



Town of Princeton  
Board of Registrars  
Wednesday, August 10, 2022 – 3:00PM

Virtual Meeting Attendance:

Board of Registrars  
Wed, Aug 10, 2022, 3:00 PM

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Agenda:

- Approval of Minutes
  - April 27, 2021 - 10:00am
  - Wednesday, February 23, 2022 - 1:00pm
- Set meeting date/time for counting UOCAVA Ballots (11/10 2:00 pm?)
- Discuss new Election Laws including EV for ATE
- Discuss EV in person for upcoming Primary / Election
- Vote on 950 CMR 55.02 (12) – Certifying pet/nom
- Vote on 950 CMR 55.02 (7) – Stamp

- Vote on authorizing the Town Clerk's Office to perform all actions required by the Board of Registrars, according to 950 CMR 55.02 (12) and MGL Ch 53, §7. Thus, the authorization of the use of signature stamps for nomination papers and petition papers.
- Discuss availability for upcoming Elections 9/6 and 11/8
- General Overview of Role of BOR ( If questions or needed)
- Adjourn

**Princeton Board of Registrars Minutes**  
**April 27, 2021**

Meeting called to order 10:00AM

Present: Phil Obrien, Sue DeLiddo, Victoria Hawks, Nathan Boudreau

- Victoria Hawks was sworn into her role as a member of the Board of Registrars
- Board voted Phillip Obrien Chair
- Town Clerk Nathan Boudreau updated the board on early voting, absentee ballots, and the upcoming election schedule.

Meeting was adjourned at 10:35

**Princeton Board of Registrars Minutes**  
**February 23, 2022**

Meeting called to order 1:00PM

Present: Phil Obrien, Sue DeLiddo, Victoria Hawks, Nathan Boudreau

- Board voted Phillip Obrien Chair
- Board voted to recommend Phillip Obrien to a new 3-year term.
- Town Clerk Nathan Boudreau updated the board on upcoming election schedule.

Meeting was adjourned at 1:45



# **The Commonwealth of Massachusetts**

William Francis Galvin, Secretary of the Commonwealth  
Elections Division

## **Election Advisory #22-01**

Changes to State Election Laws

June 23, 2022

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The purpose of this Advisory is to familiarize local election officials with changes to state election laws that will impact the 2022 State Primaries and State Election, as well as upcoming local elections.

This Advisory includes a first-glance summary of changes that will directly affect how you, as a local election official, will carry out your duties. Additional information and specifics will be provided in the coming weeks and months, as different aspects of the new law go into effect and as new regulations are promulgated.

### **The VOTES Act**

On June 22, 2022, an election reform law titled “The VOTES Act” was signed into law. Among other things, the VOTES Act makes several of the temporary changes from the pandemic permanent, so many of these policies and procedures will be familiar to those of you administering elections in 2020. The new law also makes the absentee voting process and early voting by mail processes consistent.

### **Voter Registration Deadlines**

Beginning July 22, 2022, the voter registration deadline for all elections and town meetings will be 10 calendar days before the date of the meeting or election.

Local election officials will still be required to hold in-person registration sessions on the last day to register to vote, which for any Tuesday election will now be a Saturday, but the registration session will end at 5 p.m. instead of 8 p.m.

For cities and towns with more than 1,500 voters, the registration session must be held from 9 a.m. until 5 p.m. For towns with fewer than 1,500 voters, the registration session must be held from 9 a.m. until 11 a.m. and from 3 p.m. until 5 p.m.

## **Poll Worker Appointments**

Effectively immediately, there is additional flexibility for the appointment of poll workers.

If, six weeks before an election, it is determined that there are not enough election officers appointed, the appointing authority (board of selectmen, city council, board of election commissioners) may appoint poll workers without regard to political party affiliation, voter registration status, residence, or inclusion on a list from a local party committee.

If, three weeks before an election, there are still not enough poll workers appointed, the clerk will be able to fill vacancies by appointing any competent person, without regard to party, residence, or a list from a local party committee.

Further, you now have the option to eliminate the use of a check-out table if you choose to do so. If you do not use a check-out table, however, you must still have a poll worker stationed at the ballot box.

If poll workers are appointed without regard to party affiliation, the inspectors at the check-in table (and check-out, if used) cannot be of the same political party. If poll workers are appointed from lists from the parties, the inspectors must be of different political parties.

## **Police Officer Assignments**

Effective immediately, the law regarding assignment of police officers at polling places is amended to require the board of selectmen, town council, or city council to assign police officers and constables to polling places. Previously, this was the responsibility of the chief of police.

Since this change is taking effect before the primaries, you will need to communicate with your selectmen or council to make sure they detail officers at a summer meeting before September.

## **Vote by Mail**

Effective immediately, early voting by mail must be available for all state elections, state primaries, and presidential primaries.

Early voting by mail is also required for all local elections and preliminaries, unless the city or town opts out. In order to opt out of Vote by Mail for a local election, the selectmen, city council, or town council must hold a public hearing and public roll call vote to NOT allow Vote by Mail no later than 45 days before the date of the election. Cities and towns cannot opt out of Vote by Mail for a local election if the election is happening on the same day as a state election, state primary, or presidential primary.

## **Applications**

As in 2020, the Elections Division will be mailing Vote by Mail applications at least 45 days before every regular state primary, state election, and presidential primary. The applications will be sent to everyone registered to vote by the 60<sup>th</sup> day before the election who has not

already applied for a ballot. The applications will be pre-addressed to the local election office and postage pre-paid.

Unlike previous years, family members are now allowed to request an early Vote by Mail ballot on a voter's behalf, as they currently can with absentee ballots. Similarly, family members are now permitted to return an early Vote by Mail ballot for the voter as well.

Applications to Vote by Mail must be posted every city and town website, as well as on the Secretary of the Commonwealth's website.

Any form of written communication requesting a ballot is sufficient. Applications may be signed electronically, as long as the signature is written in substantially the same manner as a hand-written signature.

Effective immediately, you are required to include Vote by Mail applications with all acknowledgement notices sent to any new voter or anyone who has changed their address. Note that unlike 2020, these applications must be sent all year round, and not only to voters who register or move after the statewide application mailing has been sent.

### **Online Portals**

The Elections Division will also be required to establish an online ballot request portal for voters to use to request their ballots online. The law states that a wet signature cannot be required for this portal. Additional information on the portal will be provided after the Secretary's Information Technology Division is able to examine the requirements in the law.

A portal for UOCAVA voters to request their ballots and submit ballots electronically will also be required, though that part of the law does not go into effect this year. More information on that will be provided after the 2022 elections.

### **Application Deadlines**

The deadline to receive a request for any ballot (early or absentee) to be mailed is now 5 business days before the election. A business day is any weekday that is not a legal holiday, so this will typically fall one week before Election Day.

For the September 6<sup>th</sup> State Primary, because Labor Day is not a business day, the deadline for you to receive vote by mail applications is 5 p.m. Monday, August 29<sup>th</sup>.

For the November 8<sup>th</sup> State Election, the deadline for you to receive vote by mail applications is 5 p.m. Tuesday, November 1<sup>st</sup>.

No ballots can be mailed to any voter whose application has not been received by 5 p.m. on the 5<sup>th</sup> business day before the election. Remember, however, that in-person early voting is still available until the Friday before the election for applicable elections and in-person absentee voting is still available until noon on the day before the election (if that day isn't a holiday).

Additionally, voters admitted to a health care facility after 12pm on the 7<sup>th</sup> day before the election can request a hand-delivered absentee ballot up until the close of polls.

### **Accessible Vote by Mail**

Effective immediately, voters who have a disability which prevents them from being able to independently mark a paper ballot are allowed to request a reasonable accommodation. Additional information on accessible voting by mail will be forthcoming.

### **Ballot Envelopes**

Return ballot envelopes (AV-8s) for state primaries, state elections, and presidential primaries are now pre-addressed and postage pre-paid.

This means that any AV-8 return ballot envelopes provided by this office need to be printed specifically for your community. It will be very important for you to be aware of your inventory and provide as much notice as possible to the Elections Division if you are running low.

### **Ballot Return**

For most elections, all ballots will still have to be returned by close of polls on Election Day. Beginning with the 2022 State Election, ballots will be able to arrive up to 3 days after Election Day for biennial state elections only. This means that ballots mailed from inside the country can be counted if they are postmarked by Election Day and received by 5 p.m. on the Friday after Election Day. Again, this is only for biennial state elections, which are the November federal elections held in even-numbered years.

This year, because the Friday after the election is a holiday, the deadline for ballots to be received is 5 p.m. on Saturday, November 12<sup>th</sup>. We realize this deadline creates logistical issues and we are in the process of exploring our options. More information will be provided as soon as we have it.

Ballots returned by hand, to a drop box, or electronically still need to be received by your office by close of polls on Election Day for all elections.

### **Ballot Processing**

Similar to 2020, you now have the option of advance removing ballots from their envelopes and advance depositing ballots into the tabulator or ballot box ahead of Election Day. All ballot removal and depositing before Election Day will still need to happen in public sessions. The Elections Division will be issuing regulations, likely similar to those used in 2020, on advance processing and more information will be provided when that happens.

### **Deceased Voters**

Since ballots will begin to be processed before Election Day, the law prohibiting counting the ballot of anyone who dies before Election Day has been repealed. A voter's ballot can be counted as long as the voter was alive when it was cast, which means as of the postmark date or when it was hand-delivered or deposited into a drop box.

## In-Person Early Voting

In-person early voting must now be offered for all regular state primaries, state elections, and presidential primaries. It must also be offered for special elections and primaries to fill vacancies for U.S. Senate or Congress. In-person early voting must also be held for any municipal elections being held on the same day as one of the above listed elections.

### In-Person Early Voting Dates

In-person early voting for biennial state elections must be held from the 17<sup>th</sup> day through the 4<sup>th</sup> day before the election. In 2022, the early voting period for the November 8<sup>th</sup> State Election will begin on Saturday, October 22<sup>nd</sup> and end on Friday, November 4<sup>th</sup>.

Early voting for state and presidential primaries will begin on the 10<sup>th</sup> day before the primary and end on the 4<sup>th</sup> day before the primary. Early voting for the September 6<sup>th</sup> State Primary will begin on Saturday, August 27<sup>th</sup> (the same day as the voter registration deadline) and end on Friday, September 2<sup>nd</sup>.

### In-Person Early Voting Hours

The requirements for early voting hours have changed to require weekend hours and set standards for weekday hours. Please note that these are minimum hours and you can always increase the in-person early voting hours.

On weekends, the number of hours you must be open depends on the number of registered voters in your community. The required minimum hours for weekends are:

Number of Voters	Required Weekend Early Voting Hours
0 - 4,999	At least 1 day per weekend At least 2 hours each day you are open At least 4 hours total each weekend
5,000 – 24,999	At least 1 day per weekend At least 3 hours per day you are open At least 6 hours total each weekend
25,000 – 39,999	At least 4 hours each weekend day
40,000 – 74,999	At least 6 hours each weekend day
75,000+	At least 8 hours each weekend day

For weekdays, the required minimum early voting hours will vary depending on the size of your community and at what point it is during the in-person early voting period. By default, the early voting hours are during your regular business hours; however, your city council, board of selectmen, or town council may have the option to limit early voting hours on certain days, if your community is small enough.



The required weekday early voting hours are:

<b>Number of Voters</b>	<b>Required Weekday Early Voting Hours</b>
0 - 4,999	At least 25% of regular business hours
5,000 – 39,999	Primary: Regular business hours  State Election: Week 1: at least 50% of regular business hours Week 2: Regular business hours
40,000+	During your regular business hours

In order to limit your early voting hours, your board of selectmen, city council, or town council will need to vote to do so at a public meeting held no later than 20 days before early voting begins. For the November 8, 2022 State Election, the deadline to take that vote is Sunday, October 2, 2022.

### **Early Voting Locations**

Minor changes have been made to the law regarding the designation of early voting sites. As has been the case previously, your local election office is the default early voting site in your community. If your office is determined to be unsuitable or inaccessible, the registrars must vote to hold early voting in a different location. You can also designate additional early voting locations, which must also be accessible.

When assigning early voting sites, your city or town must now consider, to the extent feasible, diverse geographic locations and whether the sites would have an impact on access to the polls on the basis of race, national origin, disability, income, or age. Unlike the assignment of polling places in 2020, no written report on the impact of the early voting locations is required.

Your early voting sites must be designated no later than 2 weeks before early voting begins.

### **Notice Requirements**

You will also need to publish notice of the locations and schedule for early voting at least 5 business days before early voting begins and at least once during the early voting period.

Notice must be posted: in your office or on the city/town bulletin board; in any other public building considered necessary; on the city/town’s website; and on the Secretary’s website. Remember, you need to enter your hours and locations into VRIS (or notify the Elections Division by email, if that VRIS screen is locked) for them to be posted on our website.

The deadlines for early voting posting for 2022 are:

**State Primary**

Designate Early Voting sites & schedule: Saturday, August 13, 2022

Post 1<sup>st</sup> Notice: Monday, August 22, 2022

Post 2<sup>nd</sup> Notice: August 27 – September 2

**State Election**

Designate Early Voting sites & schedule: Saturday, October 8, 2022

Post 1<sup>st</sup> Notice: Monday, October 17, 2022

Post 2<sup>nd</sup> Notice: October 22 – November 4

**Local Elections**

For local elections, cities and towns may choose to have in-person early voting. To opt-in to early voting for local elections, at least two registrars need to recommend it, and the board of selectmen, town council, or city council must then vote to authorize in-person early voting.

The vote to opt-in to early voting must take place no later than 5 days before early voting would begin, and must include the early voting schedule. Early voting can begin no earlier than the 17<sup>th</sup> day before the election or preliminary and can end no later than 2 business days before the election. Early voting for local elections default to your usual business hours, unless the vote specifies otherwise.

Sites for early voting for local elections will be designated by the clerk. The location(s) and early voting schedule must be posted no less than 48 weekday hours before early voting begins.

**150 Foot Rule**

Beginning with early voting for the September 6<sup>th</sup> State Primary, the 150 foot rule prohibiting campaigning around polling places will be extended to early voting sites as well. This means that there shall be no campaigning for or against a candidate or question on the ballot for that election within 150 feet of the entrance to the early voting site during voting hours. Signature gathering of any kind will also be prohibited during the voting hours.

**Jail-Based Voting**

While voters who are incarcerated for a reason other than a felony conviction can already vote by absentee ballot, the new law contains provisions to make voting easier for those who are incarcerated, including adding requirements to correctional facilities to distribute information. Changes to jail-based voting take effect at the beginning of 2023 and more information will be provided after the 2022 elections.

**Automatic Voter Registration**

Beginning on January 1, 2023, applicants at the RMV will no longer have the option to opt out of automatic voter registration. Instead, the RMV will be required to transmit the names and

addresses of all ***eligible citizen*** applicants to local election officials for voter registration purposes.

Applicants who are automatically registered to vote will now be allowed to decline registration only after receiving the acknowledgment notice you send to them.

# TOWN CLERK'S OFFICE



**Vote By Mail** applications can be submitted by any Princeton voter who has not already requested an Absentee ballot for the September 6, 2022, State Primary. You may drop off the application at the Town Clerk's Office, email it to [townclerk@town.princeton.ma.us](mailto:townclerk@town.princeton.ma.us) or place it in the secure official election ballot drop box located in the front lobby of Town Hall, 6 Town Hall Drive, Princeton, MA. Over the summer, an outdoor drop-box will be installed. If you wish to vote by mail, you are strongly encouraged to return your application as early as possible to ensure that you will receive your ballot in time to return it before the close of polls on Tuesday, September 6, 2022, at 8 p.m.

To obtain a Vote By Mail Application, [click here](#). You may also contact the Town Clerk at 978-464-2103 or email [townclerk@town.princeton.ma.us](mailto:townclerk@town.princeton.ma.us) and one will be sent to you.



**SEPTEMBER 6, 2022 STATE PRIMARY ELECTION**

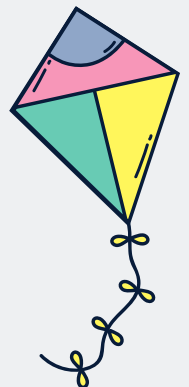
## EARLY VOTING

<b>SATURDAY AUG. 27</b>	<b>8:00 AM – 1:00 PM</b>
<b>MONDAY AUG. 29</b>	<b>9:00 AM – 4:00 PM</b>
<b>TUESDAY AUG. 30</b>	<b>9:00 AM – 4:00 PM</b>
<b>WEDNESDAY AUG. 31</b>	<b>9:00 AM – 4:00 PM</b>
<b>THURSDAY SEPT 1</b>	<b>9:00 AM – 4:00 PM</b>

**VOTING IN PERSON AT THE POLLS AFTER SUBMITTING AN EARLY BALLOT IS PROHIBITED AS OUTLINED IN 950 CMR 4 7.19.**

**TOWN HALL**

6 TOWN HALL DRIVE



# KNOW BEFORE YOU GO STATE PRIMARY EDITION

## ARE YOU A REGISTERED VOTER?

The deadline to register to be eligible to vote in the State Primary election is Saturday, August 27. The Town Clerk's Office will be open on this date from 8:00 AM - 1:00 PM for in person voter registration or register to vote online at <https://www.sec.state.ma.us/ovr/> This is also the last day to make changes to your party affiliation. REMEMBER, the Primary is a Partisan Election and you must vote on the ballot for the party in which you are registered. If you are registered as Unenrolled, you may choose which party ballot you want to vote on.

## IS YOUR VOTER STATUS ACTIVE?

Voters must return their signed street list census form annually to the Town Clerk's office to maintain an active voter status. Inactive voters are still eligible to vote but will be required to complete additional forms and show an ID at the polls in order to vote. To avoid having to complete additional paperwork at the polls, voters who appear as inactive can change their status to active by stopping by the Town Clerks Office to sign a census form in person up until Saturday, August 27 @ 1:00 pm. Changes to the voting lists cannot be made after the deadline of August 27.

## CAN I VOTE EARLY IN PERSON OR BY MAIL?

Yes - You can vote early either in person or by mail. See the Early Voting schedule for dates, hours, and location! You can also vote by mail by submitting an application to the Office of the Town Clerk not later than 5 pm on the 5th business day before the election - For the 9/6 State Primary, Monday, August 29 at 5:00 pm. Applications can be found on the Town's website or the Secretary of States website.

## WHAT WILL I BE VOTING ON?

Voters are encouraged to educate themselves on the many races and questions that will appear on their ballot PRIOR to arriving at the polls. By visiting the website:

<https://www.sec.state.ma.us/ele/eleupcomingelections/upcoming-elections.htm>

You will have the option to view your ballot and check your registration status. Educated voters will reduce the amount of time necessary in the voting booths and reduce lines and crowding on Election Day. Sample ballots will also be available to view at the Office of the Town Clerk as well as on the Town Clerk's page of the Town's website.

## WHERE DO I VOTE ON ELECTION DAY?

The Town of Princeton has 1 polling location and 1 precinct. All voters vote at: THOMAS PRINCE SCHOOL, 170 Sterling Rd, Princeton, MA

**Have an idea for the next edition of the Municipal Update? A community event to promote? A volunteer or employee you would like to see highlighted for their good work in the Town of Princeton? Send suggestions:**

**Town Clerk Nathan Boudreau  
6 Town Hall Drive  
townclerk@town.princeton.ma.us  
978-464-2103**

**Thank you to all of the boards, committees, and departments for their assistance with our Municipal Update!**

950 CMR 55.00: CERTIFICATION OF NOMINATION PAPERS AND PETITIONS

Section

55.01: Purpose

55.02: Required Actions by Registrars

55.03: Standards

55.04: Return of Certified Nomination Papers and Petitions

55.01: Purpose

950 CMR 55.00 governs the certification, by boards of registrars of voters, of voters' names on all nomination papers and petitions for ballot questions and recounts, under the authority of M.G.L. c. 53, § 7. 950 CMR 55.00 shall be interpreted to achieve and maintain accuracy, uniformity, and security from forgery and fraud in the procedures of local registrars of voters, and to promote the right of eligible voters to sign such papers and petitions.

55.02: Required Actions by Registrars

(1) When nomination papers and petitions are submitted for certification, registrars shall mark each page with the date and time of submission. They shall provide to the person submitting the nomination papers or petitions a receipt showing the number of pages submitted. They shall certify nomination papers and petitions in the order they were submitted.

(2) Registrars shall place a check mark (✓) in the left column of the nomination paper or petition next to each name they certify. They shall place the proper capital letter symbol, [N,S,D,R,E,W,T, as indicated in 950 CMR 55.03(1)] next to each name they do not certify.

(3) For the purpose of checking whether a voter is registered as of the date of certification under 950 CMR 55.03(1)(a), registrars shall consult their records of recent voter registrations since the closing date of the voting list being used for certification.

(4) Registrars shall keep the following records and enter such records into the Central Voter Registry:

- (a) which nomination papers and petitions each voter signs;
- (b) the voters who have signed a state initiative petition for a law, to check against the additional signers in the following summer; and
- (c) the total number of names that they certify on each candidate's nomination paper and on each petition.

(5) Registrars shall draw a solid line across all unused signature spaces on each page of nomination papers and petitions. If the papers or petitions are submitted in person, this shall occur at the time of submission and in the presence of the submitting person.

(6) The registrars shall indicate the number of names certified on each page in words as well as numerals.

(7) Three or more registrars must sign their certificate on each page. A facsimile stamp may be used for this purpose.

(8) Registrars need not certify more than two-fifths more (for a city or town primary or preliminary election, one-fifth more) than the total number of names necessary for nomination or qualification of a petition.

(9) If a candidate for state office resides in his/her city or town and meets the requirements of M.G.L. c. 53, §§ 6 or 48 and of 950 CMR 55.03(5), three or more registrars shall sign the appropriate certificate of voter registration or party enrollment on one or more of the candidate's nomination papers. A facsimile stamp may be used for this purpose.

55.02: continued

- (10) All writing by registrars on a nomination paper or petition shall be only in red ink.
- (11) The registrars' failure to comply with any requirement of 950 CMR 55.02, except 950 CMR 55.02(7), shall not invalidate their certification.
- (12) The registrars may authorize the office employees of the city or town clerk's office, including the city or town clerk, to perform all the actions required by 950 CMR 55.02 and by M.G.L. c. 53, § 7. This authorization may be accomplished by, among other things, a vote of the board of registrars.
- (13) When certifying names on all petitions for state ballot questions, the registrars, in addition to the requirements set forth in 950 CMR 55.00 *et seq.*, must comply with the requirements set forth in 950 CMR 48.06 *et seq.*

55.03: Standards

- (1) The registrars shall certify a voter's name signed on a nomination paper or petition unless:
  - (a) The name is not that of a registered voter at that address or the address is illegible (N).
  - (b) The name is not signed substantially as registered— the registrars cannot identify the signature as that of a voter because of form of signature (S).
  - (c) The name is illegible (S).
  - (d) The voter is enrolled in the wrong party (for primary nomination papers or recount petitions) (D or R). For primary nomination papers, the voter must be either enrolled in the proper party or unenrolled (independent) at the time of certification. For primary recount petitions, the voter must be enrolled in the proper party as of the last day to register before the primary (use E if the voter, although not enrolled in the other party, does not meet this requirement).
  - (e) The voter is registered in the wrong voting district or a different city or town (W); or
  - (f) The voter's name was already certified on the same candidate's nomination paper, or the same petition (including the earlier stage of a state initiative petition) (T).
  - (g) the name is that of an inactive voter whose address is different than the address where he or she is listed as inactive.
- (2) Registrars must certify a name even if:
  - (a) the voter's ward or precinct number has not been provided, or
  - (b) it is alleged that a voter's signature was forged or obtained by fraud. (In cases of alleged forgery or fraud, an objection may be filed, and a hearing will be held before the State Ballot Law Commission for state nominations and petitions, and before the local registrars for local nominations and petitions. The registrars may also bring alleged forgery or fraud to the attention of the State Secretary, for referral to an appropriate law enforcement agency.)
- (3) In general, a name is "signed substantially as registered" if it can reasonably be determined to be that of a registered voter. For example, registrars shall certify names in which:
  - (a) A middle initial is inserted or omitted.
  - (b) A common or known nickname is used.
  - (c) Two initials are used with a surname.
  - (d) One initial is used with a surname, if no other registered voter with that initial lives at the indicated address.
  - (e) "Jr." or "Sr." is inserted or omitted.
  - (f) Ditto marks are used to indicate a correct address.
  - (g) The name is printed.
- (4) For example, a name is not "signed substantially as registered", and registrars shall not certify it, if:
  - (a) The first name is different from the first name as registered, and no common or known nickname is used.
  - (b) The address is different, even if only the house number is different, or if a post office box number rather than a street address appears.
  - (c) The name is not that of a registered voter at the indicated address.

55.03: continued

(5) The registrars shall sign certificates under M.G.L. c. 53, §§ 6 and 48 and 950 CMR 55.02(9) for candidates for state office who reside and are registered voters as of the time of certification in their city or town, as follows:

(a) An independent or minor party candidate for state office shall receive a certificate of voter registration unless the candidate has been enrolled in a political party on the records of the registrars of the certifying city or town during the time prior to the last day for filing nomination papers and on or after the day by which a primary candidate is required by M.G.L. c. 53, § 48 to establish enrollment in a political party.

(b) A state primary candidate shall receive a certificate of party enrollment if, according to the records of the registrars of the certifying city or town:

1. the candidate has not been enrolled in a political party other than the one whose nomination the candidate seeks during the one year preceding the last day for filing nomination papers with the state secretary, and

2. either:

a. the candidate has been enrolled in the political party whose nomination the candidate seeks throughout the 90 days before the last day for filing nomination papers with the state secretary; or

b. the candidate is a newly registered voter of the registrars' city or town. For the purpose of issuing this certificate, a candidate who was not a registered voter of the city or town as of the 90th day before the last day for filing nomination papers with the state secretary, but who later registers and enrolls in the proper party in that city or town before the time of certification, is a newly registered voter.

55.04: Return of Certified Nomination Papers and Petitions

Registrars shall return certified nomination papers for state office and petitions for state ballot questions and statewide or district-wide recounts only to persons who present acceptable identification and who sign their names and addresses on the registrars' records. Acceptable identification includes:

(1) the receipt issued by the registrars at the time of submission under 950 CMR 55.02(1).

(2) written authorization signed by, or on the printed letterhead of, the candidate, or the organization sponsoring the petition.

(3) telephone authorization by the candidate's or organization's headquarters.

(4) personal recognition by the registrars.

REGULATORY AUTHORITY

950 CMR 55.00: M.G.L. c. 53, § 7.



NON-TEXT PAGE

[Massachusetts General Laws Chapter 51 §15](#) require that there shall be in every city or town, other than one having a board of election commissioners or an election commission, a Board of Registrars of Voters.

Registrars must meet the following qualifications:

Must be a registered voter in the city or town where appointed unless regularly employed by the registrars: [M.G.L. c 51 § 25](#);

Must hold no other office in the city or town where he/she is a registrar either by election or by direct appointment by the mayor, selectmen, or city/town manager or hold an office by election or appointment under the government of the United States or of the Commonwealth, except for towns with less than 2000 residents; [M.G.L. c 51 § 25](#); and

Must subscribe an oath to faithfully perform the duties of registrar. [M.G.L. c. 51 § 23](#).

The Board of Registrars of Voters are responsible for:

- Maintaining accurate lists of registered voters in the town
- Conducting elections
- Accepting nomination papers
- Certifying initiative or referendum petitions.
- Voter registration
- Processing absentee voter applications
- Processing address and party changes
- Maintaining and testing of voting equipment
- Preparing and publishing listing of residents
- Tallying Election results
- Hearing complaints of illegal or incorrect registration
- Conducting Election Recounts

The Board also conducts an annual census and has other duties and responsibilities as may be assigned to them under Chapter 51 of the Massachusetts General Laws.

The Board of Registrars of Voters consists of three (3) persons appointed for three (3) year terms by the Select Board, with one (1) member appointed each year as prescribed in Chapter 51, Section 15, of the Massachusetts General Laws. The fourth member of the Board is the elected Town Clerk. As nearly possible, the members of the board shall represent the two leading political parties. The Town Clerk need not be enrolled in a political party.



# BOARDS OF REGISTRARS & ELECTION COMMISSIONS

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## **I. INTRODUCTION**

Every city and town must have a board of registrars or election commission whose responsibilities include registering voters, making local listings of residents, certifying nomination papers and petitions, processing absent voter applications, and administering election recounts. This booklet describes how such boards and commissions are appointed, how they are structured, and how they function.

## **II. APPOINTMENT AND STRUCTURE**

In most towns, the board of registrars is comprised of four members: three members appointed by the board of selectmen, and the town clerk acting as an ex officio member. Boards of registrars in cities and towns with city-type charters may or may not include the city clerk. Some cities and towns may have election commissions instead of boards of registrars. G.L. c. 51, § 15; G.L. c. 51, § 16A; G.L. c. 51 § 17.

### **Boards of Registrars Including City/Town Clerks**

The board of registrars in cities and towns, except those which accept either section 16A or 17 of chapter 51, or which are under a special act (for example: Boston and Cambridge), is a four member board of which one member is the city or town clerk. In cities, the other three members are appointed by the mayor, with the approval of the city council or board of aldermen. In towns, the other three members are appointed by the selectmen from lists submitted by town committees of the two leading political parties.

Before making appointments to the board of registrars, the selectmen or appointing authority must solicit lists of qualified individuals from the two leading political parties. If no local party committees are organized, the state parties should be contacted. If no list is submitted within 45 days after the party chairman is notified by the selectmen or appointing authority by certified mail, appointments may be made without reference to the list.

Registrars have overlapping terms. One member of the board of registrars shall be appointed each February or March for a three year term beginning on April 1<sup>st</sup> of that same year. The clerk automatically becomes a member of the board when sworn in as city or town clerk.

The board must always contain, as nearly as possible, representatives of the two leading political parties as defined in section 1 of chapter 50 of the General Laws (Democrats and Republicans) and can contain no more than two members of each of those parties. G.L. c. 51, § 18.

The party enrollment of the clerk affects the membership of the board, but the city or town clerk need not be enrolled in a political party. If the election or appointment of a clerk would cause more than two members to be from the same party, the appointed member of the registrars with the shortest term left to serve and enrolled in the same

party as the clerk would be removed by the mayor or selectmen (after written complaint, notice and hearing) and a new member would be appointed from a different party than that of the clerk. G.L. c. 51, § 19.

### **Boards of Registrars Excluding the City Clerk**

In cities which have accepted section 17 of chapter 51, the board of registrars consists of four members appointed by the mayor with the approval of the city council to equally represent the two leading political parties. When a city changes from a board that includes the clerk as a member, the city clerk shall cease to be a member of the board as soon as the first two registrars are appointed.

When a city chooses to have a board which does not include the clerk, the first two registrars shall be appointed in February or March, one for a three year term and the other for a four year term to begin on April 1<sup>st</sup>. These two registrars fill the vacancies created by the removal of the city clerk from the board, as well as the annual expiration of one of the registrar's appointed term. The remaining two registrars from the previous board shall continue in office until their original terms expire. As registrars' terms expire, each new appointment shall be for a four year term to begin on April 1<sup>st</sup>. G.L. c. 51, § 17.

### **Election Commissions**

In any city (except Cambridge) or town that accepts the provisions of section 16A of chapter 51, there shall be a board of election commissioners who shall have all the powers, duties and responsibilities of the registrars of voters.

If a city or town accepts the provisions of section 16A, the three members of the board of registrars already in existence when the election commission is established shall become the election commissioners. The town clerk shall cease to be a member immediately and a new member must be appointed for a four year term to begin April 1<sup>st</sup>.

The commission itself shall consist of four members equally representing the two leading political parties. Appointments shall be made by the mayor with the approval of the board of alderman, by the city manager, or by the selectmen.

In towns, such appointments are made from a list containing the names of three voters from that town submitted by the town committee of the political party from which the position is to be filled. If no list is submitted within 45 days after the selectmen or appointing authority have notified the party chairman by mail, the appointments may be made by the selectmen or appointing authority without reference to any list.

### **Party Enrollment**

A registrar's or commissioner's party enrollment status is determined by reviewing his or her enrollment status two years prior to appointment. Any party enrollment status required for appointment must have been maintained continuously for two years. G.L. c. 4, § 12.

## **Qualifications**

The General Laws specify qualifications for registrars and list other offices they may or may not hold. Additionally, there are other positions registrars should avoid due to possible conflict of interest.

Registrars and assistant registrars must meet the following qualifications:

- A registrar must be a registered voter of the city or town where appointed, unless regularly employed by the registrars. G.L. c. 51, § 25.
- A registrar must hold no other office in the city or town in which he or she is a registrar, either by election or by direct appointment by the mayor, selectmen, or city/town manager. Nor may a registrar hold any office by election or appointment under the government of the United States or of the Commonwealth, except in towns with less than 2,000 residents. G.L. c. 51, § 25.
- A registrar must subscribe an oath to faithfully perform the duties of a registrar. G.L. c. 51, § 23.

If a registrar accepts any appointed or elected office, he or she may no longer serve as a registrar, and the registrar's seat is deemed to have been vacated upon the acceptance of the office. A registrar may run for and hold office as a member of a home rule charter commission or town meeting member. This law does not prohibit a registrar or assistant registrar from being a candidate for a public office, but if a registrar or assistant registrar becomes a candidate for public office, there may be other implications, such as those with the state ethics laws. A registrar or assistant registrar may be a justice of the peace, notary public, or officer of the state militia. G.L. c. 51, § 25.

Registrars should not serve as election workers. If a registrar has served as an election worker, that registrar should recuse himself or herself from any recount in that election. It should be kept in mind that in such a case, the appointing authority should temporarily fill any vacancy in the board, so as to maintain the representation of the political parties for the recount. It is sound practice to avoid conflicts of interest such as those which might occur if a person were both an election officer and a registrar.

Pursuant to section 5 of chapter 55 of the General Laws, registrars cannot serve as chairman, treasurer, or other principal officer of any political committee.

## **Vacancies**

Board vacancies which occur between the regularly appointed terms may be filled either by appointment or temporary appointment. An appointment may be made in the same manner as the original appointment, but only for the remainder of the vacated original term.

In cities, vacancies are filled by the mayor with the approval of the city council or board of aldermen. In towns, vacancies are filled by the selectmen from a list of three voters from that town submitted by the town committee of the political party from which the position is to be filled. G.L. c. 51, § 15.

A temporary appointment to fill a position for a limited time may be made by the mayor or selectmen upon written request of a majority of the board. This type of appointment may be made in cases where the vacancy occurs because of a registrar's absence from the city or town, retirement, death, or inability to perform his or her duties. G.L. c. 51, § 20.

### **Assistant Registrars**

Registrars may appoint assistant registrars for one year terms, which begin on April 1<sup>st</sup>, to assist the registrars. The assistant registrars must equally represent the two leading political parties. Unenrolled voters may be appointed assistant registrars as long as there is an equal number of Democrats and Republicans. G.L. c. 51, § 22.

Registrars may also appoint temporary assistant registrars from time to time to assist in street listing and in the registration of voters. Temporary assistant registrars must equally represent the two leading political parties. If they are regularly employed by the registrars, they need not be registered voters of the city or town.

Assistant registrars may perform the duties of registrars under the direction of the registrars. Assistant registrars are subject to the same obligations and penalties as registrars. G.L. c. 51, § 24.

Registrars may appoint absent registration officers to assist them in registering physically disabled voters. Absent registration officers must equally represent the two leading political parties. G.L. c. 51, § 22A.

All acts of a single registrar, assistant registrar, or absent registration officer are subject to acceptance of the full board of registrars. G.L. c. 51, § 33.

## **III. REGISTRATION**

Registrars are responsible for the entire registration process, for maintaining registration records, and for sending certain records to the secretary of the commonwealth.

### **Registration Functions**

At voter registration sessions, registrars are required to receive affidavits of voter registration from registrants who reside in their city or town and from those who reside in any other city or town in the commonwealth. For applications for other municipalities, the registrars must submit such completed affidavits to the registrars in the registrant's city or town. G.L. c. 51, § 42F.

Upon receipt of a completed affidavit of voter registration, the registrars shall add the name of the voter to the annual register. The affirmation by the registrant of the facts contained on the affidavit of registration, signed under the penalties of perjury, is sufficient for registration purposes and the registrars should not request additional evidence of a voter's domicile during the initial registration process. If the registrars are not satisfied with the facts set forth in the affidavit, they may require further evidence of



domicile at a post-registration hearing after issuing a formal complaint and summons. G.L. c. 51, §§ 44, 46, 47, 47B, 48, 49.

### **Functions Required of Registrars**

Registrars must post copies of sections 7, 8, and 9 of chapter 56 of the General Laws (“Aiding or abetting false oath, etc.,” “Illegal registration,” “Misconduct at registration”) at every registration site. G.L. c. 51, § 12.

The registrars must accept all completed voter registration affidavits received from registration agencies, from individuals and organizations conducting voter registration, through the mail, and by hand delivery. All registration forms are supplied by the secretary of the commonwealth. There are forms for voter registration agency use (two-part forms) and mail-in forms. G.L. c. 51, §§ 36, 42, 42F.

When registering individuals at the board of registrars’ office or office of the city or town clerk, registrars must use the two-part agency forms and give the registrant a copy of the voter registration affidavit, including the hinge at the top of the form. G.L. c. 51, § 36.

Registrars must register all eligible individuals who will be 18 on or before the date of the next election. Registrars must pre-register all eligible individuals who are 16 or 17 years old. G.L. c. 51, §§ 1, 44, 47A.

If after reviewing an affidavit of voter registration, it appears to the registrars that the applicant is not qualified to be a registered voter or the affidavit is incomplete, the registrars must notify the applicant that they have not been registered to vote and give them an opportunity to remedy the defects in the affidavit. G.L. c. 51, § 47.

The registrars must send duplicate copies of affidavits of registration to the registrars in the city or town where the voter was last registered if in Massachusetts or to the secretary of state where the voter was last registered if the previous residence was in another state. This is done by entering the voter’s previous address into VRIS. G.L. c. 51, §§ 38, 46A.

If a voter is seeking to register in a different community, the registrars must allow the voter to register using the agency form and the registrars thereafter must transmit the original affidavit to the voter’s home community within 5 calendar days. The registrars must be sure to write their 3 letter city or town code in the red box in the lower right hand corner. G.L. c. 51, §§ 36, 42F.

The registrars must preserve original affidavits of registration for two years after the form is superseded or the voter is deleted. Registrars must also preserve for all other written applications, complaints, certificates, voter lists, and affidavits received by them and all other documents relative to listing and voter registration for two years. G.L. c. 51, § 41.

Registrars must ensure that candidates for public office or persons acting on their behalf do not solicit votes or distribute campaign literature in any office where voter registration is being conducted. G.L. c. 51, § 52A.

