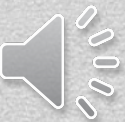


# Town Meeting & Elections

Chapter 4

Other Special Preparations



# Introduction

- This module will cover special preparations regarding municipal referendum questions, ordinances and annual town reports.

## introduction

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- Referendum questions can come from order of the municipal officers or by citizens' petition.
- Many state laws require action by secret ballot on certain issues, even in towns that have not adopted the secret ballot process.



# overview

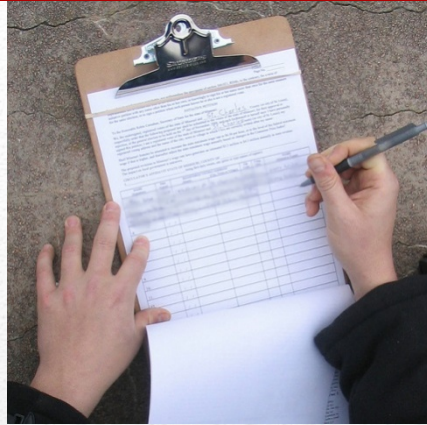


- The municipal officers can order any question to be decided by secret ballot, for an issue either initiated by the municipal officers or through the petition process.
- The secret ballot can only be ordered for issues only, and not to candidate elections, since only the voters can specify through town meeting whether they will be elected from the floor of town meeting or by secret ballot.
- An order of the municipal officers that call a referendum election must be filed with the clerk at least 60 days before the election can be held.

**by order of municipal  
officers**







- In a municipality that has adopted the secret ballot process for election of local officials, voters may submit a petition for a referendum and request a secret ballot vote, which should be honored by the municipal officers.
- If the petition does not specify a method of voting, the municipal officers have discretion to place the item for secret ballot voting or as an open town meeting item.

# by petition



[30-A M.R.S.A. § § 2522 and 2528(5)]  
(Use of this *particular* form is not required)

"Shall the Town vote to sell at unreserved public auction within thirty (30) days of this vote a 34 acre parcel of land (approximate) valued by the town assessor at \$20,400, designated on Tax Map 21, as Lot 15?"

[illegible][illegible]

The form of the article is stated in this example ("Shall the Town vote?") is the form commonly used for secret ballot referendum questions; for town meeting questions, the common style is "To see if the Town will?"; *However*, for all ordinances, whether voted on at town meeting or at referendum, the form of the question prescribed by statute is: "Shall an ordinance entitled '[name of proposed ordinance]' be enacted?" For amendments to ordinances, a similar form is recommended. Unless specifically authorized by statute, a secret ballot referendum may only be requested if the municipality has accepted that process of voting for municipal officials pursuant to 30-A M.R.S.A. § 252B.]







- The ability to shorten the 60-day deadline pertains only to the filling of vacancies in office, not to referendum elections.

# shortening process

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**Sample Notice of Shortened Nomination Process**

The Selectmen of the Town of \_\_\_\_\_ hereby give notice that they have ordered, pursuant to 30-A M.R.S.A. § 2528(4)(E), that a shortened nomination process be used to fill a vacancy on the [Board of Selectmen / School Board or Committee]. The schedule for nominations will be as follows:

Nomination papers will be available beginning on \_\_\_\_\_.

Signed nomination papers must be returned to the Town Clerk by the close of business hours on \_\_\_\_\_.

Any questions regarding the nomination process shall be directed to the Town Clerk at (207) \_\_\_\_\_ or in person at the Town Office.

BOARD OF SELECTMEN,

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

**Form Instructions:** This sample form may be used to provide notice of a shortened nomination process in accordance with 30-A M.R.S.A. § 2528(4)(E). That statute allows the standard 85-day nomination process to be shortened when necessary to fill a vacancy on a board of selectmen or school board. The deadline for return of signed nomination papers must be set for not less than 14 days prior to election day, and the date for availability of papers should be set for no less than 10 days prior to the return deadline. It is recommended that the return deadline be set for more than 30 days prior to the election, where possible, so that absentee ballots may be prepared and made available in accordance with 21-A M.R.S.A. § 752. Notice of the shortened nomination process must be posted in the same place or places that the warrant is posted and local media representatives must also be notified of the order.

