

Waterford Board of Selectman Minutes
Monday, January 24, 2022
In Person – Union Baptist Church
6:00 PM

Meeting called to order: 6:00 PM

Attendance: Warner Hodgdon, Fred Saar, Clerk – Kathy Hodgdon and attached sign in sheet

Modifications to the Agenda: None

Set date for 2022 Town Meeting: Fred Saar made the motion to move Town Meeting to 6/7/22 and still have Australian balloting as there is still lots of work to be done. . The motion was seconded by Warner and approved. Debra Allard asked why to postpone it and not still have it on 3/1/22. Fred again stated there still was lots of work to do, to get all the information they needed from the Town Office for the budget. Gary Allard asked why they had not gotten assistance from the VLCT to assist in the town office. Jessie is now out sick so not working this week.

Sandra Lyon stated the Auditors will not be ready to have stuff to printers by February 2 to be ready for a March 1 meeting.

Heather Gonyaw suggested that Town Meeting be moved to April 5th, the same day as the school meeting. Sandra Lyon agreed.

Maurice Chaloux asked if could move to an in-person Town Meeting and eliminate the Australian ballot. Jasper Billig questioned how could they eliminate the Australian ballot when it was decided upon at the last meeting to go Australian ballot?

Fred and Marcia Martel then explained that the Governor had not signed the bill stating that they could move the meeting out later in the year until after the last Selectman meeting, thus being able to have in-person meeting and eliminating the need to have Australian ballot. Governor signed the bill within days of the last Selectman meeting.

Fred Saar made the motion that Town Meeting be changed to April 5th, with an in-person meeting. Warner Seconded the motion. The vote to eliminate the prior Australian Ballot was never rescinded. As of now it is Open Meeting with Australian Ballot.

Resignation of the Town Clerk & Treasurer:

Treasurer: Fred Saar mentioned that Heather Gonyaw had shown an interest in the position of Treasurer. Fred then stated her credentials saying she was qualified to do the job noting that it was only until Town Meeting and if she were to continue, she would have to run for the position. Maurice Chaloux said it should go back two separate positions of Town Clerk and Treasurer.

Fred made the motion that Heather Gonyaw be the Treasurer and Warner seconded it. Vote unanimous.

Town Clerk: Marcia Martel asked if they had to be a resident of the Town of Waterford. Kathy Hodgdon stated that, yes, they did indeed have to be a resident in order to be appointed to an elected position according to the VLCT website. Marcia Martel said her daughter could move here by Monday. She has a piece of land next to them and was planning to build a house there next year. The motion was made by Fred Saar to appoint Kandy Benedetti as Town Clerk until Town Meeting Day. Warner seconded it. Vote passed.

After the meeting the clerk contacted VLCT for clarification. Their FAQ sheet is attached.

MEETING WAS ADJOURNED AT 6:15

MEETING SIGN-IN SHEET			
Project:	Waterford Selectboard Meeting	Meeting Date:	01/24/22
	SPECIAL MEETING	PLACE	Union Baptist Church

SIGNATURE	PRINT	SIGNATURE	PRINT
	Heather M. Goyou	Kandis Barrett	Kandis Barrett
	Sandra J. Lyon	DWAYNE KEACH	Dwayne Keach
	Marcia Martel		Justin Stahl
	Debra Allard		MAURICE CHACE
	Gary Allard		Maria Jukes
BILL WILLO			Robert Gilbert
	Ron Gray		LEWIS KRASHNER
	Clanci Giddings		John Gillett
	BRYANT FLEMING		Matthew Ash
	KEVIN GILLANDER		Elke Billig
	JOSH OAKLEY		James Humond
	Gib Trevaline		Makayla Elliott
	CLEM CROWL		Jasper Billig
	Herb Nutter		Elke Billig
	Clifton Bullock		Kathy Gosling
	Helen PIKE		
	Lynn Barrett		
	Michael Barroll		
	Marcel Lapierre		



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Vacancies in Elected Office FAQs

Wednesday, October 20, 2021

This FAQ document provides general information about State law regarding vacancies in municipal office. Municipalities with a governance charter may have different requirements and responsibilities.

