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CHAPTER 1 - Election Preparations

Section 5-101 Definitions

The provisions of this title shall apply to every municipal election.

Unless the context clearly requires a different meaning, as hereby used:

"Voter" shall mean any person who possesses the statutory and constitutional qualifications for voting;

"Election" shall mean the procedure whereby the voters' of this State or any subdivision thereof elect persons to fill public offices, or elect members of a constitutional convention or vote on public questions;

"Any election" or "all elections" shall include any primary, general or special election held in this State or any of its subdivisions.

"Office" shall be construed to mean "public office" which shall include any elective office provided for by this municipality to which a salary or other compensation attaches.

"Candidate" shall mean any person to be voted for at an election.

"Public Question" shall mean any issue or proposition now or hereafter required by the governing body of this municipality for decisions at elections.

"Minor" shall mean a person who has not become eighteen years of age.

Section 5-102 Persons Entitled to Vote

The citizens of this municipality are allowed to vote in any town election, except a person who has not been registered, or who is a minor, or who is of unsound mind, or who has been under conviction of treason, or a felony, or who has not been a resident of this municipality for more than sixty days.

Section 5-103 Municipal Voting Precinct

The Town Council for purposes of a municipal election shall establish the following precinct(s) NUMBER 1. The location of the polling place shall be Town Hall.

Section 5-104 Precincts Change

If by reason of destruction, the structure at which a voting place is established, or if for any other reason the election cannot be held there, unless changed by the Recorder, the commissioners of election (section 5-110) of such place may hold the election at the nearest possible place which is suitable for the election.

Section 5-105 Cards of Instructions of Voters

The Recorder of this town shall cause to be printed in clear type instructions for the guidance of voters in marking their ballots. He shall give twelve of these to the commissioners of election when he delivers the ballots to them. The commissioners shall cause these cards to be placed within the sixty foot limit of the polls and one outside the sixty foot limit. Such cards shall contain full instructions to the voters as to what shall be done:

- (a) To obtain ballots for voting;
- (b) To prepare the ballots for deposit in the ballot box;
- (c) To obtain a new ballot in place of one accidentally spoiled.

The ballot commissioners shall also cause to be printed ten or more copies of ballots on colored paper to be known as sample ballots which shall be posted along beside the cards of instruction.

Section 5-106 Recorder to Provide Election Supplies; Requirements for Poll Books and Ballot Books

The Town Recorder shall provide poll books, tally sheets, ballot boxes, voting booths, registration record and forms, strong and durable envelopes upon which to make returns, blank forms for certifying returns and whatever further supplies are needed for holding the elections and making the returns thereof. The poll books shall bear upon each page in the following heading:

"Names of persons voting at precinct No.-- in the District of ---, in the County of --- in the Town of --- on this (the) day of --- in the year ---. Such poll books shall have columns headed respectively: "Number of Voters," "Signature of Voter," and "Challenge of Voter," and shall have under the heading "Number of Voters," numbers in consecutive order to the bottom of each page. Forms for oaths of commissioners of election and poll clerks shall be written or printed on the poll books. Each ballot box shall be provided with two locks with difference keys so that the key for one lock will not open the other, and shall be so constructed as to be safely and securely closed and locked, with an opening in the lid of the box sufficient for only the passage of a single ballot.

Section 5-107 Recorder to Arrange Polling Places and Equipment; Requirements

The Town Recorder before each election, shall secure, in each voting precinct a suitable building in which -to hold the election, and shall cause the same to be suitably provided with heat, drinking water and light and a sufficient number of booths or compartments, each containing a table, counter or shelf and furnished with proper supplies for preparing ballots, at or in which voters may conveniently prepare their ballots, so that in the preparation thereof they may be secure from the observation of others. The number of such booths or compartments shall not be less than two nor more than five.

Section 5-108 Ballot Commissioners; Selection; Duties Generally; Vacancies

The Town Recorder and two persons by him appointed, shall constitute a board of ballot commissioners, of which board the said Recorder shall be chairman. Ballot commissioners shall be appointed between the fifteenth and thirtieth days of January in each- year in which-a municipal election -is to be held, for a term of two years beginning on February next ensuing. They shall perform the duties of such commissioners at all municipal elections held in the municipality during their term of office. A vacancy shall be filled in the same manner as an original appointment.

Section 5-109 Municipal Precinct Registration Records

At least three days prior to every municipal election, it shall be the duty of the Town Recorder to procure from the municipal precinct file in the office of the clerk of the county commission the registration records necessary for the conduct of such election.

Such records shall, within ten days after the date of this municipal election, be returned to the office of the clerk of the county commission by the municipality.