319

# sample notice of shortened nomination process

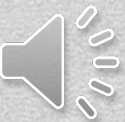
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- Municipal Charter adoption, revision, modification or amendment (30-A MRSA Sec. 2105)
- Local option liquor referendum votes on retain sales (28-A MRSA Sec. 121) and bottle clubs (21-A MRSA Sec. 162)
- SAD and RSU elections (20-A MRSA Sec. 1353 and 1501)
- Votes to approve the issuance of revenue bonds relating to certain revenue-producing facilities (30-A MRSA Sec. 5404)
- To approve a school construction project (20-A MRSA 15904)
- Formation of a single member and multi-member electric districts (35-A MRSA Sec. 3903 and 3904)
- Municipal de-organization (30-A MRSA Sec. 7202 and 7209)

# **statutory referendum elections**





- The municipal officers must hold a public hearing on the subject of an article to be voted on by secret ballot referendum at least 10 days before the election, to inform voters on the matter and allow them to discuss it (which is intended to take the place of discussion that would occur at an open town meeting).
- At least 7 days before the hearing the municipal officers must give notice of it by posting a copy of the proposed article, with the date, time and place of the hearing in the same manner required for posting a warrant. A return of the posting must be made, stating the manner of notice and when it was given.

# **secret ballot referendum hearings**

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- Campaign finance reporting is required in towns and cities of 15,000 or more population.
- Towns and cities under 15,000 in population may opt in by vote to have reporting laws apply to them.
- Reports of municipal political action committees are filed with the municipal clerk, not with any state office.

# **municipal referendum campaign finance reporting**

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- 30-A Section 3001-3009 sets forth provisions relating to ordinance authority.
- At least 7 days in advance of town meeting, the municipal officers must certify one copy of a proposed ordinance to the municipal clerk, who must keep the certified copy on file and make it available for public inspection, and must make copies available for distribution to the voters either in person or at the town meeting.

# ordinances





**Municipal Officers' Certification of Official Text of a Proposed Ordinance**  
**[30-A M.R.S.A. § 3002(2)]**

To the Town Clerk of the Town of \_\_\_\_\_:

We hereby certify to you that the document to which we have affixed this certificate is a true copy of the official text of an ordinance entitled "Town of \_\_\_\_\_ Ordinance," which is to be presented to the voters for their consideration on \_\_\_\_\_, 20\_\_\_\_.

Pursuant to 30-A M.R.S.A. § 3002(2), you will retain this copy of the complete text of the ordinance as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the town meeting/polling places on the day of the vote.

Dated: \_\_\_\_\_, 20\_\_\_\_.

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

Town Selectmen

[Notes: This form should be executed, and the ordinance and the form delivered to the Clerk, not less than seven days before the day of voting. See 30-A M.R.S.A. § 3002(2).]

When voting is to be by secret ballot, municipal officers should endeavor to certify the ordinance text not later than the 45<sup>th</sup> day before the meeting. See 30-A M.R.S.A. § 2528(5). This would mean that all *developmental* hearings on the ordinance will have to be held before the 45<sup>th</sup> day before election day.

By law, no ordinance of any municipality subject to this subsection may be held invalid due to the municipality's failure to comply with this subsection unless the plaintiff is harmed or prejudiced by that failure. 30-A M.R.S.A. § 3002(2)(A).]

# sample municipal officers' certification of proposed ordinance text



- An article to enact an ordinance MUST be worded as follows:
  - Article: \_\_\_\_: “Shall an ordinance entitled ‘[here state the name of the ordinance]’ be enacted?”
- Although state law doesn’t address language for ordinance amendments, MMA recommends this sample language:
  - Article: \_\_\_\_: “Shall an ordinance entitled ‘March 2001 amendments to the Town of Sampleton Animal Control Ordinance’ be enacted?” OR
  - Article: \_\_\_\_: “Shall the following amendment to the Town’s Animal Control Ordinance be enacted?” Section 15 is amended to read: “Violation of the ordinance is a civil violation for which a penalty of ~~\$50~~ \$100 may be adjudged.”

