive weeks between January 15th and January 30th (SDCL 9-13-6)
2) Two notices of the deadline for voter registration, stating when registration will be terminated and the effect of a failure to register. This notice must be published at least once each week for two consecutive weeks. The last publication to be not less than ten nor more than fifteen days before the deadline for registration. (SDCL 12-4-5.2)
3) Two notices of election, published once each week for two consecutive weeks, the first publication being not less than ten days prior to the election.
4) A facsimile of the official ballot shall be published in the week prior to each election. (SDCL 9-13-13)
5) If there is to be a secondary election, a notice of election shall be published once during the week before any secondary election, which shall include a list of all persons appearing on the ballot for the election. (SDCL 9-13-27)

3.150 Nominating Petitions and Filing

*Information regarding the actual Petition Forms can be found in Chapter 7

1. How is a candidate for municipal office nominated?
For the second Tuesday in April election, no candidate for elective municipal office may be nominated unless a nominating petition is filed with the finance officer no later than five p.m. on the last Friday in February preceding the day of election. The petition shall be considered filed if it is mailed by registered mail by five p.m. by the petition deadline before the election. Such petition shall contain the name of the candidate, his residence, his mailing address and the office for which he is nominated and be on the form prescribed by the state board of elections. The
signer’s post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. The finance officer may only accept nominating petitions that are on the prescribed form and were circulated and submitted pursuant to the provisions in chapters 9-13 and 12-6. If the nominating petition meets the statutory requirements, the filing of the petition shall constitute nomination (SDCL 9-13-7).

The statutes for combined election dates, regarding filing deadlines, can be found at SDCL 9-13-37, 9-13-40, 13-7-5 and 13-7-6.

12-1-3. Definition of terms used in title. Terms used in this title mean:
(8) "Petition," a form prescribed by the State Board of Elections, which contains the question or candidacy being petitioned, the declaration of candidacy if required and the circulator. If multiple sheets of paper are necessary to obtain the required number of signatures, each sheet shall be self-contained and separately verified by the circulator;
* Self-contained means petition sheets cannot be stapled, taped, glued, etc. together. They must be front to back on one piece of paper.

2. How many signatures are required on a nominating petition for a municipal election?
In municipalities of the first and second class, if the candidate is to be voted for by the voters at large, a nominating petition shall be signed by five percent of the registered voters of the municipality based on the number of registered voters recorded by the county auditor on the second Tuesday in January of the year of the election. No petition need be signed by more than fifty voters.

If the candidate is to be voted for by the voters of a ward of a municipality of the first or second class having more than one ward or subdivision, a nominating petition shall be signed five percent of the registered voters of the ward based on the number of registered voters recorded by the county auditor on the second Tuesday in January of the year of the election. No petition need be signed by more than fifty voters.

In municipalities of the third class, if the candidate is to be voted for by the voters at large, the nominating petition shall be signed by not less than three registered voters of the municipality. If the candidate is to be voted for by the voters of a ward of a municipality having more than one ward, the nominating petition shall be signed by not less than three registered voters of the ward.

No nominating petition may be circulated until on or after the first day of circulation for that election (SDCL 9-13-9). Petition signers can be active and inactive registered voters in the municipality where the candidate is being nominated (SDCL 12-4-34). All petition signers may only sign one petition for each office to be filled (SDCL 12-6-8), with the exception of a voter from a third class municipality is not restricted to the number of petitions which the person may sign (SDCL 9-13-9). If a person signs more than one petition (except in a third class municipality) the first valid signature presented counts.
5:02:08:00.04.  Validity of petition signature when signer has signed more petitions than offices to be nominated. The first signature presented to the filing meets the requirements of SDCL 12-6-8 and §§ 5:02:08:00 and 5:02:08:00.01 is valid. The same signature which meets the requirements of SDCL 12-6-8 and §§ 5:02:08:00 and 5:02:08:00.01 on the next nominating petition presented to the filing office may also be valid if the person has not signed petitions exceeding the number of candidates required to be nominated for the same office. Any subsequent signature by such person on a nominating petition presented to the filing office that exceeds the number of candidates required to be nominated for the same office is not valid, except as provided in SDCL 9-13-9.

The members of the governing body of a municipality may choose to hold a municipal election on the first Tuesday after the first Monday in June. The finance officer shall publish the notice required in SDCL 9-13-6 between February fifteenth and March first. No nominating petition may be circulated for signature until March first. Nominating petitions shall be filed under the provisions of SDCL 9-13-7 by the last Tuesday in March. All other governmental responsibilities associated with holding elections under the provisions of chapter 9-13 shall be met by the municipality (SDCL 9-13-40).

3.  Can anyone circulate a petition? Can the circulator sign the petition?
Yes, as long as the person is a South Dakota resident and at least 18 years of age (ARSD 5:02:08:13, SDCL 12-1-3 (9)).

A circulator may sign the petition they are circulating.

4.  Who can administer oaths or notarize a petition?
SDCL 18-3-1 outlines:
18-3-1.  Officers authorized to administer oaths. The following officers may administer oaths:
(1) Supreme Court justices, circuit judges, magistrates, notaries public, the clerk and deputy clerk of the Supreme Court, and clerks and deputy clerks of the circuit court, within the state, and federal judges, and federal magistrates;
(2) Members of the Legislature, while acting as a member of any legislative committee, when examining persons before the legislative committee;
(3) The county auditor, the county treasurer, the register of deeds, and the deputy of each, within their respective county;
(4) Mayors, town board presidents, municipal finance officers, deputy municipal finance officers, and township clerks, within their respective municipality or township;
(5) Sheriffs and deputies if authorized by law to select commissioners or appraisers, or to impanel juries for the view or appraisement of property, or are directed as an official duty to have property appraised, or take the answer of garnishees;
(6) Conservation officers for the purposes of taking a written statement pursuant to § 23A-2-1 for any offense of Title 41; and
(7) Other officers in cases specifically provided by law.

A candidate can circulate and be a signer but cannot be the notary on that petition.
A notary may not be a signer on the petition they notarize.

12-6-8. Time and manner of signing petition—Declaration of candidate—Verification—Signing for independent or nonpolitical candidate. No person may sign the nominating petition of a candidate before January first in the year in which the election is to be held, nor for whom the person is not entitled to vote, nor for a political candidate of a party of which the person is not a member, nor of more than the number of candidates required to be nominated for the same office. There shall be added by either the signer or the circulator, the signer’s place of residence, and the date of signing. The signer’s post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. A formal declaration of the candidate shall be signed by the circulator prior to the circulation of petitions. The signed declaration of the candidate, or a facsimile thereof, may accompany and be a part of the petition. The original signed declaration shall accompany the group of petitions upon filing. The petition shall be verified under oath by the persons circulating the petition. The verification by the person circulating the petition may not be notarized by the candidate whom the petition is nominating. The provisions of this section may not prohibit a person registered with party affiliation from signing either a petition nominating an independent or a nonpolitical candidate for office if the person has not previously signed a petition for that office to be filled.

18-1-12.2. Party to transaction as notary public prohibited. It is a Class 1 misdemeanor for a person to affix a signature to a document as a notary public when the person has also signed the document as a party to the transaction proceeding.

5. What if only one candidate files for office?
No election shall be held in any municipality, or ward thereof, wherein there is no question to be submitted to the voters or wherein there are no opposing candidates for any office; in case there are no opposing candidates the auditor or clerk shall issue certificates of election to the nominees, if any, in the same manner as to successful candidates after election (SDCL 9-13-5).

6. What happens if no one files a petition?
Incumbent elected officials have to turn in a nominating petition or their seat will become vacant. In the past if no one filed (including the incumbent) the incumbent would carry over for another term unless they resigned. State law changed July 1, 2014.

9-13-14.3. Elected official to hold office until vacancy filled. If for any reason a municipality fails to elect any person to succeed an elected official whose term has expired or an elected official fails to file a nominating petition or qualify, the office is deemed vacant. The elected official whose term has expired shall continue to act in an official capacity until the vacancy is filled by election or appointment pursuant to § 9-13-14.1 or 9-13-14.2.

9-13-14.1 Filling a vacancy on municipal governing body- Appointment or special election. If a vacancy exists on a municipal governing body, the remaining members shall appoint a replacement to serve until the next annual municipal election, or the vacancy may be filled by special election as provided in SDCL 9-13-14.2. In the aldermanic form of municipal
government, the appointment must be a person from the same ward of the first or second class municipality. If electing a person to fill the remainder of the unexpired term at an annual municipal election, the vacancy shall have occurred prior to the publication required by 9-13-6.

No special election may be held to fill a vacancy before the date of the annual municipal election, except as provided in SDCL 9-13-14.2 (SDCL 9-13-14.1).

3-4-1. Events causing vacancy in office. An office becomes vacant if one of the following events applies to a member of the governing body or elected officer before the expiration of the term of the office; the person

1. Dies;
2. Resigns;
3. Is removed from office;
4. Fails to qualify as provided by law;
5. Ceases to be a resident of the state, district, county, municipality, township, ward or precinct in which the duties of the office are to be exercised or for which elected;
6. Is convicted of any infamous crime or of any offense involving a violation of the official oath of office; or
7. Has a judgment obtained against the person for a breach of an official bond.