Registrars must change a voter's party enrollment upon a request signed under the pains and penalties of perjury and thereafter, notify the voter that the change has been made. G.L. c. 53, § 38.

If at any time after the registration of a voter, the registrars have probable cause to believe that the voter has made a false statement in his affidavit of registration, they may prepare a complaint setting forth the basis of their beliefs and summon the voter to appear before them for a hearing. G.L. c. 51, § 47B.

The registrars must summon a person to a hearing before them upon receipt by the board of a signed and sworn complaint alleging that person is illegally or incorrectly registered to vote. The complaint must be made in writing and received at least 14 days before an election in a city and four days before an election in a town. G.L. c. 51, § 48.

The registrars must examine under oath anyone summoned before the board to answer a complaint about his or her voter registration. If after examination, the registrars are satisfied that the person is not a qualified voter or the person fails to appear before them, they shall strike his name from the register. Any member of the board of registrars may administer oaths to witnesses who appear before the board. G.L. c. 51, § 49; G.L. c. 233, § 8.

The registrars must submit the number of voters enrolled in each party, political designation, and the number of those unenrolled, by precinct, to the secretary of the commonwealth within 10 days after the last day to register to vote for every state and presidential primary, general election and on or before February 1<sup>st</sup> of each even numbered year. This is done through entering all registrations into VRIS promptly upon receipt of the registration forms. G.L. c. 53, § 38A.

### **Registration Sessions**

Registrars must hold sessions for voter registration as provided in town by-laws, city ordinances, and the General Laws. The registrars may also hold other voter registration sessions at locations they deem necessary, including mobile registration units, to allow voters to register. In addition, they may hold sessions in any school in the state. Registrars must post or publish sessions of voter registration. G.L. c. 51, §§ 26, 32, 42D.

The last day to register to vote before any election or annual town meeting is 20 days before that election or meeting. The last day to register for a special town meeting is 10 days before that meeting. Voters may still register after the deadline, but they will not be eligible to vote in that election if they were not already registered in the same city or town. G.L. c. 51, § 26.

On the last day for voter registration, the board of registrars must hold a continuous voter registration session from 9 a.m. to 8 a.m., except in towns of fewer than 1,500 voters where the hours must be at least 2 p.m. to 4 p.m. and 7 p.m. to 8 p.m. G.L. c. 51, § 28.

### **Special Registration Provisions**

If the city or town accepts the provisions of section 42C of chapter 51 of the General Laws, the registrars must hold a voter education and registration session at each high school or vocational school in their city or town, as part of an educational assembly for all seniors, one day each year between April 1<sup>st</sup> and May 15<sup>th</sup>. This section applies only upon its acceptance by city council or town meeting. G.L. c. 51, § 42C.

Any legal resident of the commonwealth who was included in the definition of “specially qualified voter” (see section on absentee voting) throughout the 7 days immediately preceding the final time for registration, or who becomes a U.S. citizen after the final time for registration, may appear before a registrar or assistant registrar of the city or town where they reside and register as a voter up until 4:00 P.M. on the day before a primary, preliminary, or election. A voter registered under these circumstances must be issued a certificate of “Supplementary Registration” that they must present to election officers at the polls in order to vote. G.L. c. 51, § 50.

## **IV. LOCAL LISTS**

Registrars must assist the city or town clerk in compiling information for the annual street list, the annual register, and the voter lists. This process begins in January or February of each year with the distribution of the local census forms. For more information on local lists and the registrars’ duties in compiling them, please see the booklet published by the Elections Division entitled “Local Lists.”

## **V. CERTIFICATION OF SIGNATURES**

Registrars are responsible for certifying signatures on nomination papers and petitions, issuing party enrollment certificates and certificates of voter registration, investigating objections and challenges to local nomination papers, and certifying absent voter applications. Signatures on nomination papers, initiative petitions, referendum petitions, recount petitions, public policy petitions, and local ballot question petitions must be certified as names of registered voters in the city or town where they are filed. In many cities and towns, the town clerk or other office employees perform most certification functions. G.L. c. 53, §§ 7, 22A; G.L. c. 54, § 135; 950 C.M.R. §§ 55.02, 55.04.

### **Receipt of Petitions**

The date and time of all petitions received in the office of the registrars should be noted in the appropriate space on each paper or petition.

A line in red ink must be marked through any unused signature lines at the time the petitions are being submitted to insure that signatures are not added after papers are certified.

The registrars must issue a written receipt when they receive any petitions. The receipt should include the date and time received, the number of pages submitted, and the name and contact information of the person submitting the papers or petitions. The registrars must provide a copy of the receipt to the filer and retain a copy for their records. The papers should be certified in the order in which they were submitted to the registrars' office. G.L. c. 53 §§ 7, 46; 950 C.M.R. § 55.02(1).

### **Candidate Information**

Most nomination papers include gray areas in which the candidate's name and other information must be entered prior to circulation. The candidate's name, residential address (including street number, street name, and city or town), office, and district must be listed on the nomination papers before signatures can be gathered. In partisan elections, the candidate's party enrollment or political designation must be provided as well. On state nomination papers, registrars must draw a red line through any missing information in the gray areas, so that candidates cannot add the information afterward.

Registrars must review nomination papers for the district name when they are being submitted for certification. If the district designation is incorrect, the registrars must allow the candidate to correct it before the signatures are certified. The candidate and registrar must initial the change and explain the reason for the change in writing. Three copies must be made (one for the registrars, one for the candidate, and one attached to the nomination papers). No other information on the papers may be changed. If the district name is blank, the candidate cannot add any information to the blank space and the registrars must draw a red line through it. G.L. c. 53, §§ 7, 8, 45, 46.

### **Enrollment Certificates and Certificates of Voter Registration**

In the candidate's city or town of residence, the registrars must complete an enrollment certificate (for a party candidate) or a certificate of voter registration (for a non-party candidate).

Party candidates must fulfill certain enrollment requirements. For primaries, candidates must be enrolled members of the party whose nomination they seek, except newly registered voters, throughout the 90 days preceding the filing deadline with the secretary of the commonwealth's office. The candidate cannot have been enrolled in any other party during the one-year period before the filing deadline for that election. If these requirements are met, the registrars can fill out the certificate for a voter in their community. The enrollment certificate must be signed or stamped by at least 3 of the registrars or election commissioners and must state the name, address, and party of the candidate, as registered. G.L. c. 53, § 48; 950 C.M.R. § 55.03(5).

Non-party candidates must have been "unenrolled" during the 90 days preceding the deadline for filing nomination papers with the secretary of the commonwealth. Non-party candidates must file a certificate of voter registration, signed by the registrars in the city or town where they are registered to vote. The certificate must be signed by at least 3 registrars or voters or election commissioners, include the candidate's name and address

as registered, and must be filed no later than the last day for filing nomination papers with the secretary's office. G.L. c. 53, § 9; 950 C.M.R. § 55.03(5).

### **Certification of Names**

A voter signing nomination papers must sign in person as registered or "substantially as registered." The regulations provide that a name is "signed substantially as registered" if it can reasonably be determined to be that of a registered voter.

G.L. c. 53, § 7; 950 C.M.R. § 55.03 (1), (2), (3) and (4).<sup>1</sup>

Signatures should be certified if:

- A middle initial is inserted or omitted;
- A common or known nickname is used;
- Two initials are used with a surname;
- One initial is used with a surname if no other registered voter with that initial lives at that address;
- "Jr." or "Sr." is inserted or omitted;
- Ditto marks are used to indicate a correct address;
- The name is printed.

Signatures should not be certified if:

- The first name is different from the first name on the voter list;
- The address is different, even if only by one house number, or if a post office box rather than a street address appears;
- The name is not that of a registered voter at that address;
- The name is illegible;
- The signer is enrolled in the wrong party (for primary nomination papers or recount petitions); (For primary nomination papers the voter must be enrolled in the proper party or unenrolled (independent) at the time of certification. For primary recount petitions, the voter must be enrolled in the proper party as of the last day to register before the primary)
- The signer is registered in a different voting district or community;
- The signer already signed a nomination paper for the same candidate or petition (including the earlier stage of a state initiative petition). (Only the first signature submitted for that candidate should be certified.

G.L. c. 53, § 7.

The registrars must place a check next to the names of qualified voters and use the proper symbols designated by the Secretary indicating the reason for disqualifying any signatures. The symbols are printed on the back of each sheet. G.L. c. 53, § 7.

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<sup>1</sup> See 4, 568 Registered Voters v. City Clerk, 392 Mass 424, 425 n. 5, 465 N.E. 2d 1209, 1210 n. (1984); McCarthy v. Secretary of the Commonwealth, 371 Mass. 667, 682-85, 359 N.E. 2d 291, 301-03 (1977) and Hilsinger v. State Ballot Law Commission, Nos. 39934 & 39958 (Mass. Super., Suffolk Apr. 28, 1980).

The ward and/or precinct numbers need not be filled in by voters or circulators. The column is included for the registrars' convenience in certifying signatures. G.L. c. 53, §§ 7, 46; 950 C.M.R. § 55.02(4).

Registrars must certify a name even if it is alleged that it was forged or obtained by fraud. In cases alleging forgery or fraud, an objection may be filed and a hearing will be held before the State Ballot Law Commission for state nominations and petitions and before the local boards of registrars for local nominations and petitions. The registrars may also bring it to the attention of the secretary's office for referral to the appropriate law enforcement agency. 950 C.M.R. § 55.03(2)(b).

On each nomination paper and petition, there is a box for the registrars to complete their certification. At least three registrars must sign their names in the space provided to certify the petitions. A facsimile stamp may be used by the person designated by the registrars to certify the petition on their behalves. G.L. c. 53, §§ 7, 46; 950 C.M.R. § 55.02(7).

The registrars must indicate the number of names certified on each page in words as well as numerals, in the space indicated on the nomination papers. 950 C.M.R. § 55.02(5), (6).

Registrars may limit the number of signatures they certify to 2/5ths more than the number necessary for nomination. For a local primary or preliminary election the registrars need only certify 1/5th more than the number of signatures necessary for nomination. G.L. c. 53, § 7; 950 C.M.R. § 55.02(8).

### **Review of Non-Certified Signatures**

If a candidate for an office on the state primary or state election ballot does not have enough certified signatures, or if the candidate has less than 10% in excess of the number of signatures required for nomination, he or she may apply in writing to the registrars for a review of the noncertified signatures.

In order to request a review, the candidate must leave the nomination papers in the custody of the appropriate city or town clerk.

A candidate requesting such review must do so in writing and must include a list of all signatures not previously certified which they want reviewed. A request for a review must be made no later than 48 hours after the last day for registrars to certify nomination papers.

Upon receipt of such request, the registrars must review the signatures appealed and correct any errors or mistakes in certification.

After the review, if the registrars find signatures that should have been certified and were not initially certified, the registrars must make the correction in the check box beside the signature and initial the correction. Next, the registrars must change the number certified to the correct number in the certification area on the rear of the paper and initial it. Then

the registrars must attach a letter to each paper that a change was made on indicating the change in number (for example: “The review has resulted in the number of certified signatures changing from 8 to 9.”). This letter must be signed by a majority of the board of registrars or a facsimile stamp.

Review and corrections must be completed no later than 24 hours before the final hour for filing certified nomination papers with the secretary of the commonwealth. G.L. c. 55B, § 6.

There is no review process for non-certified signatures on municipal nomination papers or ballot question petitions.

### **Return of Certified Papers or Petitions**

Registrars shall return certified nomination papers and petitions only to persons who present acceptable identification and who sign their names and addresses on the registrars’ records. Acceptable identification includes:

- The receipts issued by the registrars at the time of submission;
- Written authorization signed by the candidate or organization sponsoring the petition;
- Telephone authorization by the candidate’s or organization’s headquarters; or
- Personal recognition by the registrars. 950 C.M.R. § 55.04.

## **VI. ABSENT VOTING DUTIES**

The clerk must transmit applications for absentee ballots to the registrars for them to certify that the signatures on the absentee ballot applications appear to be genuine and affirm that the application is for a qualified voter. Once this has been done, the registrars must return the application to the city or town clerk. If someone applies for an absentee ballot in the presence of the registrars, assistant registrars, or clerk, and seeks to vote in their presence, the person accepting the application must examine the application, execute the certificate, and allow the registered voter to mark the ballot at the office during the same visit. If the registrars find that the applicant is not a qualified registered voter they must send the person a written notice of that finding. G.L. c. 54, § 91.

Registrars may investigate anyone applying for an absentee ballot as a “specially qualified voter.” A specially qualified voter is a Massachusetts citizen who is not registered to vote and:

- Whose current residence is outside the United States and whose last residence in the United States was in Massachusetts; or
- Whose current or most recent residence is in Massachusetts and who is absent from his or her city or town of residence due to active duty military service; or
- Who is the dependent family member of a Massachusetts citizen who is specially qualified due to military service; or
- Whose current residence is in Massachusetts and who is absent from the commonwealth (for example: college students out of state); or

- Who is confined in a correctional facility or jail for reasons other than a felony conviction.

### **Permanently Disabled Voters**

Registrars must send completed absentee ballot applications to certified permanently disabled voters at least 28 days before the primary, preliminary, or general election. Certified permanently disabled voters are persons who have filed a certificate issued by a physician certifying to the person's disability with the city or town clerk. G.L. c. 54, § 86.

### **Voters Admitted to Healthcare Facilities**

If a voter was admitted to a healthcare facility after noon of the fifth day before the election, that voter may request a ballot be delivered to them up until the close of polls. If the registrars are unable to deliver a ballot to the voter, the voter may designate someone of his or her choice to bring them the ballot. The voter must still be in the healthcare facility on the day of the election and they must specify in writing who they want to deliver the ballot to them – the person delivering the ballot cannot be a candidate. G.L. c. 54, § 91B.

### **Supervised Absentee Voting**

At least 28 days before any election, the registrars may designate in writing certain health care facilities for supervised absentee voting. When a location has been designated for supervised absentee voting, the registrars must arrange a time before each election for such voting. The registrars must bring all necessary materials to the facility for supervised absentee voting, including absentee ballot applications, ballots, absentee ballot envelopes, and any other accompanying paperwork. After the voter completes the absentee voting process at the designated health care facility, the registrars must return the voted ballots and any other materials back to the city or town clerk. G.L. c. 54, §§ 91B, 92.

## **VII. APPOINTMENT OF ELECTION OFFICERS**

### **Election Officers in Cities**

By April 15<sup>th</sup> of each year, the registrars must notify the chairmen of the city and ward political party committees in writing that they may submit lists of party members by June 1<sup>st</sup> for appointment of election officers.

On or before June 30<sup>th</sup> the registrars must submit to the mayor or other appointing authority the persons chosen from the lists provided who, in the opinion of the registrars, are qualified to act as poll workers. G.L. c. 54, § 11B.

If no list is submitted, the mayor shall appoint any qualified registered voters of the city.



### **Election Officers in Towns**

The selectmen are required to notify the chairmen of the town party committees by April 15<sup>th</sup> that they may submit lists of party members by June 1<sup>st</sup> for appointment of election officers.

No later than June 30<sup>th</sup>, the registrars shall submit to the selectmen the names of the persons on the lists provided by the parties who appear to be qualified to act as election officers. Not earlier than July 15<sup>th</sup>, nor later than August 15<sup>th</sup>, the selectmen shall appoint election officers to each precinct, using the list provided by the registrars. If no lists were submitted by either party, the selectmen shall appoint any qualified registered voters of the town.

If the selectmen fail to make appointments by August 15<sup>th</sup>, the registrars shall appoint election officers from the lists of party members submitted by the party committees. If no list was submitted, the registrars may appoint any qualified registered voters.

G.L. c. 54, § 12.

## **VIII. OBJECTIONS AND CHALLENGES**

Objections to certificates of nomination, nomination papers, or withdrawals for local offices or objections to petitions for local ballot questions shall be filed with the city or town clerk and transmitted to the board of registrars. The board must render a decision on any matter referred to them. G.L. c. 55B, § 7.

Persons dissatisfied with the registrars' decisions may have these decisions reviewed by filing a complaint with the Superior Court. G.L. c. 55B, § 6.

## **IX. RECOUNTS**

The board of registrars is charged with the responsibility for presiding over recounts. The basic steps in the conduct of a recount are printed below:

1. Examine the petition and statement attached to the petition and certify the names of qualified voters on the recount petitions.
2. Arrange for the recount without unnecessary delay, but not before the deadline for filing recount petitions has passed. For any office or question on the state primary or state election ballot, except a state-wide office, the registrars must set the date for not more than 6 days after the last day for filing a recount petition for a primary and not more than 10 days after the last day for filing a recount petition for an election.
3. Give each candidate for the office to be recounted at least 3 days written notice of the time and place of the recount.
4. Appoint recount workers.

5. Administer all recounts and supervise the actual recount in person.
6. Make rulings on whether protested ballots should be counted.
7. Certify the result of the recount. Decisions of the board of registrars are subject to court review if a complaint is filed in Superior Court.



# LOCAL LISTS

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## **I. INTRODUCTION**

Registrars of voters and election commissioners must prepare certain lists each year. Specifically, the registrars must assist the clerk in compiling the annual Street List, the Annual Register, and the voter list. These lists are used by election officials, school committees, and other individuals and organizations.

## **II. ANNUAL STREET LISTS**

In January or February of each year, the registrars of each city and town must communicate with every household to gather information on all residents aged three and older. This is often referred to as the city or town census and most communities choose to conduct it via mail.

### **Form Contents**

The census form must be signed under penalty of perjury and must require each resident's name, address, date of birth, occupation, voter registration status, veteran status, and nationality (if the resident is not a U.S. citizen).. G.L. c. 51, § 4.

In any city or town which communicates with residents by mail, the communication must state in large, bold type: "Warning - failure to respond to this mailing for 2 consecutive years shall result in removal from the active voting list and may result in removal from the voter registration rolls." G.L. c. 51, § 4.

### **Mailing Street List Forms**

The census forms can either be addressed to the resident of record for the address or "Current Resident." If the form is being sent to the resident of record pre-populated with the information for all members of the household, it cannot also say "or Current Resident." Further, if the form is pre-populated with any personal information, postal regulations require it to be sent via first class mail.

### **Group Quarters**

Registrars must send to every innholder and keeper of a lodging house licensed under chapter 140 of the General Laws, every multi-dwelling unit owner, and every administrator of a nursing home, a form on which he or she must list the names and dates of birth of each resident aged 3 or older living in the complex. The form must be signed under penalties of perjury. Lodging houses include fraternity houses and dormitories of educational institutions.

In the case of a multi-dwelling unit, either the owner or his or her representative must provide the information and sign the form. Multi-dwelling units include apartment complexes of more than eight rental units and condominiums of any size.

### **Responses to Street List**

Those residents who return the completed street list form will be included on the Street List. Persons should be listed if they live and sleep in the community even part of the time, despite their legal residence for voting purposes.

Some municipalities allow residents to complete their Street List form online and submit an electronic response while others post a blank form online that residents can download and return via mail or by hand.

Except in Boston, the registrars may be assisted in obtaining the information by the police department, assessors, supervisors of school attendance, or other suitable officers or employees of the city or town, or other qualified persons employed for that purpose. In Boston, registrars may be assisted only by the police department, with the mayor's approval. G.L. c. 51, § 4.

Residents who have been omitted from the Street List may present a sworn statement to the registrars in order to obtain a certificate of residence and to add their names to the Street List.

Failure to respond to the census may result in a fine of not more than \$500 or imprisonment for not more than one year. G.L. c. 56, § 4.

### **List Format**

By April 15<sup>th</sup> of each year, the registrars must prepare the Street List containing the names and addresses of residents 17 years of age or older, based on the information that was gathered by the registrars. In cities, the Street List shall be arranged by ward and precinct and within the precincts, by street. In towns with fewer than 5,000 inhabitants, the Street List shall be arranged by precincts, if more than one, and either by street or alphabetically by name. G.L. c. 51, § 6.

On the lists prepared for public officials and made available to the chairperson of each city and town committee, the registrars must further designate all residential buildings by number or description. Such copies of the Street Lists must also include the basic information gathered about each resident aged 17 or older, including name, date of birth, occupation, voter status, and nationality (if not a U.S. citizen). G.L. c. 51, § 7.

### **Access to Information**

Certain information collected as part of the Street List can only be provided to authorized persons. Access to information regarding persons age 3-16 is limited. Not later than April 1<sup>st</sup> of each year, a list containing the name, address, and age or date of birth of all persons ages 3-21 must be sent to the school committee. The names persons age 3-16 may not be released to anyone other than the school committee, the board of trustees of county agricultural schools, or the police department. G.L. c. 51, § 4.

Any information gathered on veteran status may be released only to the adjutant general, the secretary of veterans' services, and local veterans' service officers. G.L. c. 51, § 4.

Those residents who qualify to be confidential voters or who are entitled to have certain information withheld from the public under section 24C of chapter 265, shall not appear on the street list and such names shall not be disclosed to any person. G.L. c. 51, § 4; 950 C.M.R. §§ 49.01-49.07.

### **Providing Lists**

On or before June 15<sup>th</sup> of each year, the registrars must produce sufficient copies of the Street List, so that they can provide a copy to all organized political committees and candidates, upon request and free of charge. The registrars may not release the names of any residents under the age of 17 to anyone other than those permitted under section 4 of chapter 51 of the General Laws. G.L. c. 51, § 6.

The registrars may charge a reasonable fee for copies provided to business organizations and other non-political committees and organizations. Representatives of these organizations and other persons must sign their names and addresses in a log kept in the local election office. G.L. c. 51, § 6.

Street Lists are public records and must be available for a reasonable fee. For further information about what fees may be charged, contact the Public Records Division of the secretary of the commonwealth's office at 617-727-2832.

## **III. ANNUAL REGISTER**

Under state law, registrars must prepare an Annual Register after the Street List has been completed. The Annual Register is the list of all voters who responded to the local census that year – the equivalent of list of active voters. Unlike the Street List, the Annual Register need not be printed. Registrars maintain the Annual Register by entering voter information into the statewide voter database.

### **Confirmation Notices**

One of the most important things registrars must do to maintain the Annual Register is the confirmation notice procedure, which is required by both state and federal law. By the first Monday in June of each year, registrars must send a confirmation notice to all voters whose names are not listed on the current year's Annual Register. The notice must tell such persons that they have been designated as inactive voters.

The confirmation notice must: be sent by forwardable mail; include a pre-addressed and pre-paid return card; instruct the voter to return the card indicating his or her current address; and contain certain information about remaining on the list of voters. G.L. c. 51, § 37.

If the confirmation notice is returned indicating that the voter continues to reside in the city or town, the voter is returned to active status at the address indicated on the returned card.

If the confirmation notice is returned by the voter and states that the voter has moved out of the city or town, the voter is removed from the list of voters and sent a final notice of removal to confirm the change.

If the voter does not return the confirmation notice, the voter will remain on the inactive voter list and will be removed from the list of voters if he or she fails to vote in two consecutive biennial state elections while on the inactive voter list.<sup>1</sup> Copies of the list of inactive voters must be made available to the public at a reasonable cost.

### **Updating Voter Information**

An inactive voter may become active again by signing any document under the penalties of perjury which confirms that voter's address inside the city or town in which he or she is registered. For example, the registrars must restore an inactive voter to the active voter list if the receive a census form, voter registration form, initiative petition, or nomination paper signed by the voter and confirming that voter's address. 950 C.M.R. §57.04(3)(i).

Inactive voters may also be restored to the list of active voters by voting in any election. Inactive voters are required to sign an affirmation of current and continuous residence before casting a ballot. This form is signed under the penalties of perjury and requires the voter to state his or her current address. 950 C.M.R. §57.04(3)(i).

Registrars also maintain the Annual Register by updating voter and resident information whenever they receive something signed by a voter under penalty of perjury which changes the current information on file for that voter. For instance, those who sign voter registration forms or census forms may update certain information, such as name, address, and party enrollment by submitting those forms. It is important to remember, however, that a census form may only be used to update the information of the voter who signed the form. G.L. c. 51, § 38; G.L. c. 53, § 38.

After each election, the registrars must go through all affirmations of current and continuous residence and provisional ballot affirmations and use those forms to update voter information. The registration of any voters who indicated a change of residence within the city or town must be updated at their new addresses. Voters who indicated that they have moved out of the city or town – such as those who had moved and were voting under the “six month rule” – must be removed from the list of voters. Voters who had been removed from the voter list for inactivity and submitted provisional ballot affirmations stating that they have continuously resided in the city or town must be restored to the voter list. G.L. c. 51, § 38; G.L. c. 54, § 76C.

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<sup>1</sup> Chapter 111 of the Acts of 2014 changed the language printed on the street list forms, but did not make changes to other sections of the law that require deleting inactive voters after failure to vote in two biennial state elections.



### **Removing Voters**

The registrars also maintain the Annual Register throughout the year by removing any voters who have died, registered to vote outside the city or town, or who request in writing to be removed. G.L. c. 51, § 38.

Registrars are notified via the statewide voter database whenever a voter in their city or town registers in another community in Massachusetts. Registrars also receive cancellation notices from other states when voters register outside of Massachusetts.

Registrars may remove a deceased voter from the list of voters as long as they are aware of the voter's death. Registrars are made aware of deaths when death certificates are filed with the city or town clerk's office and through regular lists provided by the Executive Office of Health and Human Service, via the secretary of the commonwealth's office. G.L. c. 51, § 38.

## **IV. LIST OF VOTERS**

The registrars are tasked with maintaining the list of voters. As with the Annual Register, the registrars use the statewide voter database to maintain and produce this list. The voter list must include all voters entered on the Annual Register, as of the deadline to register to vote in a particular election. G.L. c. 51, § 55.

### **List Format**

Voter lists may be prepared with inactive voters listed separately from active voters. Alternatively, both active and inactive voters may be listed on a single list, as long as inactive voters are designated as such on the list.

In cities and towns with more 5,000 or more inhabitants, voter lists must be arranged alphabetically by street and numerically by residence, and include the voters' names and party enrollment. Where there are multiple precincts, the list must also be arranged by wards (if applicable) and precincts.

In towns with fewer than 5,000 inhabitants, registrars may arrange the voter list alphabetically by surname. These lists must also include each voter's address and party enrollment. G.L. c. 51, § 55.

### **Posting of Lists**

Copies of the voter list must be posted in the local election office and at least one other public place in each ward (in cities) or precinct (in towns) no later than 60 days before each state election or 20 days before a city or town election. G.L. c. 51, § 57.

A list of all absentee voters must be posted in the local election office. Similarly, a list of non-registered specially qualified voters who have submitted absentee ballot applications must be posted in the same manner. G.L. c. 54, §§ 91, 91A.

**Availability of Lists**

Copies of the list of voters must be made available to all duly organized political committees and candidates running in the city or town free of charge, and upon request. Copies of the list of voters must also be made available to any other person for a reasonable fee not to exceed the cost of printing or the costs allowed under the Public Records Law. G.L. c. 51, § 57.

Upon request, the registrars must provide lists of voters to caucus chairs for use as checklists at the caucuses. For political party caucuses, the voter’s party enrollment must be included. G.L. c. 51, § 62.

Voter lists used at any primary or election must be retained for two years. After two years, the voter lists may be destroyed. G.L. c. 54, § 109.

Upon written request, at any time after a primary or election, the clerk or the registrars must supply a copy of the checked voter list which was used to any person who requests it. For this reason, it is important to ensure that the voter lists are not sealed with the ballots. The clerk may charge a reasonable fee for a copy of the list, not to exceed the cost of printing or the cost allowed under the Public Records Law. G.L. c. 53, § 37.

**V. DEADLINES**

<b>Calendar of Deadlines</b>	
<b>Deadline</b>	<b>Task</b>
Last day of February	Send out census forms for the annual Street List.
April 1st	Send list of residents ages 3-21 to school committee.
April 15th	Have Street List completed.
1st Monday in June	Send confirmation notices to inactive voters.
June 15th	Have Street List printed and available.



# LOCAL CHARTERS

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## **I. INTRODUCTION**

A city or town's charter is a document which prescribes the basic provisions that set up the form, structure, and organization of a city or town government in Massachusetts. The charter is essentially the constitution of the city or town.

No town with fewer than 12,000 inhabitants may adopt a city form of government. No town of fewer than 6,000 inhabitants may adopt a representative town meeting type of government. Towns which do not have charters operate under the General Laws and any special laws specific to those towns. Mass. Const. Amend. Art. 89, § 2.

## **II. TYPES OF CHARTERS**

Prior to the adoption of the Home Rule Amendment in 1966, the General Court established certain "plan" charters which cities could adopt. From 1931-1966, towns could also choose to adopt a standard form of representative town meeting. Some cities and towns continue to operate under forms of government adopted under these laws.

In 1966, an amendment to the Massachusetts Constitution, commonly referred to as the Home Rule Amendment, was adopted. The Home Rule Amendment allows cities and towns to adopt home rule charters through the methods outlined in the Constitution and in the General Laws. The Home Rule Amendment allows communities to adopt charters in such a way which allows greater local autonomy, though the adoption of a home rule charter may take longer than other methods of charter adoption. The Constitution places certain limits on the content of home rule charters.

Rather than go through the process required by the Home Rule Amendment, many cities and towns opt to adopt or revise their charters by seeking a special act of the Legislature. Special act charters may be adopted more quickly than home rule charters, and are not subject to the same content restrictions; however, such charters must be approved by the Legislature and therefore offer less local autonomy than home rule charters.

## **III. ADOPTING & MODIFYING BY HOME RULE METHOD**

Towns seeking to adopt a charter for the first time may choose to do so using the home rule method. Similarly, cities and towns may use the home rule method to amend an existing charter, no matter how the charter was originally adopted. Mass. Const. Amend. Art. 89, § 2; G.L. c. 43B, § 2.

The procedure to adopt or revise a charter is complex and can be quite lengthy. This process can take up to two years in a city or one year in a town. The process involves petitioning for a question to local voters, electing a charter commission, and placing the proposal before the voters.

## **Content Limitations**

Provisions adopted or changed must be consistent with laws passed by the Legislature. Most provisions concerning local government structure, officers, terms, and method of selection are consistent with state law.

A charter adopted by home rule may provide:

- That any particular local office be elected or appointed (except a board of selectmen, school committee, moderator, or members of legislative body who must be elected);
- For the term of office to be served by any local elected officer, provided that no term shall be more than five years.
- For the merger of two or more local offices; or
- For the powers and duties of one office to be divided and exercised by two or more offices.

Mass. Const. Amend. Art. 89, § 6.

Unless stated otherwise in law, no charter provision adopted or changed using the home rule charter method may:

- Regulate elections (other than those involving these home rule charter procedures, themselves);
- Levy, assess, or collect taxes;
- Borrow money or pledge the credit of the city or town;
- Dispose of park land;
- Govern civil relationships (such as those between landlords and tenants) except incidentally to an independent local power; or
- Define and punish a felony, or impose imprisonment as a punishment.

Mass. Const. Amend. Art. 89, § 7.

## **Revision vs. Amendment**

While both the adoption/revision procedure and the amendment procedure may be used either to change a current charter or special act (unless the special act specifically states otherwise), the amendment procedure may not be used to change the composition, mode of election or appointment, or terms of office of the local legislative body, the mayor, the selectmen or the city or town manager. A provision prohibiting dual office holding does not constitute a change in the mode of election of a town officer. Mass. Const. Amend. Art. 89, § 4.

If a town wishes to elect a new board or officer, increase/decrease the number of members of a board, or fix the term of office of town officers, it can do so in accordance with section 2 of chapter 41 of the General Laws without amending or revising its charter.

## **Step One: Petitioning**

The first step in the process is petitioning to place the charter question on the ballot. In order to get the question on the ballot, the petitioners must collect the signatures of at

least 15% of the number of registered voters in the city or town, as of the last state election. Mass. Const. Amend. Art. 89, § 3; G.L. c. 43B, § 3.

Petitioners may obtain blank petition forms from the city or town clerk and should be sure to allow ample time for the collection of signatures. Explicit signing instructions accompany the blank forms. Exact copies of blank petitions may be made if additional petitions are needed. Mass. Const. Amend. Art. 89, § 3; G.L. c. 43B, §§ 3, 15.

Completed petitions must be filed with the registrars, though all completed petitions need not be filed at once. Petitioners must notify the registrars in writing when their filing is complete. Once notification of the completed filing is filed, the registrars shall have ten days to certify the signatures and report the results to the city council or the board of selectmen by filing their report with the city or town clerk. The registrars do not need to certify more than 140% the number of signature required. Mass. Const. Amend. Art. 89, § 3; G.L. c. 43B, § 3.

Any registered voter wishing to challenge a completed petition must file a written objection within two working days of the report to the city or town clerk. Challenges to charter petitions are heard by the registrars, in accordance with section 7 of chapter 55B of the General Laws. Mass. Const. Amend. Art. 89, § 3; G.L. c. 43B, § 3; G.L. c. 55B, § 7.

Once the registrars have filed a report stating that the petition is in proper form and enough certified signatures have been submitted, the city council or board of selectmen must within thirty days order the question to be submitted to the voters at the next regular municipal election occurring at least 60 days after the order is given. Such an order is not subject to a referendum and, in a city, does not require the mayor's approval. Mass. Const. Amend. Art. 89, § 3; G.L. c. 43B, § 4.

Should the council or selectmen fail to act, the question shall automatically appear on the ballot at the next regular election which occurs at least 90 days after the report was filed. As the registrars have ten days to file their report once petitions have been filed, **it is advised that petitioners submit the notice of a completed filing to the registrars at least 100 days before the election in which the petitioners seek to have the question placed on the ballot.** Mass. Const. Amend. Art. 89, § 3; G.L. c. 43B, § 4.

### **Step Two: Nominating Charter Commission Candidates**

At the same local election in which the city or town votes on the charter question, the voters must also elect nine candidates to the charter commission. The commission shall prepare the charter or revision if the ballot question passes. Mass. Const. Amend. Art. 89, § 3; G.L. c. 43B, § 6.

Since these candidates must go through the normal process of filing nomination papers by deadlines which precede the election, they should begin circulating their papers almost as soon as the charter petitions are being circulated.

For a charter commission candidate’s name to appear on the ballot, the nomination papers must be submitted to the registrars for certification by 5:00 p.m., on the 49<sup>th</sup> day before the election. Further instructions and deadlines are printed on the official nomination paper forms which are available from the local election official. G.L. c. 43B, §§ 5, 6; G.L. c. 53, § 7.

Candidates for charter commission appear on the ballot alphabetically by surname, and without any party affiliation or political designation listed. G.L. c. 43B, § 5.

The number of certified signatures required in order for a charter commission candidate to be placed on the ballot is dependent upon the total population of the community:

<u>POPULATION</u>	<u>REQUIRED SIGNATURES</u>
Less than 6,000	10
6,000—11,999	25
12,000—49,999	50
50,000—99,999	100
100,000 or more	200

G.L. c. 43B, § 5.

**Step Three: First Election**

If the town has not previously adopted a charter, the question placed before the voters must be: “Shall a commission be elected to frame a charter for [name of town]?”

In cities and towns which have already adopted a charter, the question must be: “Shall a commission be elected to revise the charter of [city/town name]?”

On Election Day, each voter may vote for nine candidates, whether or not the voter has voted in favor of the establishing the charter commission. The nine candidates who receive the highest numbers of votes shall be elected to the charter commission if the ballot question is passed. Mass. Const. Amend. Art. 89, § 3.

If the question passes, the city or town clerk must notify the Department of Housing and Community Development. That department must then inform the newly elected charter commission of the dates for submitting its reports and for placing its final report on the ballot. G.L. c. 43B, § 6.



#### **Step Four: Commission Report**

Once elected, the charter commission must promptly elect a chairman, vice-chairman and a clerk. The commission must notify the city or town clerk once they have organized. In the event of a vacancy, the commission must fill it by majority vote. G.L. c. 43B, § 7.

The commission must hold a series of public hearings and prepare both preliminary and final reports on the proposed charter or revision, all within specified times. Both reports must include the text of any proposed charter or charter revision and any explanatory information, and both reports must be furnished to the Department of Housing and Community Development and the Attorney General. G.L. c. 43B, §§ 7, 9.

The Attorney General must provide the commission and the Department of Housing and Community Development with a written opinion setting forth any conflicts between the proposed charter and the constitution and laws of the commonwealth. The final report must include any comments, a comparison between the proposal and the current charter, and any minority report which has been furnished to the commission chairman within two days after the final report has been approved. G.L. c. 43B, § 9.

#### **Step Five: Second Election**

If the final report of the charter commission recommends a new charter or charter revision, it must then be approved by the voters of the city or town. The question must be placed on the ballot at the next regular municipal election occurring no less than two months from the date that the report is filed. Mass. Const. Amend. Art. 89, § 3.

The question placed before the voters must be:

“Shall this (city or town) approve the (new charter or charter revision) recommended by the charter commission summarized below?”

A brief summary of the significant provisions, prepared by the charter commission, must follow the question on the ballot. G.L. c. 43B, § 11.

No later than two weeks before the election, the city council or board of selectmen must distribute a copy of the charter commission’s final report to each household containing a registered voter. Copies must also be made available in the local election office. G.L. c. 43B, § 11.

In accordance with state campaign finance laws, the city council or board of selectmen may not use public funds to campaign for or against the question.

If a plurality of voters vote in favor of the charter question, the adoption or revision shall take effect on the date specified in the charter. If two or more alternative plans are submitted, and more than one plan receives a majority of the votes cast, only the one with the higher number of “yes” votes shall take effect. G.L. c. 43B, § 11.

### **Step Six: Notification and Publication**

Copies of the new charter or charter revision and the clerk's certification of its approval must be sent to the State Archives, the Attorney General, and the Secretary of Housing and Community Development. At least every ten years, the city council or board of selectmen must reprint the city or town's current charter and make it available to the public, at cost. G.L. c. 43B, §§ 9, 12.

### **Step Seven: Resubmitting a Defeated Charter**

If a new charter is defeated at the election, but at least 35 percent of the voters voting on it voted in favor of adoption, ten percent of registered voters in the city or town may petition to resubmit it at another regular municipal election two years later. The statute is not specific about when this petition must be filed, but submitting the petitions at least two months before the election would allow a reasonable time for petition certification and ballot preparation. G.L. c. 43B, § 12A.

## **IV. AMENDING BY HOME RULE METHOD**

The amendment procedure, like the charter adoption or revision procedure previously described, may be used to change an existing charter or special act. While it is subject to the same content limitations as the adoption or revision procedure, it further cannot be used to change the composition, mode of election or appointment, or terms of office of the local legislative body, the mayor, the selectmen or the city or town manager. Mass. Const. Amend. Art. 89, § 4.

### **Step One: Proposal**

The amendment must be proposed by a two-thirds vote of the local legislative body (the city council or board of aldermen of a city or the town meeting or town council of a town.) In a city which has a popularly elected mayor as its chief executive, the mayor must also approve of any proposed amendment. Mass. Const. Amend. Art. 89, § 4; G.L. c. 43B, § 10(a).

