

INTEROFFICE MEMO OFFICE OF THE CITY ATTORNEY

TO: Honorable Mayor and
Members of City Council

DATE: February 6, 2017

FROM: R. Joel Stern
City Attorney

SUBJECT: SPECIAL ELECTION AUTHORITY FOR REFERENDUM/INITIATIVE/RECALL

Qualified electors have the right of initiative and referendum and to recall public officers. *See* Arizona Const., Art. 4, Part 1, § 1 and Art. 8, Part 1, § 1. The question is: when would there be an election to decide such matters?

Since 1989, the city has had the authority to pass an ordinance which allows the city to place qualified referendum and initiatives on special election dates. *See Dewey v. Jones*, 159 Ariz. 409, 767 P.2d 1199 (App. Div. 2, Dept. A) (1989). In *Dewey*, the Town of Marana passed an ordinance that allowed it to hold a special election on a date other than the next regularly scheduled general election date for a qualified referendum. The court allowed the town to follow its local special election ordinance. On appeal, the court affirmed the trial court's decision and held that a city or town may pass an ordinance that allows the city or town to have a referendum on a special election date. In fact, the court stated no state law forbids the practice. This authority also applies to recall matters (*see* A.R.S. § 16-204(F)) and under such section, the potential election days that a special election can be scheduled include: 1) the second Tuesday in March; or 2) the third Tuesday in May; or 3) the tenth Tuesday before the first Tuesday after the first Monday in November; or 4) the first Tuesday after the first Monday in November.

Other non-chartered cities and towns have implemented such provisions in their city and town codes, as is detailed on the attached list. The benefit of creating such flexibility is that should a qualified referendum/initiative/recall matter be filed with the city, the city has the option to schedule a special election on the matter and not wait until the next regularly scheduled general election. Please take note that even with the special election authority, there are other election issues to consider, some of which include: 1) administrative time frames; 2) election services negotiations with respective counties and subsequent intergovernmental agreement approvals; 3) time frames for processing arguments/publicity pamphlet; 4) budget costs of at least \$25,000 - \$30,000 for stand-alone elections; 5) polling place selections; and 6) website notice for election dates.

Staff recommends passage of an amendment to the city code which authorizes council to select one of the above special election dates for future referenda, initiative and recall matters.



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<u>CITY</u>	<u>ELECTION DATE OPTIONS</u>	<u>CODE §</u>
Chino Valley	Next primary or general election or state election or at a special election called by council according to A.R.S. § 16-204	§ 37.031
Fountain Hills	Initiative: Next primary or general election	§ 2-6-1(B)
	Referendum: Council may call a special election no less than 90 days and no more than 150 days from presentation of certificate to town clerk provided there are no regularly scheduled town primary or general elections in that time period	§ 2-6-1(C)
	Referendum: If council does not have enough votes to call for a special election the matter will appear on the ballot at the next regular town primary or general election	§ 2-6-1(D)
Gilbert	Next town election or at a special election called by council	§ 26-10 (a)
Marana	Next primary or general election or at a special election called by council	§ 2-2-7
Oro Valley	Next primary or general election or at a special election called by council	§ 2-3-6 (A)
Paradise Valley	Next general election or at a special election called by council according to A.R.S. § 16-204	§ 2-3-7
Prescott Valley	Next primary or general election or at a special election called by council	§ 2-06-010
Sedona	Next primary or general election or at a special election called by council	§ 2.85.060
Show Low	Council may call a special election otherwise the matter will be decided at the next municipal election	§ 2-6-1
Sierra Vista	Next primary or general election or at a special election called by council	§ 38.06
Surprise	In accordance with A.R.S. § 16-204	§ 14-3