7. What happens when a petition is filed with the Finance Officer and there are deficiencies noted?

5:02:08:00. Guidelines for acceptance of petitions

When a petition is presented for filing, the person or governing board authorized to accept the petition for filing shall determine if it meets the following requirements for acceptance:

1. The petition is in the form required by this chapter;
2. The petition contains the minimum number of valid signatures, counted according to § 5:02:08:00.01. One or more invalid signatures on a petition section do not disallow other valid signatures on the section;
3. Each sheet of the petition contains an identical heading and is verified by the circulator. The circulator may add the addresses of the petitioners and the dates of signing before completing the verification. The circulator may also add the printed name of the signer and the county of voter registration. Residence addresses may be abbreviated. The verification was completed and signed before an officer authorized to administer oaths;
4. The declaration of candidacy contains the original signature of the candidate. Additional sheets may have an original or photocopied signature of the candidate;
5. If a petition is for a ballot question to be voted on statewide, the signatures were obtained after a copy of the text of the petition was filed with the secretary of state;
5a. If a petition is for a ballot question to be voted on statewide, the sponsor(s) must submit the affidavit of completed petition along with the information required for each petition circulator when the petition sheets are submitted to the secretary of state;
6. The governing board or person authorized by statute to accept the petition shall, if requested, allow a petition circulator the opportunity to add missing information on the signature.
lines or circulator's verification on his or her petition provided the filing deadline has not passed; and

(7) Following the presentation of the petition for filing, names may not be removed from the petition;
(8) The declaration of candidacy on a candidate petition cannot include a professional title with the candidate's name.

Except for petitions to nominate candidates for school boards and statewide campaigns, the person who is authorized to accept petitions for filing need not check for voter registration of the signers. Petitions containing signatures in excess of the minimum number may be filed, but the excess signatures will be disregarded, unless there is a challenge to that petition. But the excess signatures will not be considered by the filing office unless the excess signatures are needed to validate the petition.

*Please note, that if you do check voter registration you need to do it for all signers. You are also not required to check the voter registration of the candidate. The SDML recommends you do check to verify they are registered but again, make sure you do it for all candidates.

5:02:08:00.01. Requirements for counting signatures on petitions.
Requirements for counting signatures on a petition sheet are as follows:
(1) No signature on a petition sheet may be counted if one of the following conditions is present:
   (a) The form of the petition does not meet the requirements of this chapter;
   (b) The circulator’s verification is not completed or is improperly completed, according to subdivision 5:02:08:00(3) unless the missing information is completed elsewhere on the petition sheet. A completed circulator’s verification must include the printed name of the circulator, the circulator’s residence address as provided in subdivision 5:02:08:00.01(2)(c), and complete date;
   (c) The declaration of candidacy has not been completed on or after the first date authorized by statute to circulate the petition, and signed by the candidate and the signature witnessed by an official empowered to administer oaths in South Dakota; or
   (d) The circulator’s verification was signed by more than one circulator; and
(2) An individual signature on a petition sheet may not be counted if one of the following conditions is present:
   (a) It was signed prior to the signing of the candidate’s declaration of candidacy or, if for a ballot question, it was signed before a copy of the text was filed with the secretary of state;
   (b) It was signed after the circulator completed the verification;
   (c) The residence address does not include a street and house number or a rural route and box number and the town. If the signer is a resident of a second or third class municipality, a post office box number may be used. If the signer does not have a residence address or post office box number, a description of the residence location must be provided. If the signer is a resident of a building with a publicly known name, the building name may be used;
   (d) The date of signing, including month and day, is not indicated;
   (e) The signer’s name is not printed and legible; or
   (f) The signer’s county of voter registration is not provided.
12-1-13. **Challenge to petition signatures--Time for filing.** Within five business days after a nominating, initiative, or referendum petition, excluding petitions for statewide initiative, referendum, or constitutional initiative petitions, is validated and filed with the person in charge of the election, any interested person who has researched the signatures contained on the petition may submit an affidavit stating that the petition contains deficiencies as to the number of signatures of persons who are eligible to sign the petition. The affidavit shall include an itemized listing of the specific deficiencies in question.

Any challenge to the following items is prohibited under this challenge process:

1. Signer does not live at address listed on the petition;
2. Circulator does not live at address listed on the petition;
3. Circulator listed a residence address in South Dakota but is not a South Dakota resident;
4. Circulator did not witness the signers;
5. Signatures or petition sheets not included in the random sample. This subdivision applies only to petitions for statewide candidates, new party formation petitions, or to local jurisdictions that conduct random sampling; and
6. Petition that was originally rejected.

All challenges by the same person or party in interest shall be included in one affidavit.

The original signed affidavit shall be received by the person in charge of that election by 5:00 p.m. local time on the deadline date. If the affidavit challenges any item that is prohibited by this section, only that line item shall be summarily rejected.

The decision of the secretary of state or the person in charge of the election regarding a challenge may not be challenged a second time with the secretary of state or the person in charge of the election, but may be appealed to the circuit court. Any challenge with the secretary of state may be appealed in Hughes County. An appeal challenging a nominating petition for a primary election, takes precedence over other cases in circuit court. Any party appealing the circuit court order to the Supreme Court shall file a notice of appeal within ten days of the date of the notice of the entry of the circuit court order.

A failure to challenge a petition pursuant to this section, does not deny a person any other legal remedy to challenge the filing of a nominating, initiative, or referendum petition in circuit court. A challenge to a petition in circuit court may include items prohibited in this section.


12-1-14. **Verification of petition signatures--Written declaration as to validity.** The person in charge of the election shall verify the information contained in the affidavit submitted pursuant to § 12-1-13 and make a written declaration regarding the validity of the signatures in question. The person in charge of the election shall verify that each person, challenged pursuant to § 12-1-13, was a registered voter at the time the person signed the petition by using the registration documents on file.

Source: SL 1999, ch 70, § 2; SL 2015, ch 74, § 2.

12-1-15. **Notification of candidate or sponsor if petition declared invalid.** The person in charge of the election shall immediately notify by certified mail any candidate whose nominating
petition or any primary sponsor whose referendum or initiative petition is rejected and declared invalid in accordance with SDCL 12-1-13 and 12-1-14.

Source: SL 1999, ch 70, SDCL 3.

12-1-39. Availability of petition to public. No petition submitted may be made available to the public until the validation process has been completed and the office where that petition was submitted has filed or rejected the petition.

Source: SL 2017, ch 2, § 3.

12-1-16. Other legal remedies to challenge petition not precluded. If a person fails to challenge a petition pursuant to SDCL 12-1-13, it does not deny that person any other legal remedy to challenge the filing of a nominating, initiative, or referendum petition.


3.250 Campaign Finance

1. Do any campaign finance reporting requirements apply to municipal elections?

Only for 1st class municipal ballot question committees or if a city has adopted campaign finance ordinances.

Campaign finance requirements apply to each statewide office, legislative office, statewide ballot question, county offices and ballot questions in counties with population greater than five thousand according to the most recent Federal census, ballot questions in first class municipalities, and school district offices and ballot questions in school districts with more than two thousand average daily membership. Any municipal or school district election covered by this chapter shall conform to the contribution limits applicable to legislative offices. This chapter does not apply to the unified judicial system, nor does this chapter apply to any township or special purpose district offices or ballot questions or elections for municipal offices. However, the governing body of any county, township, municipality, school district, or special purpose district not otherwise covered by this chapter may adopt an ordinance or resolution to make the provisions of this chapter, with or without amendments, applicable to county, township, municipal, school district, or special purpose district elections. (SDCL 12-27-39).

Municipalities have the option of adopting provisions of state law regarding campaign financing for organizations contributing to ballot question committees. If such an ordinance is adopted, information to be contained in the statements is contained in SDCL 12-27-19 and 12-27-22 through 28.

The Secretary of State’s office has campaign finance disclosure guidelines available on their website at https://sdsos.gov/elections-voting/campaign-finance/default.aspx.

2. Are candidates in municipal elections required to file financial interest statement?

Yes, if in a first class municipality. Any candidate for county commissioner, school board member in a school district with a total enrollment of more than two thousand students, or commissioner, council member, or mayor in any first class municipality, shall file a statement of financial interest with the office at which the candidate's nominating petitions are filed not more than fifteen days after filing the candidate's nominating petitions or, if otherwise nominated, not more than fifteen days after the candidate's nomination is certified. Any violation of this section
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is a petty offense. An intentional violation of this section is a Class 2 misdemeanor. (SDCL 12-25-30)

3.300 Candidate’s Withdrawal

1. May a candidate withdraw after filing a petition?
   Yes. Any person who has filed a nominating petition pursuant to SDCL 9-13-7 may withdraw
   from the nomination by a written request, signed by the person and properly acknowledged and
   filed with the finance officer of the municipality. The name of a withdrawn or deceased
   candidate may not be printed on the ballot if the candidate withdraws or dies no later than five
   p.m. on the deadline day for filing nominating petitions (9-13-7.1).

If death or withdrawal of a candidate or candidates occurs at any time prior to five p.m. on the
deadline day for filing nominating petitions results in there being no contest on the ballot, that
ballot need not be voted. In addition, if that contest constitutes the only ballot to be voted upon,
then the election shall be canceled by the official in charge of the election and the unopposed
candidate shall be issued a certificate of election (9-13-7.1).

5:02:07:05. Candidate’s request to withdraw nomination
The candidate’s request to withdraw nomination must be in the following form:

CANDIDATE’S REQUEST TO WITHDRAW NOMINATION
I, ________________________________________, candidate for the office of
________________________________________ (list office, party and/or district
number, if applicable), request that my nomination be withdrawn and that my
name not appear on the ballot. I, under oath, verify that I have read and understand the contents
of this request to withdraw my candidacy.