Although the amendment must be proposed by the local legislative body, the law also allows it to be suggested to that body by certain local officials or through a petition process. The local body must go through extra steps before it can vote to approve such a suggested amendment. Mass. Const. Amend. Art. 89, § 4; G.L. c. 43B, § 10(b).

### **Step Two: Filing with the State**

Once the amendment has been officially proposed, copies of the proposed amendment must be filed with the state Department of Housing and Community Development and the Attorney General. The Attorney General must render a legal opinion about the proposed amendment within four weeks. If this opinion is unfavorable, the amendment cannot be proposed to the voters unless the local legislative body approves a proposal again by a two-thirds vote. The Department of the Attorney General takes the position that this second approval must incorporate the changes required by the unfavorable opinion. G.L. c. 43B, § 10(c).

### **Step Three: Submission to Voters**

The proposed amendment must be submitted to the voters of the city or town at the first regular municipal election occurring no sooner than two months after the proposed amendment becomes final. The amendment becomes finalized four weeks after the final vote of the local legislative body. Mass. Const. Amend. Art. 89, § 4.

The question placed before the voters must be:

“Shall this (city or town) approve the charter amendment proposed by the (name of local legislative body) summarized below?”

A brief summary, prepared by the city solicitor or town counsel, must follow the question on the ballot. G.L. c. 43B, §11.

### **Step Four: Publication**

The publication, distribution, and notification requirements for charter amendments are the same as those which apply to new charters or charter revisions. (See: “Step Six: Notification and Publication” on page 6). Mass. Const. Amend. Art. 89, § 4; G.L. c. 43B, § 12.

### **Special Steps for Suggested Amendments**

A suggested amendment may be filed in writing by the mayor, the city or town manager, any city councilor, or any selectman. Amendments may also be suggested by petition of the voters filed with the city or town clerk or election commission, in the same form as the petition for the adoption or revision of a charter as described previously. G.L. c. 43, § 15.

A petition for a suggested amendment must be signed by ten registered voters in a town, and by the number required to sign a charter commission nomination paper in a city. The suggested amendment cannot already have been considered by the local legislative body within the previous twelve months. G.L. c. 43, § 15.

Within three months of the filing of the suggested amendment, the city council or board of selectmen must order a public hearing to be held before it or its committee. The hearing must occur within four months of the filing, and the public must be given at least seven days’ prior notice in by newspaper. G.L. c. 43B, § 10(b).

Finally, the local legislative body must vote whether or not to approve the proposed amendment. In a city, this action must take place no later than six months after the suggestion was filed; in a town, the vote must occur either by the first annual town meeting occurring no less than six months after the filing date of the petition, or earlier in a special town meeting called for that purpose through the usual petitioning procedure. G.L. c. 43B, § 10(b).

If the amendment is approved by the local legislative body, it must go through the same steps to be submitted to the voters as amendments proposed by the legislative body.

## **V. ADOPTING OR AMENDING BY SPECIAL ACT**

Municipalities may adopt or change a charter or special act by requesting the Legislature to pass a special law. With few exceptions, a city or town must grant their approval before the Legislature can pass a special law specific to that municipality. The local approval may be general, but it should be specific if the city or town wishes to limit the Legislature's freedom of action. Mass. Const. Amend. Art. 89, §§ 8, 9.

### **Local Action**

Ordinarily, local approval simply means that the local legislative body votes to request that the Legislature pass the special act. In a city, the local legislative body is the city council or board of aldermen (with approval of the mayor if ordinarily required); in a town, the local legislative body is the town meeting or town council. Mass. Const. Amend. Art. 89, § 8.

If the local legislative body does not approve the request, it is possible in certain cities and towns to go directly to the voters for the local approval. The question may be placed before the voters by the local initiative petition process, where this process is available under the local charter. Petition requirements and procedures vary with the form of local government.

### **Legislative Action**

Once a special act charter or charter change has received local approval, it can be filed as a bill by a member of the Legislature.

Once filed, the bill must go through the legislative process like any other bill. If the bill is approved by both chambers of the Legislature and signed by the governor, it will become law.

### **Acceptance by Voters**

By tradition, special acts often require a vote of the city or town before the act can take effect. This local acceptance is not constitutionally required.

If the act requires local approval by the voters, the city solicitor or town counsel must prepare a fair and concise summary to appear after the question on the ballot, unless some other format of the question is otherwise provided. G.L. c. 54, § 58A.

If local acceptance is not required, the special act will take effect either on the thirtieth day after it is signed or on an effective date specified in the legislation.



# APPOINTING ELECTION OFFICERS

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## **I. INTRODUCTION**

Election officers work at the polling places on Election Day. Each officer has the general responsibility of conducting elections in a lawful and orderly manner, guaranteeing voters their right to vote, and assuring that the election results reflect the will of the electorate.

This booklet describes the categories of officers, their eligibility requirements, the procedure for their appointment, and their duties.

## **II. APPOINTMENTS**

### **Appointments in Towns**

Selectmen must notify the chairmen of each town party committee by April 15<sup>th</sup> that lists of party members who wish to be appointed as election officers must be submitted by June 1<sup>st</sup>.

Not later than June 1<sup>st</sup> of each year, the chairman of the town committee of each political party may file with the registrars a list of enrolled members of such party who desire to be election officers. The selectmen must provide written notice of the deadline to each political party committee.

The lists shall contain no more than eight names for each office to be filled. Supplemental lists may be filed with the selectmen and registrars at any time before the appointments are made. The registrars must consider the lists and then submit to the selectmen the names of people on the list who they believe are qualified to act as election officers by June 30<sup>th</sup>.

Appointments must be made from the original list before the supplemental is used. The selectmen must notify by certified mail each person on the original list who has not been appointed that someone on the supplemental list is being appointed. Such notification must be sent at least five days before the appointment of the person on the supplemental list.

If the chairman of any political committee or of the state committee fails to file the original or supplemental lists within fifteen days after having received written notice prior to June 15<sup>th</sup> from the selectmen, the selectmen may appoint as election officers any registered voters who have been recommended by the town clerk and who, in their opinion, are qualified.

If they deem it necessary, the selectmen may conduct examinations of those on the lists to determine their qualifications. Five days' notice shall be given to the candidate for election officer before the examination. The chairman of each town committee may appear and be heard in person or by counsel at the examination.

The selectmen shall annually, not earlier than July 15<sup>th</sup> nor later than August 15<sup>th</sup>, appoint from the filed lists the following election officers for each voting place or precinct:

- One warden
- One deputy warden
- One clerk
- One deputy clerk
- Two inspectors
- Two deputy inspectors

All appointees must be registered voters of the commonwealth.

In addition, the selectmen may appoint two more inspectors, two more deputies and the number of tellers needed to count the ballots.

If the selectmen fail to make appointments on or before August 15<sup>th</sup>, the registrars shall appoint the election officers. G.L. c. 54, § 12.

### **Appointments in Cities**

Registrars of voters must notify the chairmen of each city committee and of each ward committee by April 15<sup>th</sup> that lists of party members who wish to be appointed as election officers must be submitted by June 1<sup>st</sup>.

Not later than June 1<sup>st</sup> of each year, the chairman of the city committee of each political party may file with the registrars a list of enrolled members of the party who wish to be election officers. On or before June 30<sup>th</sup>, the registrars shall determine which persons on the lists they believe to be qualified to act as election officers and submit those names to the mayor or other appointing authority.

The lists submitted by city committee shall contain no more than eight names per ward for each office to be filled.

If vacancies occur, supplemental lists may be filed at any time before the appointments are made. Appointments must be made from the original list before the supplemental is used.

If the chair of the city or state committee, having received notice prior to June 15<sup>th</sup>, fails to file original or supplemental lists within fifteen days, the mayor may appoint registered voters recommended by the city clerk or election commission. If they deem it necessary, the registrars may conduct examinations of candidates to examine their qualifications.

Five days' notice shall be given to any candidate before examination. The chairman of each city committee may appear and be heard at the examination, in person or by counsel.



The mayor, except in Boston and where city charters otherwise provide, shall not earlier than July 15<sup>th</sup> nor later than August 15<sup>th</sup> of each year, appoint the following election officers for each voting precinct from the filed lists:

- One warden
- One deputy warden
- One clerk
- One deputy clerk
- Four inspectors
- Four deputy inspectors

All appointees must be registered voters of the commonwealth.

In addition, the mayor may appoint two more inspectors and two more deputies and any more deemed necessary, providing that there are not less than two nor more than four election workers for each 300 voters.

Appointments shall be filed with the city clerk within forty-eight hours after they are made.

The appointments shall be acted on by the aldermen or city council not less than three days after the filing of appointments with the city clerk on or before September 1<sup>st</sup>.

After September 1<sup>st</sup>, the mayor, with the approval of the aldermen, may appoint temporary additional inspectors. These appointments shall be open to public inspection. G.L. c. 54, §§ 11, 11B.

### **Party Representation**

The General Laws require that election officers equally represent the two leading political parties. Without disturbing the equal representation of the two leading parties, no more than two officers not representing either of these two parties may be appointed.

The warden shall be of a different party from the clerk. No more than one half of the inspectors shall be of the same party. G.L. c. 54, § 13.

The officer in charge of the ballot box and the officer in charge of the voting list shall be of different parties. G.L. c. 54 § 67.

**Note:** The above party representation requirements apply only if lists of potential election officers are filed by party committees.

### **Eligibility**

Though poll workers must be registered voters of the commonwealth, state law allows up to two 16 or 17 year olds per precinct to be appointed as election officers. Any 16 or 17 year old who is appointed must be a resident of Massachusetts and a citizen of the United States. Such an election officer must provide a letter granting permission from a parent or

guardian and, if the polling hours or training session occurs during school hours, a letter of permission from the school principal. If an election officer attends a school that encourages or requires community service, serving as an election officer may be considered a community service activity.

In no case shall a person 16 or 17 years of age serve as an election officer on the day of an election for more than the number of hours permitted for such a person to work pursuant to section 66 of chapter 149 of the General Laws. G.L. c. 54, § 11B, 12.

No one shall be an election officer in a precinct in which he is a candidate for election in a state, city, or town election. Candidates for ward or town committee shall be eligible to act as election officers in presidential primaries. G.L. c. 54, § 15; G.L. c. 53, § 31.

If an appointed election officer becomes such a candidate and does not immediately resign as an election officer, the mayor or selectmen shall remove him:

- Before November 1<sup>st</sup>, if he is a candidate at a state election.
  - At least eight days before the election, if he is a candidate at a city election.
  - Any time before the election, if he is a candidate at a town election.
- G.L. c. 54, § 15.

Town moderators and selectmen shall not serve as election officers in a state primary, presidential primary, or state election; they may serve as officers in local elections, provided they are not candidates in that election. G.L. c. 54, § 15.

### **Term**

Except as otherwise provided above (i.e. the appointment of temporary officers after September 1<sup>st</sup>), every officer shall serve for one year, beginning September 1<sup>st</sup> and serving until his successor is qualified, or until his removal. G.L. c. 54, § 13.

### **Vacancies**

If there is a vacancy, or if an officer declines his appointment and gives notice to the city or town clerk within ten days following the date of his appointment, the mayor shall fill the vacancy. Such an appointment shall preserve the equal representation of the two leading parties, if necessary. G.L. c. 54, § 14, 15.

If a municipality has accepted section 16A of chapter 54 of the General Laws, the city or town clerk may appoint election officers to fill vacancies that occur on Election Day. Any person so appointed must be an enrolled voter of the same party as the absent poll worker, if any competent person enrolled in such party is present and willing to serve.

### **Oath**

All election officers shall be sworn in before the city or town clerk, the presiding officer at the polls, or any officer qualified to administer oaths. A record of the oath shall be made. G.L. c. 54, § 20.

## **Compensation**

The aldermen or selectmen may determine compensation. G.L. c. 54, § 22.

## **III. CONDUCT**

### **Potential Conflicts of Interest**

It is not advisable for members of the board of registrars to serve as election officers, as they may need to sit as judges of a recount. If they do serve as election officers, they will not be able to participate in any recount of that election. In addition, it is not a good idea for family members of candidates to serve as election officers, as it may create an appearance of partiality which should be avoided. It may also constitute a conflict of interest if the election officer participates in a particular matter (e.g. an election) in which a family member has a financial interest. G.L. c. 268A, § 19.

For more information, contact the State Ethics Commission at 617-371-9500.

### **Campaigning**

Election officials should not participate in official decisions that may affect their own candidacies or the candidacies of persons close to them, at least for contested offices. In addition, election officials should choose between publicly displaying support for a candidate or a position on a ballot question and participating in official decisions that may affect that candidate or ballot question. G.L. c. 268A § 19.

For instance, if a registrar's spouse is running for selectman in the town, that registrar should not certify nomination papers for the office of selectman, or participate in a recount for the office of selectman. Similarly, if a city or town clerk is running for re-election in a contested election, the clerk should not certify signatures for that office or make the decisions about counting votes or absentee ballots. Instead, an assistant clerk or temporary clerk should make such decisions. G.L. c. 41, §§ 18, 19.

For more information, please contact the State Ethics Commission.

City or town clerks, members of a board of registrars or elections commission in any city or town shall not serve as the chairman, treasurer, or other principal officer of any political committee; however, any such public officer may serve as the chairman or principal officer, other than treasurer, of a political committee organized on his or her own behalf. This does not apply to city or town clerks who do not administer elections. G.L. c. 55, § 5.

For more information, please contact the Office of Campaign and Political Finance at 617-727-8353.

Some cities and towns have enacted additional restrictions on campaign activities on election officer even during their "off" hours. Questions regarding local policies and procedures should be directed to the municipal counsel.

## **Removal**

After holding a hearing, the selectmen or the mayor, with the approval of the aldermen, may remove an officer upon a written charge of incompetence or official misconduct by the city or town clerk, or by petition of not less than six voters of the ward or precinct in which the officer is appointed to serve. G.L. c. 54, § 13.

## **IV. DEFINITIONS AND DUTIES**

Election officers must perform their duties under the supervision of the city or town clerk. G.L. c. 54, § 71A.

### **Warden**

The warden is the presiding officer of the polling place. In the absence of the warden, the deputy warden shall preside. G.L. c. 50, § 1.

Generally, the warden supervises the election officers' performance of duties and maintains order in the polling place. The warden must keep the access to the polling place open and unobstructed with the assistance of a police officer or constable. G.L. c. 54, § 71; 950 CMR § 52.01(3); 950 CMR § 54.01(3)

The warden must be present at the opening of the polls, and with the aid of a police officer or constable, must keep the polling place clear of campaign material. G.L. c. 54, § 65.

The warden must ensure that instruction and penalty cards and specimen ballots are not removed or destroyed. G.L. c. 53, § 36, G.L. c. 54, § 65.

The warden must open the package containing the ballots and delivers them to the ballot clerks. G.L. c. 54, § 65.

The warden must ensure that voters are properly assisted. Voters with disabilities and those who cannot read or read English must be assisted by election officers or another person chosen by such voters. G.L. c. 54, §§ 33E, 79.

The warden must be sure that accessible voting machines are located and operable within the polling place, so that they are readily available for use by voters during the voting hours. 950 CMR § 51.02(6); 950 CMR § 54.02(6).

Whenever the name of a voter appearing at a polling place to vote does not appear on the voting list, is misspelled, appears as an inactive voter or a clerical error has been made on the list, the warden must attempt to identify such voter and his or her right to vote by consulting the active and inactive voters list at the polls and then, if necessary, calling city or town hall to verify the registration. If appropriate, the warden must give the voter an "Affirmation of Current and Continuous Residence," to be completed and attached to voting list before the voter may cast a ballot. G.L. c. 51, § 59.

The warden is in charge of handling challenged voters. G.L. c. 54, § 85.

In many communities, the warden handles provisional ballots. G. L. c. 54, § 76C.

The warden must ensure that no unauthorized information is given out. G.L. c. 54, § 68.

In communities where ballots are counted by hand, the warden must open the ballot box as soon as the polls are closed and audibly count the ballots taken from there one by one and publicly announces the total number of ballots cast. The ballots may then be divided into blocks and shall be counted by two officers representing the two leading political parties. The count must be reported to the warden, who has it recorded on the forms provided. Thereafter, the election officers must count audibly and the warden must announce the number of unused ballots and has that information recorded on the forms provided. G.L. c. 54, § 105; 950 CMR § 52.04; 950 CMR § 54.06.

At the close of election, the warden must return the ballot box, ballots cast, ballots not cast, and checked voter lists to the city or town clerk, either personally or by directing the police officer or constable to do so. G.L. c. 54, §§, 66, 107.

### **Clerk**

The clerk of each precinct must keep a written record of the proceedings of the election, including unusual happenings. The clerk must maintain the record book, fill out forms, record the names and addresses of all challenged voters, and record and announce vote totals and results. G.L. c. 54, §§ 66, 67, 85, 104, 105, 105A, 106; 950 CMR § 52.01(4); 950 CMR § 54.01(4).

At the close of polls, the clerk shall record the total number of ballots received at the polling place, the ballot box register, and the total number of spoiled ballots. The clerk must publicly and audibly count and announce the number of names checked on the voting lists. G.L. c. 54, §§ 105, 105A, 106.

After the votes are counted, the clerk must announce the results and enters the results on the forms provided. G.L. c. 54, §§ 105, 105A.

### **Inspectors**

The inspectors generally serve under the direction of the warden. Inspectors may help count and tabulate votes. G.L. c. 54, § 17; 950 CMR § 52.01(5); 950 CMR § 54.01(5).

Two inspectors of different parties (if the party representation requirement applies) must check voters in at the polling place and provide ballots to the voters. Two additional inspectors of different parties (if the party representation requirement applies) must check-out voters. G.L. c. 54, §§ 17, 67; 950 C.M.R. §§ 52.03(17), 54.04(17).

### **Teller**

In communities where ballots are counted by hand, tellers must count the ballots at the close of the polls. G.L. c. 54, § 12; 950 CMR § 52.01(6).

### **Deputies**

If a warden, clerk, or inspector is absent at the opening of the polls or subsequently on Election Day, or if the office is vacant, the deputy of such officer shall act for that election in his place. Otherwise deputies do not serve at the polls. G.L. c. 54, § 16.

## **V. VIOLATIONS AND PENALTIES**

No officer shall knowingly make any false ballot count; make a false statement or declaration of result of a vote; willfully alter, deface, or destroy any cast ballot or voting list before the requirements of law have been met; refuse to receive any lawfully required written request; or refuse to perform any lawful duty or obligation. Violators shall be fined not more than \$500 or imprisoned not more than six months. G.L. c. 56, § 12.

Any officer who willfully or negligently fails to require the name and residence of a person whose right to vote is challenged to be written on the ballot, and also the name of the person challenging and the cause, shall be fined not more than \$500 or imprisoned not more than six months. G.L. c. 56, § 13.

Any officer who willfully violates any law relating to the disposition of ballots and lists shall be fined not more than \$500 or imprisoned not more than one year.

No officer shall, before the public declaration of the vote, make any statement of the number of ballots cast; the number of votes given for any person; the name of any person who has voted; the name of any person whose name has not been checked; and any other fact tending to show the state of the polls. Violators shall be fined not more than \$500 or imprisoned for not more than one year. G.L. c. 56, § 16.

Notwithstanding the above paragraph, an election officer shall, when requested, state the figures on the ballot box register, which is not to be considered an official declaration. The clerk, if authorized in writing by the election commission, where one exists, or otherwise by the city or town clerk, may publicly announce the number of votes cast for each candidate as soon as the count of ballots for that office has been completed, and the number of affirmative or negative votes cast upon a question, as soon as the count of ballots for that question has been completed. G.L. c. 54, §§ 68, 105; 950 CMR § 52.03(25); 950 CMR § 54.04(25).

**Note:** A violation by an election officer, as above, shall not invalidate any record, copy of a record, certificate made by a precinct, city or town clerk or affect the title of a person declared to be elected to office. G.L. c. 54 § 131.



# PLANNING FOR TOWN ELECTIONS

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## **I. INTRODUCTION**

This booklet is intended for use in planning local elections and town meetings. In most towns, the dates and deadlines associated with local elections and town meetings are determined by the General Laws. An election official in any town operating under a charter or special act of the Legislature should consult the charter or act before planning an election.

## **II. CALLING ELECTIONS AND MEETINGS**

### **Timing**

Every year, towns must hold their town elections and town meetings. Annual town elections and town meetings must take place between February 1<sup>st</sup> and June 30<sup>th</sup>. The election and the town meeting are called by the selectmen, though towns may adopt bylaws to prescribe the dates that they will be held. G.L. c. 39, § 9.

Special elections and special town meetings may be called by the selectmen at any time, though certain provisions in the General Laws may restrict how soon the election or town meeting may be held.

### **Warrants**

For every election and town meeting, a warrant must be issued under the hands of the selectmen. An election warrant must list the date of the election, all offices to be voted on in the form in which they will appear on the ballot, all ballot questions in their entirety, the polling hours, and the polling locations for each precinct. G.L. c. 54, §§ 63, 64.

Town meeting warrants must include the date, time, and place of the meeting, as well as any articles to be voted upon. Voters may petition for the inclusion of articles on the warrant. Though state law does not specify a period during which the warrant must be open for the addition of articles, the selectmen should have a policy in place for the opening and closing of the warrant.

Upon the written request of at least ten voters, the selectmen shall insert into the warrant of an annual town meeting the subject indicated on the petition. For special town meeting warrants, at least 100 voters or ten percent (10%) of all registered voters (whichever number is lesser) must petition for the insertion of the article. Such petitions are commonly referred to as “citizen petitions.” It is not required that a citizen petition be in a certain format, though some towns choose to provide templates to those who want them.

Voters petitioning for a warrant article must sign their names and addresses on a petition which specifies the subject matter of the desired article. Voters may design their own petitions, as long as they meet the legal requirements. It is recommended that each page of the petition include the warrant article subject and specify the town meeting at which it will be considered.

Special town meetings may be called by the selectmen or upon the request of 200 registered voters or twenty percent (20%) of all registered voters (whichever number is lesser). The General Laws do not require that petitions for special town meetings be on a specific form, though the

Elections Division does provide forms for convenience. Petitions for special town meetings must contain the subject matter of the desired meeting, as well as the names and addresses of the required number of registered voters.

Petitions for warrant articles and special town meetings must be submitted to the selectmen for their consideration. Upon receiving a petition, the selectmen shall submit it to the board of registrars, who must certify that the names and addresses on the petition are those of registered voters. Registrars are not required to certify more than the number of signatures required for each petition.

Once the selectmen have signed the warrant, they shall direct it to the constables or some other persons to post it in accordance with the town's bylaws. Town bylaws should specify the location or locations where the warrant must be posted.

Warrants for all elections and annual town meetings must be posted at least seven days before the election or meeting. Warrants for special town meetings must be posted at least 14 days before the meeting. If the town's bylaws specify an earlier time for posting, the bylaws should be adhered to. G.L. c. 39, § 10.

### **Nomination Papers**

While the General Laws do not require that town nomination papers be released by a certain date, it is recommended that clerks allow ample time for candidates to gather signatures. It is further recommended that clerks remain consistent in the time of year that nomination papers are released. Prior to releasing nomination papers, town clerks should have a listing of all offices to appear and the terms, including any vacancies.

Town nomination papers are provided to town clerks by the Elections Division, upon request. Town clerks can only provide nomination papers to a candidate or a person authorized in writing by a candidate. G.L. c. 53, § 17. Clerks should not complete the candidate information on the papers and instead should provide direction to the candidate.

Except as otherwise provided by charter or special act, the number of certified signatures required to be nominated for town office will depend on the number of votes cast for governor and lieutenant governor at the previous state election which included those offices.

Before releasing nomination papers, clerks should calculate one percent (1%) of the total number of votes cast for all candidates for governor and lieutenant governor in the town (including write-ins, excluding blanks) at the last gubernatorial election. If that number is less than 20, the number of signatures required shall be 20; if it is greater than 50, the number of required signatures shall be 50. Any number between 20 and 50, inclusive, must be rounded to the nearest integer and shall be the number of signatures required until the next gubernatorial election. G.L. c. 53, § 6.

In towns which have accepted section 9A of chapter 53 of the General Laws, clerks must multiply the number of signatures required by five (5), in order to determine the maximum number of petitions each candidate may receive. No candidate in towns which have accepted this

section may receive more blank nomination papers than it would be necessary to submit five times as many signatures as are required in order to be nominated.

Clerks in towns which have accepted section 9A of chapter 53 of the General Laws must also require candidates to file a statement containing his or her name, address, and the office for which he or she intends to be a candidate. No nomination papers may be given to any candidate who has not filed such a statement. Clerks may wish to create a form or log for candidates to complete.

### **III. DEADLINES**

Before nomination papers are released, clerks must calculate the calendar of deadlines associated with the election.

#### **Rules to Remember**

Unless otherwise noted, all deadlines will be at 5:00 p.m. on the day specified.

Unless specified otherwise, if the last day of a period falls on a Sunday or legal holiday, the deadline shall be moved to the previous day.

When calculating a deadline, the clerk should count all calendar days, unless the statute indicates that they are “working days,” “business days,” or “weekday hours.” Such language indicates that only Monday-Friday non-holidays should be included in calculating the dates. G.L. c. 50, § 4.

#### **Using a Single Warrant**

If the annual town meeting and town election are separated by no more than thirty-five days, both may be called on the same warrant. If only one warrant is used, then only one voter registration session is necessary. The last day to register to vote in both the town election and town meeting would fall on the twentieth day prior to the election or the town meeting, whichever is scheduled first. G.L. c. 39, § 9A.

#### **Checklist**

Below is a checklist which may be helpful in calculating deadlines.

1. Determine whether the town has accepted G.L. c. 41, §110A. Towns which have accepted this statute treat Saturdays as holidays. A deadline which falls on a Saturday will not move to a different day unless this section has been accepted.
2. Determine whether the town has accepted G.L. c. 53, § 9A. If the town has accepted this statute, there will be a last day to obtain nomination papers. If the town has not accepted this statute, nomination papers may be obtained until the deadline to submit them.
3. Count 5 weeks back from the date of the election (35 days) – this is the last day to submit nomination papers to the clerk. If this date falls on a Sunday or holiday, the deadline will move forward one day. G.L. c. 53, § 10.

4. Count 2 weeks (14 days) back from the last day to submit nomination papers to the clerk – this is the last day to submit nomination papers to the board of registrars. If this deadline falls on a Sunday or holiday, the deadline will move forward one day.  
G.L. c. 53, § 7.
5. Count 2 weekdays after the last day to submit nomination papers to the clerk – this is the deadline to object or withdraw. If the deadline to submit nomination papers to the clerk falls on a Tuesday, the deadline to object or withdraw will be on Thursday. Because these are weekday hours, if the deadline to submit nomination papers to the clerk falls on a Friday, the deadline to object or withdraw will fall on the following Tuesday.  
G.L. c. 53, § 11; G.L. c. 55B, § 7.
6. If the town has accepted G.L. c. 53, § 9A, count 2 weekday hours back from the last day to submit nomination papers to the registrars – this is the last day to obtain nomination papers.
7. Count 15 days back from the last day to submit nomination papers to the registrars – this is the last day for the selectmen to notify the clerk of any vacancies to be placed on the ballot. G.L. c. 41, § 10.
8. Count one week (7 days) back from the date of the election – this is the last day to post the warrant. If the election and warrant are being called on the same warrant and the town meeting is earlier than the election, count 7 days back from the town meeting instead.  
G.L. c. 39, § 9.
9. Count 20 days back from the date of the election – this is the last day to register to vote. If the election and the town meeting are being called on the same warrant and the town meeting is earlier than the election, count 20 days back from the town meeting instead.  
G.L. c. 51, §§ 26, 28.

### **Vacancies**

No vacancy may appear on the annual town election ballot unless the selectmen have voted to place the office on the ballot and have notified the clerk by the fifteenth day before the last day to submit nomination papers to the registrars. Absent any deadlines falling on Sundays or legal holidays, this means that the selectmen must notify the clerk of any vacancies by the 64<sup>th</sup> day before the election. G.L. c. 41, § 10.

### **Ballot Questions**

All ballot questions to be placed on the town election ballot must be submitted to the clerk no later than 35 days before the election. G.L. c. 54, § 42C. This includes the exact form of the question to appear on the ballot and any summary, if authorized by state law or charter.

### **Special Town Meetings**

Warrants for special town meetings must be posted no later than 14 days before the meeting.  
G.L. c. 39, § 10.

The last day to register to vote in any special town meeting is 10 days before the meeting.  
G.L. c. 51, §§ 26, 28.

## **IV. ELECTION MATERIALS**

Before Election Day, it is important to make sure that the town clerk's office is stocked with all of the necessary materials. Many materials are provided by the Elections Division, such as voter registration forms, nomination papers, and certain petitions. If materials are low, the Elections Division should be contacted for additional supplies as soon as possible.

### **Voter Registration Forms**

The Elections Division provides each community with mail-in and in-office voter registration forms. Where necessary, forms are also provided in languages other than English. If forms are running low, additional forms may be ordered from the Elections Division.

Mail-in voter registration forms are available on the secretary's website and copies may be made, if necessary. Citizens who would like a large supply of registration forms should be directed to the Elections Division, which can provide larger quantities.

### **Ballots**

All ballots for local elections are prepared and provided by the local election official. Once all candidates and ballot questions have been determined, the clerk must prepare to have ballots printed. Before authorizing printing of ballots, it is important to make sure that they have been reviewed for accuracy and proof-read. While the General Laws do not specify a deadline by which absentee ballots must be made available, it is recommended that they be printed and ready for voters at least 3-4 weeks before the elections. G.L. c. 54, § 40. Please see the "Ballot Preparation" booklet for additional information.

### **Envelopes**

Absentee ballot envelopes and provisional ballot envelopes are provided by the Elections Division for state elections and primaries. While the state does not provide absentee materials for local elections, clerks often have large supplies of most of the envelopes, and supplies left over from previous biennial state elections may be used for local elections. The inner absentee ballot envelopes (AV-7s) are replaced after each biennial state election, when the political parties are changed. As town elections are non-partisan, these old envelopes may be used for local elections. G.L. c. 54, §§ 87, 88.

### **Accessible Voting Equipment**

Every election must be accessible to voters with disabilities. The Elections Division has provided AutoMARK accessible marking devices to each community. The AutoMARK must be programmed prior to each election.

In communities where paper hand-counted ballots are used, the clerk will need to prepare a supply of ballots which may be used with the AutoMARK.

### **Tallying Materials**

In towns where ballots are counted by hand, the clerk will need to have tally sheets and enough envelopes to hold the ballots in convenient blocks. Block tally envelopes and tally sheets may be obtained from the Elections Division. G.L. c. 54, § 105; 950 CMR § 52.04.

### **Ballot Tabulators**

In towns where electronic tabulators are used to count the ballots, clerks will need to ensure that the tabulators are programmed for the election. No later than four days before the election, all tabulators to be used must be tested in accordance with 950 CMR § 54.02.

### **Ballot Containers and Seals**

After polls have been closed and ballots have been counted, the ballots must be contained and placed under tamper-evident seal. Clerks must provide containers or envelopes for the ballots, as well as seals for the poll workers to use at the end of the night. Ballots must be kept in a secure location until they can legally be disposed of. G.L. c. 54, § 107.

### **Recounts**

In the event of a close election, recount petitions may be needed for those seeking a recount of the election. Recount petitions cannot be sent electronically, so clerks should check that they have recount petitions before the election and order additional petitions from the Elections Division if needed. G.L. c. 54, § 135.

If a recount is scheduled, clerks should ensure that there are enough tally sheets and envelopes on hand for all the ballots being recounted.

## **V. ON & AFTER ELECTION DAY**

### **Polling Hours**

Polling hours are set by the selectmen when the warrant is issued. The General Laws require that polling locations be open for no fewer than four hours in any town election. Further, polling places may open no earlier than 5:45 a.m. and no later than 12:00 p.m. All polls must be closed no later than 8:00 p.m. G.L. c. 54, § 64.

### **Oaths**

Officers elected at the town election, except for the town clerk, may be sworn-in on the day after the election by the town clerk or the moderator. The moderator may be sworn-in only by the town clerk.

The town clerk may take his or her oath of office no sooner than the seventh day after the election. The town clerk may be sworn-in by the moderator or by a justice of the peace. G.L. c. 41, § 107.

**VI. APPENDIX**

**Sample Warrant**

**COMMONWEALTH OF MASSACHUSETTS**

**SS.**

To either of the Constables of the Town of \_\_\_\_\_

**GREETINGS:**

In the name of the Commonwealth, you are hereby required to notify and warn the inhabitants of the town who are qualified to vote in the election, to vote at:

[Insert precinct numbers]

[Insert polling locations]

on [day, e.g. "FIFTH"] [month] [year] from [opening time] to [closing time] for the following purpose:

To cast their votes in the [annual or special] election for the candidates for the following offices and on the following questions:

**OFFICES**

[List offices and districts as they will appear on the ballot]

**BALLOT QUESTIONS (If any)**

[List all ballot questions which will appear on the ballot, as they will appear]

Hereof fail not and make return of this warrant with your doings thereon at the time and place of said voting.

Given under our hands this \_\_\_\_\_ day of [month],[year].

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Selectmen of: \_\_\_\_\_ [Town] \_\_\_\_\_

\_\_\_\_\_ [Indicate method of service of warrant] \_\_\_\_\_

\_\_\_\_\_ [Constable] \_\_\_\_\_ [Date] \_\_\_\_\_

## Town Election Calendar Template

Citation	Event	Date
G.L. c. 41, § 10	Last day for selectmen to notify to clerk of any vacancies to be placed on the ballot	15 days before the last day to submit nomination papers to the registrars
G.L. c. 53, § 9A	Last day to obtain nomination papers*	48 weekday hours before the last day to file nomination papers with the registrars
G.L. c. 53, § 7	Last day to submit nomination papers to the board of registrars	14 days before the last day to file nomination papers with the clerk
G.L. c. 53, § 10	Last day to file nomination papers with the clerk	35 days before the election
G.L. c. 53, § 11; G.L. c. 55B, § 7	Last day to object to nomination papers or withdraw	Two working days after the last day to file nomination papers with the clerk
G.L. c. 51, §§ 26, 28	Last day to register to vote	20 days before the election**
G.L. c. 39, § 10	Last day to post the warrant	7 days before the election

\*If the town has accepted G.L. c. 53, § 9A.

\*\*If town meeting & election are called on the same warrant and the meeting occurs first, 20 days before the town meeting.

NOTE: The above calendar is intended for internal use. For calendars released to the public, it may be best to remove certain events, in order to avoid confusion. For example, the last day to post the warrant is for the clerk and selectmen only; inclusion of this date may confuse candidates.

Further, most towns do not require candidates to physically collect their nomination papers from the registrars and submit them to the clerks. If this is not required of candidates, publishing the last day to submit the papers to the clerk may cause confusion for candidates. It is still important to calculate this date, as other deadlines are dependent upon it.





# LOCAL BALLOT QUESTIONS

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## I. INTRODUCTION

The process for placing a question on the local election ballot depends upon the law which allows the question to be voted on, as does the language and format of the question itself. This publication provides information on the most common types of ballot questions which may appear on local election ballots. Other types of ballot questions may be permitted under the General Laws, local charters, or special acts.

## II. PROPOSITION 2 ½

Ballot questions required under section 21C of chapter 59 of the General Laws are commonly referred to as “Prop 2 ½” questions, after a phrase used in the campaign for the initiative petition which resulted in the law. These questions are placed on the ballot by the selectmen or city council for the voters to approve or reject certain changes in local real estate and property taxes. While such questions are generally referred to as “Prop 2 ½ questions,” there are different types of questions permitted by section 21C, which may involve different procedures. G.L. c. 51, § 21C.

While the Elections Division may be able to provide advice on the requirements of section 21C with respect to the election and ballot question, questions pertaining to taxation, appropriation, and the timing of a related town meeting should be addressed to the Division of Local Services within the Department of Revenue.

### **Override to Increase Taxes**

An override to increase real estate and personal property taxes requires a majority vote of the board of selectmen or city council to be placed on the ballot. G.L. c. 51, § 21C(g).

Any question submitted to the voters under subsection (g) must be worded as follows:

“Shall the (city/town) of \_\_\_\_\_ be allowed to assess an additional \$\_\_\_\_\_ in real estate and personal property taxes for the purposes of (state the purpose(s) for which the monies from this assessment will be used) for the fiscal year beginning July first, \_\_\_\_\_?”

### **“Underride”**

A so-called “underride” to reduce real estate and personal property taxes requires a majority vote of the selectmen or city council to be placed on the ballot. Where available, such a question may be placed on the ballot by petition of the voters. G.L. c. 51, § 21C(h).

Any question submitted to the voters under subsection (h) must be worded as follows:

“Shall the (city/town) of \_\_\_\_\_ be required to reduce the amount of real estate and personal property taxes to be assessed for the fiscal year beginning July first, \_\_\_\_\_ by an amount equal to \$\_\_\_\_\_?”

### **Capital Outlay**

A capital outlay exemption requires a two-thirds vote of the selectmen or city council to be placed on the ballot. G.L. c. 51, § 21C(i ½).

Any question submitted to the voters under subsection (i ½) must be worded as follows:

“Shall the (city/town) of \_\_\_\_\_ be allowed to assess an additional \$ \_\_\_\_\_ in real estate and personal property taxes for the purposes of (state the purpose(s) for which the monies from this assessment will be used) for the fiscal year beginning July first, \_\_\_\_\_?”

### **Bond Payments**

An exemption for bond payments requires a two-thirds vote of the selectmen or city council to be placed on the ballot. G.L. c. 51, § 21C(k).

Any question submitted to the voters under subsection (k) must be worded as follows:

“Shall the (city/town) of \_\_\_\_\_ be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to (state the purpose or purposes for which the monies from the local issue will be used)?”

### **Information on the Ballot**

Proposition 2 ½ questions must appear on the ballot in the format required by law. Where required, the selectmen or city council must insert certain relevant information, such as the city or town name, the year that the fiscal year begins, the amount of money involved, and the purpose of the money. No other information may be added to the ballot question. Please note that summaries and statements explaining what a “yes” vote or a “no” vote would mean are not allowed to be appear on the ballot for Prop 2 ½ questions.<sup>1</sup>

### **Elections**

Proposition 2 ½ questions may appear on regular municipal election ballots, special municipal election ballots, and biennial state election ballots. In order for any ballot question to be printed on a local election ballot, it must have been voted on by the selectmen or city council and the language of the question must have been submitted to the local election official no later than the 35<sup>th</sup> day before the election. G.L. c. 54, § 42C.

Municipalities may opt to add Proposition 2 ½ questions to their biennial state election ballots. No more than three such questions may be added to the state election ballot in any city or town. In order to have any such question appear on the state election ballot, the selectmen or city council must vote to do so. A certified copy of the vote taken, along with the language of the ballot question or questions must be received by the Elections Division no later than 5:00 p.m. on the first Wednesday in August of the year in which the state election is to be held. G.L. c. 59, § 21C(i).

