

Town Meeting & Elections

Chapter 7

Moderator & Clerk – Conduct of Town Meeting

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- Town Meeting & Elections Manual, revised 2015
- Moderator's Manual
- Your town's attorney
- Clerk mentors



resources





- Three offices must be elected by written ballot:
 - Moderator
 - Municipal officers
 - School committee members
- The assembly can decide at any time to vote on any issue by a written ballot, and can be used to determine any close votes.
- Votes to exceed or increase the property tax limit must be by written ballot (30-A MRSA Section 5721)

written ballots



- The municipal clerk is responsible for preparing written ballots.
- The written ballots must be of uniform size and color and must be blank, except that two squares with “yes” and “no” may be printed on them.
- The quantity needed would be the least at a secret ballot election, since they would only be needed to elect the moderator. In open town meeting, enough would be needed for at least the three required positions of moderator, municipal officer and school board member.

preparation of written ballots





- Always a good idea for meetings where a larger turnout is expected.
- Two ways to segregate voters from non-voters:
 - Provide separate seating and direct them to it following check-in.
 - Distribute colored cards to voters, which can be used for show-of-hands voting, and to distribute written blank ballots.

separation of voters from non-voters



- Must be:
 - Resident of the Maine
 - At least 18 years of age
 - U.S. citizen
- Doesn't need to be:
 - A resident of the municipality where moderating
 - A registered voter



qualifications of moderator



- Municipal officers should not be the moderator, since they usually present and defend warrant articles, which may confuse voters if they keep switching from a moderator role to a municipal officer role.
- Clerk may not serve as the moderator, and the moderator may not serve as clerk, since the duties of each position would be difficult to perform simultaneously.
- The town manager, who holds office under the “statutory town manager plan” may not serve as moderator.



other moderator issues



- Moderators should not be a candidate for any other office in an election they are moderating, since it is inappropriate to preside over the secret ballot election or open town meeting and also be responsible for declaring the result of that same election.
- A person may not serve as an election official if they
 - are an employee of a party of a candidate in an election
 - Have a direct or indirect financial interest in the result of a referendum election
 - Are a candidate or an immediate family member of a candidate in that election.

moderator or clerk as candidate for office



- The moderator is authorized to appoint a deputy moderator, to assist the moderator.
- Especially helpful in a bifurcated meeting, since the moderator may wish to serve at the open town meeting, but may not be willing or able to serve throughout the secret ballot portion.
- Good practice, since things can happen on short notice.

appointment of deputy moderator





- Clerk opens the town meeting at the time detailed in the warrant, by reading the greeting of the warrant, which is a public announcement of the authority under which the meeting is being held.
- Clerk calls for election of a moderator by written ballot, which must be the first article on the warrant.
- Clerk receives and counts the votes. If only one person is nominated, anyone present may vote, but at least three votes must be cast.
- Clerk administers the oath to the moderator.

opening the town meeting



- For a secret ballot election, the moderator is the presiding officer and is in charge of the election from the moment of being sworn in to the delivery of counted ballots, tally sheets and other election materials to the clerk.
- For an open town meeting, the moderator is the presiding officer and is in charge from the moment of being sworn in until the gavel falls following a vote for final adjournment.
- Upon final adjournment, the moderator's office and power end. Also, the moderator has no power during any recess, between the two parts of a bifurcated meeting.

duration of moderator's authority





- 30A MRSA Section 2524 states that the moderator must preside over and supervise the voting at the meeting.
- If the municipal clerk isn't present and has no appointed deputy or assistant, then the moderator must appoint a temporary clerk immediately after being elected and sworn.
- Title 30A takes precedence over 21A regarding why the clerk does not supervise over these elections. The clerk has no authority to supervise the moderator.

duties of the moderator





- If the clerk who is to serve at this meeting has not already been sworn, the moderator will swear in the clerk.
- The moderator proceeds to Article 2, which calls for the election of officers by written ballot and Article 3, which calls for the election of officials to be chosen by some other voting method, such as show of hands.

procedure after election of moderator



- The moderator should call for nominations and state whether a second is required.
- Unless adopted rules differ, the moderator can close the nominations without a motion, by declaring they are closed after finding there are no more nominations.
- In a town where certain offices are filled using advance filed nominations, but voted at open town meeting, the floor would not be open to additional nominations unless no papers have been filed for a particular office.