(Signed) ______________________________

Subscribed and sworn to before me this ______ day of ____________ , 20____.

_____________________________
Officer Administering Oath

3.350 Voter Registration

1. Who can register voters?
The county auditor has complete charge of maintaining the voter registration records in the county. Voter registration shall be conducted by county auditors and municipal finance officers.
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Voter registration forms are also available at the Secretary of State’s office and at those locations which provide driver’s licenses; food stamps; Temporary Assistance for Needy Families; women, infants, and children nutrition programs; Medicaid; military recruitment; and assistance to the disabled as provided by the Department of Human Services (SDCL 12-4-2).

Voter registration forms can be printed at your local printing company or you can print the form off of the Secretary of State’s website. Go to www.sdsos.gov and click on Register to Vote under the Elections & Voting tab.

2. Who is eligible to vote in a municipal election?

9-13-4.1. Registration and residence required to vote in municipal election--Residence defined--Challenge--Contest of election. No person may vote at any municipal election unless the person is registered to vote pursuant to chapter 12-4 and resides in the municipality at the time of the election. For the purposes of this section, a person resides in the municipality if the person actually lives in the municipality for at least thirty days each year, is a full-time postsecondary education student who resided in the municipality immediately prior to leaving for the postsecondary education, or is on active duty as a member of the armed forces whose home of record is within the municipality. A voter’s qualification as a resident may be challenged in the manner provided in SDCL 12-18-10. No election may be contested on the grounds that any nonresident was allowed to vote if the nonresident was not challenged in the manner provided in SDCL 12-18-10.

12-1-4. Criteria for determining voting residence. For the purposes of this title, the term, residence, means the place in which a person has fixed his or her habitation and to which the person, whenever absent, intends to return.

A person who has left home and gone into another state or territory or county of this state for a temporary purpose only has not changed his or her residence.

A person is considered to have gained a residence in any county or municipality of this state in which the person actually lives, if the person has no present intention of leaving.

If a person moves to another state, or to any of the other territories, with the intention of making it his or her permanent home, the person thereby loses residence in this state.

3.355 Deadline for Voter Registration and Notice Publication Deadlines

12-4-5. Entry of applicants in registration file--Deadline--Rules--Lists for secondary elections. The county auditor shall enter in the master registration file the names of all eligible persons who have had their completed applications for registration and mail registration cards received by any county auditor or any local, state, or federal agency responsible for conducting voter registration under this chapter not later than 5:00 p.m. fifteen days preceding the election. However, any completed mail registration card mailed to the appropriate county auditor and postmarked not less than thirty days preceding an election shall be added to the registration file. Voter registrations completed at any local, state, or federal agency during any given week commencing on Tuesday through the following Wednesday shall be sent to the appropriate county auditors no later than the following Wednesday. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, for the alternative transmission of voter registration information by computer from the agency to the secretary of state. The name of any voter who has registered
to vote by 5:00 p.m. fifteen days preceding the secondary election shall be added to the file used for the secondary election.

12-4-5.2. Notice of registration procedures—Publication. The county auditor or the person responsible for the conduct of a local election shall give notice of the availability of registration officials and state when registration will be terminated and the effect of a failure to have registered. Such notice shall be published in official newspapers at least once each week for two consecutive weeks, the last publication to be not less than ten nor more than fifteen days before the deadline for registration.

5:02:04:04. Notice of deadline for voter registration
The notice of deadline for voter registration must be in the following form:

NOTICE OF DEADLINE FOR VOTER REGISTRATION

Voter registration for the ________________ Election to be held on ______________________, will close on ______________ at 5:00 p.m. Failure to register by this date will cause forfeiture of voting rights for this election. If you are in doubt about whether you are registered, check the Voter Information Portal at www.sdsos.gov or call the county auditor at    (telephone number)   .

Registration may be completed during regular business hours at the county auditor's office, municipal finance office, secretary of state's office, and those locations which provide driver's licenses, SNAP, TANF, WIC, military recruitment, and assistance to the disabled as provided by the Department of Human Services. You may contact the county auditor to request a mail-in registration form or access a mail-in form at (www.sdsos.gov or a county provided website with a link to a voter registration form - insert one option or the other).

Any voter who needs assistance, pursuant to the Americans with Disabilities Act, may contact the county auditor for information and special assistance in voter registration.

____________________________________
(Person in charge of election - Title)

____________________________________
(Political Subdivision)

3.360 Registration List from County Auditor

12-4-9. Master registration file—Contents—Open to public inspection—Access to certain information restricted. The county auditor shall maintain and safeguard a file of voters in computer format that contains each person registered in each voting precinct within the county. This file shall be known as the master registration file and shall be, at all times during office hours, open to public inspection. However, public access to social security numbers and driver license numbers contained in the master registration file shall be prohibited. Public access to each voter's day and month of birth shall be restricted. Public access to the voter's year of birth is not restricted. The master registration file shall contain all information from each voter's registration card. The master registration file shall also include the date of the last election the voter has voted in and when the voter's information was last updated. The master registration file may also contain additional voter history information.
12-4-10. Precinct registration lists—Contents—Entries by superintendent. The county auditor shall provide from the master registration file, in paper or electronic format, a separate list of the names and addresses of all registered voters in each voting precinct as established pursuant to chapter 12-14, § 9-13-16, or 13-7-11 in the county, which shall be known as the precinct registration list. The list for any voting precinct shall be designed so that each name can be distinctly marked whenever the registrant presents himself or herself for voting and shall contain a space in which may be recorded the record of any challenge, affidavit, or other information as may be required. Each entry shall be made by the precinct superintendent or precinct deputies when the voter presents himself or herself for voting.

12-4-24. Precinct lists for local election—Delivery to voting precincts. The county auditor shall complete and make available to the official charged with the conduct of a local election at least one day preceding the election a precinct registration list and the person in charge of the election shall deliver the list to each of his superintendents of election.

3.400 Ordering Election Supplies

Cities are able to print their own Election forms, however many find it more convenient to order a complete set of Election materials from a printing company.

One company that many cities utilize is McLeod’s Printing and Office Supply. Information about ordering supplies can be found at http://www.mcleodprint.com/content/Election-Forms and their phone number is (605) 996-5151. McLeod’s works directly with the SD Secretary of State’s Office in updating their materials with any changes on a yearly basis.

3.450 Ballot Creation

*Information regarding the actual Ballot Forms can be found in Chapter 7

9-13-21. Preparation and form of ballots—Absentee ballots—Arrangement of names of candidates. The finance officer shall prepare and furnish, at the expense of the municipality, all official ballots. The quantity of ballots provided shall be at least ten percent more than the number of voters at the last comparable election. The ballots shall be white in color, of good quality of print paper, printed in black ink, and in the English language only.

The ballots for municipal elections shall be available for absentee voting no later than fifteen days prior to election day. If the ballots are for a secondary election, the ballots shall be available no later than seven days prior to the secondary election day. Absentee voting shall be conducted pursuant chapter 12-19.

The names of the candidates for each office to be voted for in the precinct shall be arranged without any other designation than that of the office for which they are candidates. If more than one member of the governing body is to be elected, the ballot shall contain instructions as to how many candidates for the governing body are to be voted for. The finance officer shall determine, by lot, each candidate's position on the ballot. Each candidate may be present or represented when the position on the ballot is being determined.
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No candidate's name may be printed upon the official ballot unless the candidate has been nominated as provided in this chapter.

3.500 Absentee Ballot Process

1. What is the procedure for absentee voting?
The application, receipt for absentee ballot, guidelines for acceptance, combined application return envelope, envelope for transmitting application, envelope for sending ballots, instructions to voter, official return envelope for ballots, official record of absentee ballots delivered to voters and envelopes for use with voting service and overseas ballots can all be found at ARSD 05:02:10.

Any registered voter may vote by absentee ballot in one of two ways— in person or by mail. Voters do not need to provide a reason in order to absentee vote (SDCL 12-19-1). It is important to note that absentee ballots have to be available no later than 15 days prior to the Election Day (SDCL 9-13-21).

An absentee voter desiring to vote by mail may apply to the person in charge of the election for an absentee ballot. The application or request shall be made in writing and be signed by the applicant and state the applicant’s voter registration address. The application or request (except from overseas military or overseas citizen voters) shall contain an oath verifying the validity of the information contained in the application or request. The oath shall be administered by a notary public or other officer authorized by this state to administer an oath or administered by an out-of-state notary public. If the application or request does not contain an oath, the application or request shall be accompanied by a copy of the voter’s identification card. The application or request may be used to obtain an absentee ballot for all elections in that calendar year conducted by the jurisdiction receiving the application or request if so indicated (SDCL 12-19-2). If you receive an absentee ballot application that also indicates other elections that they want a ballot for, please make sure to send a copy of the application to those jurisdictions.

At any time prior to an election, a voter may apply in person at the office of and to the person in charge of the election for an absentee ballot during regular office hours up to 5:00 p.m. on the day before the election (SDCL 12-19-2.1). If the voter applies in person, the voter shall complete a combined absentee ballot application/return envelope and show the person in charge of the election the voter’s identification card as required in SDCL 12-18-6.1 or complete the affidavit as provided in SDCL 12-18-6.2.

In the event of confinement because of sickness or disability, a qualified voter may apply pursuant to the provisions of SDCL 12-19-2 in writing for and obtain an absentee ballot by authorized messenger so designated over the signature of the voter. The person in charge of the election may deliver to the authorized messenger a ballot to be delivered to the qualified voter. An application for a ballot by authorized messenger must be received by the person in charge of the election before 3:00 p.m. the day of the election. If an application designating an authorized messenger also indicates a request for an absentee ballot for any future election, such absentee ballot shall be mailed to the address provided on the application. If no address is provided, the ballot shall be mailed to the person’s voter registration address (SDCL 12-19-2.1).