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<sup>1</sup> Certain additional information can be provided but only if a municipality has accepted the provisions of section 18B of chapter 53 of the General Laws or has a special act of the Legislature authorizing additional information.

Ballot questions may not be added to primary ballots, preliminary ballots, or special state election ballots. A municipality may opt to hold a special election concurrent with a special state election, in order to save on the cost of holding a separate election. This is commonly referred to as a “dual election.” Dual elections require separate check-in and check-out lists, as well as separate ballots and warrants but can share ballot boxes.

### **III. COMMUNITY PRESERVATION ACT**

The Community Preservation Act (CPA) allows cities and towns that accept certain provisions of the Act to create a special Community Preservation Fund by assessing a surcharge on annual real estate taxes, and to appropriate money in that fund for open space, historic resources, and affordable housing purposes.

#### **Methods of Approval**

There are two methods for accepting the CPA. The first method requires approval of both the selectmen or city council and the voters. The alternative method is through the use of a local ballot question petition to present the question directly to the voters. G.L. c. 44B, § 3(a),(h).

#### **Legislative Body Action**

The first method of approval requires that a majority of the board of selectmen or city council first approve a specific proposal to present to the voters. The legislative body must vote to accept sections 3 through 7 of chapter 44B of the General Laws and approve the amount of the surcharge. The approved surcharge cannot exceed three percent (3%). G.L. c. 44B, § 3(b).

The selectmen or city council may include certain surcharge exemptions in the proposal to be presented to the voters. After sections 3-7 have been accepted and a surcharge plan has been adopted, a ballot question to approve the acceptance must be placed before the voters at the next regularly scheduled municipal or state election.

If the next regularly scheduled election is a municipal election, the selectmen or city council must provide the text of the ballot question and summary as prepared by the municipal attorney to the local election official no later than the 35<sup>th</sup> day before the election. If the next election is a state election, the Elections Division must receive at least 60 days written notice to place the question on the ballot for that municipality.

#### **Petitions**

If the board of selectmen or city council does not accept the CPA by the 90<sup>th</sup> day before a regular municipal election or 120 days before a biennial state election, voters may petition to place the question directly on the ballot. G.L. c. 44B, § 3(h).

Under this procedure, the voters of the city or town may file a ballot question petition to have a question seeking acceptance of the act, approval of a specific surcharge percentage, and approval of any allowable exemptions to be placed on the ballot. The petition form itself must include the surcharge percentage and any exemptions, if any, proposed for approval.

The petition must be signed by at least five percent (5%) of the registered voters of the city or town and submitted to the local board of registrars of voters for certification of signatures. The board or commission must certify the signatures within seven (7) days of filing. If the petition is signed by the required number of voters, the city or town clerk or Secretary of the Commonwealth must then place the question on the ballot at the next regular municipal or state election.

If the question is to appear on a municipal election ballot, petitions must be submitted to the board or commission for certification at least 42 days before the municipal election so that certification can be completed at least 35 days before the election. If the question is to appear on a state election ballot, the petitions must be submitted to board or commission at least 67 days before the state election so that certification can be completed and notice given to the Secretary of the Commonwealth at least 60 days certification of the signatures. G.L. c. 54, § 42C.

### **Ballot Question**

The form of the question which must appear on the ballot after approval by the selectmen or city council is set forth in the CPA. The question must be in the following format:

“Shall the (city or town) accept sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?”

The CPA does not provide a format for a ballot question proposed by petition; however, as stated above, the CPA does contain the format of a ballot question submitted after approval of the selectmen or city council. Any ballot question proposed by petition should be placed on the ballot in substantially the same form as a question submitted after approval of the legislative body.

A fair and concise summary of the Community Preservation Act provisions that are the subject of the question must appear on the ballot underneath the question. The summary must be prepared by the city solicitor or town counsel and must include the surcharge percentage approved by the selectmen or city council. The summary should also include the exemptions, if any, adopted. G.L. c. 44B, § 3(f).

The question is approved and the statute accepted if a majority of the voters voting on the ballot question vote “yes.”

### **Effective Date**

A community accepting the CPA at an election held before the actual tax commitment for a fiscal year is made may impose the surcharge beginning in that fiscal year, or in the fiscal year that begins the July 1<sup>st</sup> after the election, as specified in the acceptance vote of the legislative body or in the ballot question petition. G.L. c. 44B, § 4(a).

### **Notification of Acceptance**

The city or town clerk must notify the commissioner of revenue if the CPA is accepted. The notification must include the date and terms on which the voters accepted the Act. G.L. c. 44B, § 10(a).

### **Amended Acceptance**

A municipality may amend the surcharge percentage and exemptions in the same manner as they were originally accepted. Accordingly, amendments may be done by majority vote of the legislative body or petition and thereafter approval by the voters at an election. G.L. c. 44B, § 16(a).

### **Revocation of Acceptance**

At any time after the expiration of five years after the date on which sections 3 to 7, inclusive, have been accepted in a city or town, said sections may be revoked in the same manner as they were accepted by such city or town, but the surcharge imposed under section 3 shall remain in effect in any such city or town, with respect to unpaid taxes on past transactions and with respect to taxes due on future transactions, until all contractual obligations incurred by the city or town prior to such termination shall have been fully discharged. G. L. c. 44B, § 16(b). Therefore, if acceptance of the Act was done by petition for the ballot question, it can only be revoked by petition for a ballot question. Similarly, if acceptance was done by approval of the local legislative body and ballot question, it can only be revoked by vote of the local legislative body and ballot question.

## **IV. NON-BINDING BALLOT QUESTIONS**

Non-binding ballot questions allow voters to express their opinions on a given subject without any legal effect. Non-binding public advisory questions may be placed on regular municipal election ballots by the board of selectmen, by the city council with the approval of the mayor (subject to local charter provisions), by the voters through town meeting or the petition process. Any non-binding ballot question must be provided to the clerk no later than 35 days before the election. G.L. c. 53, § 18A; G.L. c. 54, § 42C.

Voters may propose non-binding public advisory questions by submitting a petition signed by at least 10 registered voters to the board of selectmen or city council. If the board of selectmen or council declines to place the proposed question on the ballot and there are at least 90 days before the next regular municipal election, the proponents of the question may collect the signatures of at least 10 percent (10%) of registered voters on petitions to be filed with the registrars. G.L. c. 53, § 18A.

The board of registrars shall have seven days to certify the signatures on petitions for non-binding questions. If a sufficient number of signatures are certified, the clerk must place the question on the ballot at the next regular municipal election, provided that the election is no less than 35 days away. This means that any group wishing to place a non-binding question on the ballot should submit the petitions no later than the 42<sup>nd</sup> day (6 weeks) before the election. G.L. c. 54, § 42C.

The General Laws do not require that petitions be in a specific format, so petitioners may create their own petitions. As with any petition, it is advised that the text of the proposed question be printed on each page, along with the stated purpose to have the question placed on the next municipal election ballot.

## **V. VOTER INFORMATION PUBLICATIONS**

Municipalities have the option of preparing, printing, and distributing publications to assist voters in understanding questions on their local ballots. Such booklets are similar in nature to the Information for Voters booklets which the secretary of the commonwealth's office is required by the Massachusetts Constitution to supply for statewide ballot questions. In order to provide local ballot question publications, municipalities must first accept the provisions of section 18B of chapter 53 of the General Laws or have a special act of the Legislature enacted on their behalf.

If the city council (with approval by the mayor, subject to the charter), town council, or board of selectmen accepts this statute, the municipality must prepare a voter information booklet containing the full text of each question appearing on the ballot, a fair and concise summary of each question, the effects of a yes vote and no vote for each questions, and arguments for and against each question. The voter information booklet must be mailed to every household containing a registered voter, no later than the seventh day before each election involving a ballot question. Once this statute has been accepted, voter information booklets must be prepared for all ballot questions in all future elections, unless the acceptance is rescinded.

In cities and towns which accept section 18B of chapter 53 of the General Laws, the city solicitor or town counsel must solicit arguments from the principal proponents and opponents of any ballot question, within seven days of the determination that the question shall appear on the ballot. The city solicitor or town counsel is also responsible a writing the fair and concise summary of each ballot question. G.L. c. 53, § 18B.





# BALLOT PREPARATION

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## **I. INTRODUCTION**

This pamphlet provides many of the requirements for ballot preparation contained in the Massachusetts General Laws. There are certain provisions relating to local elections that are subject to provisions of local charters or special acts of the Legislature. In a community which operates under a charter or special act, the applicable provisions must be consulted prior to ballot preparation.

## **II. BALLOT PREPARATION**

All ballots for use in state elections are prepared and furnished by the secretary of the commonwealth's office. All ballots for city or town elections are prepared and furnished by the city or town clerk. G.L. c. 54, § 40.

### **All Ballots**

The below requirements apply to optical scan and hand-counted paper ballots:

- Official election ballots – all white.
- Primary ballots – each party's ballot is a different color. Traditionally, Democratic ballots have been red and Republican ballots have been blue.<sup>1</sup>
- Absentee ballots – the paper color must be different from the official ballot or specimen ballot and, for primaries, similar to the color of each party's official ballot. Generally, yellow is used for election ballots, while a different shade of each party's traditional color is used for primary ballots.
- Early ballots – early ballots must be similar to official election ballots. Traditionally, early ballots have been gray.
- Specimen ballots – are to be printed on colored paper different from any other used. G.L. c. 54, §§, 25B, 44; G.L. c. 53, § 33.

### **Paper Ballots**

The below requirements apply only to hand-counted paper ballots:

- Must be folded to measure – from 4 ½" to 5" wide by 6" to 13 ½" long.
- Black ink, one column within each fold.
- Names must be printed in capital letters ⅛ to ¼ inches high.
- The surnames and political designations of candidates for president and vice-president and names of candidates for senator in congress must be at least 3/16 inches high. G.L. c. 54, § 44.

### **Information and Directions**

The following must appear on the ballot:

- The words "Official Ballot" or "Official Absentee Ballot";
- Type of election;

---

<sup>1</sup> While the colors used in Massachusetts may seem to contradict the color scheme adopted by the media to represent the political parties during the election of 2000, they have been used in Massachusetts for a century.

- Electoral district;
- Party name, if a primary;
- Name of the city or town for which the ballot is prepared;
- Precincts, if the content of the ballot differs within the city or town;
- Date of the election or primary;
- A facsimile signature of the preparing official (except on specimen ballots).

Paper ballots must be printed to include a space for an “X” at the right of each name, group, and question.

Directions must be printed on the ballot to aid the voter and must include the number of candidates for whom the voter may vote. If more than one, the instructions shall read “Vote for not more than two,” etc. G.L. c 53, § 34; G.L. c. 54, § 42.

For Presidential Preference ballots, instructions are printed on the ballots to aid the voter with respect to expressing his or her preference for a candidate for nomination for the office of president. G.L. c 53, § 34.

### **III. ARRANGEMENTS OF OFFICES AND QUESTIONS**

Offices should be placed on the ballot in the following order.

#### **State Election**

The order of offices for a state election is:

1. Electors of president and vice-president;
2. Senator in Congress;
3. Governor and lieutenant governor (as a ticket at a state election);
4. Attorney general;
5. Secretary of the commonwealth;
6. State treasurer;
7. State auditor;
8. Representative in Congress;
9. Councillor;
10. State senator;
11. State representative; and
12. Others in an order determined by the secretary of the commonwealth.  
G.L. c. 54, § 43A.

The first column on a paper ballot must list all statewide offices. After the offices are listed, the state ballot questions (under Article 48 of the Articles of Amendments to the Constitution) are printed on the ballot before any other ballot questions. Traditionally, questions concerning an amendment to the Massachusetts Constitution are printed first. Initiative petition questions follow, in an order determined by the secretary of the

commonwealth. Non-binding public policy questions are the last group of questions listed on the state election ballot.  
G.L. c. 54, § 42A.

### **Presidential Primary**

Candidates appearing on the presidential primary ballot are listed in the following order:

1. Presidential candidates;
2. State committee candidates;
3. Ward or town committee candidates. G.L. c. 53, § 70E.

### **Local Election**

There is no specified order for offices on the ballot for municipal elections, but offices with different lengths of terms for the same office are placed in order of the length of terms. Candidates nominated by single wards to be voted for at-large are arranged in groups by wards. Any ballot questions must be placed after all candidates. Binding ballot questions must appear before non-binding ballot questions.  
G.L. c. 54, § 42.

## **IV. NAMES AND ADDRESSES**

Generally, candidates' names and addresses are printed on the ballot as they are registered, subject to the following exceptions:

### **State Election**

The title of the office for presidential and vice-presidential candidates is "Electors of President and Vice-President." The names of the electors do not appear on the ballot. The candidates for president and vice-president run as a ticket and only their surnames are printed on the ballot. The candidates are listed in alphabetical order by surnames of the candidates for president. G.L. c. 54 § 43.

The surnames of candidates for the offices of governor and lieutenant governor are printed on the ballots for state elections as groups according to their political party or designation. The first names and addresses of the candidates shall appear on the ballot only if two candidates have the same surnames. G.L. c. 54, § 41A.

### **Presidential Primary**

In the presidential primaries, presidential candidates' full names are printed on the ballot. No addresses appear on the ballot for presidential candidates.

Candidates for state, ward, and town committee appear on the ballot with their full names and addresses as registered. For ward and town committee candidates, each candidate's city or town of residence is excluded from the address. The candidates for ward and town committee are arranged in groups and the order is determined by lot under the direction

of the secretary of the commonwealth. The secretary must notify each state committee of the drawing, so that a representative from each committee may be present. G.L. c. 53, §§ 34, 70E.

### **Local Election**

Candidates for local office appear on the ballot with their names and addresses as registered. The address need not include the city or town. The ward number where a candidate resides is also printed on the ballot for the office of alderman at-large. G.L. c. 54, § 41.

## **V. BALLOT ORDER**

No name may appear on a ballot more than once for the same office **or** for both a full term and partial term for the same office. G.L. c. 54, § 41.

Names are printed in alphabetical order by surname, except as noted below.

### **Presidential Primary**

Elected and appointed incumbent state committee members are listed before other candidates. G.L. c. 53, § 34.

### **State Primary**

Elected and appointed incumbents are placed first on the ballot; the remaining candidates follow in alphabetical order. When there are multiple incumbents on the ballot for the same office, the incumbents are listed alphabetically by surname before the rest of the candidates.

G.L. c. 53, § 34.

### **State Election**

With the exception of president and vice president, elected incumbents are listed first and, if necessary, in alphabetical order according to their surnames. Following the incumbents, the names of candidates of political parties are listed alphabetically by surname. Finally, all other candidates are listed alphabetically by surname.

G.L. c. 54, §§ 42, 43.

### **Town Election**

Candidates for re-election are listed first, followed by all other candidates alphabetically by surname, unless the town has a charter which states otherwise. G.L. c. 54, §§ 42.

### **City Election**

Candidates for re-election are listed first, unless the charter states otherwise. This includes elected incumbents as well as incumbents chosen by vote of the board of aldermen or city council, or those chosen by joint convention of the board of aldermen/city council and school committee. Following the incumbents, all other candidates are listed. G.L. c. 54, §§ 42.

### **Determination by Lot**

Ballot positions may be determined by lot in local preliminaries and elections if a charter so provides. G.L. c. 53, § 34.

## **VI. STATEMENTS OF PUBLIC OFFICE**

A candidate may choose to include a statement of no more than 8 words next to his or her name on a primary or preliminary ballot. The 8 word statement may include any public offices he or she holds or has held, and if the candidate is not currently holding such position, the statement must include “former.” If the candidate is an elected incumbent, the statement may include the words “Candidate for Re-nomination.” Further, if the candidate is a veteran, the word “veteran” may be included in the 8 word statement.

Please note that the words “Candidate for Re-nomination” may not be used in a candidate’s statement of public office if the candidate is an appointed incumbent. “Candidate for Re-election” cannot be used as part of the 8 word statement, as that phrase appears on election ballots only. G.L. c. 53, § 34.

Not every government employee holds a “public office.” In determining whether the office is a public office, the following factors must be considered: whether the individual has entrusted to him or her some portion of the sovereign authority of the state; whether the duties are not merely clerical, but are instead performed in the administration of the law; whether the duties are “public” in nature; whether the position is established by statute; and the tenure by which the position is held. See Attorney General v. Tillinghast, 203 Mass. 539 (1909), Opinion of the Justices, 368 Mass. 866 (1975), and DeNucci v. State Ballot Law Commission, No. 76-236 (S.J.C. August 2, 1976).

In order for a position to qualify as a public office, the duties must not be merely clerical, but must involve the exercise of some significant discretion or judgment. The position must not be merely advisory, and may not be a political party position.

## **VII. POLITICAL PARTIES & DESIGNATIONS**

Non-party candidates who are not running in a primary may provide on their nomination papers the political designation which they represent, expressed in no more than 3 words. This 3 word statement appears next to the name of the candidate on the general election ballot. If the candidate does not provide a statement of political designation, the candidate shall go on the ballot as “Unenrolled.” G.L. c. 53, § 8; G.L. c. 54 § 41.

### **General Election**

“Candidate for re-election” shall be added for any elected incumbent, except for governor and lieutenant governor and electors of president and vice-president.

An appointed incumbent is not considered a candidate for re-election.

A candidate for election to the same office in a precinct, ward, or district which contains any portion of the territory which he or she was elected to represent at the last preceding municipal election for that office is considered an elected incumbent.

A district alderman, councilor, or school committee member seeking election as an at-large alderman, councilor, or school committee member **is not** considered an elected incumbent. G.L. c. 54 § 41.

### **State Election**

The nominee of a recognized political party shall have the name of that political party printed next to his or her name on the state election ballot. A political party is recognized in Massachusetts when a political designation enrolls at least 1% of all voters in Massachusetts or when a candidate running under a designation attains at least 3% of the votes cast for a statewide office at the biennial state election. Check with the Elections Division for a list of current political parties.

If a candidate is nominated by two parties, the names of both parties may appear on the ballot in an order chosen by the candidate, or by the secretary of the commonwealth if the nomination is accepted and the candidate does not choose an order by the deadline.

Non-party candidates may place a statement of political designation of up to 3 words on nomination papers and that designation shall be placed on the ballot. The names of current political parties may not be used. If no statement appears, the word “Unenrolled” shall be used on state ballots. G.L. c. 54 § 41.

### **Local Election**

The name of the nominating party shall be printed next to the name of a candidate nominated at a partisan caucus. For instance, “Democratic Caucus Nominee” or “Republican Caucus Nominee” would appear next to the name of a candidate nominated at a local partisan caucus, depending on the party of the candidate.

Only two statements may appear on a ballot for a nonpartisan general election: “Caucus Nominee,” for a candidate chosen by a town’s citizen caucus, and “Candidate for Re-election,” if appropriate.

## **VIII. WRITE-INS**

Blank spaces must be left at the end of the list of candidates for each office equal to the number to be elected, so that the voter may insert the name and address of any person not printed on the ballot who they wish to vote for. Exceptions are listed below.  
G.L. c. 54 § 42.



**Presidential Primary**

One blank space for a presidential write-in must be printed following “No Preference.”

In the presidential primary, blank write-in spaces are only provided for ward or town committee if fewer names are listed on the ballot than the number to be elected. If there are fewer candidates than the number to be elected, spaces are only provided up to the number to be elected. G.L. c. 53, § 70E.

**State Primary**

On paper ballots at state primaries, blank spaces are only provided where there are fewer names than there are persons to be chosen. Voters may still write-in a candidate not appearing on the ballot below the list of candidates, but there is no designated space for the name. G.L. c. 53, § 34.

**State Election**

A write-in space must be provided below the list of candidates for president and vice-president; however, only candidates who have filed electors with the secretary of the commonwealth by the sixtieth day prior to the election are eligible to have votes counted. Votes for candidates who have not been certified by the secretary shall be tallied under “All Others.” G.L. c. 54, §§ 78, 78A.



# ELECTION OFFICER'S HANDBOOK

OPTICAL SCAN

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## **I. INTRODUCTION**

Election officers are an integral part of every election. This handbook is intended both to prepare you for your duties on Election Day, and as a quick reference guide to be used throughout the day.

It is important to remember that election officers present the face of the election to the voters. It is crucial that you behave in a way that assures voters that the elections are unbiased and non-partisan. Election officers must refrain from any political activity during polling hours. This includes both discussions of political matters and postings to social media sites. Your city/town clerk may have additional guidelines to help avoid any appearance of impropriety.

Throughout this booklet, you will see the phrases “election officer” and “poll worker.” These titles are used interchangeably and refer to any election workers appointed by the city or town to work at the polls.

Further, you will notice that the local election official is frequently referred to as the city/town clerk. Most local election officials are city or town clerks, though some communities have elections commissions instead. If your community has such a commission, any references to the city/town clerk should be understood to mean the elections commission.

## **II. ELECTION OFFICERS**

Each polling place must have assigned to it a warden, a clerk, and inspectors. In polling places where there is more than one precinct voting, precincts may share a warden. Every precinct has its own clerk and a certain number of inspectors.

Wardens work under the city/town clerk and are in charge of their precincts. Clerks report to the warden and the city/town clerk and assist the warden, while also keeping records relating to the election. Inspectors report to the warden and the city/town clerk and assist the voters with checking in, checking out, and depositing their ballots in the ballot box.

Each polling place must also have a police officer or constable assigned to it. The police officer or constable assists the warden and the city/town clerk in enforcing the election laws in and around the polling place.

If any poll workers are absent, contact the city/town clerk’s office immediately. If deputies have been appointed, the deputy of the absent election officer will be sent to the polling location as soon as possible.

## **III. POLLING PLACE SET-UP**

Often, polling places are set up the day before the election by the city/town clerk, but there are still certain tasks which must be completed in the time before the polls open.

## **Opening the Polling Location**

No later than 30 minutes before the opening of the polls, the polling place must be unlocked and accessible for any members of the public who wish to observe the preparations for the election.

## **Signage**

In every polling place, certain information must be posted. Before the polls open, you must post:

- 3 specimen ballots
- 3 “Information on Federal and State Laws” posters
- 3 “Instructions to Voters” posters

The “Information on Federal and State Laws” and “Instructions to Voters” posters are part of a wide “tri-fold” poster which also includes the Voter’s Bill of Rights (see page 21).

In primaries, there are specimen ballots for each party, which means that three of each type of specimen ballot must be posted.

Additionally, you must post signs directing voters to call the Secretary of the Commonwealth’s Elections Division at 1-800-462-VOTE (8683) if they experience any problems in voting.

Signs must be posted inside the polling place, but outside the “guard rail” and at least one of each poster must be placed no higher than 48 inches from the ground.

In most cases, the guard rail is not a physical rail, but rather an invisible barrier between the area where the voting is taking place and the outer areas of the precinct. The guard rail should surround the area just beyond the check-in table and must include the voting booths, the check-out table, and the ballot box. Some election officials choose to mark this area with tape on the ground or with ropes.

## **Tabulator**

While setting up the tabulator, be sure to follow the steps below:

1. Insert the tabulator into the appropriate place on top of the ballot box and plug it in.
2. Unlock each compartment of the ballot box to show anyone in the polling place that there are no ballots inside.
3. Follow the tabulator instructions (provided by your city/town clerk) to turn on the tabulator.
4. Print a “zero tape.” This tape shows that all offices and questions on the ballot have zero votes when the polls open.
5. Two poll workers of different parties (usually the warden and clerk) sign the zero tape and post it in a conspicuous place in the polling place.

6. Record the number of votes on the ballot box (this should be zero) in the clerk's log. If there are any issues with the tabulator, record that information as well.
7. Secure any locks on the ballot box and tabulator and give the key to the police office or constable for safe keeping.

### **AutoMARK**

Every polling place is equipped with an AutoMARK Voter Assist Terminal. The AutoMARK is a machine which assists voters in reading and marking their ballots. Instructions should be provided by your local election official on how to turn on the machine and prepare it for voters.

Be sure to turn on the AutoMARK and plug in the headphones before the polls are opened. The AutoMARK must also be set up in a way that ensures voter privacy, with the screen is facing away from the public. Ideally, the screen of the AutoMARK should be facing a wall, with enough space between the machine and the wall for a wheelchair to easily maneuver. It is recommended that a chair be placed nearby, for anyone who needs it.

### **Accessibility**

If your polling place does not have an already designated accessible parking spaces and the city/town clerk has not already done so, you must ensure that at least one accessible parking space is clearly marked. If the main entrance to the polling place is not accessible, signs must be placed directing voters to the accessible entrance to the building. You must also check to make sure the accessible entrance door is unlocked.

### **Ballots**

Ballots are delivered to the polling location in the morning, either by someone in the clerk's office or by a police officer. The ballots must be counted and the warden must certify the number of ballots received. Ballots are usually packed in packs of 50 or 100. You do not need to open the pre-packaged ballots while counting. The clerk must record the number of ballots received in the clerk's log.

### **Voting Booths**

Pens should be placed in the voting booths for the voters to mark their ballots. Many people find it useful to remove the caps from the pens so that voters do not take them with them when they leave. If the city/town clerk has provided additional instructions on marking the ballots, they may be posted in the booths.

### **Materials at Check-In**

Inspectors working at the check-in table should make sure that they have the following materials available at their table:

- Ballots
- Voter lists
- Red pens or pencils
- Rulers
- Secrecy sleeves

- Information for Voters books (for biennial state elections)

Voter lists should be marked with red pen or pencil. Many inspectors prefer to use rulers when marking the voter lists, to make sure they are checking off the right box. For November elections in even-numbered years, red Information for Voters booklets must be available at the check-in table.

### **Materials at Check-Out**

Inspectors working at the check-out table should make sure that they have the following materials available at their table:

- Voter lists
- Red pens or pencils
- Rulers

## **IV. OPENING THE POLLS**

In state elections, state primaries, and presidential primaries, polls must open no later than 7:00 a.m., though polls may open as early as 5:45 a.m. Polling hours are determined by the board of selectmen or city or town council.

Polls must be opened at precisely the time that has been designated. When the time comes, the presiding officer must announce the opening of the polls.

### **Oath**

Before the polls can be opened, the election officers must be sworn to their duties by the city or town clerk or the warden. The oath administered to public officials is as follows:

*I, (Name), do solemnly swear (or affirm) that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof. So help me, God.*

*I, (Name), do solemnly swear (or affirm) that I will faithfully and impartially discharge and perform all the duties incumbent on me as an election officer, according to the best of my abilities and understanding, agreeably to the rules and regulations of the Constitution and Laws of the Commonwealth. So help me, God.*

*I, (Name), do solemnly swear (or affirm) that I will support the Constitution of the United States.*

## **V. DURING THE VOTING HOURS**

### **Observers**

In the interest of transparent elections, any person who wishes to do so may observe the election process. Observers may be present in the morning during the polling place set-up until the counting is finished and the polling place is closed up. Any observers must remain outside the “guard rail.” See “Signage” on page 3 for an explanation of the guard rail.

Observers are usually stationed near the check-in table, so that they can hear the names and addresses of the voters checking in. Observers are not required to give notice or get permission ahead of time; however, if the polling location is too crowded with observers, the warden may ask the observers to pool information and should give preference to those who notified the clerk ahead of time.

Often, observers are campaign workers who are keeping track of who has voted and who has not. Observers may bring voter lists which they may make notes on. While electronic devices may be used by observers, they must be silent and cannot be plugged into any outlets in the polling location.

Observers must never be allowed to speak to the voters and should speak only to the warden. If an observer is unable to hear the inspectors repeating the names and addresses of the voters, they should not ask the inspector to speak up, but rather, should speak to the warden who can ask the inspectors to speak loudly enough to be heard. Observers cannot review the voting lists at all.

### **Checking-In**






The first place voters go in the polling place is the check-in table, where they must give the inspectors at the check-in table their address and name.

Except in very small towns, voter lists are organized by street, then by street number, then by voter name. The inspector with the list must ask the voter to state his or her address and name, and then repeat the same back to the voter, loud enough for anyone near the check-in table to hear.

Voters may try to simply show identification or quietly state their information, but the law requires that voters' names and addresses be said aloud. This is important, because any observer may challenge a voter's qualification for any legal cause, so they must be able to hear the name and address that each person is giving.

Below is a portion of a sample voter list:



Ward	Pct	Street Name	Party	Voted	AV	EV	Voter Id	Street Name
Show House#	Name							
ID?								
			Inactive Date					
0	1	MAIN ST		0	1			MAIN ST
	1	PERSON, ONE	L	<input type="checkbox"/>	AV			
	1	TEST, MISTER		<input type="checkbox"/>				
ID	1	TEST, MRS	D	<input type="checkbox"/>				
	2	SAMPLE, JOHN		<input type="checkbox"/>				
	2	SAMPLE, SUSAN	R	<input checked="" type="checkbox"/>		EV		
				*I*	07/18/2017			

Once you find a voter’s name on the list, you must look for any notations next to the voter’s name. In the voter list example, you can see the most common notations:

- ID – “Mrs Test” of 1 Main St. is voting for the first time and must present identification.
- \*I\* – “John Sample” is inactive and will be required to sign an affirmation of current and continuous residence and show identification and may be directed to the warden.
- AV – “One Person” is an absentee voter and should be directed to the warden.
- EV – “Susan Sample” is an early voter and should be directed to the warden.

In the part column to the left of the check boxes, you can see each voter’s political party. Party affiliation only matters in state and presidential primaries, when it can affect which ballot a voter can choose. Voters who have letters next to their names in the party column (“D” for Democrat, “R” for Republican, “L” for Libertarian) may take only their own party’s ballot.

Notice that not all voters have letters next to their names. If the space in that column is left blank, it means that the voter is not enrolled in a party. These voters may choose one of the party ballots, and their choice must be marked by the inspector in the blank space. Codes may be used when marking a voter’s choice, but it is recommended that inspectors use “DEM” and “REP” instead of “D” and “R,” as those letters are sometimes difficult to distinguish.

Once a ballot has been chosen and the voter’s choice has been marked on the list, the voter cannot change his or her mind and pick a different party ballot.

### Inactive Voters

If a voter’s name cannot be found on the list, it may be on a separate inactive voter list. Some cities and towns keep all voters on a single list with inactive voters flagged, while others choose to keep separate lists for inactive voters.

Voters may become inactive by failing to respond to the annual street listing, also known as the city or town census. The census form is mailed to every home at the beginning of each year. Voters who fail to respond to it are then mailed a confirmation notice, which is usually a postcard asking if the voter still lives at his or her address. Voters who do not return the

confirmation notice will remain on the inactive voter list until they confirm their address in writing with the local election official or until they vote.

If a voter has \*I\* next to their name or if they are on the inactive voter list, the voter must be sent to the warden, where the following steps must be followed:

1. Give the voter an Affirmation of Current and Continuous Residence to fill out (see page 18).

If the voter still lives at the same address they are registered, they should fill out the top part of the form, which says they are still residing at their address.

If the voter has moved within the city or town, they should fill out the part of the form which asks for their old and new address within the city or town.

If the voter has moved out of town within the last six months and they are voting in any election except a city or town election, the voter must complete the part of the form which says “For State Elections Only.”

If the voter moved out of town more than six months ago, or if the voter has moved out of town and is trying to vote in a local election, tell the voter that they are not eligible to vote in this election.

2. Ask the voter for identification. If the voter cannot provide identification showing their current address, challenge the voter’s ballot.
3. Send the voter back to the check-in table to get a ballot. Keep all the affirmations together to be sent back to the clerk’s office with the voter lists.

### **Identification**

When voters are required to show identification, they must present identification that bears their name and current address. Acceptable identification includes:

- Driver’s license;
- State-issued RMV identification card;
- Duplicate copy of the voter’s registration form;
- Recent utility bill
- Pay stub;
- Government check;
- Bank statement;
- Lease;
- Rent receipt; or
- Any other official document bearing the voter’s name and current address.

Sometimes, students who do not have any other type of identification may present a letter from their college’s housing office, on university letterhead, which states that the student is a resident of the dorm. This is an acceptable form of identification.

Voters who have the letters “ID” next to their names on the voter list are required by federal law to show identification before voting. This law applies to voters who registered by mail, who have not previously voted in Massachusetts, and whose identification could not be verified before the election.

Unlike inactive voters, voters who have “ID” next to their names cannot cast challenged ballots if they are unable to present identification. If a voter has “ID” next to their name and cannot produce identification, they may either go home to get identification and return later or they may cast a provisional ballot.

### **Challenged Ballots**

Occasionally, observers or poll workers may choose to challenge a voter’s ballot for legal cause. If observers or other voters in the polling place have a legal reason for doing so, they may challenge any voter’s ballot at the point of checking-in. When a voter announces their name and address to the inspector at the check-in table, any person in the polling place may interrupt to say that they would like to challenge the voter’s ballot.

Challenged ballots are counted on Election Day and are only re-examined if there is a recount or if a court orders that the ballots be re-examined. At this time, the qualifications of any challenged voters may be investigated.

If someone is attempting to challenge a voter’s ballot, the warden should:

1. Ask the challenger the reason for the challenge.

Acceptable reasons include: “this person is not old enough to vote”; “this person is not a citizen”; “this person should have been removed from the voter list”; “this person has already voted”; or “this person is not the person he claims to be.”

The challenger must be able to provide factual information specific to the voter regarding the reason (for example: “This person should have been removed from the voter list, because he moved five years ago. I know this because I live next door to the address he gave.”). If the challenger is unable to provide the required information, the voter should be allowed to vote normally.

2. Issue the challenged voter’s oath to the voter.

*“You do solemnly swear (or affirm) that you are the identical person whom you represent yourself to be, that you are registered in this precinct, and that you have not voted in this primary (or election).”*

3. Give the voter a ballot and ask the voter to write his or her name and address in a blank space on the ballot.
4. Add the challenger’s name and address and the reason given for the challenge.

5. Instruct the inspector handling the voter list to check off the voter and add the letters “CV” next to his or her name,
6. Instruct the voter to proceed to the voting booth to complete his or her ballot, check-out, and then insert the ballot into the ballot box. The letters “CV” should be written next to the challenged voter’s name on the voter lists.
7. Instruct the clerk to note the challenge in the clerk’s log.

### **Provisional Ballots**

If a voter’s name cannot be found on any of the voter lists, the warden must contact the local election office to ask them to check their records. Telephones must be available in all polling locations. The staff at the local election office can check the statewide voter database and the forms in their office to determine if the voter is on the list anywhere else. If the voter is on the list at another polling place, the voter must be directed to the correct polling place

If the voter insists their name should be on the list at that polling location and does not wish to go to the polling location where they are listed, they should be offered a provisional ballot. That voter should be cautioned, however, that unless documentation can be found to confirm the voter’s registration at that location, the provisional ballot will not be counted, and that if they vote at the polling place where their name is on the list, it will likely count.

If the voter cannot be found on any list, but the voter believes that he or she should be registered, the warden must offer a provisional ballot. Provisional ballots are put into envelopes after they are completed and set aside until the city or town clerk can determine if the voter is eligible. If a record of the voter’s registration can be found and the voter should have been on the list, the ballot will be counted. If the clerk finds that the voter was not eligible, the ballot will be destroyed without being opened. **Provisional ballots are counted no matter how close the election is.**

A voter may also cast a provisional ballot if they are voting in a primary and believe that they are incorrectly listed with the wrong party.

The below steps must be followed with provisional voters:

1. Instruct the voter to complete a provisional ballot affirmation (see page 19). It is also recommended that a voter registration form also be completed by the voter, in case a record of voter registration cannot be found.

The affirmation gives the voter the opportunity to provide information about where and how he or she registered. This will help the city or town clerk find any registration records.

2. Request the voter’s identification and complete the bottom part of the affirmation.

All provisional voters must be asked for identification, though they must still be allowed to vote even if they do not have identification. Voters who are casting provisional ballots because they do not have identification must return with their identification before the polls close, in order for their ballot to be counted.

3. Write the word “PROVISIONAL” at the top of a blank ballot.
4. Add the voter’s information to the provisional ballot roster (see page 21).

The provisional ballot roster must be completed with the voter’s name, address, party, reason for casting a provisional ballot, and provisional ballot number. The warden generally assigns provisional ballot numbers in the order they are cast (the first provisional ballot in that precinct is #1, and so on.).

5. Write the ward/precinct and the provisional ballot number on the envelope and the provisional ballot information sheet (see page 20).
6. Hand the ballot, envelope, and information sheet to the voter and instruct him or her to proceed to a booth to complete the ballot and to seal the ballot in the envelope when finished.
7. Take the envelope containing the ballot when the voter is finished and put it aside with other provisional ballots in a secure location. Provisional ballots should never be sealed with cast ballots.
8. Tell the voter to bring the information sheet home and call the phone number on the instructions to find out if the ballot was counted.

### **Spoiled Ballots**

If a voter makes a mistake, they may “spoil” that ballot and request a new one. A voter may spoil up to two ballots and receive no more than three ballots total.

Spoiled ballots should be marked “SPOILED” by an election official and placed into the spoiled ballot envelope.

### **Assisting Voters**

Poll workers cannot give voters any information about candidates or questions which is not already on the ballot. If a voter has a question about what an office is, what candidates believe, or what a question means, poll workers are not able to answer those questions. While voters may find this frustrating, it is important that poll workers not influence the way any voters choose to cast their ballots.

Voters who need assistance because of a physical disability or because they cannot read any of the languages on their ballot may use the AutoMARK or ask for the assistance of the poll workers. Some polling places may have translators on hand to assist non-English speakers.

The AutoMARK is available for any voter who wishes to use it. It is specifically designed for voters with visual impairment, certain physical disabilities, or inability to read. The AutoMARK has the ability to magnify the ballot on the screen, read the ballot aloud to the voter, and mark the ballot according to the voter's choices. Voters who have sip/puff machines may use them with the AutoMARK. Once the ballot has been marked, it must be removed from the machine and the voter may then proceed to the check-out.

Voters who prefer to be assisted by poll workers should be accompanied in the voting booth by two poll workers of different political parties. Poll workers may read the ballot to the voter and mark the options the voter wants to make. Voters may also bring a person of their choice to assist them. Voters who bring someone to assist them should be asked if they need assistance and if the person with them is the person they wish to have assist them.

### **Campaign Activity**

State law prohibits any campaigning within 150 feet of the entrance to the polling place. This rule is enforced by the warden and the police officer or constable. Some cities and towns choose to mark the 150 foot boundary in some way.

Within 150 feet of the polling place, no person may: wear political apparel, such as t-shirts, buttons, or hats; hold political signs; solicit votes for or against a candidate or question; gather signatures on any petitions. Nothing intended to aid or defeat a candidate or ballot question is allowed within the 150 zone.

It is the opinion of the Elections Division that a candidate's presence in the polling place is, in itself, campaign activity. Candidates shaking hands in polling locations are essentially walking advertisement for themselves. Candidates should only be present in the polling place if they are voting, or if they are coming in to get the number of ballots cast on the ballot box from the warden.

