



OFFICE OF THE CITY ATTORNEY

To: Charter Review Commission
From: William D. Geary, City Attorney
Subject: Election Days
Date: August 1, 2013

During the July 31, 2013, Commission meeting the issue of appropriate election days was raised. This memorandum will address the major issues involved in changing when the City holds its Mayor / Council elections.

ELECTION DAYS

The City Charter establishes the fourth Tuesday in March as the general election day; the primary election is four weeks prior to that date.¹ The State requires that all public elections be held on a Tuesday.² In 2012 the General Assembly modified the list of authorized days for elections to include the first Tuesday after the first Monday in April, August and November. Bond elections may be held on the first Tuesday after the first Monday in February, but no other issues can be included on that ballot.³

Prior to August 28, 2012, a city was explicitly prohibited from adopting a charter amendment that would call for an election on any other day than those allowed by statute.⁴ However, a city may establish another election day by charter:

All public elections shall be held on Tuesday. Except as provided in subsections 2 and 3 of this section, and section 247.180, all public elections shall be held on the general election day, the primary election day, the general municipal election day, the first Tuesday after the first Monday in November, or on another day expressly provided by city or county charter, and in nonprimary years on the first Tuesday after the first Monday in August. Bond elections may be held on the first Tuesday after the first Monday in February but no other issue shall be included on the ballot for such election.⁵

A city's charter must be consistent with the Missouri constitution and statutes.⁶ Any conflict is resolved against the City. The City may pick any Tuesday it wishes for elections.

However, changing the primary and general election dates must meet statutory requirements. Notice must be given to the election authorities not later than 10 Tuesdays before the date of the election.⁷ The City may not identify the successful primary candidates for several days after the primary election because of the election authorities' need to certify the returns. Consequently, the time between the primary and general election should be more than 10 weeks.

Because one of the goals of changing election days is to reduce the City's cost, one or both of the elections need to coincide with elections of other entities, such as school districts. This means the

April election day must be used. A dozen weeks from that day leaves the general election on a day from June 18 to June 24.⁸

TERM OF OFFICE

To change election days means the time a term of office begins must also change. The 2006 Charter amendment lengthened the time from April 10 to May 1. This was done in recognition of the fast paced work that a new mayor must do to put together an administration ready to operate on the first day of the term.

The Constitution says

The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended.⁹

But a look at the history of the provision suggests it is lawful to extend a term of office when the extension is part of a *systemic change* in government. This was done with the most recent City Charter, which explicitly stated:

Terms of office for the Mayor, members of the Council, and judges of the Kansas City Municipal Division of the Circuit Court serving at the time of adoption of this Charter are recognized to end May 1, 2007.¹⁰

The constitutional provision was designed to prevent the adoption of special legislation keeping persons in office without the need to stand for re-election. But the extension of a term of office by two years was allowed by the Supreme Court because the change in election dates was made as a reform of the system providing for justices of the peace.¹¹ Furthermore, it has been established that the voters of Kansas City have the right to reduce the terms of incumbents for the same reason they have to extend terms as part of a systemic change in government:

We cannot suppose that the convention intended thereby to cripple and embarrass the legislature in the exercise of a sound and wise discretion in making such reasonable changes in the times of electing public officers, as the public interest and convenience might require.¹²

An official serves until the official's successor is elected (or appointed) and qualified to take office.¹³ Consequently, if the people choose to change the City Charter to provide for elections on the first Tuesday after the first Monday in April, and 12 weeks thereafter, the extension of a term of office until a reasonable time after the election is permissible.