The voter must sign a statement on the absentee ballot envelope prior to returning the ballot. All voted ballots must be returned to the person in charge of the election in time to be delivered to the appropriate polling place prior to the closing of the polls.
Any voter identified as being covered by the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1, 2011, may submit an application or request for an absentee ballot by facsimile or emailed image to the person in charge of the election. The secretary of state may authorize a person in charge of an election to accept an application or request for absentee ballot pursuant to this section through the system provided by the Office of the Secretary of State (SDCL 12-19-2.3).

A finance officer is not authorized in law to go to nursing facilities or care centers etc. to help citizens vote absentee. Those individuals need to request an absentee ballot through the regular process. A finance officer or other city employee would be able to drop off absentee ballot applications. Only if a voter puts the finance officer as their authorized messenger would the finance officer be able to bring a ballot to them to vote. We encourage finance officers to not do this since you are the person in charge of running the election. The administrator at the facility could be the authorized messenger.

If any voter who had previously filed an application or request for an absentee ballot submits another application or request for the same election with an updated address, the county auditor shall send an absentee ballot to the new address. If any voter who had previously filed an application or request for absentee ballot appears at the county auditor’s office, the voter may complete another application and be allowed to vote an absentee ballot. If any voter who filed an application or request for absentee ballot notifies the county auditor that the voter never received that ballot, the voter may request that another ballot be sent to the same address. The provisions of this section only apply to a person who has not voted or returned an absentee ballot (SDCL 12-19-2.4).

If a registration form is received simultaneous with an absentee ballot request and prior to the registration deadline, the absentee ballot provided shall be based on the submitted registration form (SDCL 12-19-3).

The envelope containing the enclosure, if not delivered to the voter personally by the person in charge of the election or authorized messenger filing the voter's request for an absentee ballot, shall be sent first class to the absentee voter at the address stated in the application. (SDCL 12-19-5)

The ballot must be completed in the usual fashion. The voter shall place the voted ballots in the return envelope provided and seal the envelope. The voter shall execute the statement on the return envelope. (SDCL 12-19-7)

**3.550 Election Officials**

1. **Who selects and pays for election officials?**
   Each voting precinct shall be presided over by an election board consisting of a minimum of two precinct deputies and one precinct superintendent appointed by the governing body (if your wards all use the same polling place you only need to appoint one election board. (SDCL 9-13-36). Each precinct superintendent and precinct deputy shall receive compensation which shall be fixed by the governing body (9-13-16.1). The state board of elections has adopted a form to be
used in appointing election officials for school or municipal elections (05:02:05:11). Refer to the kinship chart (Attachment A) when considering who you can appoint as your election officials.

SDCL 12-15-14.3 gives you direction on this: Certain relatives of candidates prohibited from serving on election and counting boards. No person may serve on an election or counting board who is a candidate or related by blood or marriage within the second degree to a candidate who is on the ballot in that precinct (SDCL 12-15-14.3).

Federal regulations have a special exception for Election Workers- you do not need to withhold Social Security or Medicare from their paychecks if they earn less than $1600 and do not hold any other city position. No 1099 needs to be issued. If the individual earns more than $1600 or their election pay plus their wage from their other city position is more than $1600 then you follow normal procedure for withholdings.

Any precinct superintendent or precinct deputy appointed under the provisions of SDCL 12-15-1 shall be a registered voter and a resident of the precinct for which the person is appointed. If, by the time prescribed in SDCL 12-15-1, a sufficient number of members of the precinct election board are unable to be appointed, a vacancy may be filled by appointing any registered voter of the county in which the precinct is located (SDCL 12-15-2).

5:02:05:11.01. Notice of appointment of election officials for school or municipal election
The notice of appointment of election officials for municipal elections or school district must be in the following form:

STATE OF SOUTH DAKOTA
MUNICIPALITY OF (or)
SCHOOL DISTRICT (or)
COUNTY OF

NOTICE OF APPOINTMENT

To: ____________________ Precinct Superintendent
   ____________________ Precinct Deputy
   ____________________ Precinct Deputy
   ____________________ Precinct Deputy
You are appointed as precinct election board members for the ________ election for ________ (Ward/Precinct). This election will be held at (polling place) from _____ a.m. to 7:00 p.m., local time, on the _____ day of ____________, 20__.

If you are unable to serve, please contact the person in charge of the election immediately.
Dated this _____ day of ____________, 20__.

(Signed) ____________________________
Municipal Finance Officer or School Business Manager

3.600 Testing Automatic Tabulating Equipment

Automated tabulating systems must be tested before election day and immediately prior to counting on election day. (SDCL 12-17B-5, 12-17B-12 and ARSD 5:02:09:01.02)
5:02:09:01. Notice of testing automatic tabulating equipment

The notice of testing the automatic tabulating equipment shall be in the following form:

NOTICE OF TESTING AUTOMATIC TABULATING EQUIPMENT

Notice is hereby given that the automatic tabulating equipment will be tested to ascertain that it will correctly count the votes for all offices and measures that are to be cast at the ____________ election held on the _____ day of __________, ______.

The test will be conducted on the _____ day of __________, _____, at ______ o’clock (a.m.) (p.m.) at the following location: ______________________________________________.

Dated this _____ day of __________, ______.

___________________________________
Person in Charge of Election
Chapter 4

Election Day

4.000 County Auditor Responsibilities

1. What does the County Auditor provide by way of assistance?

By law, the County Auditor shall:

A. Complete and make available to the official charged with the conduct of a local election at least one day preceding the election a precinct registration list. The person in charge of the election shall deliver the list to each of his superintendents of election (SDCL 12-4-24).

B. Remain open on request until the polls close. Be sure to notify your County Auditor as soon as you know you will have an election (SDCL 7-7-2).

C. Be available on Election Day to check voter registrations in the master registration file and authorize emergency voting cards (SDCL 12-4-9, 12-18-7.1 and 12-18-7.2).

4.050 Campaigning, Campaign Signs, Poll Watchers

1. Who determines what size campaign signs can be, when they can be put up and when they have to be taken down?

That is up to the local government to establish rules governing dates and sizes. Please also note that, unless the city has adopted campaign finance laws or ordinances, a candidate does not have to put “paid for by…” on the campaign materials.

2. What are the requirements for campaigning and poll watchers?

Except for sample ballots and materials and supplies necessary for the conduct of the election, no person may, in any polling place or within or on any building in which a polling place is located or within one hundred feet from any entrance leading into a polling place, maintain an office or public address system, or use any communication or photographic device in a manner which repeatedly distracts, interrupts, or intimidates any voter or election worker, or display campaign posters, signs, or other campaign materials or by any like means solicit any votes for or against any person or political party or position on a question submitted or which may be submitted. No person may engage in any practice which interferes with the voter’s free access to the polls or disrupts the administration of the polling place, or conduct any petition signature gathering, on
the day of an election within one hundred feet of a polling place. A violation of this section is a Class 2 misdemeanor (SDCL 12-18-3).

Any person may be present at any polling place for the purpose of observing the voting and counting process. Poll watchers shall be allowed to position themselves where they can plainly see and hear what is done within the polling place, and such polling place shall be arranged that poll watchers shall be so accommodated (SDCL 12-18-9).

The superintendent of elections may order poll watchers and voters waiting to vote to position themselves where the poll watchers and voters cannot see into voting booths, read identifying numbers on photo identification cards, or interfere with voters in the act of voting or with the official actions of the election board. A violation of such an order is a Class 2 misdemeanor (SDCL 12-18-9.1).

4.100 Arrangements and Conduct of Voting

1. What happens if polls can’t open or if they open late?
If weather conditions make it impossible to open the polls on time for a local election (not primary or general), the governing body of the jurisdiction may postpone the election for one week. If the polls open late the precinct may extend the polling hours until the emergency situation has been resolved.

12-2-9. Notification to voters of postponement of election. The person in charge of the election shall use any and all means necessary to notify the voters in the jurisdiction of the postponement of an election pursuant to this chapter. If the postponement misses the deadline for the official newspaper, a notice shall be posted in three of the most public places within the jurisdiction.

12-2-4. Emergency extension of closing times--Reopening after extended emergency. Notwithstanding § 12-2-3, the county auditor may, upon request of the superintendent of an election precinct, if an emergency exists by reason of mechanical failure of a voting machine or an unanticipated shortage of ballots or like unforeseen event warrants it, extend the polling hours for that precinct until the emergency situation has been resolved. If the emergency situation is not resolved within two hours, except for a primary or general election, the polling place shall remain closed for one week and reopen at the time of the closure of the polling place.

2. What are the hours for municipal elections?
The polls shall be opened at the hour of seven o’clock a.m. and remain continuously open until seven o’clock p.m., standard time or daylight savings time, whichever is in effect. However, no polling place may be closed at any election until all the voters who have presented themselves at the polling place inside or outside for the purpose of voting prior to the time of the closing of the polls shall have had time to cast their ballots (SDCL 12-2-3, 9-13-1).
4.105 Arrangements on Election Day

* A sample Election Day Checklist can be found on the SDML website by going to http://www.sdmunicipalleague.org/ and click on the Library tab, the Elections.