The prohibition against campaign materials and solicitation of votes applies only to candidates and questions on the ballot that day. For instance, a candidate for state representative at the state election in November may campaign outside a polling place on the day of a special town election held in October.

No solicitation of signatures is allowed within 150 feet of the polling place, no matter what the petition is for.

### **Checking Out**

Once a voter has finished marking their ballot, they must go to the check-out table before putting their ballot in the ballot box. The voter must again give their address and name, and just like at the check-in table, the inspector must repeat the same back to the voter.

In primaries, if the voter is not enrolled in a party, the inspector must confirm which party's ballot the voter chose. Be sure to ask which ballot the voter chose and not "how did you vote?" Voters may get upset if they believe you are asking which candidate they voted for.

## **Casting the Ballot**

There should be an inspector positioned near the ballot box to assist voters in casting their ballots. Unless a voter requires assistance due to physical disability, poll workers should never handle any in-person voter's completed ballot.

Voters cast their ballots by inserting them into the tabulator placed on top of the ballot box. If a voter has accepted the secrecy sleeve offered at the check-in table, poll workers stationed near the ballot box should be unable to see any of the voter's choices as the ballot is inserted. Even in a voter has declined the secrecy sleeve, poll workers should make every effort not to look at any completed ballots.

In the case of a ballot being rejected by a tabulator, follow the below steps:

1. Stop the voter from leaving.
2. Ask the voter to pick up his or her ballot – do not touch the ballot yourself!
3. Look at the screen on the tabulator. This screen will show the reason for the rejection and will indicate if the ballot should be re-inserted. One of the most common error messages is “Ballot not read – please re-insert” or similar language indicating that the voter should try again. Other error messages may indicate that the entire ballot is blank or that the voter has voted too many times for an office or question, which is called an over-vote.
4. If the screen indicates that the ballot should be re-inserted, ask the voter to try again. If the ballot has any folds or curves in it, you may instruct the voter to straighten them out before re-inserting.  
If the screen indicates a blank ballot, ask the voter to look at their ballot and, if necessary, show the voter on a posted specimen ballot how to correctly complete the ballot. Sometimes voters may mark their ballots incorrectly, perhaps by circling candidates' names instead of filling in the vote indicator. This would be read by the tabulator as a blank ballot.  
  
If the screen indicates an over-vote, it means that the voter has marked more choices than allowed. For instance, a voter who votes for two different presidential candidates, who votes both “Yes” and “No” on a ballot question, or who votes for three candidates for school committee when only two are to be elected has cast an over-vote. Over-vote must be tallied as blanks if not corrected, so the voter must be given the opportunity to complete a new ballot.
5. If the problem persists, or if the voter insists on casting the blank or over-voted ballot, instruct the voter to insert the ballot into the auxiliary bin on the side of the ballot box. Ballots placed in this compartment must be hand-counted at the end of the night.
6. If a tabulator consistently rejects ballots for reason other than blank ballots or over-votes, contact the city/town clerk.

If a tabulator stops working, voter must be allowed to continue voting. Instruct voters to place their ballots in the auxiliary compartment and explain that they will be hand-counted after the polls are closed. Never instruct voters to stack their ballots on top of the tabulator or to place them in any container besides the auxiliary compartment. Ballots cast by in-person voters cannot be placed into the ballot box or tabulator by anyone except the voter. Ballots cannot be fed into the tabulator after it has been fixed – any ballots cast when the tabulator is down must be hand-counted.

### **Absentee Ballots**

Any absentee ballots returned by voters in your precinct will be sent to the polling place to be cast by the poll workers. Most often, a large batch of absentee ballots will be delivered in the morning. Absentee ballots are generally delivered by a police officer, a registrar, or an assistant registrar. Absentee ballots received on Election Day before the close of polls will be sent to the polling places throughout the day.

Absentee ballots may be processed whenever time allows. Often, it is easier to wait until after the morning rush and to try to process the bulk of the ballots before the evening rush.

The process for casting absentee ballots is:

1. One poll worker takes the ballots to the check-in table.
2. The poll worker reads the addresses and names off the ballot envelopes to the inspectors at the check-in table.
3. The inspectors check the absentee voters off on the voter lists. Absentee voters should have “AV” next to their names.
4. The poll worker with the ballot proceeds to the check-out table, where the same process is repeated.
5. The ballots are brought to the ballot box. The envelopes are shuffled together, placed face-down, and opened. Ballots are removed from the envelopes and shuffled together again.

This process is used to preserve the secrecy of the ballots, so that the poll worker does not know whose ballot they are removing from each envelope.

6. The poll worker announces that absentee ballots are being cast and inserts the ballots into the tabulator.
7. Put all envelopes aside to be sent back to the clerk’s office. Do not seal the empty envelopes in with the cast ballots at the end of the night.

Absentee voters may come into the polling place to cast their ballots, as long as they “beat the ballot.” This means that an absentee voter may vote in-person as long as you have not already



processed their ballot. If a voter arrives in the polling place who has “AV” next to their name, call the city/town clerk’s office. The clerk must certify that the voter’s ballot has not already been cast before they may vote. Certification may happen over the phone. Any absentee voters certified to vote in person should have the letter “C” added next to their name in the voter list.

## **VI. CLOSING THE POLLS**

In state primaries, state elections, and presidential primaries, the polls must be closed at 8 PM. Polls may close earlier in local elections.

At the time designated for the closing of the polls, the warden must announce that the polls have closed. Any voters in line at the close of polls must be allowed to vote. If necessary, the police officer or constable should be stationed behind the last person in line at the time the polls closed.

### **Reconciling Voter Lists**

Inspectors at the check-in and check-out tables must tally the number of voters marked as voting on each voter list. Do not change the voter lists in any way, even if the voter total numbers on the check-in list and check-out lists do not match. The total number of voters checked off on each list must be recorded in the clerk’s log. Any discrepancies on the voting list totals can be noted in the clerk’s log.

## **VII. COUNTING THE VOTES**

### **Closing out the Election**

Once all voters have completed voting and have inserted their ballots into the tabulators, the clerk must check the number of ballots cast on the tabulator screen and record that number in the clerk’s log. The warden must then retrieve the keys from the police officer or constable and close out the election on the tabulator. Follow the instructions provided by the city/town clerk for your tabulator.

### **Tallying**

The below steps must be followed when tallying votes:

1. Print a results tape. The tape showing the results of the election will print when the election is closed out on the tabulator. The city/town clerk may request that you print extra results tapes.
2. Hand the results tape to the clerk, who will read the results aloud.
3. While the clerk reads the results, another poll worker of a different party than the clerk (usually the warden) must record the results on the tally sheet.
4. The warden must unlock the auxiliary compartment and remove any ballots, which will need to be hand-counted. The clerk shall read the results off of the ballots to the person recording results on the tally sheet.

5. The warden must unlock the other compartments of the ballot box and all ballots must be removed.
6. Poll workers must examine all ballots for any write-in votes. Even if the ballot box has a separate container for write-ins, all ballots in each compartment must be examined.
7. The clerk must read the write-in votes to the person recording the votes on the tally sheet. Tally only the races on the ballots which have write-in votes. The rest of the ballot was already counted by the tabulator.

### **Write-In Votes**

The city/town clerk will notify you of any known write-in candidates. Write-in candidates are not required to give notification to the clerks, but many choose to, so that you can keep an eye out for any votes cast for them.

Write-in votes should be counted as long as you can determine the intent of the voter. For instance, if you know John Smith is running a write-in campaign and someone writes-in “J. Smith,” that vote **should be counted**.

Write-in votes which misspell the candidate’s name **should be counted**, as long as the voter’s intent can be determined.

If a voter writes-in a candidate, but does not fill in the vote indicator, that vote **should be counted**.

Write-in votes which do not include the candidate’s address **should be counted**.

Write-in votes for candidates already on the ballot for that office **should be tallied as blanks**.

Votes for fictional or dead persons (such as Mickey Mouse or Abraham Lincoln) **should be tallied as blanks**.

When it doubt, it is best to add a candidate to the tally sheet and let the city/town clerk decide whether a write-in vote should be tallied for a candidate or with “All Others.”

Because some write-in votes may have been tallied by the tabulator as blanks if the voter did not fill in the vote indicator, you may need to deduct votes from the blanks on the tally sheet if the number of votes cast is greater the number of ballots cast.

All ballots must be counted at the polling place.

## **VIII. PACKING UP**

The below steps must be followed when packing up materials to be returned to the local election office:

1. Place all cast ballots into the containers provided. Cast ballots include all ballots taken from the ballot box, including write-in and hand-counted ballots. Affix ballot seals to the container. The warden and clerk must sign the outside of the container, as well as a certificate stating that the container holds cast ballots. **Do not seal anything else in with the cast ballots.**
2. Count all uncast ballots and place them into containers separate from the cast ballots. Uncast ballots are ballots which are entirely blank. The number of uncast ballots must be recorded in the clerk's log. Affix ballot seals to the container.
3. Place all spoiled ballots in the envelope provided. Record the number of spoiled ballots in the clerk's log.
4. Place all provisional ballots and affirmations in an envelope with the provisional ballot roster. Record the number of provisional ballots in the clerk's log.
5. Place the voter lists in an envelope. The warden and the clerk must sign a certificate provided by the city/town clerk certifying the contents of the envelope.
6. Place tally sheets and results tapes into the envelope provided. The warden and clerk must sign the outside of the envelope.
7. Place the tabulator and any accessories (cords, ender card, memory card, etc.) into the carrying case.
8. Place AutoMARK into carrying case.
9. Pack up any posters, specimen ballots, instructions, publications, pens, rulers, etc.
10. Return all of the above materials to the local election office, along with the keys and the clerk's log. Materials must be delivered by the police officer or constable.

# IX. APPENDIX

## Affirmation of Current and Continuous Residence

### AFFIRMATION OF CURRENT AND CONTINUOUS RESIDENCE FOR INACTIVE VOTERS

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You have appeared to vote on Election Day and your name appears as an Inactive Voter at:

\_\_\_\_\_ since \_\_\_\_\_  
(Address) (Date)

You are still eligible to vote today if you have registered to vote in \_\_\_\_\_ in the past and sign an affirmation under penalties of perjury that you are still a current resident of \_\_\_\_\_ and have continuously been a resident in \_\_\_\_\_ since the date you were listed as an Inactive Voter.

I, \_\_\_\_\_ am a current resident in \_\_\_\_\_ at \_\_\_\_\_ and have continuously resided in \_\_\_\_\_ since the date of my Inactive Voter status listed above.

If you have moved within \_\_\_\_\_, please list your old address and your new address:  
Old Address: \_\_\_\_\_  
New Address: \_\_\_\_\_

Signed under the penalties of perjury:

\_\_\_\_\_  
(Sign Name) (Date) (Print Name)

---

### FOR STATE ELECTIONS ONLY—G. L. c. 51, § 1

At a state primary or election only, you may vote in \_\_\_\_\_ from the address where you were last registered to vote until the expiration of six months from the date you moved out of \_\_\_\_\_.

I, \_\_\_\_\_, was a registered voter in \_\_\_\_\_ but moved to \_\_\_\_\_ on \_\_\_\_\_.  
(Present Address) (Date)

Therefore, I assert my right under G. L. c. 51, § 1, to vote in the state primary or election held on the date below. I further request that my name be removed from the voting list as I am no longer a resident of \_\_\_\_\_.

Signed under the penalties of perjury:

\_\_\_\_\_  
(Sign Name) (Date) (Print Name)

---

### WARDEN'S CERTIFICATE

This is to certify that the name of the voter listed above appeared on the Inactive Voting List for Ward \_\_\_\_\_, Precinct \_\_\_\_\_, Party \_\_\_\_\_.

Attest: \_\_\_\_\_  
(Warden/ Clerk) (Date)

---

### IDENTIFICATION FOR INACTIVE VOTERS

Was current address verified through identification: YES \_\_\_ NO \_\_\_ (If identification is not presented, the voter must still be allowed to vote, but the clerk/warden must challenge the voter).

# Provisional Ballot Affirmation

Ward/Precinct: \_\_\_\_\_

Provisional Ballot #: \_\_\_\_\_

## The Commonwealth of Massachusetts

### Provisional Ballot Affirmation

1) Name: \_\_\_\_\_

2) Date of Birth: \_\_\_\_\_

3) Current Address:

I have continuously resided at this address since registering to vote at this address.

\_\_\_\_\_

4) Address at which you are registered to vote (if different):

**For State Elections Only** - I have moved from this municipality to another municipality in Massachusetts within the last 6 months, and I have not registered elsewhere. (check if applicable)

\_\_\_\_\_

5) Party: \_\_\_\_\_

6) Most recent voter registration form was completed (Check one):

Online       By Mail

At a voter registration agency (Location): \_\_\_\_\_

At the RMV (branch): \_\_\_\_\_ RMV ID #: \_\_\_\_\_

I affirm under penalty of perjury that the above information is true; that I am a registered voter in this municipality and within this precinct; that I know of no legal reason to prevent my vote from being cast and counted; that I have not voted and shall not vote in another precinct or by absentee ballot in this state during this election; that I understand that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefore; and that I further understand that if I execute this affirmation knowing that I am not a qualified registered voter at the address stated above, I have committed a criminal act.

Signed under penalty of perjury: \_\_\_\_\_ Date: \_\_\_\_\_

ELECTION OFFICIAL USE ONLY	
<p><b>Precinct Election Official</b></p> <p>Identification Provided : <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Election Date: _____</p> <p>Election Type: <input type="checkbox"/> State Primary    <input type="checkbox"/> State Election  <input type="checkbox"/> Local Election    <input type="checkbox"/> Local Preliminary</p> <p>Reason: <b>N:</b> Name not on list and cannot be verified at precinct  <b>I:</b> Name not on list and determined ineligible  <b>D:</b> Failure to provide required identification  <b>C:</b> Voter is voting as the result of a court order extending polling hours  <b>O:</b> Other</p> <p>Initials: _____ Time: _____</p>	<p><b>Municipal Election Official</b></p> <p>Research Indicates: <input type="checkbox"/> Not Registered    <input type="checkbox"/> Registered too late  <input type="checkbox"/> Address change    <input type="checkbox"/> Cancelled  <input type="checkbox"/> Other</p> <p>Comments: _____          _____          _____</p> <p>Counted: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Initials: _____ Time: _____</p>

## Provisional Ballot Information Sheet



### The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth

## PROVISIONAL BALLOT INFORMATION SHEET

You have received this information sheet as a result of casting a provisional ballot. You have cast a provisional ballot because your eligibility to vote was not able to be determined at the polling location on the day of an election.

You have executed a provisional ballot affirmation before a precinct officer at the polling place declaring that you are a registered voter in the city or town and reside within the geographical boundaries of this precinct. The written affirmation also stated your name, current residential address, political party affiliation, that you are a registered voter in the city or town and reside in this precinct, that you know of no legal reason to prevent your vote from being cast and counted, that you have not voted and shall not vote in another precinct or by absentee ballot in this state during this election and that you understand that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefore and that you understand that if you executed the affirmation and are not a qualified registered voter at the current address stated, you have committed a criminal act.

After voting your ballot, you placed it in the envelope, sealed it and returned it to the precinct election official. Your ballot will be set aside until a determination of your eligibility can be made. Your eligibility will be determined using the information provided on your affidavit. The municipal election official will review available records, at least those for the last three (3) years, to determine your eligibility.

If your eligibility is confirmed, your ballot will be removed from the sealed envelope and grouped with similar ballots and counted in a manner that provides the greatest secrecy. If your eligibility cannot be confirmed, your ballot will remain sealed in the envelope until such time as it is required to be kept and then will be destroyed without being viewed.

To find out if your ballot is counted, you may contact the Elections Division, Office of the Secretary of the Commonwealth at 1-800-462-8683 or 617-727-2828, or your municipal election official. The information will be available seven (7) days after a primary and twenty (20) days after an election. When calling, you must provide your name, address, date of birth and provisional ballot number to receive the information.

Ward/Precinct: \_\_\_\_\_

Provisional Ballot #: \_\_\_\_\_

# Provisional Ballot Roster

## PROVISIONAL VOTING ROSTER

To be completed by poll workers and attached to clerk's record.

CITY/TOWN:	WARD/PRECINCT:

**REASON CODES:**  
 N: Name not on list and cannot be verified at precinct  
 I: Name not on list and determined ineligible  
 D: Required to provide identification but does not  
 C: Voter is voting as result of court order extending hours  
 O: Other  
 Please insert reason code in the column marked "REASON CODE."

NAME	ADDRESS	DATE OF BIRTH	POLITICAL PARTY	BALLOT NUMBER	REASON CODE

# Tri-Fold Poster



The Commonwealth of Massachusetts  
 William Francis Galvin, Secretary of the Commonwealth

### Massachusetts Voters' Bill of Rights

Your voting rights are protected. These rights are guaranteed to qualified registered voters.

- You have the right to vote if you are a qualified registered voter.
- You have the right to cast your ballot in a manner that ensures privacy. You have the right to vote without any person trying to influence your vote and to vote in a booth that prevents others from watching you mark your ballot.
- You have the right to remain in the voting booth for five (5) minutes if there are other voters waiting and for ten (10) minutes if there are no other voters waiting.
- You have the right to receive up to two (2) replacement ballots if you make a mistake and spoil your ballot.
- You have the right to request assistance when voting from anyone of your choice. If you do not bring someone with you, you have the right to have two (2) poll workers assist you.
- You have the right to vote if you are disabled. The polling place must be accessible, and there must be an accessible voting booth.
- You have the right to vote if you cannot read or write or cannot read or write English.
- You have the right to vote but must show identification if you are a first-time voter who registered to vote by mail and did not submit identification with the voter registration form; or your name is on the inactive voter list; or your vote is being challenged; or if requested by a poll worker. Acceptable forms of identification are: Massachusetts driver's license, other printed documentation containing your name and address such as a recent utility bill, vote receipt or landlord's letterhead, lease, or a copy of a voter registration acknowledgment or receipt.
- You have the right to vote by absentee ballot if you will be absent from your city or town on Election Day or if you have a physical disability that prevents your voting at the polling place or if you cannot vote at the polls due to religious belief.
- You have the right to cast a provisional ballot if you believe you are a qualified registered voter but a poll worker tells you that you are ineligible to vote.
- You have the right to follow up any challenge to your right to vote through the complaint process.
- You have the right to vote if you are not currently incarcerated for a felony conviction and have registered as a voter after your release.
- You have the right to take this Voters' Bill of Rights or any other papers, including a sample ballot, voter guide or campaign material into the voting booth with you. Please remember to remove all papers when you leave the booth.
- You have the right to vote at your polling place any time between 7am and 8pm for state and federal elections—hours may vary for local elections. If you are in line at your polling place when the polls close at 8pm, you have the right to vote.
- You have the right to bring your children into the voting booth with you.

If you feel that your right to vote has been violated in any way, call the Secretary of the Commonwealth's Elections Division at 1-800-462-VOTE (8683). This call is free within Massachusetts.

### Information on Federal and State Laws that Prohibit Fraud and Misrepresentation:

The following lists the principal election law violations under federal and/or state law:

- Persons must not make any false statement or claim that they are citizens of the United States in order to register or vote in any federal, state, or local election.
- Persons must not procure or submit materially false, fraudulent or fictitious voter registration applications in any election that includes a federal candidate.
- Persons must not submit false information as to name, address or period of residence in a voting district for the purpose of establishing eligibility to register or vote in any election that includes a federal candidate.
- Persons must not procure, cast or tabulate materially false, fraudulent or fictitious ballots in any election that includes a federal candidate.
- Persons must not pay, offer to pay or accept payment for voting, registering to vote, withholding their vote, or voting for or against any candidate in any election that includes a federal candidate.
- Persons must not tamper with or injure or attempt to tamper with or injure any voting machine to be used or being used in an election or prevent the correct operation of such machine.
- Persons must not hinder, delay or interfere with or aid in hindering, delaying or interfering with a voter while on their way to vote in a primary, caucus or election, while within the guardrail, while marking their ballot or while voting or attempting to vote, or endeavor to induce a voter, before depositing their ballot, to disclose how they marked their ballot.
- Persons must not remove a ballot from the space enclosed by the guardrail before the close of the polls.
- Persons must not vote or attempt to vote in any place knowing that they are not a qualified voter therein.
- Persons must not vote or attempt to vote more than once at the same election.
- Persons must not vote or attempt to vote on any name other than their own.
- Persons must not aid or abet a person who is not entitled to vote in voting or attempting to vote or in voting or attempting to vote in a name other than their own or in casting or attempting to cast more than one ballot.
- Persons must not place any distinguishing marks upon their ballot, make any false statements as to their ability to mark their ballot, allow the marking of their ballot to be seen by any person for any purpose not authorized by law, or give a false answer to or make a false oath to an election officer.
- Persons must not behave in a disorderly manner.
- Persons must obey the lawful command of the election officials.
- Persons must not obstruct the voting.
- Persons must not challenge a qualified voter for the purpose of intimidation or for ascertaining how they voted or for any other illegal purpose.

Violation of any of these laws may result in fines and/or imprisonment.

### Instructions to Voters

- Before voting:** Give your address and name to an election officer.  
 If you need assistance because of blindness, physical disability, inability to read or to read English, you may ask help from either a person of your choice or from two election officers of different political parties. You may also ask the election official to use the AutoMARK Voter Assist Terminal, which is an accessible ballot marking device, to mark your ballot.  
 Enter a voting compartment and mark your ballot.  
 You will have ten minutes to vote but if others are waiting, you have only five minutes.
- Identification:** Because of a federal law, the Help America Vote Act of 2002 passed by Congress, if you registered to vote by mail on or after January 1, 2005, you will be required to show identification when you vote for the first time in a federal election since registering by mail. Acceptable identification must include your name and the address at which you are registered to vote, for example a current and valid photo identification, current utility bill, bank statement, paycheck, government check, or other government document showing your name and address.  
 If you do not provide such identification, the Help America Vote Act of 2002 requires that you may only cast a provisional ballot which will be counted later, but only after your eligibility to vote has been determined.
- If you are not allowed to vote:** If you have registered but your name has been omitted from the voting list, or listed incorrectly, you may seek to vote either by appearing before the municipal election official at city/town hall or you may vote by PROVISIONAL BALLOT.  
 To cast a provisional ballot, you must execute a provisional ballot affirmation before a precinct officer at the polling place declaring that you are a registered voter in the city or town and reside within the geographical boundaries of said precinct. All provisional voters must show suitable identification.
- To vote for candidates and questions:** Vote for a listed candidate or on a question by filling in the oval ( ) next to your choice, like this:  Examine the candidates and questions on the ballot and decide how you wish to vote. Be sure that you have answered all ballot questions as once they appear on the reverse. Do not vote for more candidates than the number allowed for each office.
- To write-in a vote:** If you wish to vote for a person whose name is not on the ballot, write that person's name and address or insert a pre-printed sticker in the blank space following the list of candidates for the office, and fill in the oval to the right.
- Spoiled ballots:** If you wish to change your vote after marking your ballot, return it to the ballot clerk who will give you another. You may repeat up to two new ballots.
- After voting:** Before you leave the voting compartment, check to see if you have voted for all the candidates and questions you wish to vote for. Place your ballot in the secrecy sleeve provided and you place it in the ballot box.  
 DO NOT FOLD OR BEND OR DAMAGE THE BALLOT IN ANY WAY. It must go through an optical scanner.  
 Do not show anyone how you have marked your ballot. Go to the ballot box and give your address and name to one of the ballot box officers. Put your ballot in the box. Do not put the secrecy sleeve in the ballot box.



# ELECTION OFFICER'S HANDBOOK

## PAPER BALLOTS

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## **I. INTRODUCTION**

Election officers are an integral part of every election. This handbook is intended both to prepare you for your duties on Election Day, and as a quick reference guide to be used throughout the day.

It is important to remember that election officers present the face of the election to the voters. It is crucial that you behave in a way that assures voters that the elections are unbiased and non-partisan. Election officers must refrain from any political activity during polling hours. This includes both discussions of political matters and postings to social media sites. Your town clerk may have additional guidelines to help avoid any appearance of impropriety.

Throughout this booklet, you will see the phrases “election officer” and “poll worker.” These titles are used interchangeably and refer to any election workers appointed by the city or town to work at the polls.

## **II. ELECTION OFFICERS**

Each polling place must have assigned to it a warden, a clerk, and inspectors. Communities which hand-count their ballots often choose to employ tellers, as well. In polling places where there is more than one precinct voting, precincts may share a warden. Every precinct has its own clerk and a certain number of inspectors.

Wardens work under the town clerk and are in charge of their precincts. Clerks report to the warden and the town clerk and assist the warden, while also keeping records relating to the election. Inspectors report to the warden and the town clerk and assist the voters with checking in, checking out, and depositing their ballots in the ballot box. Tellers begin work only after the polls close and assist in counting the ballots.

Each polling place must also have a police officer or constable assigned to it. The police officer or constable assists the warden and the town clerk in enforcing the election laws in and around the polling place.

If any poll workers are absent, contact the town clerk’s office immediately. If deputies have been appointed, the deputy of the absent election officer will be sent to the polling location as soon as possible.

## **III. POLLING PLACE SET-UP**

Often, polling places are set up the day before the election by the town clerk, but there are still certain tasks which must be completed in the time before the polls open.

## **Opening the Polling Location**

No later than 30 minutes before the opening of the polls, the polling place must be unlocked and accessible for any members of the public who wish to observe the preparations for the election.

## **Signage**

In every polling place, certain information must be posted. Before the polls open, you must post:

- 3 specimen ballots
- 3 “Information on Federal and State Laws” posters
- 3 “Instructions to Voters” posters

The “Information on Federal and State Laws” and “Instructions to Voters” posters are part of a wide “tri-fold” poster which also includes the Voter’s Bill of Rights (See page 19).

In primaries, there are specimen ballots for each party, which means that three of each type of specimen ballot must be posted.

Additionally, you must post signs directing voters to call the Secretary of the Commonwealth’s Elections Division at 1-800-462-VOTE (8683) if they experience any problems in voting.

Signs must be posted inside the polling place, but outside the “guard rail” and at least one of each poster must be placed no higher than 48 inches from the ground.

In most cases, the guard rail is not a physical rail, but rather an invisible barrier between the area where the voting is taking place and the outer areas of the precinct. The guard rail should surround the area just beyond the check-in table and must include the voting booths, the check-out table, and the ballot box. Some election officials choose to mark this area with tape on the ground or with ropes.

## **AutoMARK**

Every polling place is equipped with an AutoMARK Voter Assist Terminal. The AutoMARK is a machine which assists voters in reading and marking their ballots. Instructions should be provided by your local election official on how to turn on the machine and prepare it for voters.

Be sure to turn on the AutoMARK and plug in the headphones before the polls are opened. The AutoMARK must also be set up in a way that ensures voter privacy, with the screen is facing away from the public. Ideally, the screen of the AutoMARK should be facing a wall, with enough space between the machine and the wall for a wheelchair to easily maneuver. It is recommended that a chair be placed nearby, for anyone who needs it.

## **Accessibility**

If your polling place does not have an already designated accessible parking spaces and the city/town clerk has not already done so, you must ensure that at least one accessible parking space is clearly marked. If the main entrance to the polling place is not accessible, signs must be placed directing voters to the accessible entrance to the building. You must also check to make sure the accessible entrance door is unlocked.

**Ballots**

Ballots are delivered to the polling location in the morning, either by someone in the clerk's office or by a police officer. The ballots must be counted and the warden must certify the number of ballots received. The clerk must record the number of ballots received in the clerk's log.

There will also be a supply of ballots which are specially designed to be used with the AutoMARK machine. Be sure to have these ballots on hand for any voters wishing to use the AutoMARK.

**Voting Booths**

Black pens should be placed in the voting booths for the voters to mark their ballots.

**Materials at Check-In**

Inspectors working at the check-in table should make sure that they have the following materials available at their table:

- Ballots
- Voter lists
- Red pens or pencils
- Rulers
- Information for Voters books (for biennial state elections)

Voter lists should be marked with red pen or pencil. Many inspectors prefer to use rulers when marking the voter lists, to make sure they are checking off the right box. For November elections in even-numbered years, red Information for Voters booklets must be available at the check-in table.

**Materials at Check-Out**

Inspectors working at the check-out table should make sure that they have the following materials available at their table:

- Voter lists
- Red pens or pencils
- Rulers

**IV. OPENING THE POLLS**

In state elections, state primaries, and presidential primaries, polls must open no later than 7:00 a.m., though polls may open as early as 5:45 a.m. Polling hours are determined by the board of selectmen or town council.

Polls must be opened at precisely the time that has been designated. When the time comes, the presiding officer must announce the opening of the polls.

## **Oath**

Before the polls can be opened, the election officers must be sworn to their duties by the town clerk or the warden. The oath administered to public officials is as follows:

*I, (Name), do solemnly swear (or affirm) that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof. So help me, God.*

*I, (Name), do solemnly swear (or affirm) that I will faithfully and impartially discharge and perform all the duties incumbent on me as an election officer, according to the best of my abilities and understanding, agreeably to the rules and regulations of the Constitution and Laws of the Commonwealth. So help me, God.*

*I, (Name), do solemnly swear (or affirm) that I will support the Constitution of the United States.*

## **Ballot Box**

Before opening the polls, the warden must open the ballot box to show anyone present that there are no ballots inside. The ballot box counter should be set to zero and this fact must be recorded in the clerk's log.

The warden must close and lock the ballot box and attach the ballot box crank. The ballot box key must be given to the police officer or constable for safe keeping.

## **V. DURING THE VOTING HOURS**

### **Observers**

In the interest of transparent elections, any person who wishes to do so may observe the election process. Observers may be present in the morning during the polling place set-up until the counting is finished and the polling place is closed up. Any observers must remain outside the "guard rail." See "Signage" on page 3 for an explanation of the guard rail.

Observers are usually stationed near the check-in table, so that they can hear the names and addresses of the voters checking in. Observers are not required to give notice or get permission ahead of time; however, if the polling location is too crowded with observers, the warden may ask the observers to pool information and should give preference to those who notified the clerk ahead of time.

Often, observers are campaign workers who are keeping track of who has voted and who has not. Observers may bring voter lists which they may make notes on. While electronic devices may be used by observers, they must be silent and cannot be plugged into any outlets in the polling location.

Observers must never be allowed to speak to the voters and should speak only to the warden. If an observer is unable to hear the inspectors repeating the names and addresses of the voters, they should not ask the inspector to speak up, but rather, should speak to the warden who can ask the inspectors to speak loudly enough to be heard.






## Checking-In

The first place voters go in the polling place is the check-in table, where they must give the inspectors at the check-in table their address and name.

Voter lists may be organized alphabetically by last name or they may be sorted by street, then by street number, then by voter name. The inspector with the list must ask the voter to state his or her address and name, and then repeat the same back to the voter, loud enough for anyone near the check-in table to hear.

Voters may try to simply show identification or quietly state their information, but the law requires that voters' names and addresses be said aloud. This is important, because any observer may challenge a voter's qualification for any legal cause, so they must be able to hear the name and address that each person is giving.

Below is a portion of a sample voter list:

Ward	Pct	Street Name	Party Voted	AV	EV	Voter Id	Street Name
Show House#	Name						
ID?				Inactive Date			
<b>0</b>	<b>1</b>	<b>MAIN ST</b>		<b>0</b>	<b>1</b>		<b>MAIN ST</b>
	1	PERSON, ONE	L	<input type="checkbox"/>	AV		
	1	TEST, MISTER		<input type="checkbox"/>			
<b>ID</b>	<b>1</b>	<b>TEST, MRS</b>	<b>D</b>	<input type="checkbox"/>			
	2	SAMPLE, JOHN		<input type="checkbox"/>			
	2	SAMPLE, SUSAN	R	<input checked="" type="checkbox"/>	EV		
				<b>*I*</b>	<b>07/18/2017</b>		

Once you find a voter's name on the list, you must look for any notations next to the voter's name. In the voter list example, you can see the most common notations:

- **ID** – “Mrs Test” of 1 Main St. is voting for the first time and must present identification.
- **\*I\*** – “John Sample” is inactive and will be required to sign an affirmation of current and continuous residence and show identification and may be directed to the warden.
- **AV** – “One Person” is an absentee voter and should be directed to the warden.
- **EV** – “Susan Sample” is an early voter and should be directed to the warden.

In the party column to the left of the check boxes, you can see each voter's political party. Party affiliation only matters in state and presidential primaries, when it can affect which ballot a voter can choose. Voters who have letters next to their names in the party column (“D” for Democrat, “R” for Republican, “L” for Libertarian) may take only their own party's ballot.

Notice that not all voters have letters next to their names. If the space in that column is left blank, it means that the voter is not enrolled in a party. These voters may choose one of the party ballots, and their choice must be marked by the inspector in the blank space. Codes may be used when marking a voter's choice, but it is recommended that inspectors use "DEM" and "REP" instead of "D" and "R," as those letters are sometimes difficult to distinguish.

In primaries, ballots are color-coded by party. By decades-old tradition, Republican ballots are blue and Democratic ballots are red/pink. This may be counterintuitive for anyone who has become accustomed to the media's use of red for Republican and blue for Democrat. Be sure not to confuse the ballots when handing them to voters.

Once a ballot has been chosen and the voter's choice has been marked, the voter cannot change his or her mind and pick a different party ballot.

### **Inactive Voters**

If a voter's name cannot be found on the list, it may be on a separate inactive voter list. Some cities and towns keep all voters on a single list with inactive voters flagged, while others choose to keep separate lists for inactive voters.

Voters may become inactive by failing to respond to the annual street listing, also known as the city or town census. The census form is mailed to every home at the beginning of each year. Voters who fail to respond to it are then mailed a confirmation notice, which is usually a postcard asking if the voter still lives at his or her address. Voters who do not return the confirmation notice will remain on the inactive voter list until they confirm their address in writing with the local election official or until they vote.

If a voter has \*I\* next to their name or if they are on the inactive voter list, the voter must be sent to the warden, where the following steps must be followed:

1. Give the voter an Affirmation of Current and Continuous Residence to fill out (see page 16).

If the voter still lives at the same address they are registered, they should fill out the part at the top of the form that says they are still residing at their address.

If the voter has moved within the town, they should fill out the part of the form which asks for their old and new address within the city or town.

If the voter has moved out of town within the last six months and they are voting in any election except a town election, the voter must complete the part of the form which says "For State Elections Only."

If the voter moved out of town more than six months ago, or if the voter has moved out of town and is trying to vote in a local election, tell the voter that they are not eligible to vote in this election.

2. Ask the voter for identification. If the voter cannot provide identification showing their current address, challenge the voter's ballot.
3. Send the voter back to the check-in table to get a ballot. Keep all the affirmations together to be sent back to the clerk's office with the voter lists.

### **Identification**

When voters are required to show identification, they must present identification that bears their name and current address. Acceptable identification includes:

- Driver's license;
- State-issued RMV identification card;
- Duplicate copy of the voter's registration form;
- Recent utility bill
- Pay stub;
- Government check;
- Bank statement;
- Lease;
- Rent receipt; or
- Any other official document bearing the voter's name and current address.

Sometimes, students who do not have any other type of identification may present a letter from their college's housing office, on university letterhead, which states that the student is a resident of the dorm. This is an acceptable form of identification.

Voters who have the letters "ID" next to their names on the voter list are required by federal law to show identification before voting. This law applies to voters who registered by mail, who have not previously voted in Massachusetts, and whose identification could not be verified before the election.

Unlike inactive voters, voters who have "ID" next to their names cannot cast challenged ballots if they are unable to present identification. If a voter has "ID" next to their name and cannot produce identification, they may either go home to get identification and return later or they may cast a provisional ballot.

### **Challenged Ballots**

Occasionally, observers or poll workers may choose to challenge a voter's ballot for legal cause. If observers or other voters in the polling place have a legal reason for doing so, they may challenge any voter's ballot at the point of checking-in. When a voter announces their name and address to the inspector at the check-in table, any person in the polling place may interrupt to say that they would like to challenge the voter's ballot.

Challenged ballots are counted on Election Day and are only re-examined if there is a recount or if a court orders that the ballots be re-examined. At this time, the qualifications of any challenged voters may be investigated.

If someone is attempting to challenge a voter's ballot, the warden should:



1. Ask the challenger the reason for the challenge.

Acceptable reasons include: “this person is not old enough to vote”; “this person is not a citizen”; “this person should have been removed from the voter list”; “this person has already voted”; or “this person is not the person he claims to be.”

The challenger must be able to provide factual information specific to the voter regarding the reason (for example: “This person should have been removed from the voter list, because he moved five years ago. I know this because I live next door to the address he gave.”). If the challenger is unable to provide the required information, the voter should be allowed to vote normally.

2. Issue the challenged voter’s oath to the voter.

*“You do solemnly swear (or affirm) that you are the identical person whom you represent yourself to be, that you are registered in this precinct, and that you have not voted in this primary (or election).”*

3. Give the voter a ballot and ask the voter to write his or her name and address on the back of the ballot.
4. Add the challenger’s name and address and the reason given for the challenge.
5. Instruct the inspector handling the voter list to check off the voter and add the letters “CV” next to his or her name,
6. Instruct the voter to proceed to the voting booth to complete his or her ballot, check-out, and then insert the ballot into the ballot box. The letters “CV” should be written next to the challenged voter’s name on the voter lists.
7. Instruct the clerk to note the challenge in the clerk’s log.

### **Provisional Ballots**

If a voter’s name cannot be found on any of the voter lists, the warden must contact the town clerk to look up the voter. Telephones must be available in all polling locations. The town clerk can check the statewide voter database and the forms in their office to determine if the voter is on the list anywhere else. If the voter is on the list at another polling place, the voter must be directed to the correct polling place.

If the voter insists their name should be on the list at that polling location and does not wish to go to the polling location where they are listed, they should be offered a provisional ballot. That voter should be cautioned, however, that unless documentation can be found to confirm the voter’s registration at that location, the provisional ballot will not be counted, and that if they vote at the polling place where their name is on the list, it will likely count.

If the voter cannot be found on any list, but the voter believes that he or she should be registered, the warden must offer a provisional ballot. Provisional ballots are put into envelopes after they are completed and set aside until the city or town clerk can determine if the voter is eligible. If a record of the voter's registration can be found and the voter should have been on the list, the ballot will be counted. If the town clerk finds that the voter was not eligible, the ballot will be destroyed without being opened. **Provisional ballots are counted no matter how close the election is.**

A voter may also cast a provisional ballot if they are voting in a primary and believe that they are incorrectly listed with the wrong party.

The below steps must be followed with provisional voters:

1. Instruct the voter to complete a provisional ballot affirmation (see page 17). It is also recommended that a voter registration form also be completed by the voter, in case a record of voter registration cannot be found.

The affirmation gives the voter the opportunity to provide information about where and how he or she registered. This will help the town clerk find any registration records.