Vermont law states that an elected town office becomes “vacant” if the town officer resigns, is removed from office, dies, becomes unable to perform their duties due to a mental condition or psychiatric disability, or moves out of the town in which they serve. [24 V.S.A. § 961](#) [1]. A vacancy can also be created when a town clerk, selectperson, constable, lister, or fence viewer refuses or neglects - within 30 days of election or appointment - to take their oath of office pursuant to [24 V.S.A. § 831](#) [2]. However, the office will not be deemed vacant until the selectboard has warned a regular meeting for that purpose and affords the officer the opportunity to take the oath of office at the meeting. The creation of a vacancy in town government can be a time of great confusion and uncertainty for municipalities. MAC developed a list of frequently asked questions and answers to assist members with vacant elected offices.

While every effort is made to provide members with the most accurate information possible, this document does not constitute legal advice. If you are a member and have questions about vacancies or other Vermont municipal issues please contact the VLCT Municipal Assistance Center at info@vlct.org [3] or call 1-800-649-7915 for assistance.

[What laws govern vacancies in locally elected offices?](#)

Absent the existence of a municipal governance charter (the more specific provisions of which will otherwise control), the laws governing vacancies in locally elected offices can be found in [Title 24, Chapter 33, Subchapter 6, Sections 961-963](#) [4].

[How is a vacancy in a locally elected office created?](#)

A locally elected office becomes legally vacant when “a municipal officer resigns the officer’s office, or has been removed, dies, becomes unable to perform the officer’s duties due to a mental condition or psychiatric disability, or removes from town.” [24 V.S.A. § 961\(a\)](#) [1]. A vacancy can also be created when a town clerk, selectperson, constable, lister, or fence viewer refuses or neglects – within 30 days

of election or appointment – to take their oath of office. However, the office will not be deemed vacant until the selectboard has warned a regular meeting for that purpose and affords the town officer the opportunity to take the oath of office at the meeting. An elected office does not become vacant until such time as the circumstances creating the vacancy come to pass.

How is a vacancy filled?

The law provides that when a vacancy is created, “the selectboard forthwith by appointment in writing shall fill such vacancy until an election is had.” [24 V.S.A. § 963\(a\)](#) [5]. The selectboard must file a record of its appointment in the office of the town clerk who must record it in the book of town records. [24 V.S.A. § 963\(b\)](#) [5]. The law also provides that a town may fill a vacancy at a special town meeting. [24 V.S.A. § 962](#) [6]. A special town meeting may be called by the selectboard or on the application of five percent of the town’s voters. [17 V.S.A. § 2643\(a\)](#). [7]

Can the voters demand “an election” to fill a vacancy?

Yes. Because the selectboard’s appointee to fill a vacancy serves only “until an election is had,” and the law allows a town to fill a vacancy at a special town meeting, the voters may petition the selectboard for an election regardless of whether the selectboard has filled the vacancy or not. If the selectboard receives a valid voter backed petition signed by five percent of the voters of the town, it has 60 days from the date of its receipt to warn (provide official notice of) when the meeting will be held. [17 V.S.A. § 2643](#) [7]. The special town meeting date must be set for a date “not less than 30 nor more than 40 days” from the date it is warned. The statutory requirements for warning and noticing a special town meeting are found in [17 V.S.A. § 2641](#) [8]. For additional information about warning a special town meeting, please see our “[Quick Guide to Warning Special Town Meetings](#) [9]”.

Can a vacancy be filled during a state primary or federal election?

Only if the selectboard warns a special town meeting to occur simultaneously with the primary or national election. State primary and national elections do not qualify as town meetings for purposes of filling vacancies.

When must a vacancy be filled?

The law requires that a selectboard fill a vacancy “forthwith.” Unfortunately, the law does not define what exactly “forthwith” means. When interpreting statutes, courts aim to implement the intent of the Legislature and will presume that it intended the plain, ordinary meaning of words, which can be taken from the dictionary. Black’s Law Dictionary, 8th Ed defines "forthwith" as: “(1) Immediately; without delay; or (2) Directly; promptly; within a reasonable time under the circumstances.”

Who is responsible for filling a vacancy?

Most vacancies are filled by the selectboard, though there are three exceptions described below:

1. The board of cemetery commissioners has the sole authority to fill a vacancy on their own

board, but it is an authority they “may” not “must” exercise. This is the case even if a majority of the positions on the commission are vacant as the controlling law speaks to the “remaining commissioners.” A person appointed to fill a vacancy on the board of cemetery commissioners serves “until the next annual meeting.” [18 V.S.A. § 5374](#) [10].