The superintendent of the election precinct is in charge of conducting the election in that precinct. The superintendent must erect and have ready a sufficient number of booths to accommodate the voters in the precinct. The superintendent must also see to it that all ballots, electronic ballot marking systems, and supplies convenient to the voters are at the polling place. All materials are to be furnished by the finance officer. (SDCL 12-18-1) The American flag shall be displayed inside or outside of all polling places at each election. (SDCL 12-14-13)

The precinct election officials must be at the polling place at all times after the polls are opened. (SDCL 12-18-1.4)

4.110 Conduct of voting

*The Polling Place Voter Key can be found in Appendix B

Identification at the Polls: All voters will be required to provide identification before voting or obtaining an absentee ballot (SDCL 12-18-6.1). The personal identification that may be presented shall either be:

(1) A South Dakota driver’s license or non-driver identification card;
(2) A passport or an identification card, including a picture, issued by an agency of the United States government;
(3) A tribal identification card, including a picture; or
(4) A current student identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or technical school, located within the State of South Dakota.

If a voter is not able to present personal identification, the voter may complete an affidavit in lieu of the personal identification. The State Board of Elections shall promulgate rules pursuant to chapter 1-26, prescribing the form of the affidavit (SDCL 12-18-6.2). Affidavit is at http://www.sdlegislature.gov/Rules/DisplayRule.aspx?Rule=05:02:05:25

Provisional Ballots: Provisional ballots if identity is not verified (SDCL 12-18-6.3):
If any person is not authorized to vote, is successfully challenged, or is otherwise denied the ability to vote and the person maintains that he or she is currently registered to vote in that precinct, the person may cast a ballot that shall be called a provisional ballot.

The voter must complete an affirmation for a provisional ballot. Provisional ballots are not counted on election night. The person in charge of the election will investigate the following day to determine if that voter was properly registered in that precinct. If the information found determines that the voter was properly registered, then that provisional ballot will be counted. The voter will receive notification from the municipal Finance Officer of whether his/her provisional ballot was counted or not and if not, an explanation of why it was not counted.

By voting a provisional ballot, the vote may not be secret if only one provisional ballot is cast in that precinct.
**5:02:05:23. Notice to provisional voter.** The notice handed to a provisional voter shall be in the following form:

Provisional Ballot

You will be sent a notice within 13 days whether your ballot was counted or not counted. If the ballot was not counted, you will be told of the reason.

**4.150 Instructions to Voters**

*Please ensure you have the most updated versions of the Instructions to Voters on your posters.*

5:02:05:02. Instructions to the voters using hand-counted paper ballots.

5:02:05:02.01. Instructions to the voters using optical scan ballots.

**4.200 Ballots**

**4.205 Deliver and Marking of Absentee Ballots**

When the finance officer receives the absentee ballots, they must deliver the ballot and the written application for absentee ballot to the precinct superintendent of the election of the voter's home precinct. (SDCL 12-19-10)

The ballot shall be delivered with the election supplies to the polling place or, if received later, before the polls close. The board must process the ballot in the following manner:

1) Compare the statement on the reverse side of the return envelope with the written application without opening or breaking the seal of the return envelope.

2) The election officials must be satisfied that the ballots received were voted by the voter whose name appears on the statement, that the written application and statement were both signed by the voter, and that he is a registered voter of the precinct and not previously voted at that precinct in that election.

3) The voter's name is then entered in the poll book and the registration list is marked.

4) The board shall then open the envelope without opening, unfolding or examining the ballots the envelope may contain, stamp the ballots with the official stamp, and deposit the ballots with the other ballots cast at the election.

If the board determines that an envelope cannot be opened because it does not meet the requirements for opening, the reason shall be written on the envelope, signed by a member of the board, and the envelope placed in a larger envelope for unopened absentee ballots. No person may, prior to the counting of the votes, open, unfold or examine any ballot, or make any communication to any person concerning the markings or contents of the ballot. (SDCL 12-19-10)

The written application and official return envelope shall be preserved by the election officers and returned by them to the proper office together with the other election supplies. (SDCL 12-19-11)

If any absentee ballot is received at the polling place after the polls have closed, the ballot cannot be counted or opened. (SDCL 12-19-12)
4.210 Counting Ballots after Polls Close
*Please refer to the South Dakota Election Day Precinct Manual available on the Secretary of State’s Office website at https://sdsos.gov/elections-voting/election-resources/default.aspx

4.215 Spoiled Ballots

5:02:05:10. Record of spoiled ballots.

The election board’s record of spoiled ballots must be in the following form:

**STATE OF SOUTH DAKOTA**

__________________   COUNTY
__________________   PRECINCT

We do hereby certify that at the election held on Tuesday the ________ day of ______________________, 20___, official ballots were spoiled, returned by voters and cancelled as follows:

<table>
<thead>
<tr>
<th>NAME OF VOTER</th>
<th>Type &amp; Number of Ballots</th>
<th>NAME OF VOTER</th>
<th>Type &amp; Number of Ballots</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

Dated this __________ day of __________, 20__.

-------------------------------  ) Precinct Superintendent
-------------------------------  ) Precinct Deputy
-------------------------------  ) Precinct Deputy
-------------------------------  ) Precinct Deputy
-------------------------------  ) Precinct Deputy

Chapter 5

After the Election

5.000 Official Canvass
5.050 Tie Votes and Re-counts
5.100 Qualifying for Office, Certificate of Election
5.150 Oath of Office
5.200 Financial Interest Statements

5.000 Official Canvass

1. What constitutes an official canvass?
The election returns shall be reported as soon as possible to the finance officer, and within seven days of the election, the governing body shall canvass the election returns, declare the result, and enter the result on its journal (SDCL 9-13-24).

Please note that the voter registration list is considered a public record.

A quorum of council needs to be present for the canvas since a majority vote to approve the canvas needs to be taken and recorded. Do not take the ballot box to canvass as the governing body does not have the authority to recount ballots.

5:02:17:12. Duties of official board of canvassers for local jurisdiction. The duties of the official board of canvassers for a local jurisdiction are as follows:
   (1) Open the returns from each precinct which are found in each poll book;
   (2) Satisfy itself that the returns are genuine and not forged;
   (3) Tabulate the returns from the precincts and the certification of provisional ballot count;
   (4) Declare the result; and
   (5) Make an abstract of the results of the votes cast for each of the candidates and each of the issues. The abstract must be signed and certified by the canvassers under the seal of the business manager or finance officer of the local jurisdiction.

05:02:17:11. Official canvass sheet -- Municipalities, school districts, and other local jurisdictions. The official canvass sheet used by the governing body of a municipality, school district, or other local jurisdiction to canvass an election shall be in the following form:
## OFFICIAL CANVASS SHEET

Date of Election:______________________  
Type of Election:______________________  
Jurisdiction:__________________________

<table>
<thead>
<tr>
<th>OFFICE OR QUESTION</th>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Names of Candidates or “Yes” and “No”</td>
<td>Precincts</td>
<td>Precinct 1</td>
<td>Precinct 2</td>
<td>Precinct 3</td>
<td>Precinct 4</td>
</tr>
<tr>
<td>STATE OF SOUTH DAKOTA )</td>
<td>SS</td>
<td>COUNTY OF ______________ )</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>We, (list names), appointed as the Board of Canvassers because of our positions on the governing board in the jurisdiction of ______________ for the ________________ election held on the _____ day of ______<strong><strong>, 20</strong></strong>, hereby certify that the foregoing is a true abstract of the votes cast in the jurisdiction of ______________ at the election as shown by the returns certified to the person in charge of the election.</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

________________________________
________________________________
________________________________
________________________________

Sworn to before me this ______ day of ______________, 20____.

________________________________
Person in Charge of the Election

### 2. How long do you have to keep ballots and election materials?
The person in charge of the election can destroy the voted ballots and pollbook from a non-federal election sixty days following the election. However, they may not be destroyed if a recount or contest of the election if pending (SDCL 12-20-31).
Section 5

Absentee Ballot applications need to be retained, as they are good for the calendar year.

Refer to the SD Municipalities Records Retention and Destruction Schedule at http://boa.sd.gov/divisions/records/municipalities/2010_municipal_manual.pdf for information regarding other election materials and the length of time they need to be retained.

5.050 Tie Votes and Recounts

1. **What needs to happen in event of a tie vote? How is a recount conducted?**

If a tie vote exists after a canvass of original official returns, the governing body making the canvass shall certify the vote to the finance officer. The finance officer shall then notify the candidates that if no request for recount is made in writing to the finance officer within five days after the certification, the winner shall be determined by drawing of lots. If no recount request is made or a tie vote between candidates is found to exist on the basis of the recount, the finance officer shall fix a time and place for the drawing of lots, giving reasonable notice of the time and place to each of the tied candidates. The drawing of lots shall be in the manner directed by the finance officer and the certificate of election shall be issued to the candidate winning in the drawing (SDCL 9-13-27.2).

Recounts - Request - Filing. If any candidate for the municipal governing body is defeated by a margin not exceeding two percent of the total votes cast for all candidates for the office, or by a margin of five votes or less, the candidate may, within five days after completion of the official canvass, file with the municipal finance officer a written request for a recount. The finance officer shall set the time and place for the recount to occur within ten days of the date of the receipt of the recount request. A recount board shall be established consisting of one person chosen by each candidate declared elected and by each candidate who is eligible to request a recount. If this board consists of an even number of persons, one additional recount board member shall be appointed by the finance officer who shall be mutually agreeable to each candidate involved in the recount. Each representative to the recount board shall be named within three days of the receipt of the recount request by the finance officer. The person having custody of the ballot boxes containing the ballots to be recounted shall deliver them to the recount board. Any question arising on the recount shall be determined by majority vote of the recount board. The recount shall proceed expeditiously until completed. (SDCL 9-13-27.3).