2. Request the voter's identification and complete the bottom section of the affirmation (see page 17).

All provisional voters must be asked for identification, though they must still be allowed to vote even if they do not have identification. Voters who are casting provisional ballots because they do not have identification must return with their identification before the polls close, in order for their ballot to be counted.

3. Write the word "PROVISIONAL" at the top of a blank ballot.
4. Add the voter's information to the provisional ballot roster (see page 19).

The provisional ballot roster must be completed with the voter's name, address, party, reason for casting a provisional ballot, and provisional ballot number. The warden generally assigns provisional ballot numbers in the order they are cast (the first provisional ballot in that precinct is #1, and so on.).

5. Write the ward/precinct and the provisional ballot number on the envelope and the provisional ballot information sheet (see page 18).
6. Hand the ballot, envelope, and information sheet to the voter and instruct him or her to proceed to a booth to complete the ballot and to seal the ballot in the envelope when finished.

7. Take the envelope containing the ballot when the voter is finished and put it aside with other provisional ballots in a secure location. Provisional ballots should never be sealed with cast ballots.
8. Tell the voter to bring the information sheet home and call the phone number on the instructions to find out if the ballot was counted.

### **Spoiled Ballots**

If a voter makes a mistake, they may “spoil” that ballot and request a new one. A voter may spoil up to two ballots and receive no more than three ballots total.

Spoiled ballots should be marked “SPOILED” by an election official and placed into the spoiled ballot envelope.

### **Assisting Voters**

Poll workers cannot give voters any information about candidates or questions which is not already on the ballot. If a voter has a question about what an office is, what candidates believe, or what a question means, poll workers are not able to answer those questions. While voters may find this frustrating, it is important that poll workers not influence the way any voters choose to cast their ballots.

Voters who need assistance because of a physical disability or because they cannot read any of the languages on their ballot may use the AutoMARK or ask for the assistance of the poll workers.

The AutoMARK is available for any voter who wishes to use it. It is specifically designed for voters with visual impairment, certain physical disabilities, or inability to read. The AutoMARK has the ability to magnify the ballot on the screen, read the ballot aloud to the voter, and mark the ballot according to the voter’s choices. Voters who have sip/puff machines may use them with the AutoMARK. Once the ballot has been marked, it must be removed from the machine and the voter may then proceed to the check-out.

Voters who prefer to be assisted by poll workers should be accompanied in the voting booth by two poll workers of different political parties. Poll workers may read the ballot to the voter and mark the options the voter wants to make. Voters may also bring a person of their choice to assist them. Voters who bring someone to assist them should be asked if they need assistance and if the person with them is the person they wish to have assist them.

### **Campaign Activity**

State law prohibits any campaigning within 150 feet of the entrance to the polling place. This rule is enforced by the warden and the police officer or constable. Some cities and towns choose to mark the 150 foot boundary in some way.

Within 150 feet of the polling place, no person may: wear political apparel, such as t-shirts, buttons, or hats; hold political signs; solicit votes for or against a candidate or question; gather

signatures on any petitions. Nothing intended to aid or defeat a candidate or ballot question is allowed within the 150 zone.

It is the opinion of the Elections Division that a candidate's presence in the polling place is, in itself, campaign activity. Candidates shaking hands in polling locations are essentially walking advertisement for themselves. Candidates should only be present in the polling place if they are voting, or if they are coming in to get the number of ballots cast on the ballot box from the warden.

The prohibition against campaign materials and solicitation of votes applies only to candidates and questions on the ballot that day. For instance, a candidate for state representative at the state election in November may campaign outside a polling place on the day of a special town election held in October.

No solicitation of signatures is allowed within 150 feet of the polling place, no matter what the petition is for.

### **Checking Out**

Once a voter has finished marking their ballot, they must fold the ballot and go to the check-out table before putting their ballot in the ballot box. The voter must again give their address and name, and just like at the check-in table, the inspector must repeat the same back to the voter.

In primaries, if the voter is not enrolled in a party, the inspector must confirm which party's ballot the voter chose. Be sure to ask which ballot the voter chose and not "how did you vote?" Voters may get upset if they believe you are asking which candidate they voted for.

### **Casting the Ballot**

There should be an inspector positioned near the ballot box to assist voters in casting their ballots. Unless a voter requires assistance due to physical disability, poll workers should never handle any in-person voter's completed ballot.

Voters cast their ballots by inserting them into the ballot box face-up. The inspector stationed at the ballot box must then turn the crank until the ballot drops into the box. When a ballot is cast, the counter on the ballot box should advance by one.

### **Absentee Ballots**

Any absentee ballots returned by voters in your precinct will be sent to the polling place to be cast by the poll workers. Most often, a large batch of absentee ballots will be delivered in the morning. Absentee ballots are generally delivered by a police officer, a registrar, or an assistant registrar. Absentee ballots received on Election Day before the close of polls will be sent to the polling places throughout the day.

Absentee ballots may be processed whenever time allows. Often, it is easier to wait until after the morning rush and to try to process the bulk of the ballots before the evening rush.

The process for casting absentee ballots is:

1. One poll worker takes the ballots to the check-in table.
2. The poll worker reads the addresses and names off the ballot envelopes to the inspectors at the check-in table.
3. The inspectors check the absentee voters off on the voter lists. Absentee voters should have “AV” next to their names.
4. The poll worker with the ballot proceeds to the check-out table, where the same process is repeated.
5. The ballots are brought to the ballot box. The envelopes are shuffled together, placed face-down, and opened. Ballots are removed from the envelopes and shuffled together again.

This process is used to preserve the secrecy of the ballots, so that the poll worker does not know whose ballot they are removing from each envelope.

6. The poll worker announces that absentee ballots are being cast and inserts the ballots into the ballot box.
7. Put all envelopes aside to be sent back to the clerk’s office. Do not seal the empty envelopes in with the cast ballots at the end of the night.

Absentee voters may come into the polling place to cast their ballots, as long as they “beat the ballot.” This means that an absentee voter may vote in-person as long as you have not already processed their ballot. If a voter arrives in the polling place and that voter has “AV” next to their name, call the town clerk’s office. The clerk must certify that the voter’s ballot has not already been cast before they may vote. Certification may happen over the phone. Any absentee voters certified to vote in person should have the letter “C” added next to their name in the voter list.

## **VI. CLOSING THE POLLS**

In state primaries, state elections, and presidential primaries, the polls must be closed at 8 PM. Polls may close earlier in local elections.

At the time designated for the closing of the polls, the warden must announce that the polls have closed. Any voters in line at the close of polls must be allowed to vote. If necessary, the police officer or constable should be stationed behind the last person in line at the time the polls closed.

### **Reconciling Voter Lists**

Inspectors at the check-in and check-out tables must tally the number of voters marked as voting on each voter list. Do not change the voter lists in any way, even if the voter total numbers on the check-in list and check-out lists do not match. The total number of voters checked off on each

list must be recorded in the clerk's log. Any discrepancies on the voting list totals can be noted in the clerk's log.

## **VII. COUNTING THE VOTES**

### **Tallying**

Tallying occurs in the polling place, in view of any members of the public who wish to observe the process. Any observers must remain behind the guard rail and may not approach the ballots.

When tallying votes, the tellers (or, if there are no tellers, the poll workers who are tallying) must count votes as long as the intent of the voter can be determined. For instance, if a voter marks their ballot with a check mark instead of an X, the intent of the voter is clear and the vote should be counted.

If a voter votes for more options than allowed, the vote for that office or question must be tallied as a blank.

The below steps must be followed when tallying votes:

1. Retrieve the ballot box key from the police officer or constable.
2. Record the number of votes cast on the ballot box in the clerk's log.
3. Unlock the ballot box and remove all ballots within.
4. In primaries, separate the different party ballots. Once all ballots have been separated, count the ballots into stacks of 50.
5. Tellers separate into teams of two, of different political parties.
6. Tellers begin counting one stack of fifty at a time.
7. One teller reads the votes to the other, who marks the tally sheet with a red pen.
8. Tellers continue to tally ballots, one stack at a time, until each block of ballots has been tallied.

### **Write-In Votes**

The town clerk will notify you of any known write-in candidates. Write-in candidates are not required to give notification to the clerks, but many choose to, so that you can keep an eye out for any votes cast for them.

In elections, write-in spaces are provided below all candidates listed on the ballot for each office. In primaries, there are no write-in spaces provided, unless there are no candidates listed for a

particular office. In both cases, write-in votes are allowed. Voters may write-in a candidate's name below the list of candidates, even if no write-in space is specified.

Write-in votes should be counted as long as you can determine the intent of the voter. For instance, if you know John Smith is running a write-in campaign and someone writes-in "J. Smith," that vote **should be counted**.

Write-in votes which misspell the candidate's name **should be counted**, as long as the voter's intent can be determined.

Write-in votes which do not include the candidate's address **should be counted**.

Write-in votes for candidates already on the ballot for that office **should be tallied as blanks**.

Votes for fictional or dead persons (such as Mickey Mouse or Abraham Lincoln) **should be tallied as blanks**.

When in doubt, it is best to add a candidate to the tally sheet and let the town clerk decide whether a write-in vote should be tallied for a candidate or with "All Others."

All ballots must be counted at the polling place.

## **VIII. PACKING UP**

The below steps must be followed when packing up materials to be returned to the local election office:

1. Place all cast ballots into the containers provided. Cast ballots include all ballots taken from the ballot box, including write-in and hand-counted ballots. Affix ballot seals to the container. The warden and clerk must sign the outside of the container, as well as a certificate stating that the container holds cast ballots. **Do not seal anything else in with the cast ballots.**
2. Count all uncast ballots and place them into containers separate from the cast ballots. Uncast ballots are ballots which are entirely blank. The number of uncast ballots must be recorded in the clerk's log. Affix ballot seals to the container.
3. Place all spoiled ballots in the envelope provided. Record the number of spoiled ballots in the clerk's log.
4. Place all provisional ballots and affirmations in an envelope with the provisional ballot roster. Record the number of provisional ballots in the clerk's log.

5. Place the voter lists in an envelope. The warden and the clerk must sign a certificate provided by the city/town clerk certifying the contents of the envelope.
6. Place tally sheets into the envelope provided. The warden and clerk must sign the outside of the envelope.
7. Place AutoMARK into carrying case.
8. Pack up any posters, specimen ballots, instructions, publications, pens, rulers, etc.
9. Return all of the above materials to the local election office, along with the clerk's log. Materials must be delivered by the police officer or constable.



# IX. APPENDIX

## Affirmation of Current and Continuous Residence

### AFFIRMATION OF CURRENT AND CONTINUOUS RESIDENCE FOR INACTIVE VOTERS

---

You have appeared to vote on Election Day and your name appears as an Inactive Voter at:

\_\_\_\_\_ since \_\_\_\_\_  
(Address) (Date)

You are still eligible to vote today if you have registered to vote in \_\_\_\_\_ in the past and sign an affirmation under penalties of perjury that you are still a current resident of \_\_\_\_\_ and have continuously been a resident in \_\_\_\_\_ since the date you were listed as an Inactive Voter.

I, \_\_\_\_\_ am a current resident in \_\_\_\_\_ at \_\_\_\_\_ and have continuously resided in \_\_\_\_\_ since the date of my Inactive Voter status listed above.

If you have moved within \_\_\_\_\_, please list your old address and your new address:  
Old Address: \_\_\_\_\_  
New Address: \_\_\_\_\_

Signed under the penalties of perjury:

\_\_\_\_\_  
(Sign Name) (Date) (Print Name)

---

### FOR STATE ELECTIONS ONLY—G. L. c. 51, § 1

At a state primary or election only, you may vote in \_\_\_\_\_ from the address where you were last registered to vote until the expiration of six months from the date you moved out of \_\_\_\_\_.

I, \_\_\_\_\_, was a registered voter in \_\_\_\_\_ but moved to \_\_\_\_\_ on \_\_\_\_\_.  
(Present Address) (Date)

Therefore, I assert my right under G. L. c. 51, § 1, to vote in the state primary or election held on the date below. I further request that my name be removed from the voting list as I am no longer a resident of \_\_\_\_\_.

Signed under the penalties of perjury:

\_\_\_\_\_  
(Sign Name) (Date) (Print Name)

---

### WARDEN'S CERTIFICATE

This is to certify that the name of the voter listed above appeared on the Inactive Voting List for Ward \_\_\_\_\_, Precinct \_\_\_\_\_, Party \_\_\_\_\_.

Attest: \_\_\_\_\_  
(Warden/ Clerk) (Date)

---

### IDENTIFICATION FOR INACTIVE VOTERS

Was current address verified through identification: YES \_\_\_ NO \_\_\_ (If identification is not presented, the voter must still be allowed to vote, but the clerk/warden must challenge the voter).

# Provisional Ballot Affirmation

Ward/Precinct: \_\_\_\_\_

Provisional Ballot #: \_\_\_\_\_

## The Commonwealth of Massachusetts

### Provisional Ballot Affirmation

1) Name: \_\_\_\_\_

2) Date of Birth: \_\_\_\_\_

3) Current Address:

I have continuously resided at this address since registering to vote at this address.

\_\_\_\_\_

4) Address at which you are registered to vote (if different):

**For State Elections Only** - I have moved from this municipality to another municipality in Massachusetts within the last 6 months, and I have not registered elsewhere. (check if applicable)

\_\_\_\_\_

5) Party: \_\_\_\_\_

6) Most recent voter registration form was completed (Check one):

Online       By Mail

At a voter registration agency (Location): \_\_\_\_\_

At the RMV (branch): \_\_\_\_\_ RMV ID #: \_\_\_\_\_

I affirm under penalty of perjury that the above information is true; that I am a registered voter in this municipality and within this precinct; that I know of no legal reason to prevent my vote from being cast and counted; that I have not voted and shall not vote in another precinct or by absentee ballot in this state during this election; that I understand that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefore; and that I further understand that if I execute this affirmation knowing that I am not a qualified registered voter at the address stated above, I have committed a criminal act.

Signed under penalty of perjury: \_\_\_\_\_ Date: \_\_\_\_\_

ELECTION OFFICIAL USE ONLY	
<p><b>Precinct Election Official</b></p> <p>Identification Provided: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Election Date: _____</p> <p>Election Type: <input type="checkbox"/> State Primary    <input type="checkbox"/> State Election  <input type="checkbox"/> Local Election    <input type="checkbox"/> Local Preliminary</p> <p>Reason: <b>N:</b> Name not on list and cannot be verified at precinct  <b>I:</b> Name not on list and determined ineligible  <b>D:</b> Failure to provide required identification  <b>C:</b> Voter is voting as the result of a court order extending polling hours  <b>O:</b> Other</p> <p>Initials: _____ Time: _____</p>	<p><b>Municipal Election Official</b></p> <p>Research Indicates: <input type="checkbox"/> Not Registered    <input type="checkbox"/> Registered too late  <input type="checkbox"/> Address change    <input type="checkbox"/> Cancelled  <input type="checkbox"/> Other</p> <p>Comments: _____          _____          _____</p> <p>Counted: <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p>Initials: _____ Time: _____</p>

## Provisional Ballot Information Sheet



### The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth

## PROVISIONAL BALLOT INFORMATION SHEET

You have received this information sheet as a result of casting a provisional ballot. You have cast a provisional ballot because your eligibility to vote was not able to be determined at the polling location on the day of an election.

You have executed a provisional ballot affirmation before a precinct officer at the polling place declaring that you are a registered voter in the city or town and reside within the geographical boundaries of this precinct. The written affirmation also stated your name, current residential address, political party affiliation, that you are a registered voter in the city or town and reside in this precinct, that you know of no legal reason to prevent your vote from being cast and counted, that you have not voted and shall not vote in another precinct or by absentee ballot in this state during this election and that you understand that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefore and that you understand that if you executed the affirmation and are not a qualified registered voter at the current address stated, you have committed a criminal act.

After voting your ballot, you placed it in the envelope, sealed it and returned it to the precinct election official. Your ballot will be set aside until a determination of your eligibility can be made. Your eligibility will be determined using the information provided on your affidavit. The municipal election official will review available records, at least those for the last three (3) years, to determine your eligibility.

If your eligibility is confirmed, your ballot will be removed from the sealed envelope and grouped with similar ballots and counted in a manner that provides the greatest secrecy. If your eligibility cannot be confirmed, your ballot will remain sealed in the envelope until such time as it is required to be kept and then will be destroyed without being viewed.

To find out if your ballot is counted, you may contact the Elections Division, Office of the Secretary of the Commonwealth at 1-800-462-8683 or 617-727-2828, or your municipal election official. The information will be available seven (7) days after a primary and twenty (20) days after an election. When calling, you must provide your name, address, date of birth and provisional ballot number to receive the information.

Ward/Precinct: \_\_\_\_\_

Provisional Ballot #: \_\_\_\_\_





# ELECTION DAY ISSUES

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## **I. INTRODUCTION**

This booklet is intended to provide an overview of the Massachusetts General Laws which address some common situations that may arise on Election Day. Activities in the polling locations include those provisions that apply to candidates and their observers as well as the rules and regulations pertaining to poll workers. For official information, please refer to the General Laws and Code of Massachusetts Regulations cited.

## **II. POLLING HOURS**

### **Opening of Polls**

Polling hours are set by the city council or selectmen when they issue the warrant for each election, though minimum polling hours are required. For city elections and state primaries and elections, polling locations must open no later than 7:00 a.m., though they may open as early as 5:45 a.m., and they must close at 8:00 p.m. For town elections, polling locations must be open at least four hours and may open no later than 12:00 p.m. For certain city preliminaries, the polling locations must be open at least six hours. G.L. c. 43, § 44A; G.L. c. 53, § 43; G.L. c. 54, § 64.

### **Closing of Polls**

Any voters in line at the time set for the closing of the polls must be allowed to vote. The polling location must remain open after the closing of the polls so that the public may observe the counting of votes from outside the guardrail. The voting lists and all ballots removed from the ballot box shall be kept in open view of the voters present until enclosed and sealed up, and all proceedings in the canvass and counting of votes shall be public and in open view of the voters. Only election officers may take part in the actual process of counting and sealing the voting materials. During this process, the observers must stand outside the guard rail. G.L. c. 54, §§ 70, 105A.

## **III. CAMPAIGNING AND OBSERVING**

### **Activities in the Polling Location**

On Election Day, certain activities are prohibited within 150 feet of the polling place. Section 65 of chapter 54 of the General Laws prohibits the posting, exhibition, circulation, or distribution of material--including pasters, stickers, posters, cards, handbills, placards, pictures or circulars--intended to influence the action of the voter within 150 of the entrance to the polling place.

Consistent with the activities restricted by statute, regulations prohibit the solicitation of votes for or against, or any other form of promotion or opposition of any person or political party or position on a ballot question to be voted on at the current election. Accordingly, a person standing within 150 feet of a polling location, including observers in the polling location, may not: hold any campaign sign; hand any person literature intended to influence the voter's action at the polls; wear any campaign buttons or

identifying signage; solicit a person's vote for or against a candidate or question on the ballot; or, distribute stickers. 950 C.M.R. § 54.04(22)(d).

Circulators of nomination, initiative, and referenda petitions are also restricted from soliciting signatures within 150 feet of a building entrance door to a polling place. This is true even where the nomination, initiative petition or referendum petition is not related to the current election. G.L. c. 54, § 65.

This does not limit the voter themselves from bringing material into the voting booth. Voters may bring pre-printed brochures or pamphlets, or their own notes to assist them. Voters may also bring stickers with the names and addresses of write-in candidates to affix to the ballot. Please note that there are criminal penalties for exhibiting such materials. Accordingly, voters should not display campaign literature while in the polling location. It is the duty of the election officers to check the voting booths regularly to ensure that no one has left any materials behind. 950 C.M.R. § 54.04(22)(b).

### **Political Signs**

Signs intended to influence the action of voters are subject to both statutory and regulatory directives. It is well settled that no person may hold a sign that attempts to influence the voter, or leave such a sign unattended, within 150 feet of a polling location; however, other issues often arise on Election Day relative to the holding and posting of unattended signs. There are no state laws addressing unattended signs on public property. If the sign is on state land – for example on a rotary or highway – the state police will remove it where they believe it to be a traffic or safety hazard. On the municipal level, it is quite common for by-laws or ordinances to exist which either regulate or forbid the posting of signs on public property. G.L. c. 54, § 65.

Frequently, municipalities also have by-laws or ordinances regulating the posting of signs on private property. By-laws or ordinances regulating the posting of political signs have included regulation of: the size of the sign, the number of signs on a piece of property, and the time period during which the sign may be exhibited. If the municipality has such a by-law or ordinance, it is the law in that municipality, and must be complied with. Please check with city or town hall for copies of such rules.

### **Observers**

Observers are allowed inside the polling place, outside the guardrail, unless they are disorderly or obstruct the access of voters. The pertinent regulation states:

To achieve the legal requirement that the election be held in public view, observers shall be allowed inside the polling place, outside the guardrail, unless they are disorderly or obstruct the access of voters. Observers may keep notes including marked voting lists. If there are so many observers in the polling place that they obstruct voters, they may be asked to cooperate in collecting information. The warden may exclude from the polling place any person who is disorderly or who obstructs the access of voters. 950 C.M.R. § 54.04(22)(a).



The poll workers at the check-in table must announce the names of the voters loud enough for the observers to hear. Observers may not request the names and addresses directly from voters or interfere with the check in process in any way. Rather, the observers should be listening as the election workers request such information. Observers should only communicate with the warden of the polling location and no other poll workers or voters. If an observer cannot hear the names being announced by the poll workers, the observer should notify the warden. 950 C.M.R. § 54.04(5).

If the observer intends to keep notes on a voting list, the observer must request copies of voting lists prior to Election Day. There is no obligation for local election officials to provide a voting list to a candidate on Election Day or to respond to any questions from observers.

Observers may not speak on cell phones within the polling place, as it is may be disruptive. All electronic devices being used by observers should be silent. Observers are not permitted to use the electricity in the polling location. Further, any observer who is recording video of the voting process, including press, must have the ability to record without capturing audio, as it is unlawful to record or broadcast the names of the voters at the check-in table. G.L. c. 54, § 76.

Observers are positioned behind the guard rail, but close enough to be able to hear the names and addresses of voters as they check-in. There is no obligation for the polling location to provide a table or other equipment for observers. Pursuant to 950 C.M.R. § 51.00, each polling location must be accessible. To meet the accessibility standards, many polling locations have little spare space. As such, there may not be enough room to accommodate many observers. If the presiding officer determines that there are too many observers for the polling location, the presiding officer may ask the candidates to “pool” the information gathered by a smaller number of observers.

The presiding officer, pursuant to their authority to maintain order and decorum in the polling place, and to prevent interference with the voters, may determine that the number of observers, or their behavior, is disruptive. In such situations, the presiding officer may remove an observer interfering with the election process.

### **Challenging Ballots**

Any person may challenge a voter for any legal cause. Challenges must take place at the point of check-in, and the person challenging must state the reason for the challenge. The reason must be specific, for example: this person is not old enough to vote; this person is not a citizen; this person should have been removed from the voting list; this person has already voted; this person is not the person he claims to be, etc. It is not sufficient for the challenger to simply say that a voter is not qualified; the challenger must state the specific reason for challenging the right of a person to vote and that specific reason must be recorded on the ballot.

If a person makes a challenge for an unspecified reason, the election worker should thereafter ask the challenger what specific reason they wish to have recorded. If, after

being so questioned by the election official, the challenger gives no specific reason, the voter should be permitted to vote, and should not be considered a challenged voter.

Once the warden, clerk or election officer is informed that a voter's ballot is being challenged, the election officer must issue the following oath to the challenged voter: "You do solemnly swear (or affirm) that you are the identical person whom you represent yourself to be, that you are registered in this town and that you have not voted at this election."

Before the ballot is marked, the election official shall require the challenged voter to write his or her name and current residence on the ballot. The warden will then add the name of the challenger to the ballot, along with the cause of the challenge. The ballot will then be cast and counted like all others. G.L. c. 54, §§ 85, 85A; 950 C.M.R. 52.03(23); 950 C.M.R. 54.04(23).

Please note that there are criminal penalties for challenging a qualified voter for purposes of intimidation, or of ascertaining how they voted, or for any other illegal purpose. G.L. c. 56, § 31; 950 C.M.R. § 52.03(23)(c); 950 C.M.R. § 54.04(23)(d).

### **Challenging Absentee Ballots**

When an absentee ballot is challenged, no challenged voter's oath may be issued, as the voter is not present. Therefore, the warden bears the responsibility of recording the name and address of the voter on the ballot. G.L. c. 54, § 96.

Should a candidate believe that there are violations of the statutes governing the application for or casting of absentee ballots, his or her observers must challenge those ballots as the warden announces the names of the absentee voters. Taking this proactive approach allows the ballot, and therefore, the vote contained thereon, to be identified with a specific person, and preserves the issue for a potential recount. If a candidate neglects to challenge such voters, the votes cast cannot be deducted from the appropriate candidate at a recount as there will be no way to link a specific ballot to a specific voter. At that point, if the candidate believes such votes will make a difference in the outcome of the election, the candidate will be forced to pursue a remedy in court. G.L. c. 54, § 135; G.L. c. 56, § 59.

Candidates should review the list of absentee voters required to be available prior to the election, and instruct his or her observers accordingly. Local election officials must prepare lists of absentee voters, arranged by voting precincts, of the names and addresses of all absentee voters for public inspection. G.L. c.54, § 91.

## **IV. VOTING**

### **Absentee Voters Voting at the Polling Place**

A person who has completed an absentee ballot who later wishes to vote in person on Election Day may do so if his or her ballot has not yet been processed. Such a voter may,

at the check-in table, request from the presiding officer that they be permitted to vote at the polls. If the warden determines that the voter's absentee ballot has not yet been processed and that the individual is otherwise qualified to vote—for example, the voter is asked to show identification which proves their identity and address—the warden may issue the voter a certificate allowing the person to cast a ballot at the polls. The capital letter “C” should then be placed next to the voter's name, and the certificate should be attached to the voter list and be maintained as part thereof.

When the warden later comes across that individual's absentee ballot, the warden must mark across the face of the envelope, “Rejected as Voted in Person,” and the envelope must be preserved and destroyed in the manner provided by law for the retention, preservation and destruction of official ballots. G.L. c. 54, § 100.

### **Inactive Voters**

Voting lists must be delivered to the officers responsible for the check-in table, as well as to the officers responsible to the check-out table. The list of inactive voters may be separate from the list of active voters, though a single list of all registered voters may be used as long as inactive voters are so designated on the list. G.L. c. 51, § 55; G.L. c. 54, § 67.

The check-in process for inactive voters involves a number of steps. The pertinent regulation states, in part:

If the name, address, or party enrollment of a person claiming the right to vote appears on the voting list as an inactive voter, the presiding officer shall allow such inactive voter to vote upon written affirmation by the inactive voter of his current and continuous residence in the municipality, (or, at a state primary or state election, residence in the municipality within the previous six months,) signed under the penalties of perjury. Such written affirmation shall be attached to and be considered part of the voting list, returned and preserved therewith, and such inactive voter shall be restored to the active voting list at his current residence, without requiring further action by the person.  
950 C.M.R. § 54.04(6)(a).

An inactive voter must therefore be provided with the form known as an Affirmation of Current and Continuous Residency, in order to provide the voter with the opportunity to affirm in writing, signed under the penalty of perjury, that they do currently live, and have continuously lived within the municipality.

The poll worker must also request identification containing the inactive voter's name and current address. If the voter has moved within the municipality, the voter should vote where he is listed on the voter list. Should an inactive voter fail to show identification with his or her current address, the election official must challenge the voter's ballot. G.L. c. 51, § 59 (2002 ed.); 950 C.M.R. § 54.04(6).

## **Identification**

The Help America Vote Act of 2002 requires any voter who registered to vote by mail to show identification when he or she votes for the first time in Massachusetts. Acceptable identification must include the voter's name and the address at which he/she is registered to vote, for example: a current and valid photo identification; current utility bill; bank statement; pay stub; government check; or other government document showing your name and address. If the voter does not provide such identification, federal law requires that the voter may only cast a provisional ballot, which will be counted only if the voter presents identification by close of polls. 52 U.S.C. 21083(b)(2)(A); G.L. c. 54, § 76B

Additionally, an election officer authorized to do so by the local election officials may request any voter to present written identification. The requests must not discriminate in any way and may therefore be: entirely random, consistent, or based on reasonable suspicion. Please note that there is no provision which permits observers to request identification from any voter or to communicate with voters in any way.

950 C.M.R. § 52.03(5B); 950 C.M.R. § 54.04(6B).

## **Voter Assistance**

A voter who informs the warden that from blindness or other physical disability or inability to read or to read in the English language that they are unable to prepare their ballot or register their vote is entitled to receive assistance to do so. The voter may designate a person of their choice to assist them. In the alternative, the voter can request that two election officers, one from each major party, accompany them into the voting booth to assist them in completing their ballot. G.L. c. 54, § 79; 950 C.M.R. § 54.04(9)(c).

Additionally, each polling location must be equipped with a ballot marking device which allows voters with disabilities to mark their ballots privately and independently.

## **Provisional Voting**

If the name of a person claiming the right to vote is not on the voting list or is listed incorrectly, the person may seek to vote either by appearing before the municipal election official at city or town hall or may vote by provisional ballot. Additionally, a voter who is required to show identification pursuant to the Help America Vote Act of 2002 as described above, but who does not, must vote on a provisional ballot.

To cast a provisional ballot, a person must execute a provisional ballot affirmation before a precinct officer at the polling place declaring that he/she is a registered voter in the city or town and resides within the geographical boundaries of said precinct. All provisional voters must show suitable identification showing their name and current address.

After voting on a provisional ballot, the person places it in a specially marked envelope, seals that envelope and returns it to the precinct election official. The ballot will then be set aside until a determination of the person's eligibility can be made.

After the election, the person's eligibility will be determined using the information

provided in the affidavit. The municipal election official will review available records to determine eligibility. Election officials have 3 days after a state or presidential primary and 12 days after a state election to determine the eligibility of all provisional voters.

If the person's eligibility is confirmed, the ballot will be removed from the sealed envelope and grouped with similar ballots and counted in a manner that provides the greatest secrecy. If the person's eligibility cannot be confirmed, the ballot will remain sealed in the envelope until such time as it is required to be kept and then will be destroyed without being viewed.

A person may contact the Elections Division, Office of the Secretary of the Commonwealth at 1-800-462-8683 or 617-727-2828, or their municipal election official to find out if their ballot was counted. When calling, the person must provide their name, address, date of birth, and provisional ballot number to receive the information. G.L. c. 54, § 76C.

### **Spoiled Ballots**

A voter may request a new ballot if they make a mistake in marking their ballot. If a voter spoils a ballot, the voter may obtain two others, one at a time, upon returning each spoiled one. A ballot that is spoiled by a voter is marked "Spoiled" and then sealed in an envelope without being examined. G.L. c. 54, § 81.

## **V. COUNTING VOTES**

The process of counting the ballots differs depending on the type of voting equipment used, but the basic requirements are the same. The clerk must record the final register number on the ballot box. A count must be made of the voters on both the check-in and check-out lists, and the voting lists must thereafter be sealed in an envelope. G.L. c. 54, §§ 105, 105A, 107.

The election officers shall canvass and count the ballots if paper ballots are used, and otherwise, the election officers shall read the vote totals from the counting device after the polls close, either by a printer mechanism or otherwise. The ballots not able to be read by the machines must be counted by hand. Election officers may not hold a pen or any other kind of marking device during the counting of the ballots, except for the person actually recording the votes. Furthermore, such election officials may only use red pencils or red ink to record or tabulate votes. For the purpose of ascertaining the results of a state election, city election, or a town election, or of any question submitted to the voters, the election officials must use the blank forms and apparatus provided by the Secretary of the Commonwealth. G.L. c. 54, §§ 80, 104, 105, 105A.

The unused and spoiled ballots must also be counted, placed in a container under seal, and the clerk must record the numbers. The counted ballots are placed into a designated container, which is then sealed a certificate is affixed to the container stating that only ballots cast and no other ballots are contained inside. The total tally sheets are placed in

an envelope and sealed. The warden and clerk must sign the outside of the envelope. In communities using a central tabulation facility, the ballots will then be transported to the facility, and then transmitted to the city or town clerk, who must retain them in a secure location. In all other communities, the sealed envelopes and containers will be returned directly to the city or town clerk, who must retain them in a secure location. G.L. c. 54, §§ 105, 105A.

## **VI. IF PROBLEMS ARISE**

If a person encounters a problem at a polling location on Election Day, the person should approach the warden or the presiding officer with the issue. As the warden or presiding officer is in charge of the polling location, they should be able to resolve any issues. If the problem persists, a person should contact the city or town clerk, who is the chief election officer of the municipality. If the problem is still not resolved, any person may contact the Secretary of the Commonwealth's Elections Division at 617-727-2828 or 1-800-462-8683.



# PROVISIONAL BALLOTS

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## **I. INTRODUCTION**

Since 2004, provisional ballots have been available to Massachusetts voters who believe their names have been incorrectly omitted from the list of voters, or who believe that they have been listed incorrectly. Required by the Help America Vote Act of 2002, provisional ballots help ensure that voters are not turned away from the polls due to clerical errors.

Prior to 2004, Massachusetts used similar procedures for voters who were not on the list, with ballots called “escrow ballots.” While escrow ballots were counted only in the case of a close election, provisional ballots of eligible voters are counted in all elections, no matter the margin of victory.

## **II. VOTING PROVISIONALLY**

### **Voter Not Listed**

There are several legal reasons for casting a provisional ballot. The most common reason that a voter may need to cast a provisional ballot is that his or her name does not appear on the voter list and the voter believes that he or she is registered to vote and should be voting in that precinct.

If a voter’s name cannot be located on the list of active or inactive voters, the warden should contact the local election office to confirm that the voter is in the correct precinct. If the voter is in the wrong precinct, he or she should be directed to the correct polling place or line. If the voter appears to be registered at a previous address, he or she may be eligible to vote from the precinct where the voter is listed. G.L. c. 54, § 76C(a).

Voters who have moved within the same city or town may vote from a previous address until they have updated their registration. Voters who have moved from one Massachusetts municipality to another within six months of the election may return to vote in the previous community, as long as the voter has not registered elsewhere. This is commonly referred to as the “Six Month Rule” and it applies in state primaries, presidential primaries, and state elections. The Six Month Rule does not apply to local elections. G.L. c. 51, § 1.

Voters who are listed at a previous address and who believe they have registered at their new address may have to make a choice about where and how to vote. Voters who are still eligible to vote from their previous address may return to the precinct where they are listed and have their ballots counted. Alternatively, such voters may opt to vote provisionally where they believe they should be listed. As there is greater certainty that the ballot will be counted if the voter casts it where he or she is listed, voters often choose to return to vote from his or her previous address. Such voters should be encouraged to complete voter registration forms after casting their ballots. G.L. c. 54, § 76C(a).

Even if a voter is listed elsewhere, the voter still has the right to cast a provisional ballot where he or she believes his or her name should appear on the list. G.L. c. 54, § 76C(a).

### **Voter Listed Incorrectly**

A voter may vote by provisional ballot if he or she claims that there is a listing error. Most often, this reason arises in primaries. For example, a voter who believes that he or she is unenrolled and who wishes to vote in the Republican primary may appear on the voter list as a Democrat. As Democrats are not eligible to vote in Republican primaries, such a voter could only vote in the Republican primary by casting a provisional ballot. G.L. c. 53, § 37; G.L. c. 54, § 76C.

### **Voter Cannot Produce Identification**

Some voters are required by the Help America Vote Act to show identification the first time they vote in Massachusetts. These voters are flagged on the voter list with the letters “ID” and are often referred to as “HAVA voters.” HAVA voters who cannot produce acceptable identification may vote by provisional ballot and return before the close of polls with identification. 52 U.S.C. § 21083(b)(2)(A).

Acceptable identification must bear the voter’s name and the address at which he or she is registered and may include: identification issued by the Registry of Motor Vehicles, such as a driver’s license or state ID card; recent utility bill, pay stub; government check; rent receipt printed on landlord’s letterhead; or any other official document which bears the voter’s name and current address. Student voters who do not have any other form of identification may use a letter on university letterhead which states the voter’s name and address and confirms the voter’s residency in a dormitory. 950 C.M.R. § 53.03(5B); 950 C.M.R. § 54.04(6B).

As identification is requested at the check-in table, voters who do not have identification with them may choose to go home to get their identification and return to the polling place later in the day. These voters should still be given the opportunity to cast a provisional ballot, but either way, they must return to the polling place with identification by the time the polls close.

Please note that voters who are asked to show identification because they are on the inactive voters list should not vote by provisional ballot. Such voters may cast challenged ballots if they are unable to provide identification. Challenged ballots are counted on Election Day and are re-examined only in the case of a re-count or court order. 950 C.M.R. § 53.03(5B); 950 C.M.R. § 54.04(6B).

### **Voting Under Court Order**

In the case of a judge issuing an order extending polling hours, any voters casting ballots after the originally scheduled time for the closing of the polls must vote on provisional ballots. This reason is rarely used. Provisional ballots cast for this reason must be counted unless a judge rules that they should not be counted. G.L. c. 54, § 76C(e).

## **III. EXECUTING PROVISIONAL BALLOTS**

Voters casting provisional ballots must be directed to the warden or other presiding officer in the precinct. Before receiving a provisional ballot, each provisional voter must complete a

provisional ballot affirmation, upon which the voter must confirm his or her residency and eligibility. The affirmation also asks for information about the method and location of registration, to assist the local election official in locating any records of the voter's registration at the address he or she is claiming. G.L. c. 54, § 76C(b).

When completing the affirmation, provisional voters must also be asked to present identification. Obviously, voters who are voting provisionally because they do not have identification will not be able to produce identification at this time. Failure to present identification does not stop provisional voters from casting their ballots. G.L. c. 54, § 76C(c).

Once the provisional ballot affirmation has been completed, the election official assisting the voter must enter the voter's information on the provisional voter roster. This roster must contain the names, addresses, dates of birth, ballot numbers, and reasons for casting a provisional ballot for each provisional voter in that precinct. A provisional ballot number is assigned to each voter by the election official at the time of completing the roster. Generally, the first voter provisional voter in the precinct will receive Provisional Ballot #1, and so on. The roster is used by local election officials to match ballots to voters and to ensure that each provisional ballot is accounted for.

After entering a voter's information on the provisional ballot roster, the election official assisting the voter must write the word "PROVISIONAL" at the top of a blank ballot. The election official must also enter the provisional ballot number on a provisional ballot envelope and a provisional ballot information sheet. The provisional ballot envelope is marked only with the ward and precinct in which the ballot was cast and the provisional ballot number, in order to protect the anonymity of the voter if the ballot is later counted. The ballot, envelope, and information sheet must be given to the voter, and the voter should be instructed to complete his or her ballot, seal it inside the envelope provided, and return it to the election official assisting him or her.