# **form of article adopting or amending an ordinance**







- The statutory form of the question for adoption or amendment of ordinances asks a “yes/no” question, which would seem to indicate that no amendment can be made from the floor of open town meeting,

## **amendments from the floor of open town meeting**





- The clerk must prepare attested copies of any proposed ordinance and have it posted in the same manner as the warrant for town meetings.
- Brief ordinances can be included in the warrant, so by posting the warrant, the requirements for ordinance posting is met.
- If an ordinance doesn't appear in the warrant itself, the warrant should include an article calling action on it and should make reference to an attached copy.
- If a proposed ordinance exceeds 10 pages and is difficult to post (i.e. comprehensive plan), the warrant and warrant article can include a statement that copies of the text of the ordinance and any related materials are available from the town clerk.

**post in or  
with warrant**





- Title 30-A Section 3003 permits adoption, amendment or repeal of certain codes by reference.
- Requirements for adoption of codes by reference:
  - One copy must be filed in the clerk's office for 30 days before the adoption of the ordinance, and made available for public use, inspection and examination.
  - The ordinance adopting the code must state any penalties for violation of it, since no part of the penalty can be incorporated by reference only.
  - If the code is being promulgated (the act of formally declaring a law after enactment) by a regional agency, the municipality must be within the territorial boundary of that agency.

# **adoption of codes by reference**





- There must be a public hearing held at least 10 days prior to consideration of any article being considered by secret ballot election, which also pertains to ordinances.
- If there are substantive changes to the ordinance as a result of the public hearing, a further hearing must be held on the new version of the ordinance.

## **public hearing preceding secret ballot vote on ordinance**







- Although there is no requirement to hold a public hearing on an ordinance in advance of town meeting, since it can be discussed from the floor, it is good practice to do so since ordinances cannot be amended from the floor.

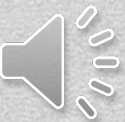
**advance hearings recommended  
for open town meeting votes on  
ordinances**





- Samples of ordinances that can be enacted directly by the municipal officers:
  - Cable TV, franchising and regulation (30-A Sec. 3008)
  - Development moratoria, extension of a moratorium for an addition 180 days (30-A Section 4356)
  - Drug and alcohol testing, adoption of a policy to test employees with CDL licenses (49 CFR Part 382)
  - Ethics, adoption of a policy (30-A Sec. 2607)
  - General Assistance, enact an ordinance for administration, and amending the maximum levels for assistance annually (22 Sec. 4305)
  - Harbor channels, make rules and regulations (38 Sec. 2)
  - Lodging Houses, enact an ordinance requiring licensure (30-A 3811)
  - Motor vehicle traffic and parking, enact an ordinance to regulate traffic and parking on public ways, plus on frozen lakes (30-A 3009)
  - Public Water Supplies, adopt regulations regarding the uses of sources of the public water supply or land overlying aquifers and their recharge areas (22 Sec. 2642)

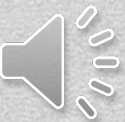
**certain ordinance within exclusive  
legislative power of municipal  
officers**





- Seasonal road closings, adopt rules for temporary closure of local roads or restricting vehicle weight limits for extra protection (29-A Sec. 2395)
- Sewer service charges, establish service charges for use of they system (30-A Sec. 3406)
- Single assessors, enact an ordinance providing for a single assessor (30-A Sec. 2526)
- Snowmobile and ATV access routes, establish routes on public ways (12 Sec. 13106 and 13107)
- Subdivision, may adopt subdivision regulations (30-A 4403)
- Unpaid taxes, adopt an order requiring the tax collector and treasurer to apply tax payments to the oldest unpaid bill (36 Sec. 906)
- Winter road maintenance, where the legislative body has authorized, the municipal officers may determine that certain roads can be closed to winter maintenance from November through April for up to 10 years (23 Sec. 2953)