Recounts - Ballot question, initiative or referendum. Notwithstanding any other provisions of law, recounts of municipal ballot questions shall be conducted if, within five days after completion of the official canvass of a municipal ballot question election at which a question is approved or disapproved by a margin not exceeding two percent of the total votes cast in the election, any three registered voters of the municipality file a petition duly verified by such voters, setting forth that they believe a recount will change the outcome. The finance officer shall set the time and place for the recount to occur within ten days of the date of the receipt of the recount request. A recount board shall be appointed by the finance officer who shall appoint one person on each side of the question and one person who shall be mutually agreed upon by the other two appointed. Each representative to the recount board shall be named within three days of the receipt of the recount request by the finance officer. The recount shall be conducted according to the provisions of § 9-13-27.3. (SDCL 9-13-27.4).
5.100 Qualifying for Office, Certificate of Election

1. What does it mean when it says a person must qualify for office? In order to qualify, a person must be:

A. A qualified voter of the municipality;
B. Reside in municipality 3 months before the election (SDCL 9-14-2). If the person has resided in an area annexed, pursuant to chapter 9-4, for at least three months, he may hold any municipal office.
C. Not a defaulter to the municipality (an individual that held a municipal position and absconded with city funds during their term of office; page 5-6 of SDML Handbook for Municipal Officials). This section does not apply to appointive officers (SDCL 9-14-2).
D. Take an oath of office and give a bond (SDCL 3-1-5).

Alderman candidates must be registered voters and residents of the ward they are running for when nominated (SDCL 9-8-1.1).

The person in charge of the election is responsible for notifying the person elected what they need to do to qualify.

9-13-28. Notice to persons elected--Time allowed for qualification. The finance officer, within two days after the result of the election is declared, shall notify each person elected to office of the person's election. If a person does not qualify by filing an oath or affirmation of office in the usual form provided by law within ten days after the first meeting of the month next succeeding the election, the office becomes vacant.

If an official fails to qualify then a vacancy is created pursuant to SDCL 3-4-1:

3-4-1. Events causing vacancy in office. An office becomes vacant if one of the following events applies to a member of the governing body or elected officer before the expiration of the term of the office; the person

(1) Dies;
(2) Resigns;
(3) Is removed from office;
(4) Fails to qualify as provided by law;
(5) Ceases to be a resident of the state, district, county, municipality, township, ward or precinct in which the duties of the office are to be exercised or for which elected;
(6) Is convicted of any infamous crime or of any offense involving a violation of the official oath of office; or
(7) Has a judgment obtained against the person for a breach of an official bond.
5:02:15:08. Municipal candidate NOT ON the ballot. The certificate of election for a municipal candidate not on the ballot shall be in the following form:

STATE OF SOUTH DAKOTA
COUNTY OF ______________
MUNICIPALITY OF ______________
CERTIFICATE OF ELECTION

THIS IS TO CERTIFY THAT

 was duly nominated and having no opposition at the Municipal Election is hereby declared elected to the office of ___________ for a term of _____ years, beginning ____________.

Dated at ___________________, South Dakota, this _____ day of __________, 20 ___.

______________________________
(Clerk, Auditor or Finance Officer)

5:02:15:09. Municipal candidate ON the ballot. The certificate of election for a municipal candidate on the ballot shall be in the following form:

STATE OF SOUTH DAKOTA
COUNTY OF ______________
MUNICIPALITY OF ______________
CERTIFICATE OF ELECTION

THIS IS TO CERTIFY that on the ________ day of __________, 20____, at the municipal election held throughout the city of ____________

 was duly elected by the qualified voters of the city of ____________ to the office of ____________ for a term of _____ year(s) beginning ____________.

Dated at ___________________, South Dakota, this _____ day of __________, 20 ___.

______________________________
(Clerk, Auditor or Finance Officer)

5.150 Oath of Office

18-3-1. Officers authorized to administer oaths. The following officers may administer oaths:

(1) Supreme Court justices, circuit judges, magistrates, notaries public, the clerk and deputy clerk of the Supreme Court, and clerks and deputy clerks of the circuit court, within the state, and federal judges, and federal magistrates;
Section 5

(2) Members of the Legislature, while acting as a member of any legislative committee, when examining persons before the legislative committee;

(3) The county auditor, the county treasurer, the register of deeds, and the deputy of each, within their respective county;

(4) Mayors, town board presidents, municipal finance officers, deputy municipal finance officers, and township clerks, within their respective municipality or township;

(5) Sheriffs and deputies if authorized by law to select commissioners or appraisers, or to impanel juries for the view or appraisement of property, or are directed as an official duty to have property appraised, or take the answer of garnishees;

(6) Conservation officers for the purposes of taking a written statement pursuant to § 23A-2-1 for any offense of Title 41; and

(7) Other officers in cases specifically provided by law.

Oath of Office   SDCL 3-1-5, 9-14-6

The following is a sample oath for elected or appointed municipal officials. Make sure that your City Attorney has checked the oath your municipality uses for legality.

I do solemnly swear, or affirm, that I will support the Constitution of the United States, and the Constitution of the State of South Dakota, and that I will faithfully discharge the duties of ________________________ for the City of _____________________________,

______________________ County, to the best of my ability.

Signature _________________________________

Sworn to before me this ______________ day of ________________, A.D. 20_____

_________________________________
Signature of Officer Administering Oath

(seal)

Title of Officer Administering Oath

5.200 Financial Interest Statements

3-1A-4. Additions and corrections filed on assumption of elective local office. Any person who assumes the office of a county commissioner, school board member of a school district with a total enrollment of more than two thousand students, or commissioner, councilman, or mayor in municipalities of the first class, shall, not more than fifteen days after the person assumes office and then not later than the first day of January of every year the person continues to hold the office, file a statement of financial interest setting forth any additions or corrections to any previous statement of financial interest filed pursuant to § 12-25-30.
In addition to the annual election for municipal officials, there are many occasions when municipalities are required to hold elections. These elections may include an option to fill a vacancy on a governing board to bond issues. Other elections are the result of action by the voters of the municipality, including referendums, initiatives, annexations or changes in form of government.

SDCL 9-13-14   Special elections governed by general provisions--Questions to be stated in notice. Every special election authorized by law, except as provided in SDCL 6-8B-4 and 9-13-14.2, shall be held upon the same notice, at the same polling places, be conducted, returned, and canvassed, and the result declared as provided herein for the annual municipal election. The notice of such special election shall state any question or questions to be voted upon (SDCL 9-13-14).

### 6.000 Notice of Special Election

#### 5:02:04:09. Notice of special election

The notice of special election must be in the following form:

**NOTICE OF SPECIAL ELECTION**

**MUNICIPALITY OF ____________________________**

A Special Election will be held on ____________, _____, in _______________, South Dakota. If the polls cannot be opened because of bad weather, the election may be postponed one week.

The election polls will be open from seven a.m. to seven p.m. __________ (mountain or central standard or mountain or central daylight savings) time on the day of the election.

At the election, the following questions will be voted upon:

(HERE LIST THE QUESTIONS TO BE VOTED UPON AND OFFICES TO BE FILLED, WITH TERM LENGTHS AND CANDIDATE NAMES)

The polling place in each precinct of this (municipality or county) is as follows:

<table>
<thead>
<tr>
<th>Section 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 6</td>
</tr>
<tr>
<td>Special Elections</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6.000</th>
<th>Notice of Special Election</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.050</td>
<td>Secondary Election</td>
</tr>
<tr>
<td>6.100</td>
<td>Filling Vacancies on Municipal Governing Body or Office of Mayor</td>
</tr>
<tr>
<td>6.150</td>
<td>Home Rule Charters</td>
</tr>
<tr>
<td>6.200</td>
<td>Bond Issues</td>
</tr>
<tr>
<td>6.250</td>
<td>Referendum</td>
</tr>
<tr>
<td>6.300</td>
<td>Initiative</td>
</tr>
<tr>
<td>6.350</td>
<td>Annexation</td>
</tr>
<tr>
<td>6.400</td>
<td>Change in Form of Government</td>
</tr>
<tr>
<td>6.450</td>
<td>Recall Elections</td>
</tr>
<tr>
<td>6.500</td>
<td>Liquor Option</td>
</tr>
<tr>
<td>6.550</td>
<td>Other Special Elections</td>
</tr>
</tbody>
</table>
Section 6

(Here list precincts and polling places. Here also may be inserted a map showing the
precincts and location of the polling places.)

Any voter who needs assistance, pursuant to the Americans with Disabilities Act, may
contact the (list person in charge of the election ex: county auditor or municipal finance officer)
at (insert phone number) before the election for information on polling place accessibility for
people with disabilities.

Finance Officer

6.050 Secondary Election

9-13-25. Person with highest number of votes for office to be declared elected. In any
municipality, the person having the highest number of votes for any office shall be declared
elected. However, the governing board of any municipality may, on or before the first of
October in the year preceding, approve an ordinance requiring a secondary election to be

9-13-26.1. Runoff election when no candidate receives a majority of votes--Conduct of
election. If a municipality has passed an ordinance requiring a runoff election, and no candidate
in a race involving three or more candidates receives a majority of the votes cast in the race, a
runoff election shall be held three weeks from the date of the first election. At the runoff
election, the only persons voted for shall be the two candidates receiving the highest number of
votes at the first election. However, if there is a tie for second place in the first election and there
is no tie for first place, all tying second place candidates shall be placed along with the first place
candidate on the ballot for the runoff election. The runoff election shall be held at the same
polling places and shall be conducted, returned, and canvassed in the same manner as the first
election. The result shall be declared and entered in the minutes of the municipality in the same
manner as the first election. The person receiving the highest number of votes at the runoff
election is elected.