When the voter has completed voting, the election official must take the sealed envelope containing the absentee ballot and attach the voter's provisional ballot affirmation to the outside of the envelope. The envelope must then be secured apart from the cast ballots. The voter should be instructed to keep the provisional ballot information sheet, which provides instructions on how to find out if the ballot has been counted. G.L. c. 54, § 76C(i).

While not required, it is recommended that each provisional voter complete a new voter registration form after voting. This ensures that voters for whom no registration records are found will still be registered for any future elections.

After the close of polls, provisional ballots must not be secured with cast ballots, as containers holding cast ballots should not be opened without a recount or a court order allowing the ballots to be examined. Provisional ballots must be returned to the local election official for his or her examination and determination.

## **IV. INVESTIGATING PROVISIONAL BALLOTS**

### **When to Count Provisional Ballots**

In most cases, the eligibility of provisional voters is determined after Election Day. If a local election official is able to determine before the polls close that a provisional ballot should be counted, the warden may be instructed to remove the provisional ballot from its envelope and insert it into the ballot box, in the same manner as absentee ballots are counted.

Unlike Federal Write-in Absentee Ballots and overseas ballots which arrive after Election Day, provisional ballots do not need to be counted at a meeting of the Board of Registrars. State law requires that all eligible provisional ballots be counted by the city or town clerk. Clerks must make determinations on all provisional ballots no later than 5:00 p.m. on the third day following state and presidential primaries or by 5:00 p.m. on the twelfth day following state elections. G.L. c. 54, § 76C(d), (f).

### **Online and RMV Registrations**

Much of a clerk's investigation into provisional ballots depends on the information provided by voters on their affirmations. If a voter indicates that he or she registered to vote online or through the Registry of Motor Vehicles, the clerk should request a copy of the voter's registration form from the secretary of the commonwealth's office. Ballots of voters who claim to have registered online are some of the easiest determinations to make, as there are records of all registrations submitted through the Online Voter Registration System.

If a provisional voter has indicated that he or she registered as part of a Registry of Motor Vehicles transaction, the RMV can supply that voter's application or applications for review. If the secretary's office is able to determine that the voter did, in fact, register to vote through the RMV, then the clerk shall be notified and the ballot can be counted. If recent RMV applications show that the voter indicated that he or she did not wish to register to vote, then the ballot cannot be counted.

### **Other Registrations**

For voters who indicate that they have registered by mail or in person at a voter registration agency, clerks must search their records for any such form. In some cases, forms may have been submitted to the local election office after the voter registration deadline. If no forms are found, or if a form is found that was submitted or postmarked too late, the ballot cannot be counted.

### **Voters Deleted for Inactivity**

Some voters may need to cast provisional ballots because their names have been deleted from the list of voters due to inactivity. Inactive voters are removed from the voter list if they have been inactive and have not voted in two consecutive biennial state elections. This means that voters may be removed from the voter list after 2-4 years on the inactive voter list. All voters are sent several notices regarding removal, including the annual street listing form, a follow-up confirmation notice, and a final notice of removal. Still, voters who have been removed from the voter list may cast provisional ballots and have those ballots counted, as long as they have continuously resided in the city or town in which they were previously registered. G.L. c. 54,

§ 76C(g).

If a clerk determines that a voter has previously been registered to vote in his or her community and was deleted due to inactivity, the clerk must check the voter's affirmation to confirm that the voter indicated that he or she has continuously resided in the same city or town since registering to vote there. The clerk must also check for any indication that the voter has resided elsewhere since he or she registered to vote in that city or town. Unless the clerk finds some evidence that the voter once moved out of town, such as a cancellation notice, returned confirmation notice, or evidence of a registration or census form returned in another community, the clerk must count the voter's ballot. G.L. c. 54, § 76C(g).

### **Voters Who Have Moved**

Voters who have moved within six months of the election are still eligible to vote in their previous community even if they have been deleted, as long as they still reside in Massachusetts, have not registered elsewhere. While it is rare for voters to have been deleted so close to a state election without having registered elsewhere, it is possible. For instance, a voter may return a confirmation notice in June indicating that he or she has moved to another town, but may then fail to register at that address before the registration deadline for the state primary three months later. Such a voter would need to cast a provisional ballot, because he or she is not on the list.

When voters complete a provisional ballot affirmation, they have the option of indicating that they have moved to another community in Massachusetts within the previous six months. As long as the voter was previously registered at the address he or she claimed and the clerk does not find evidence that the voter has registered elsewhere since moving, such a provisional ballot should be counted. G.L. c. 51, § 1.

### **Provisional Ballots Cast in the Wrong Precinct**

Occasionally, in investigating a provisional ballot, a clerk may find that the voter was on the voter list, but in a different precinct than the one in which he or she cast the provisional ballot. While state law says that provisional ballots cast in the incorrect precinct should not be counted, the same statute requires poll workers to direct voters to the correct precinct. Unless the clerk has evidence – such as a notation in the clerk's log or verbal communication from a poll worker – that the voter was directed to the correct precinct and still insisted upon casting the ballot in the incorrect precinct, the clerk should assume that it was a case of poll worker error. As voters should not be penalized because the poll workers erred by not appropriately directing the voter, such a provisional ballot should be counted. G.L. c. 54, § 76C(a).

If, after completing an investigation into a voter who did not appear on the voter list in any precinct, a clerk discovers that the voter should have appeared on the list in a different precinct in the same town, such a ballot should be counted. For example, a voter may have registered at the RMV in Ward 2, Precinct 3 of Boston and a clerical error led to that registration not being processed. The voter then may have moved to Ward 19, Precinct 1 in Boston. Had the RMV registration been processed, that voter would have had the right to vote from his or her previous address, as the voter has not moved out of Boston. Due to the clerical error, the voter could not have been directed to Ward 2, Precinct 3 by the election officials at Ward 19, Precinct 1, so that voter's ballot should still be counted. G.L. c. 54, § 76C(c).

It is possible with provisional ballots cast in the wrong precinct that the offices and questions on the provisional ballot may not be the same as those on the ballot that the voter would have received in the correct precinct. In such a case, only the common offices and questions should be counted. G.L. c. 54, § 76C(c).

## **V. COUNTING PROVISIONAL BALLOTS**

Once all provisional ballots have been resolved, the ballots which have been deemed eligible to be counted must be separated from those which cannot be counted. Ballots must also be kept separated by precinct. Any provisional ballot affirmations still attached to the envelopes should be removed, so that the clerk does not know whose ballot he or she is counting.

One precinct at a time, the clerk must open the envelopes and remove the ballots inside. The provisional ballots should be shuffled together to preserve the secrecy of the ballots. The clerk must tally the votes on the ballots and add them to the existing tallies for each precinct. G.L. c. 54, § 76C(f).

Ballots cast in the wrong precinct should be tallied for the precinct in which the voter was listed or should have been listed. If a ballot cast in an incorrect precinct contains different offices or questions than the ballot in the correct precinct, votes in the differing offices and questions should be tallied as blanks. G.L. c. 54, § 76C(c).

Voters found to be eligible who are still living in the city or town should be added or restored to the active voter list. A provisional voter's date of registration should be recorded as the date of his or her most recently submitted voter registration form.

State and federal laws require that the state provide a toll-free number for voters to call to find out the disposition of their provisional ballots. The toll-free number, which is provided to provisional voters on the information sheets they receive at their polling places, is 1-800-462-VOTE (8683). This number will connect the voter with the Elections Division. In order for the Elections Division to be able to provide voters with information regarding the disposition of their provisional ballots, the determination of each provisional ballot must be entered into the state voter database (VRIS) by the fourth day following a primary or the fifteenth day following an election. G.L. c. 54, § 76C(h), (j).



# ABSENTEE BALLOTS

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## I. INTRODUCTION

Absentee ballots must be provided for all state, local, and district elections. They are generally available at least three weeks before the election, primary, or preliminary.

The Secretary of the Commonwealth's office supplies absentee ballots and materials for state elections. Local election officials are responsible for providing ballots and materials for local elections.

## II. APPLYING TO VOTE ABSENTEE

### Reasons for Voting Absentee

Unlike with early voting, voters who wish to vote absentee must have a reason for doing so. Though voters are not asked for their specific reason when applying for absentee ballots, absentee voters must meet at least one of the following qualifications:

1. Absence from the city or town during the hours the polls are open; or
2. Disability; or
3. Religious belief which prevents voting during the hours the polls on Election Day. G.L. c. 51, § 86.

### Who Qualifies

1. Registered voters; and
2. Certain **unregistered** "specially qualified voters." Specially qualified voters may be:
  - Citizens of Massachusetts who are temporarily absent from the Commonwealth (such as college students or those serving in AmeriCorps);
  - Members of military or merchant marine serving on active duty and dependent family members of the same service members;
  - Citizens residing outside of the country whose last address (or whose qualifying parent's last address) inside the United States was within Massachusetts;
  - Massachusetts citizens who are confined to a correctional facility for a reason other than a felony conviction. G.L. c. 50, § 1.

### How to Apply

An applicant may request an absentee ballot for a specific election, or for all elections occurring within that calendar year. Applications may be sent by mail, fax, e-mail, or hand-delivered by the voter or any other person. Applications which are submitted electronically must be signed and scanned so that a signature is visible. Voters who submit their applications electronically are not required to mail the original application to the local election official. A voter may apply to vote at the clerk's office or to vote by mail, but in either case the election official must receive a signed application before providing a ballot. G.L. c. 54, § 89.

### **Application Deadlines**

An application form or any other form of written request signed by the applicant must be received by the election official no later than noon on the day before the election. (If the day before the election is a Sunday or legal holiday, the deadline becomes 5:00 p.m. of the last day the office is open before the election). A voter who is admitted to a health care facility after 12:00 p.m. on the fifth day before an election may apply for an absentee ballot until the polls close. Such voters may have their ballots hand-delivered by a registrar, but if a registrar is not available, they can designate in writing someone else of their choosing, as long as the designated person is not a candidate on the ballot. G.L. c. 54, § 89.

### **Permanently Disabled Voters**

Any voter who is permanently disabled and files a physician's letter to that effect with the local election official shall be maintained on the permanently disabled voter list. The list of permanently disabled voters is *not* a public record. Permanently disabled voters must be sent by mail a completed application for an absentee ballot from the local election office at least 28 days before an election. The local election official should complete the entire application and instruct the voter to sign it and return it to the local election official. G.L. c. 54, § 86.

### **Applications by a Family Member**

A family member of a person qualified to vote by absentee ballot may apply on behalf of such a voter. The applicant shall state his or her relationship to the absent voter, sign the application under the pains and penalties of perjury, and send the application to the clerk of the city or town of the absent voter's residence. G.L. c. 54, § 89.

A family member is defined as a spouse or person residing in the same household, in-laws, parent, sibling, child, uncle, aunt, niece, nephew, grandparent, or grandchild. G.L. c. 50, § 1.

### **Assistance in Completing an Application**

Voters who need assistance in completing their applications may ask anyone of their choosing to help them. The application requires the person assisting the voter to include their name and address and the reason the applicant required assistance in completing the form. The applicant does not need to include the reason they are requesting the absentee ballot.

## **III. PROCESSING APPLICATIONS**

### **Receiving Applications**

The registrars must first determine whether the applicant is a registered voter or unregistered but qualified to vote as a specially qualified voter. If the voter cannot be found on the voter list, and the voter has indicated on his or her request that he or she is residing overseas or is serving in the military on active duty and provided a voting address within the city or town, the voter is specially qualified. If necessary, the local

election official may follow up with the applicant to determine whether the voter is specially qualified. G.L. c. 54, § 91A.

Inactive absentee voters are restored to the active voter list upon receipt by the registrars of an absentee ballot application, if signed by the voter under the penalty of perjury.

### **UOCAVA Voters**

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) is a federal law which ensures that certain types of citizens are able to vote in federal elections. An absentee voter is considered a UOCAVA voter if the voter is:

- Temporarily or permanently residing overseas; or
- Serving on active duty in the military or merchant marine; or
- The dependent family member of someone serving on active duty.

UOCAVA voters may be registered voters or specially qualified. If a UOCAVA voter maintains a residence in Massachusetts, that voter may remain registered to vote. A UOCAVA voter who has permanently moved out of the country may continue to vote from his or her Massachusetts residence as a specially qualified voter.

A UOCAVA voter may submit a Federal Post Card Application, standard Massachusetts absentee ballot application, or any other written communication requesting an absentee ballot. G.L. c. 54, § 91C.

State law allows for UOCAVA voters to vote in all elections, including municipal elections.

### **Primaries**

A voter enrolled in a political party may receive only his or her own party's primary ballot. If a voter is enrolled in a political party and requests the ballot of a different party, the voter must be sent a ballot of his or her own party.

If the voter is not enrolled in a party (unenrolled and political designations), and no party preference is indicated on the application, the voter must provide the missing information before a primary ballot may be sent to the voter.

Once a voter has been provided with the ballot of one party, the voter may not receive another ballot of a different party for that same primary. G.L. 53 § 37A.

## **IV. PROVIDING ABSENTEE BALLOTS**

### **Sending Absentee Ballots**

Local election officials must mail the ballot and proper envelopes to voters who apply for mailed ballots. Ballots should be mailed to the address indicated on the application, even if it is within the voter's city or town. Ballots cannot be mailed to healthcare facilities

designated for supervised absentee voting within the city or town where the voter is registered. G.L. c. 54, §§ 87, 89, 91A, 91B.

### **Materials Mailed to the Voter**

1. Absentee ballot;
2. Absentee voting instructions;
3. An inner envelope in which the voter places the ballot (AV-7);
4. An envelope addressed to the clerk for the voter to use to mail the ballot back.

This envelope should be pre-addressed by the clerk.

A white envelope with green first-class diamonds (AV8) is used for voters in the United States, except for military personnel and their families. A postage free envelope (SAV8) is used for all voters outside the United States and for military persons and their families, both in and outside the United States.

The ballot, inner envelope and return envelope are all mailed inside the corresponding outside envelope; manila envelope with first-class diamonds (AV11), or manila postage free envelope (SAV7).

### **Providing Ballots to UOCAVA Voters**

UOCAVA voters must be provided with their ballots no later than 45 days prior to the date of any federal election. In federal elections, such voters may receive and return ballots by mail, fax, or email. There is currently no state law which allows for UOCAVA voters to receive local election ballots electronically, though state law does allow such voters to submit Federal Write-in Absentee Ballots electronically in all elections. 52 U.S.C. § 20302; G.L. c. 54, §§ 91C, 95.

In addition to the ballot and instructions, UOCAVA voters voting in a federal election must be provided with an absentee voter affidavit and electronic transmission cover sheet.

### **Voting Over the Counter**

Any qualified absentee voter may request to vote in person at his or her local election official's office. This is referred to as voting "over the counter." G.L. c. 54, § 91B.

Voters who wish to vote over the counter should arrange a convenient time with the local election official ahead of time, though election officials may allow walk-ins, at their own discretion. *An absentee voter who applies in person must be allowed to vote over the counter during the same visit;* in this case, the city or town clerk, registrar, or assistant registrar performs the duties of the registrars in certifying the application. The local election official must still confirm the applicant is a voter before providing the voter with the ballot and materials.

A voter may vote over the counter after the 12:00 p.m. application deadline, as long as the application was received by noon. G.L. c. 54, § 89.

When voting over the counter, a voter should be provided with a ballot, an inner envelope (AV-7), a marking device, and a private location to mark the ballot. The voter should complete the affirmation on the AV-7 and seal his or her ballot within before returning it to the local election official.

### **Hand-Delivering Absentee Ballots**

It is illegal to hand-deliver an absentee ballot to anyone outside the local election office, except in two situations – both involving health care facilities.

Healthcare facilities may be designated as supervised absentee voting sites by the city or town clerk, or two registrars or election commissioners in writing at least 28 days before a primary or election. Ballots and accompanying papers must be delivered in person, by a registrar; assistant registrar; or absent registration officer to the designated address and returned to the election office after voting. It is a good idea for the registrars to bring absentee ballot applications and additional absentee ballots with them when they go to the designated health care facility, in case other residents of the facility would like to vote by absentee ballot. The registrar can certify the application at the health care facility after speaking by telephone with someone in his or her office. It is also advisable that the registrars schedule their visit as closely to the election as possible to avoid having to return to the health care facility at a later date, in response to additional applications. G.L. c. 54, §§ 91B, 92; G.L. c. 111, § 25B.

Voters who state under penalty of perjury on their applications that they have been admitted to a health care facility after 12:00 p.m. of the fifth day before any primary or election, may also have their absentee ballots hand-delivered by a registrar, assistant registrar or absent registration officer, or by any person designated in writing by the voter. If the health care facility is outside the city or town and no person is designated by the voter for this purpose, the ballot need not be delivered, but may be mailed instead. G.L. c. 54, §§ 91B, 92.

### **Receiving Hand-Delivered Ballots**

Completed absentee ballots can be returned by mail or by hand. The voter or a family member of the voter may hand deliver a completed ballot to the office of the city or town clerk. G.L. c. 54, § 92.

Absentee ballots for town elections, preliminary and primary elections must be received by the close of polls. Absentee ballots for city and state elections returned by mail from outside of the United States may be received up until 5pm on the tenth day after the election, if they are postmarked on or before Election Day. Absentee ballots returned electronically from UOCAVA voters must be received by the close of polls.

## **V. ABSENTEE BALLOT PROBLEMS**

### **Spoiled or Lost Absentee Ballots**

A voter who has spoiled an absentee ballot may be given another if the first spoiled ballot has been returned. If the first ballot cannot be returned because it has been lost (or for some other reason), the voter must submit in writing a statement to that effect.

In a primary, a voter who has requested a particular party ballot cannot request a ballot for another party. G.L. c. 54, §§ 81, 89.

### **Absentee Voters Voting at the Polls**

Registered absentee voters may be authorized by the clerk to vote in person at the polling place, as long as the voter's absentee ballot has not yet been processed. If the clerk determines that the absent voter is qualified to vote at the polling place, the clerk may authorize the warden to issue a certificate of authorization to vote in person. This authorization may be done by telephone. G.L. c. 54, § 100.

## **VI. PROCESSING ABSENTEE BALLOTS**

### **Receiving Absentee Ballots**

The outer envelope of the absentee ballot should be time-stamped and opened as soon as possible after the ballot has been received by the local election official. The affidavit on the inner envelope must then be examined. The voter's signature must be compared with the signature on the application and remainder of the affidavit shall be examined for conformity.

### **Accepting/Rejecting Absentee Ballots**

If the absentee ballot envelope does not contain the voter's signature (or an assisting person's signature on behalf of a voter unable to complete it) the ballot must be rejected as defective.

If the ballot is rejected as defective, the affidavit must be so marked and the clerk must send a notice to the voter that the absentee ballot was rejected and include the reason for rejection. Unless the clerk or election commissioner determines that there is clearly insufficient time for the voter to return another ballot, the clerk shall proceed as if the voter requested a substitute ballot. If the clerk received the original ballot by mail, the clerk must enclose the substitute ballot and proper envelopes with the mailed notice of rejection. If the original ballot was delivered to the voter in the clerk's office or at a health care facility, the clerk shall attempt to communicate to the voter that a substitute ballot is available. G.L. c. 54, § 94.

### **Receiving UOCAVA Ballots**

UOCAVA ballots returned by mail may be processed in the same manner as regular absentee ballots. In federal elections, a UOCAVA ballot which is returned electronically must be accompanied by an absentee voter affidavit and a signed electronic transmission

cover sheet upon which the voter waives his or her right to a secret ballot. Failure to include the electronic transmission sheet shall not invalidate the ballot. G.L. c. 54, § 95.

### **Federal Write-in Absentee Ballots**

A UOCAVA voter may submit a Federal Write-in Absentee Ballot (FWAB) without having previously applied for an absentee ballot. FWABs are blank ballots upon which UOCAVA voters may write-in the candidates and ballot question options of their choice. If a FWAB is received prior to the deadline for requesting a ballot, it should be treated as an application, and a ballot should be sent to the voter. If the voter then returns the ballot, the full ballot will be counted instead of the FWAB. If the ballot is not returned, the FWAB shall be counted.

A UOCAVA voter may cast a FWAB by mail, fax, or email in any election. G.L. c. 54, § 95.

## **VII. ELECTION DAY**

### **Processing Absentee Ballots at the Polls**

The clerk must send the following to the polling place:

- Valid absentee ballots still sealed in the inner envelopes.
- Voting list marked with “AV” next to names of registered voters to whom absentee ballots were sent.
- List of non-registered voters who were sent absentee ballots. G.L. c. 54, § 95.

The clerk must issue a certificate to vote at the polls to a voter who has requested one and whose absentee ballot has not been processed or has been rejected as defective. The clerk should authorize the presiding officer to issue such certificate by telephone if the clerk determines that the voter is entitled to one. If the absentee ballot is then received it shall be marked “rejected as voting at the polls.” G.L. c. 54, § 100.

The absentee ballots must be cast at the polls by the election officers. The name, address, and party in a primary must be announced and the name of each voter must be checked as having voted. In a primary, the party of the ballot given to the voter must be recorded next to the name of any voter not enrolled in a political party. The ballot must be removed from the inner envelope, placed into the ballot box, and the envelope must be preserved. G.L. c. 54, § 95.

Absentee ballots received too late to be sent to the polls on Election Day may be counted after the polls close either at the polling location or at the clerk’s office. G.L. c. 54, § 95.

If election officers are aware of an absentee voter’s death prior to the opening of the polls on Election Day, that voter’s ballot cannot be counted. G.L. c. 54, § 100.

In town elections and primaries, absentee ballots received after the polls close on Election Day may not be counted. In state and city elections only, absentee ballots mailed from

outside the United States must be counted if postmarked by Election Day and received by 5:00 p.m. on the tenth day after the election.

Absentee ballots received after close of polls on Election Day which are eligible to be counted must be counted at a public meeting of the board of registrars. The registrars may hold this meeting as soon as they have received all absent voting ballots mailed to such voters outside the United States, but shall hold it in any event after 5:00 p.m. on the tenth day following the election. Written notice of this meeting must be given by the board to the chairman of the city or town committee of each political party at least three days before the meeting. G.L. c. 54, § 95.

#### **Counting UOCAVA ballots**

UOCAVA ballots may be counted at the end of the night, in the same manner as ballots received too late to be sent to the polls. Ballots which were sent or received electronically cannot be counted by tabulators and must be hand-counted at the end of the night. It is recommended that local election officials count UOCAVA ballots in their offices, in view of the public, after the polls are closed.

UOCAVA ballots returned electronically must be received by the close of polls on Election Day in order to be counted. G.L. c. 54, § 95.

#### **Counting Federal Write-in Absentee Ballots**

Federal Write-in Absentee Ballots must be counted at a public meeting of the board of registrars, in the same manner as those ballots mailed from outside the United States and received after the close of polls. G.L. c. 54, § 95.





# ELECTION RECOUNTS

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## **I. INTRODUCTION**

In Massachusetts, recounts are a quasi-judicial procedure based on the General Laws, court decisions, and customs developed from practical experience. The purpose of a recount is to ascertain the will and intention of the voters. McCavitt v. Registrars of Voters of Brockton, 385 Mass. 833 (1982).

The rights of all parties are clearly delineated in state law. Section 135 of chapter 54 of the Massachusetts General Laws is the principal reference for the procedures in this booklet. Sections 134, 135B, 136, and 137 of chapter 54 also contain relevant information.

The following procedures apply generally to recounts of all offices and questions decided in all local and state preliminaries, primaries, and elections. District-wide and statewide recounts after state primaries and elections (including presidential primaries, except for ward and town committees) have additional requirements which are found in a separate section IV of this booklet.

## **II. BEFORE THE RECOUNT**

### **Petitioning for a Recount**

Candidates may initiate a recount by petitioning the local election official in the city or town in which the recount is being requested. Only candidates for an office to be recounted may petition for a recount. Any registered voter of the city or town may petition for a recount of a ballot question. The chart on page 5 shows petition filing deadlines and signature requirements for different types of recounts. In every case, it is wise to secure more signatures than required.

### **Where to get Petition Forms**

Recount petition forms are available from the Election Division of the Office of the Secretary of the Commonwealth and from city or town clerks or election commissioners. The petitioner must file a separate recount petition in each ward of a city or precinct of a town in which he or she desires a recount.

### **The Petition Form**

Candidates who request a recount must specify on the petition form the office to be recounted – not the names of the candidates for that office. The form contains a statement that the signers have reason to believe that the election records are erroneous and that a recount will affect the results of that election; however, the petitioner must also specify the particular reasons for the recount request. Care should be taken in wording the reasons for the recount on the petition as no other count may be made or other information taken from the ballots than what is specified in the petition.

In communities voting by optical scanner ballot, petitioners who want a hand count of the ballots must state this on the form by checking the appropriate box.

Voters signing a recount petition must sign in person as registered, or substantially as registered, listing their current address of registration. The standards for certification of signatures on recount petitions are contained in the Code of Massachusetts Regulations, 950 CMR § 55.03.

Voters signing petitions for recounts of political party primaries must have been enrolled in that party on or before the last day to register to vote in that primary. G.L. c. 54, § 40A.

The signature of one signer for each ward of a city or precinct of a town must be notarized in the notarization certificate printed on the petition sheet. Each petition sheet must be accompanied by a written request for a recount signed by the candidate on whose behalf it is being conducted. The candidate's request is printed on the petition form in the upper left hand corner. The candidate need only sign one petition in the proper place.

### **Filing Procedure**

Recount petitions must be filed with city or town clerks, except in communities with election commissions. In such cases, the petitions should be filed with the election commission.

**Note:** When filing any recount petition for a special state election, it is also essential to file a written statement of your intention to seek a recount with the Secretary of the Commonwealth, no later than 5:00 P.M. on the sixth day after the election. G.L. c. 54, §116.

### **Certification**

Upon receipt of recount petitions, the city or town clerk will deliver them to the registrars of voters, along with the following materials from the election: sealed envelopes containing the ballots cast, including absentee and challenged ballots; original tally sheets; envelopes containing spoiled and unused ballots; voting lists used at the election; certificates issued to voters omitted from the voting list; written affirmations of current and continuous residence; precinct clerks' election records; applications for absentee ballots and absentee ballot envelopes; the list of voters who were sent absentee ballots, indicating whether the ballots were cast or rejected as defective or whether such persons voted in-person; and the sealed envelopes containing the ballots rejected as defective.

After examining the petition and statement and certifying the registration of the signers, the registrars shall schedule the recount. A recount may not be held before the deadline for filing recount petitions.

<b><u>Filing Deadlines and Signature Requirements</u></b>			
<b>Recount Area*</b>	<b>Local Filing Deadline After a Primary or Preliminary Election</b>	<b>Local Deadline After Election</b>	<b>Number of Registered Voter Signatures Required</b>
City Ward (Except Boston)	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	10 or more from each ward
Boston Ward	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	50 or more from each ward
Towns With Under 2,500 Voters or Without Precincts	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	10 or more from the town
Towns With Over 2,500 Voters and precincts	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	10 or more from each precinct
*See the special requirements for district-wide (including statewide) recounts after the state primaries and elections, on page 10.			

**Setting the Date for the Recount**

After examining the recount petition and certifying the registration of the signers, the registrars must set the recount time and place and give at least three days written notice of this to each candidate for the office for which the recount was petitioned. In the case of a recount on a ballot question, they shall give notice to the person designated by the petitioners and to the appropriate committee organized on the other side. For a recount of any office or question appearing on a state primary or state election ballot, the registrars must schedule the recount to be held within six days of the filing deadline for a primary recount petition and within ten days of the filing deadline for an election recount petition. The registrars may decide when the recount will be held as soon as they receive the petition, but it may be advisable to wait until after the petition filing deadline, if other recounts are possible.

The notice sent by the registrars must include the date and time of the recount in addition to the number of agents allowed, which will be equal to the number of persons counting and checking ballots for the registrars at the recount. Upon setting the date and time of a recount for an office or question appearing on a state primary or state election ballot, the registrars shall notify the Secretary of the Commonwealth in writing of what office or question is to be recounted, the time and place of the recount, and the number of observers (agents) to which each candidate is entitled.

### **Discontinuing a Recount**

If the candidate who filed the petition for a recount files a written request with the city or town clerk that the recount be discontinued, the clerk shall immediately order the recount discontinued and shall notify each candidate that unless a written objection is received within 72 hours after the notice was sent, the recount shall be discontinued. If a written objection is received within 72 hours, the recount must continue. If no objections are received within 72 hours, the recount is discontinued.

### **Preparation for the Recount**

Responsibility for the good order and smooth functioning of the recount proceedings lies with the registrars or election commissioners. It is preferable to have all four registrars or election commissioners at the recount, but a minimum of three is required. If necessary, a temporary registrar may be appointed by the mayor or selectmen in accordance with the provisions and procedures set forth in section 20 of chapter 51 of the General Laws.

The registrars or election commissioners sit as “judges” of the protested ballots; they do not tally the votes, but may appoint the number of clerks necessary to do the actual recounting. In addition to the ballot readers and clerks who record the ballots (tally clerks), there should be “runners” to bring the protested ballots to the registrars for examination and decision, and if desired, a stenographer to record the protested ballots. Designated “agents” or legal counsel can make arguments respecting the protested ballots **only** to the registrars, not the ballot readers or tally clerks.

Once a recount begins, all candidates (or ballot question representatives) have exactly the same rights, regardless of whether or not they requested the recount.

Each candidate for the office in question or person representing each side of a ballot question is allowed to witness the recount, accompanied by one or more counsel if desired. Each candidate or representative may also be represented by agents. Up to one agent for each officer or clerk reading the ballots or recording the votes is allowed. These agents must be appointed by the candidate or counsel in writing and have the right, along with the candidate and counsel, to watch and inspect the ballots, tally sheets and all other papers used in the recount, and to watch every individual act performed in connection with the recount.

The general public may also witness the recount but cannot participate.

Candidates or their counsel should, prior to the recount, consult with the registrars or election commissioners regarding procedures and in turn, instruct their agents. In some communities the registrars or commissioners instruct all parties before the recount begins. Some send out instructions to the candidates or agents in advance of the recount.

The set-up of the recount will vary depending on the size of the city or town, the number of ballots to be counted, the number of teams and tables, the space available, as well as

other factors. The number of counting tables will be determined based on the number of teams counting the ballots. The table for the registrars, with places for the candidates' counsel or representatives, should be separate from the tables where the counting takes place.

All candidates for the office in question may, upon written request to the city or town clerk, obtain and examine the record books and the precinct clerk's book, where used; and may require that a count be made of the number of persons checked on the voting lists as having voted and that the figures on each ballot box register be examined. G.L. c. 54, § 108.

### **III. THE RECOUNT**

After the registrars and their clerks are in place, the candidates' representatives and agents are admitted to the recount area upon presentation of their written authorization. Only those people directly involved in the recount can be present within the recount area; however, the public and the press must be admitted into the room where the recount is being conducted, to observe the proceedings. Members of the public must remain outside the recount area. In some communities, badges are provided to identify the people present and their different roles and some communities use a "guardrail" to designate the recount area.

The registrars must supervise the removal of the ballots from the vault, and check for proper seals and markings. The candidates' counsel may accompany the registrars and ascertain to their satisfaction that all is in order.

#### **Ballots to be Counted by Hand**

Before the ballots are counted, they are first separated into blocks of 50 and each block is put into an envelope. Each counting team will receive a block of 50 ballots and a tally sheet on which to record the votes. While all ballots are to be counted, only the office or question being recounted is to be read and tallied. Those ballots protested during the recount are counted in accordance with the decision of the majority of the board of registrars. If there is a 2 – 2 vote by the board of registrars, the ballot is counted as called by the ballot reader. The recount includes counting all ballots cast for all the candidates for the office, blanks cast, all spoiled and unused ballots, and absentee ballot envelopes and applications.

Where hand-counted paper ballots are used, the boxes should be brought into the room one at a time and an envelope containing a block of 50 ballots with its tally sheet should be delivered to each counting team one at a time.

There should be two clerks on each team, facing each other across the table, one reading the ballot and one marking the tally sheet. An agent for each candidate may stand behind each clerk to watch and may keep a tally, or make notes.

Only the registrars and their clerks are permitted to handle the ballots. No marks whatsoever are to be made on the ballots. For paper ballots, each ballot should be spread fully on the table in front of the ballot reader so that everyone at the table may view first the outside, and then the inside of the ballot. A red pen or pencil is the only writing instrument to be used at the table by the tally-clerk, who enters the ballot count on new tally sheets. Conversation should be kept to a minimum.

The candidates' counsel and agents should also try to maintain tallies.

### **The Will of the Voters**

All parties to a recount should keep in mind that the will of the voters, if it can be determined with reasonable certainty, must be given effect. If the marks on the ballot fairly indicate the voter's intent, the vote should be counted in accordance with that intent, as long as the voter has essentially complied with the election law. The voter is not disenfranchised because of minor irregularities. Where, however, the ballot is marked in a way that leaves the intent of the voter unclear, the vote should not be counted. See section V for examples of contested ballot marks. McCavitt v. Registrars of Voters of Brockton, 385 Mass. 833 (1982); Kane v. Registrars of Voter, 328 Mass. 511, 518 (1952); Munn v. Dabrowski, 335 Mass. 41 (1956).

### **Protested Ballots**

When a ballot is protested by any agent, the tally clerk should not record the vote. The tally clerk should call the runner to take the ballot to the registrars' table where they may make their determination in the presence of the candidates' counsel. If all the counsel agree with the registrars' ruling, the runner returns the ballot to the table where it was originally protested and reports how the registrars ruled. The tally clerk records the vote as ruled and the ballot is resealed with the remainder of the ballots from that block. If any counsel protests the ruling of the registrars, one registrar signs the back of the protested ballot and above his signature puts the block number, the office for which the vote was protested, and the name of the candidate for whom the vote was counted. This ballot is returned to the table for counting according to the registrars' ruling, and then brought back to the registrars to be segregated with other protested ballots.

If the clerks finish counting the block before the runner returns with the protested ballot, they should wait for its return before tabulating the block total or opening a new block envelope.

### **Absentee Ballots Rejected as Defective**

During a recount, the registrars examine the sealed inner ballot envelopes of absentee ballots which have previously been rejected as defective to determine whether each such ballot should have been rejected or accepted. The ballot must be rejected if the envelope is not signed by the voter. The envelope should not be rejected merely because a signature is difficult to read.

The registrars shall make a statement on the back of each of these inner ballot envelopes giving their reason for rejecting or accepting these ballots during the recount. The



statement must be signed by a majority of the registrars. This determination is subject to protest as each envelope is examined at the recount. If the registrars decide to accept an inner envelope originally rejected as defective, they must open the envelope, count the ballot, and attach the envelope to the ballot.

### **Write-in and Sticker Votes**

Section 77 of chapter 54 of the General Laws provides that a voter intending to write-in a candidate on the ballot should insert “the name and residence of such candidate in the space provided.” The court has recognized the address requirement as a direction to the voter rather than a mandatory requirement.

In O’Brien v. Board of Election Commissioners, 257 Mass. 332, 338-339, 153 N.E. 553, 556 (1926) the court ruled that “if the intent of the voter can be determined with reasonable certainty from an inspection of the ballot, in the light of the generally known conditions attendant upon the election, effect must be given to that intent... The omission of residence... on some ballots on which the name has been written by the voters rightly was found not to invalidate such votes.” See also Maiewski v. Board of Registrars of Voters, 347 Mass. 681, 199 N.E. 2 d 680 (1964).

An “X” placed to the right of the candidate’s name is permitted, but not required on a write-in or sticker vote.

Votes written in for candidates who are already printed on the ballot for the same office are considered over-votes and must be tallied as blanks.

### **Challenged and Provisional Ballots**

If any challenged or provisional ballots were voted on Election Day, the registrars must also decide whether to count or reject each such ballot. Challenged ballots result when a voter whose name appears on a voting list is challenged at the polls for some legal reason as set forth in section 85 of chapter 54 of the General Laws. Challenged ballots will have been cast in the ballot box and counted on Election Day, and are identified with the name and address of the voter, as well as the reason for the challenge.

Provisional ballots may have been used in certain circumstances: if a voter’s name did not appear on the voters list, but the voter believed they were registered; if a voter was required to present identification under the Help America Vote Act, but was unable to do so; and in primaries, if a voter believed they were listed with an incorrect party affiliation. G.L. c. 54, § 76C. The disposition of a provisional ballot is made after every primary and election, regardless of whether there is a recount.

For challenged ballots, the registrars may hold a hearing at the recount on whether or not to count each challenged ballot but must hold a hearing when requested as part of the recount. This will usually require deciding whether the challenged voter in question was eligible to vote. For this purpose, the registrars may issue summonses for witnesses or documents, and may administer oaths. G.L. c. 51, §§ 48, 49; G.L. c. 233, § 8. The registrars should also notify counsel for all candidates (or for committees concerning a

ballot question) of the time and place of these hearings, and give counsel an opportunity to examine and cross-examine witnesses, present evidence, and make arguments of law. The registrars should then vote whether to count each ballot; a tie vote results in counting a challenged ballot. The registrars should indicate on the back of each ballot their decision, signed by those registrars who agree. If they decide to count it, they should add the vote to the tally.

### **Optical Scanner Recount Procedures**

If the recount petition does not include a request to hand count the optical scan ballot, the recount consists of inserting the optical scanner ballots, including absentee ballots, into the vote tabulator, which has been programmed and tested according to statute. Challenged ballots are examined and, if ruled acceptable, are included in the tabulation. Any optical scanner ballot which is rejected by the vote tabulator or which was mutilated so that it could not be inserted in the vote tabulator should be counted by hand.

Hand counting optical scanner ballots is similar to counting paper ballots. The general rule about giving effect to the will of the voter must be followed. Write-in votes are counted whether or not the voter has omitted the address or failed to mark the vote indicator for the write-in or sticker candidate. Sealed envelopes containing any absentee ballots rejected as defective are examined by the registrars. See page 7 for protested ballot procedures.

### **When the Recount is Complete**

When the recount is complete, and with the candidates' counsel present if they wish, ballots must be properly sealed in their containers, certified and returned to the vault. The protested ballots must be placed in the vault in a separate, sealed and certified envelope. Only one recount is permitted. The registrars may not order a "re-count" unless the number of ballots in a block does not add up to the block count (e.g. there is a block of fifty ballots and the count shows 24 for "X," 24 for "Y" and 1 blank).

The registrars must make and sign a statement of their determination of the results of the recount. All materials, including the statement, must be returned to the city or town clerk or election commissioners, who must amend the final vote tallies. The amended records stand as the true record of the election.

The results of any recount of votes cast at a primary or state election, whether or not the tally has changed, must be reported immediately to the Secretary of the Commonwealth.