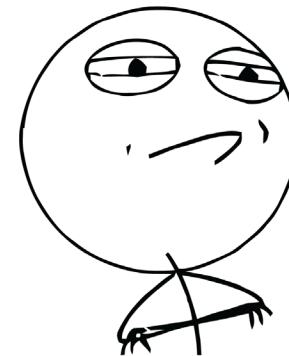
opening & closing nominations



- A candidate need not qualify for an office until after having been elected to it, but must qualify for an office before being sworn into the office; therefore challenges to nominations are moot.

challenges to nominations

CHALLENGE ACCEPTED



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- From lowest to highest level of certainty:
 1. Voice vote
 2. Show of hands
 3. Standing vote
 4. Division of house
 5. Written ballot



methods of voting



- A town official or deputy must be sworn in before assuming the duties of an office.
- The oath can be administered by:
 - The moderator (during open town meeting only)
 - The clerk
 - A notary
 - A dedimus justice

swearing in new officials



- A moderator who is a registered voter and is presiding over a meeting of their town is entitled to vote in the election of all town officials and in all town matters.
- A moderator who is a registered voter and is presiding over a meeting of their town may speak on any matter being considered at that meeting; to do so, the moderator should step down and have the appointed deputy stand in as moderator, and then be recognized by the deputy moderator. After speaking, the moderator could return to the podium and continue to preside over the meeting.

moderator as voter or speaker





Rules

- 30A MRSA Section 2524(3)(A) states that all persons shall be silent at the moderator's command, and may not speak before being recognized by the moderator.
- A person must be recognized by the moderator on each occasion on which the person wishes to speak.
- A non-registered voter may not speak unless 2/3 of the voters present give their consent.

statutory rules of procedure



- For dealing with disorderly people, 30A MRSA Section 2524(3)(A) allows:
 - For the moderator to direct the person to leave, after unsuccessfully commanding order
 - For the moderator to have that person removed and confined until adjourned, by a constable or other law enforcement officer.



disorderly conduct



- To control matters of procedure, the moderator may wish to establish rules of his/her own, or use a published set of rules of parliamentary procedure.
- No formal motion and vote are necessary, but the moderator may call for a motion and vote to adopt a specific set of rules.



other rules of procedure



- Ordinances must not be amended from the floor, but must be voted on in the version that was posted with the warrant.
- “Capped” appropriation articles can be amended to reduce the amount to spend, but cannot be amended to increase the amount to spend.
- “open-ended” articles that do not specify an amount can be amended by increasing or decreasing the amount from the recommended figure.
- Other articles can be amended, so long as the amendment is procedural, rather than substantive. Basically, if the amendment affects the basic subject matter of the article, it should not be allowed.

amendment of articles



- When a vote declared by the moderator is immediately questioned by at least 7 voters, the moderator shall make it certain by polling the voters or by a method directed by the legislative body, a/k/a “recount” of town meeting vote.
- Voter’s can appeal the moderator’s procedural ruling by making a motion, which requires a second. This motion is subject to limited debate, is not amendable, and requires a majority vote to pass.



moderator’s actions challenged or appealed



- Maine law is silent on who counts the votes in open town meeting, but one could infer that it is the moderator.
- The moderator can announce the appointment of persons to assist in the counting of the votes at open town meeting, which are referred to as “tellers” or “tellers of elections”.



tellers





- Open town meeting:
 - To elect town officials with towns of 4,000 or less is by majority (50% plus 1)
 - To elect town officials with towns larger than 4,000 is by plurality (one more vote than any other candidate)
 - All other business is decided by majority (50% plus 1)
- Secret ballot elections:
 - Candidates are decided by plurality, regardless of population
 - Referendum elections technically require a majority vote

determining the vote





- To calculate the majority, use the number of ballots cast, not the number of voters present.
- Every voter has the right to abstain from a vote, and cannot be questioned as to why or required to vote.