9-13-27.1. Publication of notice of secondary election. The finance officer shall have a notice
of election published once during the week next preceding any secondary election. Such notice
shall include a list of all persons appearing on the ballot for the election. A facsimile of the
official ballot need not be published for secondary elections.

5:02:04:13. Notice of secondary (runoff) election

The notice of secondary (runoff) election must be in the following form:

NOTICE OF SECONDARY (RUNOFF) ELECTION
MUNICIPALITY OF ____________________

The following candidates will appear on the ballot for the secondary (runoff) election to be held
on __________, ___. If the polls cannot be opened because of bad weather, the election may
be postponed one week.
Section 6

(HERE LIST CANDIDATES APPEARING ON THE BALLOT AND POSITION FOR WHICH THEY ARE RUNNING.)

The election will be held during the same hours and at the same polling places as the annual municipal election held on ________________________ .

Voters with disabilities may contact the city finance officer for information and special assistance in absentee voting or polling place accessibility.

______________________________
Finance Officer

6.100 Filling Vacancies on Municipal Governing Body or Office of Mayor

If a vacancy exists on a municipal governing body, the remaining members shall appoint a replacement to serve until the next annual municipal election, or the vacancy may be filled by special election as provided in SDCL 9-13-14.2. In the aldermanic form of municipal government, the appointment must be a person from the same ward of the first or second class municipality. **No special election may be held to fill a vacancy before the date of the annual municipal election, except as provided in SDCL 9-13-14.2 (SDCL 9-13-14.1).**

The governing body of any municipality may, by ordinance, require that any vacancy on the governing body or in the office of the mayor is to be filled by a special election called for that purpose to be conducted as provided in SDCL 9-13-14 and this section. No such special election may be held less than ninety days before the annual municipal election. The finance officer of the municipality shall publish a notice in the official newspaper of the municipality stating that a vacancy exists, that the vacancy will be filled by special election, the date of the election, and the time and place where nominating petitions may be filed for the office. The notice shall be published once each week for two consecutive weeks beginning at least sixty days before the date of the special election. Nominating petitions for the vacancy shall be prepared and filed as provided in SDCL 9-13-7 and shall be filed at least thirty days before the date of the special election. A notice of the special election shall be published as provided in SDCL 9-13-13 and 9-13-14 (SDCL 9-13-14.2).

6.150 Home Rule Charters

A special election shall be called on any question involving a home rule charter unless another election is scheduled within one hundred twenty days of the initiation of the action (SDCL 6-12-8).

For purposes of SDCL 6-12-7 and 6-12-8, an initiation of the action means the point at which the governing body or combination of governing bodies have passed a motion to either submit the proposed charter to a vote or to submit to a vote the question of whether a charter should be initiated pursuant to SDCL 6-12-2 (SDCL 6-12-8.1).
6.200 Bond Issues

If it is determined by the governing body to be necessary to issue bonds, the governing body may by resolution or ordinance declare the necessity of the bonds and submit the question to the voters. The resolution or ordinance must include the purpose for which the bonds are to be issued and the maximum amount of the bonds. The resolution or ordinance may also include the maximum interest rate and the maximum time within which the bonds shall become due and payable or other matters the governing body determines relevant (SDCL 6-8B-3).

The governing body shall publish notice of the election once each week for two consecutive weeks in all official newspapers designated by the public body or if there is no official newspaper, a newspaper of general circulation serving the public body. The second notice shall be published not less than four nor more than ten days before the election. The notice shall state the maximum amount of bonds to be issued, the purpose for which bonds are to be issued, and other matters the governing body determines to be necessary (SDCL 6-8B-4). The ballot form is described in SDCL 6-8B-5 and ARSD 5:02:06:14.

6.250 Referendum

Statutes provide that five percent of the voters of a municipality have the right to refer an ordinance or resolution that was passed by the governing body. The percentage shall be based on the number of registered voters of the municipality as recorded by the county auditor on the second Tuesday in January in the year of the election. (SDCL 9-20-8).

After the petition is filed with the finance officer, it must be presented to the governing body at its first ensuing regular or special meeting. The governing body must submit it for a vote of the voters in the manner prescribed in SDCL 9-20-11.

The referendum petition shall be signed by at least five percent of the registered voters residing in the municipality. Along with the signature, each voter must include his residence address, county of voter registration, and the date of signing. The signer or circulator shall add this information (SDCL 9-20-8). Referendum petitions must be filed with the finance officer no later than normal closing hours of the city hall or city auditor’s office on the twentieth day after the publication of the ordinance or resolution to be referred (SDCL 9-20-6).

Referendum, initiative, and nominating petitions may be challenged in the manner provided in SDCL 12-1-13 through 12-1-16.

Any person circulating an initiative or referendum petition shall verify that each person signing the petition is a resident and qualified voter of the municipality (SDCL 9-20-9).

Upon presentation of a petition of referendum or initiative, the governing body shall submit the question to the electors at the next annual municipal election or the next general election, whichever is earlier. Pending the election, the governing body may take no action with respect to the subject matter of the petition that would alter or preempt the effect of the proposed petition. However, the governing body may expedite the date of the election by ordering, within ten days...
of receiving the petition, a special election to be held on a Tuesday not less than thirty days from the date of the order of the governing body (SDCL 9-20-11).

If submitted at the next general election, the ballot language must be certified to the county auditor by the second Tuesday in August of the year of the general election (9-20-11.2). Guidance on how to write the ballot language can be found at: SDCL 9-20-7 & 13 and 12-13-9. Except for the ballot form, referendum elections shall be governed by the Provisions of Chapter 9-13 (SDCL 9-20-14).

### 6.300 Initiative

A petition to propose an ordinance or resolution shall be filed with the finance officer. The form of the ordinance or resolution must conform to SDCL 9-19-6. (See Hdbk., sec. 4.065) The petition must include: 1) the required number of resident, registered voters; 2) each signer’s residence address, county of voter registration; and 3) the date of signing. The signer’s post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class (SDCL 9-20-2). No signature is valid if signed more than six months prior to the filing of the petition. The Board of Elections has established by rule the appropriate petitions to be used.

Any person circulating an initiative or referendum petition shall be a resident of South Dakota and at least 18 years of age, and shall verify that each person signing the petition is a resident and qualified voter of the municipality (SDCL 9-20-9).

The registered voters of any municipality may propose ordinances and resolutions for the government of the municipality if the petition is signed by at least five percent of the registered voters in the municipality. The percentage shall be based on the number of registered voters of the municipality as recorded by the county auditor on the second Tuesday in January in the year of the election (SDCL 9-20-1).

### 6.350 Annexation

One method by which the boundaries can change is annexation by petition. Statute provides that upon receipt of a written petition describing the boundaries of any territory contiguous to that municipality sought to be annexed to that municipality, the governing body may by resolution include such territory or any part within such municipality if the petition is signed by not less than three-fourths of the registered voters and by the owners of not less than three-fourths of the value of the territory sought to be annexed to the municipality (SDCL 9-4-1).

The required number of voters residing in the combined area of the municipality and special annexation precinct may file within twenty days after the publication of the annexation resolution a petition with the municipal finance officer, requiring the submission of the annexation resolution to a vote of the voters of the combined area of the municipality and special annexation precinct for its rejection or approval (SDCL 9-4-4.5).
The governing body shall within ten days after the presentation of a petition pursuant to SDCL 9-4-4.5, fix a date for holding a special election, to be on a Tuesday not less than thirty nor more than fifty days from the date of the order of the governing body. If a petition is filed on or after January first prior to the annual municipal election and within sufficient time to comply with the provisions of SDCL 9-13-14, the question shall be submitted at that annual municipal election. The special election shall be conducted pursuant to SDCL 9-20-12 to 9-20-14, inclusive, and SDCL 9-20-16 and 9-20-17 and shall be under the charge of the municipal finance officer.

### 6.400 Change in Form of Government

The voters of any municipality may change its form of government or change the number of its commissioners, wards, or trustees by a majority vote of all electors voting at an election called and held as provided. Any municipality under special charter may adopt any form of government as provided in Title 9 (SDCL 9-11-5).

If a petition signed by fifteen percent of the registered voters of any municipality, as determined by the total number of registered voters at the last preceding general election, is presented to the governing body requesting that an election be called for the purpose of voting upon a question of change of form of government or upon a question of the number of wards, commissioners or trustees, the governing body shall call an election to be held within fifty days from the date of the filing of the petition with the municipal finance officer. At that election the question of the change of form of government or the number of wards, commissioners or trustees, or both, shall be submitted to the voters. No signature on the petition is valid if signed more than six months prior to the filing of the petitions. If the petition is filed on or after January first prior to the annual municipal election and within sufficient time to comply with the provisions of SDCL 9-13-14, the question may be submitted at that annual municipal election. The election shall be held upon the same notice and conducted in the same manner as other city elections (SDCL 9-11-6).

Both the question of form of government and the number of commissioners may be submitted upon one ballot, when both questions are to be voted upon. The vote upon such questions shall be by ballot in the form and be cast in the manner provided by chapter 9-13 (SDCL 9-11-7).