## **IV. AFTER THE RECOUNT**

Rulings made by the board of registrars are binding and any appeal must be directed to the Superior Court in a civil action. G.L. c. 56, § 59; McCavitt v. Registrars of Voters of Brockton, 385 Mass. 833 (1982). Any appeals should be pursued as quickly as possible after the recount has been completed. In the case of an appeal, only the ballots recorded

as protested at the recount are required to be produced, except by express order of the court.

No officer recounting ballots may, except as required by law, make any statement or give any information regarding the ballots cast.

**In state elections and primaries**, the results of the election are declared by the statutory deadline for certification, even if a recount petition has been filed.

**In city elections**, the city clerk shall not declare the result of an election until the time for filing a petition for a recount has expired. If a recount petition has been filed, the results of the election are not declared until the ballots are recounted and the results amended. G.L. c. 54, § 137.

**In town elections**, the results of an election are declared as soon as they are certified, even if a recount petition is filed. After the recount has been completed, if it appears that a person was elected other than the person who was previously declared to be elected, the registrars must sign a certificate of that fact. The certificate must also state the number of votes for each candidate, as determined by the recount. The signed certificate must then be filed with the town clerk. The town clerk must record the certificate and, within 24 hours, deliver a copy of the certificate to both the candidate originally declared to be elected and to the candidate who by the recount certificate appears to be elected. G.L. c. 54, § 135.

The ballots and other materials for local elections must be preserved for 30 days. Ballots and other materials from biennial state primaries and elections (in which ballots federal candidates appear on the ballot) must be preserved for 22 months. 52 USC § 20701. In order to compel a clerk to preserve materials beyond the required period, a candidate or supporter or opponent of a ballot question must file with the city or town clerk or election commission a written claim to the office or declaration of intention to contest the election within 30 days of the election. G.L. c. 54, § 134.

## **V. DISTRICT-WIDE RECOUNTS (Including Statewide)**

While basic recount procedures also apply to district-wide (including statewide) recounts of offices or questions voted on at a state primary, state election or presidential primary (except for ward and town committees), there are some additional procedures. **These procedures may be used only if the margin of victory is not more than one-half of one percent (0.5%) of the votes cast for an office or question.**

Please note that procedures and deadlines for district-wide and statewide recounts may be changed for certain elections pursuant to state law. Questions regarding the petitioning process for a specific election should be addressed to the Elections Division.

## **Petitioning**

Petitioners must use different petitions for voters to sign from each city and town in the district. District-wide and statewide petition forms are similar to regular recount petitions on which candidates must specify on the petition form the office to be recounted and contains a statement that the signers have reason to believe that the election records are erroneous and that a recount will affect the results of that election. Further, the petitioner must also specify the particular reasons for the recount request. In communities voting by optical scanner ballot, petitioners who want a hand count of the ballots must state this on the form by checking the appropriate box.

In district-wide or statewide recounts of state primaries, petitions must be submitted to local registrars of voters no later than 5:00 p.m. on the third day after the state primary. The petitions must then be submitted to the Secretary of the Commonwealth no later than 5:00 p.m. on the tenth day after the state primary.

In district-wide or statewide recounts of state election offices or questions, the petitions must be submitted to the local registrars of voters no later than 5:00 p.m. on the seventh day after the election. The petitions must then be filed with the Secretary of the Commonwealth no later than 5:00 p.m. on the fifteenth day following the state election.

For a district-wide recount, the petitions must be signed by one-fourth of the number of voters required to sign a nomination paper to qualify a candidate for the ballot for that office. For example, to request a recount of the office of state representative, petitioners would need to file no less than 38 signatures – one-fourth of the 150 signatures required in order for a candidate's name to be printed on the ballot for state representative. **Check with the Elections Division for the exact number.** For a statewide recount, the petition must be signed by at least 1,000 registered voters of the Commonwealth. There is no limitation on where signatures may be obtained in the district; they may all be obtained in the same city or town, however, separate petition sheets must be used for each municipality. Further, at least one signature on the entire petition must be sworn to before a notary public. For a state primary district-wide or statewide recount petitions, signers must have been enrolled in the proper party as of the last day to register to vote for the primary, which is twenty days prior to the date of the primary.

After a state primary, the Secretary of the Commonwealth will order the district-wide recount conducted as soon as it appears to him that the difference in votes is within the required margin and that a sufficient number of signatures have been submitted.

After a state election, the Secretary of the Commonwealth must hold the recount petitions until after the official tabulation of votes is made by the Governor and Council. If the difference in the number of votes cast is greater than one-half of one percent of the total number of votes cast, the district-wide recount will not be held. If the difference is one-half of one percent or less of the total number of votes cast, the Secretary of the Commonwealth will order that the registrars of each city and town conduct the recount.

### Setting the Date of the Recount

The board of registrars in each city or town shall set the date of the recount for an office or question that appeared on a state primary for a date not more than 6 days after the deadline for filing a recount petition for a primary and not more than 10 days after the deadline for filing a recount petition for an election. For statewide offices and questions, the recount date is not set until after official tabulation as noted above.

### Retention of Ballots

If a district-wide recount petition has been filed, all ballots must be retained by the city and town clerks for at least **60 days** after the election.

### Notice

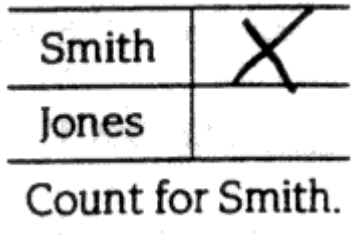
Written notice of the time and location of the recount must be given by local registrars to all candidates for the office to be recounted in a district-wide recount at least three days in advance of the recount. In the case of a recount on a question, committees that favor and oppose the question are treated as candidates and as such are entitled to receive notice of the recount and have counsel and observers attend.

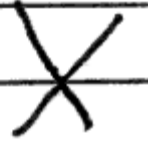
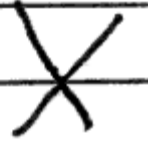
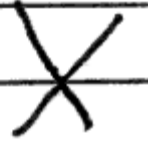



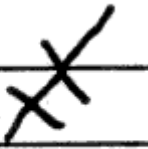
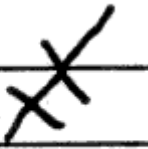
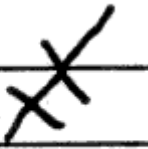






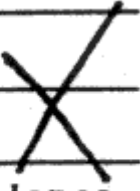
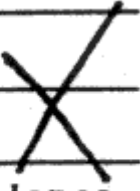
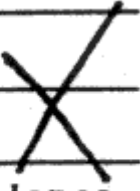
### When the Recount is Complete


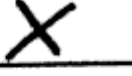

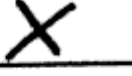

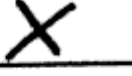









When the recount is complete, the registrars shall enclose and seal the ballots in envelopes or containers, keeping all protested ballots in a separate envelope; make and sign a statement of their determination of the questions raised; and return all materials to the city or town clerk. The city or town clerk will amend the records, which stand as the true record of the election, and sends copies immediately to the Secretary of the Commonwealth.

## VI. EXAMPLES OF CONTESTED BALLOT MARKS

The below votes are examples of court rulings on contested ballots in election cases.

 <p>Count for Smith.</p>	<p><b>Example 1</b> <b>Cross or check within parallel lines containing name of candidate.</b></p> <p>Legal References: <i>Beauchemin v. Flagg</i>, 229 Mass. 23, 118 N.E. 2d 251 (1918).  <i>Coughlin v. LeClair</i>, 294 Mass. 434, 2 N.E. 2d 461 (1936).</p>
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<table border="1"> <tr> <td>Smith</td> <td rowspan="2"></td> </tr> <tr> <td>Jones</td> </tr> </table> <p>Count as a blank.</p>	Smith		Jones	<p><b>Example 2</b>  <b>Apex of cross on line.</b></p> <p>Legal Reference:  <i>Coughlin v. LeClair</i>,  294 Mass.434, 2 N.E. 2d 461 (1936).</p>	
Smith					
Jones					
<table border="1"> <tr> <td>Smith</td> <td></td> </tr> <tr> <td>Jones</td> <td></td> </tr> </table> <p>Count for Smith.</p>	Smith		Jones		<p><b>Example 3</b>  <b>Diagonal marks used with some consistency.</b></p> <p>Legal Reference:  <i>Gilligan v. Registrars of Voters</i>,  323 Mass. 346, 82 N.E. 2d 3 (1948).</p>
Smith					
Jones					
<table border="1"> <tr> <td>Smith</td> <td rowspan="2"></td> </tr> <tr> <td>Jones</td> </tr> </table> <p>Count for Jones.</p>	Smith		Jones	<p><b>Example 4</b>  <b>More than one line intersecting diagonal, if distinguishable from attempt to obliterate.</b></p> <p>Legal Reference:  <i>Gilligan v. Registrars of Voters</i>,  323 Mass. 346, 82 N.E. 2d 3 (1948).</p>	
Smith					
Jones					
<table border="1"> <tr> <td>Smith</td> <td></td> </tr> <tr> <td>Jones</td> <td></td> </tr> </table> <p>Count for Smith.</p>	Smith		Jones		<p><b>Example 5</b>  <b>"X" clearly appears in Smith box; diagonal line in Jones box inferred to be error.</b></p> <p>Legal Reference:  <i>Gilligan v. Registrars of Voters</i>,  323 Mass. 346, 82 N.E. 2d 3 (1948).</p>
Smith					
Jones					
<table border="1"> <tr> <td>Smith</td> <td rowspan="2"></td> </tr> <tr> <td>Jones</td> </tr> </table> <p>Count for Jones.</p>	Smith		Jones	<p><b>Example 6</b>  <b>Apex of cross within Jones box.</b></p> <p>Legal Reference:  <i>Kane v. Registrars of Voters</i>,  328 Mass. 511, 105 N.E. 2d 212 (1952).</p>	
Smith					
Jones					

<table border="1"> <tr> <td>Smith</td> <td></td> </tr> <tr> <td>Jones</td> <td></td> </tr> </table> <p>Count for Jones.</p>	Smith		Jones		<p><b>Example 7</b>  <b>Obliteration or erasure.</b></p> <p>Legal References:  <i>Kane v. Registrars of Voters</i>,  328 Mass. 511, 105 N.E. 2d 212 (1952).</p> <p><i>Munn v. Dabrowski</i>,  335 Mass. 41, 138 N.E. 2d 570 (1956).</p> <p><i>DePetrillo v. Registrars of Voters</i>,  342 Mass. 13, 171 N.E. 2d 843 (1961).</p> <p><i>Desjourdy v. Board of Registrars of Voters</i>,  358 Mass. 644, 266 N.E. 2d 672 (1971).</p> <p><i>Morris v. Board of Registrars of Voters</i>,  362 Mass. 48, 283 N.E. 2d 854 (1972).</p>
Smith					
Jones					
<table border="1"> <tr> <td>Smith</td> <td></td> </tr> <tr> <td>Jones</td> <td></td> </tr> </table> <p>Count for Smith.</p>	Smith		Jones		<p><b>Example 8</b>  <b>Imperfect cross.</b></p> <p>Legal References:  <i>Kane v. Registrars of Voters</i>,  328 Mass. 511, 105 N.E. 2d 212 (1952).</p> <p><i>Munn v. Dabrowski</i>,  335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith					
Jones					
<table border="1"> <tr> <td>Smith</td> <td></td> </tr> <tr> <td>Jones</td> <td></td> </tr> </table> <p>Count for Smith.</p>	Smith		Jones		<p><b>Example 9</b>  <b>Checks and crosses intermingled on ballot, or all checks.</b></p> <p>Legal Reference:  <i>Munn v. Dabrowski</i>,  335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith					
Jones					
<table border="1"> <tr> <td>Smith</td> <td></td> </tr> <tr> <td>Jones</td> <td></td> </tr> </table> <p>Count for Smith.</p>	Smith		Jones		<p><b>Example 10</b>  <b>"V" within Smith box; no mark in Jones.</b></p> <p>Legal Reference:  <i>Munn v. Dabrowski</i>,  335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith					
Jones					

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; text-align: center; padding: 5px;">✕</td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="text-align: center; padding: 5px;">○</td> </tr> </table> <p style="margin-top: 5px;">Count for Smith.</p>	Smith	✕	Jones	○	<p><b>Example 11</b>  <b>Consistent pattern of zeroes for candidates not voted for.</b></p> <p>Legal Reference:  <i>Munn v. Dabrowski</i>,  335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith	✕				
Jones	○				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; padding: 5px;"></td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="text-align: center; padding: 5px;">3</td> </tr> </table> <p style="margin-top: 5px;">Count for Jones.</p>	Smith		Jones	3	<p><b>Example 12</b>  <b>Use of numeral instead of cross.</b></p> <p>Legal Reference:  <i>Munn v. Dabrowski</i>,  335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith					
Jones	3				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; text-align: center; padding: 5px;">✓</td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="padding: 5px;"></td> </tr> </table> <p style="margin-top: 5px;">Count for Smith.</p>	Smith	✓	Jones		<p><b>Example 13</b>  <b>Clear impression of cross on paper, but only one leg penciled.</b></p> <p>Legal Reference:  <i>Desjourdy v. Board of Registrars of Voters</i>,  358 Mass. 644, 266 N.E. 2d 672 (1971).</p>
Smith	✓				
Jones					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; text-align: center; padding: 5px;">✓</td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="padding: 5px;"></td> </tr> </table> <p style="margin-top: 5px;">Count for Smith.</p>	Smith	✓	Jones		<p><b>Example 14</b>  <b>Check mark for Smith which dips slightly into Jones' box.</b></p> <p>Legal Reference:  <i>Desjourdy v. Board of Registrars of Voters</i>,  358 Mass. 644, 266 N.E. 2d 672 (1971).</p>
Smith	✓				
Jones					





# VACANCIES

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Revised 2017

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## **I. INTRODUCTION**

Vacancies most often occur because of death, withdrawal, or resignation of a candidate or elected official. This publication is meant to explain how to fill vacancies which occur during the election process and those which occur during the term of office.

## **II. OFFICES ON THE STATE BALLOT – BEFORE THE ELECTION**

### **A. Party Candidates**

A vacancy may occur at any stage of the election process. The method for filling a vacancy may depend on whether the vacancy occurred before or after the primary and how the vacancy occurred. The dates and deadlines listed below may be changed by legislative action.

#### **Before the Primary**

Candidates who submit nomination papers may withdraw their nomination by filing a notarized request with the secretary of the commonwealth within 72 weekday hours after the deadline for filing nomination papers. G.L. c. 53, §§ 11, 13; G.L. c. 55B, § 5.

Nominations to fill vacancies for state offices caused by withdrawal must be filed with the secretary of the commonwealth within 72 weekday hours after the deadline for filing withdrawals. For statewide offices, if a candidate withdraws his or her name from nomination; dies; or is found ineligible before the primary, and there is no other candidate for the party nomination for the office, the vacancy may be filled by the state committee. If it is a district office, then the vacancy may be filled by the members of the ward and town committees in the district. These nominations are open to objections in the same manner, so far as practicable, as other nominations. No vacancy caused by withdrawal can be filled before the withdrawal has been filed. G.L. c. 53, §§ 14, 49, 50.

#### **After the Primary**

A candidate nominated at a state primary may file a written withdrawal with the secretary of the commonwealth within 6 days after the day of the primary. No vacancy can be filled before the withdrawal is filed. G.L. c. 53, §§ 14, 53A.

A vacancy due to death, withdrawal, or ineligibility may be filled by a regularly elected general or executive committee representing the political party in the district in which the vacancy occurs. Certificates of nomination must be filed within 72 weekday hours after the deadline for filing withdrawals.

In the case of a vacancy for statewide office, the state committee of the party may fill the vacancy. In the case of a vacancy for a district office including only one municipality, the members of the town or ward committees may fill the vacancy.

In the case of a vacancy for a district office in which the district includes more than one municipality, the state committee of the party must designate a person to call a meeting of the

ward and town committees in the district. The person so selected shall preside until a chair is elected. Once a chair has been elected, delegates must be selected, not to exceed one for each 500 votes cast in each ward or town for the candidate of that party for governor in the last election. The secretary of the commonwealth must be notified of all delegates chosen. G.L. c. 53, § 14.

### **Tied Vote at a Primary**

If the final results of a primary show a tied race, the position is considered vacant. In such a case, the vacancy must be filled by choosing one of the candidates who received the tie vote. In the case of a tied vote for a statewide office, the relevant party state committee would choose between the tied candidates. In the case of a tied vote for a district office, the ward and town committees in the district would choose between the tied candidates. G.L. c. 53, § 53.

### **B. Non-Party Candidates**

All withdrawals from non-party candidates must be notarized and filed within 72 weekday hours after the deadline for filing nomination papers. G.L. c. 53, §§ 11, 13.

In the event of death, withdrawal, or ineligibility of a non-party candidate, the vacancy may only be filled if the candidate was running for governor or lieutenant governor. Since candidates for governor and lieutenant governor run as a ticket, a special provision exists for filling vacancies caused by death, withdrawal, or ineligibility of either candidate. Such a vacancy may be filled by a majority vote of the committee of 5 members whose names were placed on the candidates' nomination papers before voters' signatures were obtained. If no committee of 5 was nominated, the vacancy cannot be filled. G.L. c. 53, § 14.

The certificate of nomination to fill any vacancy caused by death or ineligibility must be filed within 72 weekday hours after 5 p.m. on the day the meeting to fill the vacancy was held. G.L. c. 53, § 5.

## **III. OFFICES ON THE STATE BALLOT – DURING A TERM OF OFFICE**

### **Governor**

In the case of a tied vote, the House of Representative shall, by ballot, elect two persons from four candidates receiving the most votes. Those two candidates shall be sent to the Senate who shall, by ballot, elect one to serve as governor. Mass. Const. Part II, c. 2, § 1, art. 8.

If the governor-elect dies before the qualification of the lieutenant governor-elect, the lieutenant governor-elect upon qualification shall become governor. Mass. Const. Amend. Art. 82, § 1.

Whenever the office of governor is vacant due to death, absence from the state, or otherwise, the lieutenant governor shall be the acting governor. Mass. Const. Part II, c. 2, § 2, art. 3.

If the offices of both governor and lieutenant governor are vacant due to death, absence from the state, or otherwise, the secretary of commonwealth, attorney general, treasurer, and auditor, in that order of succession shall be the acting governor. Mass. Const. Part II, c. 2, § 3, art. 6.

Whenever the governor or the chief justice and a majority of the associate justices of the Supreme Judicial Court send to the Senate President and the Speaker of the House a written declaration that the governor is unable to discharge the powers and duties of the office, the office shall be deemed vacant.

If and when the governor sends to the Senate President and the Speaker of the House a written declaration that he or she is no longer unable to discharge the powers of the office, the vacancy shall be deemed to have terminated in four days, and the governor shall resume the powers and duties of the office. If within those four days, the chief justice and a majority of the associate justices of the Supreme Judicial Court send to the Senate President and the Speaker of the House a written declaration the governor is still unable to perform the powers and duties of the office, the General Court must decide the issue and must assemble within 48 hours for that purpose, if not in session. If the General Court, within twenty-one days after receipt of the latter written declaration (or, if the General Court is not in session, within twenty-one days after the general court is required to assemble) determine by roll call vote of two-thirds of each house present and voting, that the governor is unable to discharge the powers and duties of his office, the office of governor shall continue to be deemed vacant. Otherwise, such vacancy shall be deemed to have terminated and the governor shall resume the powers and duties of his office. Mass. Const. Amend. Art. 91.

### **Lieutenant Governor**

In the case of a tied vote, the vacancy shall be filled by the Senate and House of Representatives, in the same manner as the governor is to be elected in the same scenario. Mass. Const. Part II, c. 2, § 2, art. 1.

If both the governor-elect and lieutenant governor-elect die, both offices are considered vacant and shall be filled in the same manner as if there were a tied vote. Mass. Const. Amend. Art. 82.

### **Councillor**

In the case of a vacancy on the Governor's Council, the Senate and House of Representatives shall, by concurrent vote, choose some eligible person from the district where the vacancy occurs. If the vacancy happens when the Legislature is not in session, the governor, with the advice and consent of the Council, may fill the vacancy by appointment of some eligible person. Mass. Const. Amend. Art. 25.

### **Other Constitutional Offices**

In case of a failure to elect in the office of secretary, attorney general, treasurer and receiver-general, or auditor, or if the person elected dies before being sworn in, the office shall be filled on or before the third Wednesday in January, by joint ballot of the senators and representatives in one room. If any such office becomes vacant for any reason during an annual or special session of the General Court, such vacancy shall in like manner be filled in the same manner. If such a

vacancy occurs when the General Court is not in session, it shall be filled by the governor by appointment, with the advice and consent of the Council. Mass. Const. Amend. Art. 79.

Any person appointed to fill such a vacancy shall serve until his or her successor is chosen and duly qualified. If the person chosen or appointed fails, within ten days, to discharge duties of the office, the office is considered vacant. To qualify as a replacement, a person must have resided in Massachusetts for at least five years before his or her appointment. Mass. Const. Amend. Art. 17.

### **Senator in General Court**

Any vacancy shall be filled by a special election by the people of the unrepresented district, upon the order of a majority of senators elected. Mass. Const. Amend. Art. 24.

If there is a special election, nomination papers shall be filed with the secretary of the commonwealth on or before 5 p.m. of the 9<sup>th</sup> Tuesday before the day of such election. G.L. c. 53, § 10.

### **Representative in General Court**

If there is a failure to elect or a vacancy, the Speaker of the House shall call a special election on a date determined by vote of the House of Representatives. If such vacancy occurs during a recess between the first and second annual sessions of the same General Court, the Speaker may choose the date of the special election. All such special elections must be held on a Tuesday. G.L. c. 54, § 141.

If there is a special election, nomination papers shall be filed with the secretary of the commonwealth on or before 5 p.m. of the 9<sup>th</sup> Tuesday before the day of such election. G.L. c. 53, § 10.

### **County Offices**

Upon failure to elect a district attorney, clerk of courts, register of probate, or sheriff, the governor shall call a special election. G.L. c. 54, § 142.

Upon a vacancy by removal or otherwise in any of the above named offices, the governor shall cause precepts to fill the vacancy at the next biennial state election for which precepts can be seasonably issued, unless the same office is already on the ballot for that election. Upon such a vacancy, the governor may appoint someone to serve in the office until another is elected and qualified.

Upon a vacancy in the office of a clerk of the superior court in Suffolk County, the justices of said court may appoint a clerk to hold the office until a clerk is qualified.

### **Register of Deeds**

If there is a failure to elect a register of deeds, except in Suffolk and Nantucket counties and those counties without county commissioners, the county commissioners must call a special election on a date of their choosing.

Upon a vacancy by removal or otherwise, except in Nantucket county and those counties without county commissioners, the county commissioners must place the position on the ballot at the next biennial state election, if the precepts can be issued seasonably and if the office is not already on that same ballot. The county commissioners may appoint some person to fill the office until another is elected and qualified.

In Nantucket, if there is a failure to elect or upon a vacancy, the Nantucket selectmen shall call a meeting to elect a register of deeds as described above and may appoint some person to the office until a person is elected. G.L. c. 54, § 143.

The county commissioners in each county shall notify the secretary of the commonwealth of any vacancy in the office of register of deeds and shall send him a copy of the precepts issued. G.L. c. 54, § 146.

In the event of a vacancy in the office of register of deeds in a county or district in which the office is under the jurisdiction of the secretary of the commonwealth, the secretary shall issue precepts for an election to fill the vacancy at the next biennial state election for which precepts can be reasonably issued, unless the office is already on that same ballot. The secretary shall appoint some person to fill the office until a person is elected and qualified. G.L. c. 54, § 143A.

### **County Treasurer**

If there is a failure to elect a county treasurer, the county commissioners shall call a special election on a date of their choosing. G.L. c. 54, § 143.

Upon a vacancy by removal or otherwise, the county commissioners must issue precepts for an election to fill the vacancy at the next biennial state election, if the precepts can be issued seasonably, unless that office is already on the same ballot. The commissioners may appoint someone to fill the office until a person is elected and qualified.

The county commissioners in each county shall notify the secretary of the commonwealth of any vacancy in the office of county treasurer and shall send to him a copy of the precepts issued. G.L. c. 54, § 146.

### **County Commissioner**

If there is a failure to elect a county commissioner, the board of examiners (probate court judge, register of probate court, and clerk of courts) must call a special election on a date of their choosing.

Upon a vacancy by removal or otherwise, the board of examiners must issue precepts, for an election to fill the vacancy at the next biennial state election, if the precepts can be issued seasonably, unless that office is already on the same ballot.

The two remaining county commissioners and the clerk of the courts for the county, or a majority of them, may appoint a person (not a resident of the same town as either of the remaining commissioners) to fill the vacancy until another person is elected and qualified. G.L. c. 54, §§ 122, 144.

The board of examiners shall notify the secretary of the commonwealth of any vacancy and shall send him a copy of the precepts issued. G.L. c. 54, § 146.

### **Congress**

In the event of a vacancy in the office of representative in Congress or in the office of senator in Congress, the governor shall immediately call a special election. The day appointed for the special election shall not be less than 145 days, nor more than 160 days after the date that the vacancy is created.

If a vacancy in the office of representative in Congress occurs after February 1<sup>st</sup> in an even-numbered year, the governor shall not issue precepts.

If a vacancy occurs in the office of senator in Congress after April 10<sup>th</sup> of an even-numbered year, the governor shall issue precepts to place that office on the biennial state election ballot in the same year, unless the same seat is set to expire on the first Wednesday of the following January.

If a vacancy for senate is created after April 10<sup>th</sup> of an even-numbered year, but on or before the seventieth day prior to the state primary, the office shall be placed on the regular state primary and state election ballots.

In the event of a vacancy in the office of senator in Congress, the governor shall make a temporary appointment to fill the vacancy. The person appointed shall serve until such a time as another is elected and qualified.

A senator elected at a special election shall serve for the remainder of the term. Those elected to Congress at the biennial state election when there is a vacancy in the same office shall also be deemed to be elected to serve for the remainder of the current term. G.L. c. 54, § 140.

### **Electors**

In the case of a failure to elect in the office of electors of president and vice-president, the governor shall issue a proclamation to call together the General Court. Senators and representatives of the General Court shall choose electors by ballot to complete the full number.

If there is a vacancy in the office of elector on the date of the meeting of the Electoral College, the electors present shall choose from alternate electors of Massachusetts citizens to complete the number. G.L. c. 54, § 138.

## **IV. MUNICIPAL OFFICES**

Cities and towns in Massachusetts elect their offices using different forms of elections. Some municipalities nominate candidates at preliminaries or town caucuses before their municipal elections, while others hold only their general local elections. Local charters and bylaws should be consulted before any vacancy is filled.



## **A. Vacancies Occurring During an Election**

### **Municipalities Holding General Elections Only**

A candidate may withdraw within 2 working days after the deadline to file nomination papers. G.L. c. 53, § 13; G.L. c. 55B § 7.

### **Municipalities Holding Preliminaries**

A candidate may withdraw before a preliminary within two working days after the deadline to file nomination papers. Some municipalities may allow a committee of 5 voters, who signed papers for that candidate, to fill the vacancy. G.L. c. 53, §§ 11, 13, 14.

A candidate nominated at a preliminary election may withdraw any time before 5 p.m. on the sixth day following the preliminary election. Unless the local charter provides otherwise, the vacancy shall be filled by the candidate who received the next highest number of votes in the preliminary, if that number was equal to or greater than the number of signatures required for the candidate to get on the preliminary ballot. G.L. c. 53, § 13.

### **Towns Holding Caucuses**

In towns holding non-partisan caucuses, all withdrawals may be filed within two working days after 5 p.m. on the last day for filing certificates of nomination. The withdrawal must be in writing, notarized, and filed with the town clerk. G.L. c. 53, §§ 11, 13.

In towns holding partisan caucuses, a candidate may withdraw within 48 hours after 5 p.m. on the day fixed for opening nomination papers, by request signed by the candidate and filed with the secretary of the city or town party committee. G.L. c. 53 § 101.

The procedure for filling a vacancy caused by withdrawal depends on whether the caucus is partisan or non-partisan. In towns holding non-partisan caucuses, vacancies may be filled in the manner indicated on the certificate of nomination. A new certificate of nomination must be filed within 48 weekday hours after the withdrawal deadline date. In the case of death or ineligibility, a new certificate of nomination must be filed with the town clerk. Vacancies cause by death or ineligibility may only be filled if there is sufficient time to prepare ballots. G.L. c. 53 §§ 5, 11, 13, 14, 15.

The new certificate of nomination must be signed by the chairman and secretary of the caucus and must include the name and residence of the original nominee, the fact of his death, withdrawal, or ineligibility, and the proceedings by which the vacancy was filled. The written acceptance of the new candidate must accompany this certificate of nomination. G.L. c. 53, § 53A.

In towns holding partisan caucuses, the secretary of the party committee must immediately give notice of any withdrawal to the person who filed the paperwork (the candidate, committee member, etc.) who may within 24 weekday hours after the last day for making withdrawals, present a new name on the nomination papers to fill the vacancy. In the case of death or ineligibility, the chairman of the committee may file with the town clerk a new name to fill the

vacancy. Such a vacancy may be filled only if there is sufficient time to prepare ballots. Whoever is named to fill the vacancy must file a written acceptance. G.L. c. 53, § 101.

If nomination papers are not filed for all the offices to be filled at the partisan caucus, or if a vacancy occurs other than by withdrawal, the chairman or secretary of the committee must call a meeting of the town committee to nominate candidates for those offices. The members of the town committee who agree to the nominations must sign and file with the secretary of the town committee the nomination papers for those candidates. In the case of disagreement with the committee, two sets of papers may be filed. If, at the expiration of 2 weekdays after the time at which nomination papers were opened, proper nomination papers have not been filed for all the offices to be filled, or upon any vacancy caused by death or otherwise (except a withdrawal) the chairman and secretary of the town committee may file nomination papers for such offices or vacancies. G.L. c. 53, §§ 99, 100.

Withdrawals for nominations made at a partisan caucus may be filed within two working days after 5 p.m. of the last day for filing certificates of nomination. The withdrawal must be in writing, notarized, and filed with the town clerk. G.L. c. 55B, § 7.

Vacancies caused by withdrawals made after a partisan caucus may be filled in the manner indicated on the certificate of nomination. In the case of withdrawal, a new certificate of nomination must be filed within 48 weekday hours of the withdrawal deadline. In the case of death or ineligibility, a new certificate of nomination must be filed with the town clerk. Such a vacancy may be filled only if there is sufficient time to prepare ballots.

The new certificates of nomination must be signed by the chairman or presiding officer of the caucus or by the chairman and secretary of the town committee. It must include the name and residence of the original nominee, the fact of his death, withdrawal, or ineligibility, and the proceedings by which the vacancy was filled. The written acceptance of the new candidate must accompany this certificate of nomination. G.L. c. 53, §§ 5, 11, 13, 14.

## **B. Vacancies Occurring During a Term – Town Offices**

Vacancies in any town office may be filled for the duration of the unexpired term by a special election called by the selectmen. With the exception of the office of selectman, unless or until an annual or special election is held for the office, a vacancy in a town office is filled by the appointment procedure described below. Vacancies are filled by appointment only until the next annual town election. G.L. c. 41, § 10.

All resignations must be filed in writing with the town clerk. The appointment process for filling vacancies cannot begin until the resignation has been filed with the clerk. No person may be appointed to fill a vacancy cause by resignation until after the effective date of the resignation. Once filed, a resignation cannot be rescinded. The selectmen may call a special election once a resignation has been filed, provided that the date of the special election falls after the date that the resignation becomes effective. G.L. c. 41, § 109.

No election to fill a town vacancy can be held unless the selectmen file with the town clerk notice of the election at least fifteen days before the last day to submit nomination papers to the registrars of voters for that election. As the deadline to submit nomination papers is always at least 49 days prior to the date of the election, this means that notice must be provided to the town clerk at least 64 days prior to the election.

If there is a failure to elect for a town office, or if the person elected to such an office shall decline to take the oath of office, the position is deemed to be vacant. A vacancy caused by a failure to elect shall be filled in the same manner as any other vacancy. G.L. c. 41, § 10.

### **Town Clerk**

If the position of town clerk is vacant, or if the clerk is absent during a town meeting, the meeting shall elect a temporary clerk by ballot. If the position of town clerk is vacant, or if the clerk is unable to perform his or her duties, the selectmen may, in writing, appoint a temporary clerk for the performance of such duties. G.L. c. 41, § 14.

The town clerk may appoint an assistant clerk. The assistant clerk, in the absence of the clerk, performs the clerk's duties and has the same powers and is subject to the same requirements and penalties as the clerk, unless a temporary clerk is elected or appointed. Record must be made of the appointment and oath. G.L. c. 41, § 19.

### **Selectman**

A vacancy on the board of selectmen may only filled by an election. The remaining selectmen may call a special election to fill the vacancy. If the selectmen choose not to call a special election, the voters may petition for one. Upon written request of 200 registered voters of the town or 20% of the total number of registered voters (whichever is lesser), the selectmen shall call a special election, as long as the request was not filed within 100 days of the annual town election. G.L. c. 41, § 10.

### **Moderator**

If the position of moderator is vacant, it may be filled by the voters of the town. If the moderator is absent, a temporary moderator must be elected at the town meeting. Until a moderator or temporary moderator is elected, the town clerk or chairman of the board of selectmen shall preside at the town meeting. G.L. c. 39, § 14.

### **Treasurer, Tax Collector**

If a vacancy occurs or if an officer is unable to perform his duties because of disability or absence, the selectmen may in appoint a temporary town officer until another is elected and qualified. Such appointment must be filed in writing with the town clerk. If the office is elected, the temporary officer must be a registered voter of the town.

The temporary officer must swear to faithfully perform his duties and give bond to the State Department of Revenue. If he or she fails to give bond within 10 days of the appointment, the selectmen must rescind the appointment and appoint someone else. G.L. c. 41, § 40.

If a treasurer fails to give bond within 10 days after appointment or election or fails to renew his or her bond 10 days after it expires, the selectmen must declare the office vacant and fill it in accordance with the vacancy procedures outlined above. G.L. c. 41, § 35.

If a person appointed to collect taxes refuses to serve, or if no one is elected or appointed, the constables shall be the collectors. G.L. c. 41, § 39.

### **Auditor**

If there is a vacancy in the office of auditor, the remaining auditors may perform the duties and may appoint a person to aid them. If there is no remaining auditor, a temporary auditor shall be appointed by the selectmen to serve until another is qualified. G.L. c. 41, § 49.

### **Town Boards**

If there is a vacancy in a board consisting of 2 or more members, the board must notify the selectmen in writing, within one month of the vacancy. The selectmen and the remaining members of the board shall hold a joint meeting, after one week's notice, to appoint someone to fill the vacancy.

If the board fails to inform the selectmen within one month, the selectmen may fill the vacancy on their own. Whoever is selected must be a registered voter in the town and perform the duties of the office until the next town election or until another person is qualified. G.L. c. 41, § 11.

## **C. Vacancies Occurring During a Term of Office – City Offices**

Most city charters provide procedures to fill vacancies in city offices. Below are the procedures found in state law for filling vacancies in city offices. Where a city charter differs from state law, the charter should be followed.

### **City Clerk**

If the office of city clerk is vacant, or if a city clerk is unable to perform the duties of the office, the mayor shall appoint a temporary clerk to perform such duties. The person appointed to fill the vacancy shall hold the office until the end of the unexpired term of his or her predecessor. The individual appointed is not required to be a resident or a registered voter of the city. G.L. c. 41, § 14.

### **Mayor**

If the city has accepted the provisions of section 6 of chapter 39 of the General Laws, if no mayor is elected, the president of the board of aldermen shall perform the mayor's duties until a mayor is chosen and sworn. The aldermen shall issue the warrant for a special election of the office of mayor.

Except as otherwise provided by city charters, upon the resignation, death, absence or inability of the mayor to perform his duties, the president of the board of aldermen, or such aldermen as the board may elect will perform such duties or act until the vacancy is filled. Such person is the

“acting mayor” and will have the powers of the mayor only in matters that cannot be delayed and such acting mayor cannot make permanent appointments. G.L. c. 39, § 5.

### **Board of Aldermen/City Council**

If the city has accepted section 6 of chapter 39 of the General Laws and the full number of aldermen have not been elected, or a vacancy exists, those who were elected shall issue a warrant for a special election to elect the remainder of aldermen at a time and place designated by them. A city officer shall, notwithstanding his removal from one ward of the city to another, continue to perform his official duties during his term of office.

### **School Committee**

Except for cities with Plan E type charters, if a vacancy occurs on the school committee, the city council and the remaining members of the school committee shall meet together and appoint a suitable person to fill the vacancy until the first Monday in January following the next regular municipal election. At the next regular municipal election, a person shall be elected to serve the balance of the unexpired term, if any, and shall begin to serve on the above mentioned first Monday in January. G.L. c. 43, § 36.

## **V. PARTY COMMITTEES**

### **State Committees**

In case of death, withdrawal or ineligibility of a candidate for state committee, the vacancy may be filled by the state committee according to its rules.

If there is a tie vote for members of the state committee, it shall be filled by the ward and town committees of the district in which it exists. The vacancy may only be filled by one of the candidates receiving the tie vote. G.L. c. 53, § 70G.

### **Ward and Town committees**

City and town committees may fix the number of members to be elected at the presidential primary to be not less than 3, nor more than 35 members for each ward and town. If no number is fixed, the secretary of the commonwealth shall designate the number of members to be elected as the number of members last fixed or assigned.

Vacancies on ward or town committees may not be filled before the presidential primary once nomination papers have been filed, though any vacancies may be filled by appointment at the first meeting following the election of the committee. G.L. c. 52, §§ 4, 9; G.L. c. 53, § 70G.

If there is a failure to elect an entire ward or town committee, the city or state committee, respectively, of the same party, may appoint the committee members from among qualified voters. G.L. c. 52, § 4.

If there is a tie between candidates, the elected members may fill the vacancy by choosing one of the candidates receiving the tied vote. G.L. c. 52, § 4; G.L. c. 53, § 70G.

A vacancy in the office of chairman, secretary, treasurer, and other offices in the membership, shall be filled by such committee from among the enrolled members of the party residing in such ward, town, or city. If any member moves from the ward, town, or city or if the ward lines change, such affected person shall no longer be a member at the end of the calendar year during which their residence has changed. G.L. c. 52, § 6.

## **VI. DEATH OF A CANDIDATE**

It is generally held that one who has died before an election cannot be a candidate for elected office. *Madden v. Board of Election Commissioners*, 251 Mass. 95, 146 N.E. 280 (1925). When a candidate dies before the election, and it is a widely known fact, it has been held that the candidate receiving the next largest number of votes wins the election. When a candidate's death is not a widely known fact, the position shall be considered vacant. The key point seems to be whether or not it is a well-known fact that the candidate is dead. It makes no difference whether the living candidate's name is printed on the ballot, or appears as the result of write-in votes.