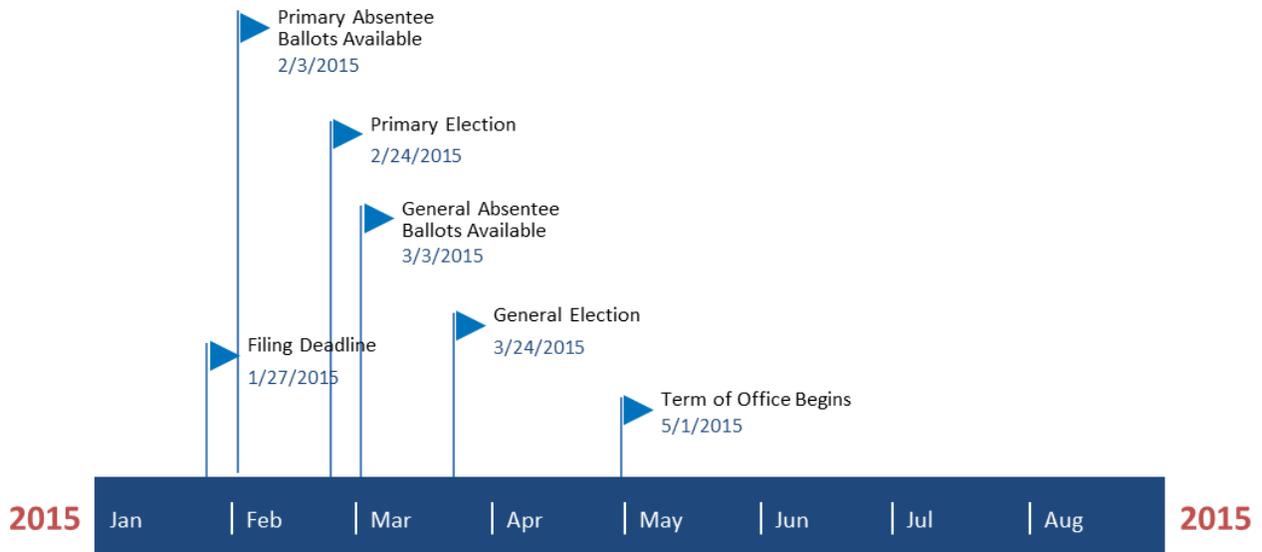
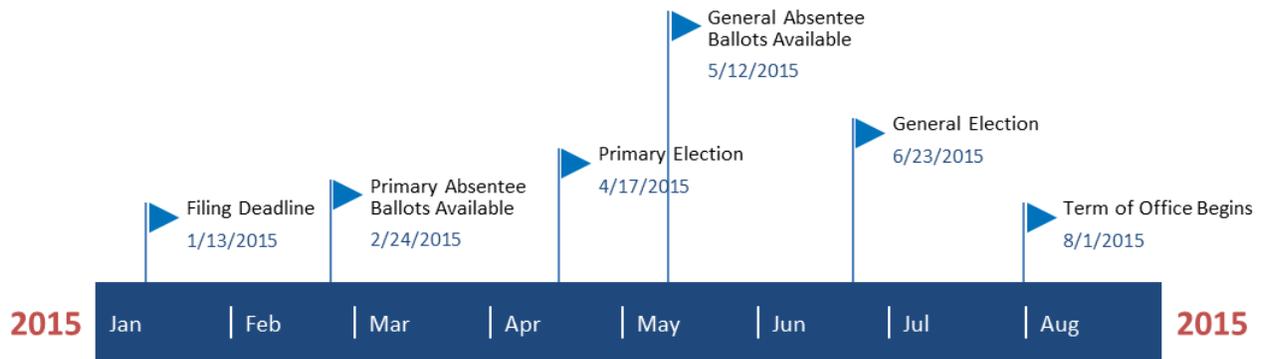
FILING FOR OFFICE

Currently a person may file for office no later than four weeks before the primary election.¹⁴ This period will be enlarged significantly if a new primary date is picked because the election authorities are entitled to at least 10 weeks' notice of the election.¹⁵ There must be time for the

candidate to establish his or her qualifications through a tax clearance, for example. The filing period must be established on the assumption that someone will file on the last day. Again, I will assume a 12 week period. This would mean the filing period would expire in the middle of January.¹⁶ This is but about two weeks earlier than the current deadline.

COMPARISON OF POSSIBLE SYSTEM WITH CURRENT SYSTEM

The following two timelines compare the possible change to the current system:



Several observations can be made about this comparison:

1. By lengthening the period during which people campaign, those who need to build name recognition will have more time to reach potential supporters.
2. Incumbents will have been raising money, generally, during their current term, before people are contemplating running or ready to announce they are running. A lengthier campaign will give challengers more time to raise money.

3. Donors are pressed to give during the second donation period – between the primary and general elections, but with a lengthier campaign donors will have a period three times as long in which to support a general election candidate.
4. Absentee ballots are often unable to be requested, provided, and returned (particularly if this is done by mail) in the short four week period, thus rendering absentee voters unable to participate in the elections. A longer period between elections would remedy that defect.
5. By moving the election dates the cost of the primary election would be shared with school districts.
6. By moving the election dates the campaign will be moved from the winter and the unknown factor of weather affecting voter turnout.
7. By moving the election dates candidates will not be faced with door-to-door campaign during the winter.
8. Current incumbents will serve an additional three months.



William Geary
City Attorney

cc: Jim Giles, Special Assistant, Intergovernmental
Affairs, Office of the Mayor

¹ §604, City Charter (2006).

² §115.123.1, RSMo.

³ *Id.*

⁴ §115.123.4, RSMo. (repealed by S.C.S. H.B. 1036, 2d Reg. Sess. 96th General Assembly).

⁵ §115.123.1, RSMo.

⁶ MO. CONST. art. VI §19(a).

⁷ §115.125.1, RSMo. [There are exceptions not applicable to a general election.]

⁸ Under this scenario general election days would be June 23, 2015; June 18, 2019; June 20, 2023; June 22, 2027; June 24, 2031; June 19, 2035; June 21, 2039. The pattern would then repeat beginning in 2043.

⁹ MO. CONST. art. VII §13.

¹⁰ §1309(d), City Charter (2006).

¹¹ *State ex rel. Attorney General v. Ranson*, 73 Mo. 78 (1880); *see also State ex rel. Attorney General v. McGovney*, 3 S.W. 867 (Mo. 1887)

¹² *State ex rel. Voss v. Davis*, 418 S.W.2d 163 (Mo. 1967) *citing Ranson and McGovney*.

¹³ MO. CONST. art. VII §12.

¹⁴ §602, City Charter (2006).

¹⁵ §115.125.1, RSMo.

¹⁶ This would also mean candidates or their workers could collect signatures at the polls in November, thereby helping to gather a high number of qualified voters signing.