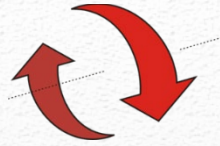
determination of vote - abstentions



- If a tie between candidates occur in open town meeting, repeated rounds of voting should continue until there is a winner. If a tie vote continues, this a failure to elect, which results in a vacancy in office that must be filled by calling a new election.
- Statutes are silent on how to handle a tie vote on an issue at open town meeting. A voter can motion to revote an issue. In this case, it may be helpful to use a more definite means of voting, and perhaps recess to allow time for voters to clarify the issue. If a tie cannot be broken, the issue fails.

tie vote – open town meeting





- If a tie vote results for a candidate election, the moderator should ensure that the meeting is adjourned to a date certain rather than finally adjourned, for the holding of a run-off election between the tied candidates.
- The run-off election should be set for a date at least 40 days from the original election, to allow 7 days for candidates to withdraw, and for absentees to be prepared and printed to allow absentee voting for at least 30 days prior.
- A new warrant is required, whether the run-off election is a continuation of the prior meeting or a separate, new meeting.
- For referendum issues, a tie vote is a failure of the issue to carry, which means another vote can only be taken on this issue by calling another meeting.
- A secret ballot vote takes precedence over a vote by any other means at the same meeting; therefore, an open meeting held as the second part of a bifurcated meeting cannot hold a vote to try to break a secret ballot tie vote.

tie vote – secret ballot elections



- An open town meeting cannot reconsider an election of a person to an office. The only way to reconsider in the same meeting is by motion to challenge the moderator's declaration of the count, by at least 7 voters immediately after the vote is announced. If no challenge is made, the election is final.
- A motion to reconsider a warrant article that has already been acted upon by open town meeting can be made at any time up to the final adjournment of the meeting.

reconsideration of an election



NO

- A vacancy in office occurs when the apparent winner declines to accept the office. The office is not awarded to the second highest vote-getter, but is to be filled by calling a new election to fill the vacancies for municipal officers and school committees.
- The municipal officers are allowed to fill vacancies in other elected offices by appointment.

decline office



- No state law establishes a minimum number of voters who must be present to take action at a town meeting; but a town may establish quorum requirements by charter if they wish.
- Two state statutes give quorum requirements:
 - To reconsider a referendum vote of a SAD or RSU issue, there must be present at the reconsideration meeting at least as many voters as were present at the meeting that took the original action.
 - In changing from a board to a single assessor, the determination is effective only if the total of the votes both for and against the determination equal or exceed 10% of the number of votes cast in the town at the last gubernatorial election.

no quorum required for town meeting



- A recess is a break in a meeting, usually at mealtime, or in an extended open town meeting, or to await the counting of written ballots. It can be taken by formal vote of the meeting, or the moderator can suggest it, with the voters informal consent.

recess – open town meeting





- Two kinds of adjournment:
- Adjournment sine die: is a latin phrase that means “without day”, which is a final adjournment. This marks the end of the moderator’s tenure, the end of the meeting’s ability to reconsider any action taken or to take up any unfinished business. A new warrant would have to be posted to take up any omitted or additional business.
- Adjournment to a date certain is in the nature of an extended recess, or one that extends at least overnight. When reconvened, the meeting can take up where it left off when it voted to adjourn.

adjournment – open town meeting



- There can be no motion to adjourn at a secret ballot election until the polls have closed. There is no authority to halt and continue voting at another time.
- If a secret ballot election is the first part of a bifurcated meeting, there is no need to recess or adjourn after the close of secret ballot voting, since the warrant establishes the place and time when the open portion will convene.
- If a secret ballot election is the second part of a bifurcated meeting, or is the whole meeting, then the meeting must be adjourned after the results of the election have been certified. Usually, adjournment is sine die, unless there is a tie in a candidate race. In this case, the moderator should adjourn to a date certain for the holding of a run-off election.

recess and adjournment in secret ballot election



- Which three offices must be elected by written ballot
- Information about written ballots
- Who may speak at town meetings
- How to recount a town meeting vote
- Difference between a majority and a plurality vote
- What to do with a tie vote
- Moderator duties and restrictions

Knowledge check





- You have reached the end of Module 7 of the Town Meeting and Elections class.
- For specific questions on any topic in this module, please contact the legal department at Maine Municipal Association, your town's attorney, or a clerk mentor.
- Please print this final page as proof of completion of this module.
- You may submit the final page to MMA along with the other eleven modules' completion pages to obtain a certificate to be used for certification points.

thank you