2. A vacancy in the office of the justice of the peace is filled by Vermont’s Governor. [17 V.S.A. § 2623](#) [11].
3. A vacancy in the office of the board of listers is filled by the selectboard, but Vermont law provides that when there is less than a majority of the board and the selectboard cannot find a resident willing to serve, the selectboard may appoint a professional assessor (who need not be a town resident) until the next annual town meeting. [17 V.S.A. § 2651c](#) [12].

Who is responsible for filling a vacancy on the Selectboard?

The remaining selectpersons are responsible for filling a vacancy or vacancies on the selectboard. If there are vacancies in a majority of the selectboard at the same time so that the selectboard is unable to obtain a quorum and take binding action, the vacancies must be filled at a special town meeting called for that purpose by the remaining selectperson(s). If there are no selectpersons left in office, the Secretary of State must call a special town meeting to fill the vacancies. [24 V.S.A. § 963\(c\)](#) [5].

Can a non-resident be appointed to fill a vacancy?

No. Eligibility to serve in a locally elected office is dependent upon being a legally qualified voter of the town. “At the annual meeting, a town shall choose from among its **registered voters** the following town officers, who shall serve until the next annual meeting and until successors are chosen, unless otherwise provided by law.” [17 V.S.A. § 2646](#) [13]. Emphasis added. Being a registered voter of a town is dependent upon being a resident of that town. “Any person may register to vote in the town of their residence in any election held in a political subdivision of this state in which he or she resides who, on election day: (1) is a citizen of the United States; (2) is a resident of the State of Vermont; (3) has taken the voter’s oath; and (4) is 18 years of age or more.” [17 V.S.A. § 2121](#) [14]. Since only registered voters can hold locally elected office, only residents of the town in which the vacancies exist are eligible to be appointed to serve those offices.

Can the selectboard appoint someone to fill a vacancy who holds an office that is deemed “incompatible” by statute?

Yes, but the person appointed will have to resign one of the incompatible offices once the appointment is made. [17 V.S.A. § 2647](#) [15].

How does the selectboard choose someone to appoint to fill a vacancy?

There is no process that is specifically required by law. If the selectboard decides that it wants to appoint someone, it is up to the selectboard to decide whether to solicit or interview candidates for the vacant position. The selectboard may use the public notice of vacancy to advertise the availability of the office to interested applicants. The selectboard is free to craft the appointment process in any way it chooses, including requesting letters of interest/resumes, asking candidates to come to a board

meeting to discuss their candidacy, or having no process at all.

When someone is appointed to fill a vacancy, how long do they serve?

A person appointed by the selectboard serves “until an election is had.” [24 V.S.A. § 963](#) [5]. This means that an appointee will remain in office until the next annual town meeting (if no special town meeting is called), at which time the voters will elect a replacement to fill the balance of the office’s unexpired term, if any, or to a new term. If a special meeting is called, the person elected to the position will serve the remainder of the office’s original term.

There is an exception to this general rule. When a vacancy is created in the office of trustee of public funds, the person chosen to fill the vacancy, whether by appointment or election, “shall serve only for the remainder of the unexpired term.” [24 V.S.A. § 2431](#) [16].

How does a town officer resign their elected office?

Although not specifically required by law, it is best practice for a resignation to be given in a written document that includes the date and time that the resignation will take effect, and that is signed by the resigning officer. This will avoid any uncertainty as to when the office will become vacant and when exactly a replacement may be selected. Using a written document will also help deal with the fact that people sometimes say things in the heat of the moment that they later regret. Confirming a verbal resignation in writing is the cleanest course of action, even if the verbal resignation was recorded in the minutes of a meeting. The words and actions of an officer taken together indicate that an officer intends to resign. A letter of resignation helps solidify that intention. A resignation letter should be addressed and presented to the selectboard since the selectboard has a statutory duty to post notice of the vacancy and to fill it “forthwith by appointment in writing . . . until an election is had . . .” Additionally, the town clerk, depending on the office, may have to notify the State. [24 V.S.A. §§ 961](#) [1], [963](#) [5].

When is a resignation effective?

A resignation is not effective until the date and time of the announced resignation has passed. An elected officer announcing that he or she “will resign in one month” is not bound by Vermont law to leave the office at the self-proclaimed date. On the other hand, if an elected officer announces the date of their last day, and that day comes and goes without the officer changing their mind, then the office becomes vacant on the next day.

Does a resignation need to be accepted to be effective?