The question of changing the form of government having been once voted upon shall not be again submitted within ONE year thereafter. (SDCL 9-11-8) If an election changes the form of government or number of commissioners, wards, or trustees is approved, at the next annual municipal election or at a special election called by the governing board and held pursuant to SDCL 9-13-14, officers shall be chosen under the changed form of government (SDCL 9-11-9).

### 6.450 Recall Elections

9-13-29. Municipal officers subject to recall. In any municipality, with or without a city manager, the mayor, any commissioner, any alderman, or any member of the board of trustees may be removed from office at any time by the voters qualified to vote for a successor as provided in §§ 9-13-30 to 9-13-32, inclusive.
Section 6

9-13-30. Petition for recall--Number of signatures--Grounds--Time limits. A petition signed by fifteen percent of the registered voters of the municipality, based upon the total number of registered voters at the last preceding general election, demanding the election of a successor to the mayor, commissioner, alderman, or trustee sought to be removed shall be filed with the auditor and presented by the auditor to the governing body. The allowable grounds for removal are misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross partiality. The petition shall contain a specific statement of the grounds on which removal is sought. The form for the municipal recall petition shall be prescribed by the state Board of Elections pursuant to chapter 1-26. No signature on a petition is valid if signed more than sixty days prior to the filing of the petitions.


9-13-31. Special election on recall petition--Notice and arrangements. The governing body shall, upon the presentation of a petition pursuant to § 9-13-30, within ten days, order and fix a date for holding a special election, to be on a Tuesday not less than thirty nor more than fifty days from the date of the order of the governing body. If a petition is filed on or after January first prior to the annual municipal election and within sufficient time to comply with the provisions of § 9-13-14, the question of a successor shall be submitted at that annual election.

The governing body shall have a notice of election published in the same manner as provided in § 9-13-13.

9-13-32. Incumbent as candidate in recall election--Other candidates--Secondary election on recall. Any mayor, commissioner, alderman, or trustee sought to be removed may be a candidate to succeed himself or herself and, unless the incumbent requests otherwise in writing, the auditor shall place the incumbent's name on the official ballot without nomination. The auditor shall also place on the official ballot the name of any other candidate nominated as provided in this chapter. If no other candidate is nominated for the position, no recall election may be held, and the incumbent shall remain in office.

Any secondary election required shall be conducted as provided by this chapter.

9-13-33. Continuation of incumbent in office if re-elected. If the incumbent shall be elected, he shall continue in office and not be obliged again to qualify.

Source: SL 1913, ch 119, § 15; RC 1919, § 6332; SL 1937, ch 176, § 1; SDC 1939, § 45.1325; SL 1963, ch 280.

5:02:04:10. Notice of vacancy which may occur due to filing of recall petitions

The notice of vacancy which may occur due to filing of recall petitions shall be in the following form:

NOTICE OF VACANCY WHICH MAY OCCUR DUE TO FILING OF RECALL PETITIONS
MUNICIPALITY OF ___________________________

The following office(s) may become vacant due to the filing of recall petitions:

[HERE LIST THE OFFICE(S) TO BE FILLED]

Nominating petitions may be filed in the office of the Finance Officer located at
_________________________ between the hours of _____ a.m. and _____ p.m.,
_________________________ (mountain or central standard or mountain or central daylight savings) time,
not earlier than the _____ day of _____________, 20___, and not later than the __________ day of ____________________________ , 20 ________ .

______________________________

Finance Officer

5:02:04:11. Notice of special recall election and of filing of nominating petitions for special recall election

The notice of special recall election and the filing of nominating petitions for the special recall election must be in the following form:

NOTICE OF SPECIAL RECALL ELECTION
MUNICIPALITY OF ________________________________

A Special Recall Election will be held on ________________, ______, in all the voting precincts in ______________, South Dakota. If the polls cannot be opened because of bad weather, the election may be postponed one week.

The following individual(s) (has or have) filed petitions in the office of the Finance Officer for the position(s) to be filled in the Special Recall Election:

(HERE LIST THE INDIVIDUAL(S) WHO (HAS OR HAVE) FILED NOMINATING PETITIONS)

The incumbent, ____________________, (will also or will not) appear on the ballot.

The election polls will be open from seven a.m. to seven p.m. __________, (mountain or central) time on the day of the election.

At the election the following office(s) will be filled:

[HERE LIST THE OFFICE(S) TO BE FILLED]

The polling place in each precinct of this municipality is as follows:

(Here list the precincts and polling places. Here also may be inserted a map showing the precincts and location of the polling places within the municipality.)

Any voter who needs assistance, pursuant to the Americans with Disabilities Act, may contact the municipal finance officer at (insert phone number) before the election for information on polling place accessibility for people with disabilities.

______________________________

Finance Officer
6.500 Liquor Option

Any municipality may, by vote of its electors, as provided in SDCL 35-3-8 to 35-3-23, inclusive, determine whether or not alcoholic beverages, except malt beverages, may be sold within the municipality by on-sale dealers, and may also in the same manner determine whether the municipality shall procure a license or licenses for the sale of alcoholic beverages, except malt beverages, at retail, or in case such municipality is engaged in such business, whether such license or licenses shall be renewed (SDCL 35-3-7).

As to any of the questions referred to in SDCL 35-3-7, fifteen per cent of the legal voters residing in a municipality may petition for a special election to determine such question. In the case of a municipality having a mayor, the number of legal voters shall be deemed the total number voting in the last preceding election of a mayor, and in other municipalities the number of legal voters shall be deemed the total number voting in the last preceding regular municipal or township election. The petition shall set forth the question which the petitioners’ desire submitted, and shall be filed with the city or town auditor or finance officer, or township clerk, as the case may be (SDCL 35-3-8).

The form of the question on local option is prescribed in SDCL 35-3-10 and 35-3-12.

6.550 Other Special Elections

Other circumstances that may require elections include:

- Sale of a public utility (SDCL 9-39-37);
- Consolidation of municipalities (SDCL 9-5-1);
- Dissolution of a municipality (SDCL 9-6-1);
- Establishing or dissolving a utility board (SDCL 9-39-6 or 9-39-31);
- Voting to exceed tax levy limitation (SDCL 10-12-36, 10-13-36), and
- Establishment of municipal bus service (SDCL 9-35-12).
Chapter 7

Petition Forms and Ballot Forms

7.000 Nominating
7.050 Referendum
7.100 Initiative
7.150 Bond
7.200 Tax Levy Opt-out
7.250 Recall Election
7.300 Change in Form of Government

5:02:05:00. Official stamp for ballots - All elections

Official ballots for each election must be stamped with an official stamp which must contain the following information:

OFFICIAL BALLOT
(NAME OF COUNTY, SCHOOL DISTRICT, MUNICIPALITY, 
OR OTHER POLITICAL SUBDIVISION)
(Precinct name or number or both)
SOUTH DAKOTA

5:02:06:18. Colors of ballots for combined elections

When more than one ballot is voted in municipal, school district, or combined elections, white shall be used for one of the ballots and contrasting colors may be used for other ballots.

12-1-3. Definition of terms used in title. Terms used in this title mean:
(8) "Petition," a form prescribed by the State Board of Elections, which contains the question or candidacy being petitioned, the declaration of candidacy if required and the verification of the circulator. If multiple sheets of paper are necessary to obtain the required number of signatures, each sheet shall be self-contained and separately verified by the circulator;
* Self-contained means petition sheets cannot be stapled, taped, glued, etc. together. They must be front to back on one piece of paper.

05:02:08:00.03 Form of petition

7.000 Nominating

05:02:06:12 – Municipal Election Ballot
5:02:08:13 – Nominating Petition for Municipal Election Form

7.050 Referendum

05:02:06:13 – Municipal Questions Election Ballot
05:02:08:16 – Municipal Referendum Petition Form
7.100 Initiative
05:02:06:13 – Municipal Questions Election Ballot
05:02:08:15 – Municipal Initiative Petition Form

7.150 Bond
05:02:06:14 – Municipal Bond Election Ballot
*No prescribed petition form.

7.200 Tax Levy Opt-out
05:02:06:20 – Tax Levy Opt-out Ballot
05:02:08:41 – Form of Petition for Referring a Tax Levy Opt-Out

7.250 Recall Election
05:02:08:17 – Municipal Petition for Recall Form
05:02:06:12 – Municipal Election Ballot

7.300 Change in Form of Government
05:02:08:23 – Form of Petition for Change in Municipal Government
05:02:06:13 – Municipal Questions Election Ballot
Appendix A

FIFTH DEGREE OF KINSHIP CHART

(5th degree)
Great, Great,
Great Grandparent

(4th degree)
Great, Great
Grandparent

(5th degree)
Great, Great
Aunt
(3rd degree)
Great
Grandparent
(5th degree)
Great, Great
Uncle

(4th degree)
Great Aunt
(2nd degree)
Grandparent

(5th degree)
Second Cousin
(3rd degree)
Aunt

(4th degree)
First Cousin
(2nd degree)
Sister

(5th degree)
First Cousin
(Once removed)
(3rd degree)
Niece

(4th degree)
Grand Niece

(5th degree)
Great
Grand Niece

(5th degree)
Great
Grand Niece

(4th degree)
First Cousin
(Once removed)
(3rd degree)
Nephew

(4th degree)
Grand Nephew

(4th degree)
First Cousin
(5th degree)
Great
Grand Nephew

Dependent child

(3rd degree)
Uncle
(5th degree)
Second Cousin
(4th degree)
Uncle

(5th degree)
Great Uncle
If you have any questions, call your County Auditor

November 2004