**certain ordinance within exclusive  
legislative power of municipal  
officers (continued)**





**NOTICE  
OF  
PUBLIC  
HEARING**

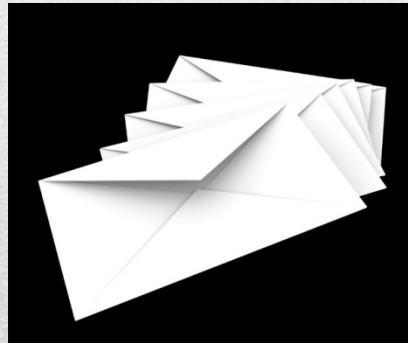
- Before a municipality may adopt or amend a zoning ordinance or map, the municipal reviewing authority (planning board in most municipalities) must hold a public hearing for public comment.
- Notice of this hearing must be posted and published
  - Posting in the municipal office must take place at least 13 days before the public hearing.
  - Publication must be done 2 times in a newspaper which has general circulation in the municipality, at least 12 days before the hearing and at least 7 days before the hearing.

## **zoning ordinances – special notice required**





- Additional notice to individuals is required where the zoning ordinance either prohibits all industrial, commercial or retail uses, OR permits these classes of uses where they were prohibited.
- Additional individual notice is also required when the boundary of a district that details where a class of uses is prohibited or allowed.



## **individual notice requirement for certain zoning changes**



- When a petition is received that requests either adoption or amendment to the zoning ordinance, map or comprehensive plan, the municipal officers should refer the question to the local reviewing authority, who is usually the planning board. They can best determine whether the proposal is consistent with the town's comprehensive plan. If it is not consistent, is it invalid. But the reviewing authority may choose to amend the comprehensive plan.

**petition for zoning ordinance,  
comprehensive plan, or zoning  
map adoption or amendment**







- There are separate posting and publishing requirements for public hearings in connection with conditional and contract rezoning of property. Refer to 30-A Section 4352 and MMA's Municipal Clerks' Manual for details.

# conditional and contract zoning







- Public notice and hearing requirements for shoreland zoning require individual notice whenever land is being considered for inclusion in a resource protection zone, since development in these zones is strictly limited. See 38 MRSA Section 438-A.

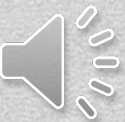
## **adoption or amendment of shoreland zoning ordinances**





- Farm Operations (7 MRSA Sec. 155), clerks must submit a copy of any proposed ordinance regarding farm operations to the Commission of the Maine Department of Agriculture
- General Assistance (22 MRSA Sec. 4305), newly adopted ordinance and any amendments must be filed with the Commissioner of Health and Human Services after adoption
- Pesticides (22 MRSA Sec. 1471-U), notice and a copy of an ordinance regulating the storage, distribution, or use of pesticides must be provided to the Board of Pesticide Control at least 7 days before adoption.
- Shellfish Conservation (12 MRSA Sec. 6671), before adopting an ordinance, a municipality must have raised or appropriated money for a shellfish conservation program, and written approval of the ordinance must be obtained from the Commission of Marine Resources
- Shoreland Zoning (38 MRSA Sec. 438), municipal shoreland zoning ordinances, amendments and any repeals of them are not effective unless approved by the Commissioner of Environmental Protection
- Solid Waste Disposal Facilities (38 MRSA Sec. 1310-U), municipalities may adopt ordinances governing the siting of solid waste disposal facilities, but local ordinances should not contain criteria stricter than those established in state laws and regulations
- Timber Harvesting, (12 MRSA Sec. 8869), ordinances regulating timber harvesting and any amendments to them must be developed in consultation with the Department of Conservation and reviewed by a professional forester before adoption.
- Water Level Regimes; Minimum Flow Requirements, (30A MRSA Sec. 4454), establishes municipal authority to adopt ordinances that regulate water levels and minimum flow requirements for bodies of water and dams that are entirely within the municipality's boundaries
- Firearms Discharge Ordinances (30-A Sec. 3007), within 30 days following enactment or amendment of such an ordinance, the municipality must provide a copy to the Department of Inland Fisheries & Wildlife, along with a map depicting areas of town affected by the ordinance or amendment

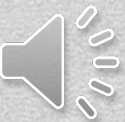
# state agency filing or review requirements