No, there is nothing in State statute or case law that requires that a selectboard to “accept” a resignation. A leading treatise on municipal law states that “[w]here the holding of an office is not compulsory, in the absence of legal provision, resignation upon delivery to the proper authorities takes effect without acceptance; and in such case a successor may be appointed or elected without the formal acceptance of the resignation.” McQuillin, *Municipal Corporations*, § 12.125. There being no “legal provision” in Vermont to the contrary, it seems appropriate to focus on receipt rather than acceptance of a resignation.

Can a resignation be withdrawn?

Yes, but only prior to the date and time that the resignation takes effect. A resignation cannot be withdrawn after it takes effect. Since a resignation is completely voluntary and does not have to be accepted, a court would likely hold that when an officer has given a specified date for resignation, that officer is free to rescind their resignation at any time before the stated effective date.

Does the public need to be notified of a vacancy?

Yes. The Town is obliged to provide public notice of the vacancy within ten days of the effective date of the vacancy by posting such notice in the town clerk's office and at least two public places in town. [24 V.S.A. § 961\(a\)](#) [1]. The notice serves to inform the public of the change in leadership and of the citizens' right to petition for a special town meeting to elect someone to the position. [24 V.S.A. § 961\(a\)](#) [1]. Posting the notice of vacancy is required in all instances, regardless of whether the selectboard fills the vacancy by appointment. Note that the selectboard may appoint to fill a vacancy before the notice is publicly posted. Please see below for a model "Notice of Vacancy."

Is there a template I can use for a Notice of Vacancy?

VLCT Model Notice of Vacancy. Vermont law merely states that the selectboard is obliged to post notice of the vacancy but does not give any detail about what the notice looks like. Below is a suggested template for a vacancy notice. A selectboard may fill the vacancy prior to noticing it, though not prior to the creation of the vacancy. The selectboard may also want to supplement this template to advertise the availability of a vacant office to interested applicants.

Copy below this line

TOWN OF [INSERT NAME OF TOWN]

NOTICE OF VACANCY

[insert date of notice]

In accordance with 24 V.S.A. § 961(a), the Selectboard of the Town of [insert name of town] hereby gives notice of a vacancy created by [insert applicable reason such as "resignation," "death," etc.] in the office of [insert name of office] effective [effective date of vacancy].

The Selectboard, pursuant to 24 V.S.A. § 963, [insert "will make" or "made" as appropriate] an appointment to fill this vacancy at its meeting on [insert date and time of meeting]. The person appointed will serve until a town election is had.

CITIZENS' RIGHT TO PETITION FOR VOTE: Titles 17 V.S.A. § 2643 and 24 V.S.A. § 963 grant citizens the right to petition for a vote to replace the Selectboard's appointee at a special town meeting. If a special town meeting is called, the newly elected town officer will remain in office for the balance of the unexpired term. If a special town meeting is not called, the Selectboard's appointee will remain in office until the next annual town meeting.

To exercise this right, citizens must present a petition calling for an election for this office signed by five percent of the legal voters of the Town to the Town Clerk prior to the next annual Town Meeting.

ADDITIONAL INFORMATION pertaining to this notice and its contents may be obtained by contacting [*insert name, title, phone number*] during normal office hours.

Dated this ____ day of _____, 202_.

Selectboard Chair

Links

- [1] <https://legislature.vermont.gov/statutes/section/24/033/00961>
- [2] <https://legislature.vermont.gov/statutes/section/24/033/00831>
- [3] <mailto:info@vlct.org>
- [4] <https://legislature.vermont.gov/statutes/chapter/24/033>
- [5] <https://legislature.vermont.gov/statutes/section/24/033/00963>
- [6] <https://legislature.vermont.gov/statutes/section/24/033/00962>
- [7] <https://legislature.vermont.gov/statutes/section/17/055/02643>
- [8] <https://legislature.vermont.gov/statutes/section/17/055/02641>
- [9] <https://www.vlct.org/node/14419>
- [10] <https://legislature.vermont.gov/statutes/section/18/121/05374>
- [11] <https://legislature.vermont.gov/statutes/section/17/053/02623>
- [12] <https://legislature.vermont.gov/statutes/section/17/055/02651C>
- [13] <https://legislature.vermont.gov/statutes/section/17/055/02646>
- [14] <https://legislature.vermont.gov/statutes/section/17/043/02121>
- [15] <https://legislature.vermont.gov/statutes/section/17/055/02647>
- [16] <https://legislature.vermont.gov/statutes/section/24/065/02431>