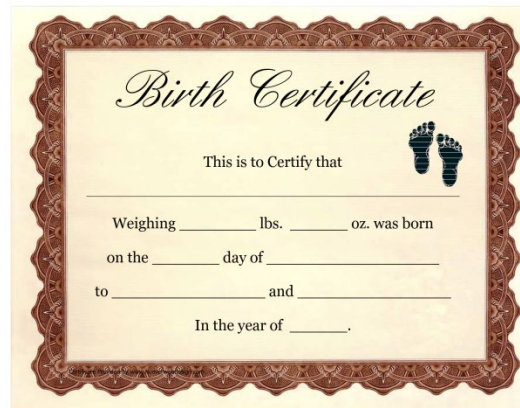


- Required contents (30-A MRSA Sec. 2801):
  - A record of all financial transactions of the municipality during the municipal year
  - A detailed statement of municipal assets and liabilities, including a list of all delinquent taxpayers and the amount due from each
  - Any engineering and survey reports relating to the municipal boundaries, and all related proceedings and actions of the municipal officers
  - Any other information the municipal officers consider to be of historical significance.
  - A statement that the complete post-audit report for the last municipal year is on file at the municipal office, and the following excerpts from the report
    - Auditor's name and address
    - Auditor's comments and suggestions for improving the financial administration of the town
    - A comparative balance sheet
    - A statement of departmental operations.

# annual report





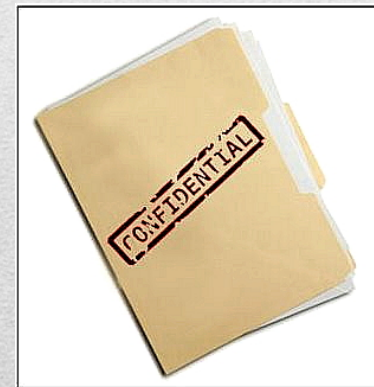


- Births – to include the number of births, with no names
- Deaths – the name of the deceased, the date of death, and age, location (town) where the death occurred.
- Marriages – the names of the parties and the date of the marriage

# annual report – vital records



- The names of persons issued concealed firearms permits must not be included in the annual report
- No information regarding a general assistance applicant or recipient can be disclosed to the general public
- No information relative to a child's birth record regarding illegitimacy or adoption, and no information regarding the cause of death for a decedent may be released.



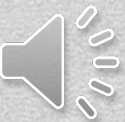
# **confidential and privileged information**





- Although the tax collector is required to make a report of tax abatements at the annual meeting, no law requires that this report be included in the annual report.
- It is recommended that no information be included in the tax collector's report which permits identification of taxpayers who were granted poverty or infirmity abatements.

## **poverty/infirmity abatements**



- Certain state agencies request that a copy of the annual report be provided to them each year, as follows:
  - State Librarian
  - Department of Audit
  - Department of Administrative and Finance Services
  - The Fogler Library at the University of Maine, Orono
  - Maine Municipal Association

## **distribution of annual report to state agencies**

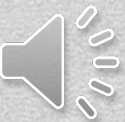
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- Copies of the annual report must be kept in the municipal office, or in the office of the clerk, and be open to inspection by voters during usual business hours. (30-A MRSA Sec. 2801)

**Availability of report – no mailing requirement**





- There is no requirement to include the warrant in the annual report, because the posted version is the official one.
- Some towns opt to mail the annual report because they can include the “doomsday notice”, which is a written notice given by the assessor’s to a taxpayer to file a list of their real and personal property and that if the taxpayer fails to file one, they are barred from obtaining an abatement of taxes – but inclusion in the annual report is not arguably direct enough notice.
- Annual reports must be made available to the voters at least 3 days before the annual meeting.
- If the report is partially incomplete, or late getting back from the printers and unavailable at least 3 days before the annual meeting, that fact will not render the meeting illegal or void. Issue the report even if some portions are not available at print time, and make the missing pieces available as soon as they are ready.

# annual report – odds & ends

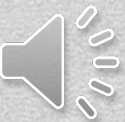




- Deadline to submit petitions
- Public hearing notice requirement
- Proper ordinance enactment and amendment language
- Annual report requirements

# Knowledge check

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- You have reached the end of Module 4 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