In case of a contested municipal election, the registration record of any challenged voter shall be made available by the clerk of the county commission to the town council empowered to determine the contest. Such record shall be returned to the office of the clerk of the county commission within a reasonable time after the contest shall have been finally decided.

The person obtaining and returning registration records shall obtain a receipt as proof.

In the event any municipal registration record is lost, destroyed, defaced or worn in any way as to warrant replacement, it shall be the duty of the clerk of the county commission to prepare a duplicate of such record and it shall be the duty of this municipality to pay for such replacement.

Section 5-110 Election Commissioners and Clerks - Appointment and Notification; Vacancies; Authority to Administer Oaths, etc. AMENDED 04/09/02

The Town Council shall hold a regular or special session at the Town Hall on the first Tuesday of the month next preceding the date on which

any election is to be held and appoint three commissioners and two clerks to hold the election in each precinct in the town. For every precinct in which there are three hundred, but not more than four hundred* registered voters, there may be two boards of election officers, and for all precincts in which there are more than four hundred registered voters, there shall be two boards of election officers, and where two boards are used, each board shall consist of three election commissioners and two poll clerks, one of which boards shall be designated the "receiving board" and the other the "counting board". Provided that for any special election where there are only public questions to be voted upon, there shall be but one board of election officers in each precinct, consisting of three commissioners and two poll clerks.

The Town Council shall, by mail, notify all commissioners and poll clerks of their appointment, and include with such notice an appropriate form for each person so appointed to return indicating whether or not he will serve as such commissioner or poll clerk. It shall be the duty of all persons so appointed to immediately return said form to the town council. In the event any of the persons so appointed refuse to serve as such commissioners or poll clerks, the Town Council shall make additional appointments to replace those declining to serve.

If any person appointed receiving commissioner or clerk of election shall fail to appear at the voting place at the hour for opening the polls, the remaining commissioner or commissioners of election shall select another commissioner or clerk. If none of the receiving commissioners of the election or poll clerks shall appear at the voting place at the hour appointed for opening the polls, the qualified voters present, being at least ten in number shall select three commissioners and two clerks, and the persons so selected shall constitute the receiving board for the precinct. A vacancy or vacancies on the counting board shall be filled in the manner herein provided for filling a vacancy or vacancies on the receiving board, except that such vacancy or vacancies shall be determined and filled as of the hour appointed in this title for the counting board to attend at the polls. Any commissioner of election acting at any election precinct is hereby empowered and authorized to administer oaths and to take and certify affidavits in relation to any matter or thing required or permitted to be done by any of the provisions of this chapter in conducting and holding the election.

**AN ORDINANCE AMENDING
SECTIONS 5-110 AND 5-111 OF CHAPTER 1 OF TITLE 5
OF THE CODE OF SHEPHERDSTOWN, WEST VIRGINIA
RELATING TO MUNICIPAL ELECTIONS**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Section 5-110 of Chapter 1 of Title 5, entitled "Election Commissioners and Clerks -Appointment and Notification; Vacancies; Authority to Administer Oaths, etc.", and Section 5-111 of Chapter 1 of Title 5, entitled "Same - Qualifications", are hereby amended to read as follows:

Section 5-110 Boards of Election Officials; Nomination and Appointment; Vacancies

(A) Boards of election officials; definitions, composition of boards, determination of number and type.

(1) For the purpose of this title:

(a) The term "standard receiving board" means those election officials charged with conducting the process of voting within a precinct and consists of five persons, including one team of poll clerks, one team of election commissioners for the ballot box and one additional election commissioner: Provided, That if a municipal election is held at a time when there is no county or state election, then the standard receiving board is to consist of four persons, including one team of poll clerks and one team of election commissioners for the ballot box.

(b) The term "expanded receiving board" means a standard receiving board as defined in subdivision (1) of this subsection and one additional team of poll clerks;

(c) The term "counting board" means those election officials charged with counting the ballots at the precinct in any election using paper ballots and includes one team of poll clerks, one team of election commissioners and one additional commissioner; and

(d) The term "team of poll clerks" or "team of election commissioners" means two persons appointed by opposite political parties to perform the specific functions of the office: Provided, That no team of poll clerks or team of election commissioners may consist of two persons with the same registered political party affiliation or two persons registered with no political party affiliation.

(2) The composition of boards of election officials shall be as follows:

(a) In any municipal primary, general or special election, each election precinct is to have one standard receiving board;

(b) In any election conducted using paper ballots, counting boards may be allowed, disallowed or required as follows:

(i) For any municipal special election, no counting board may be allowed; and

(ii) In a municipal primary or general election, one counting board may be allowed, at the discretion of the Town Council for any precinct of more than two hundred registered voters.

(3) For each municipal primary and general election in the Town, the Town Council shall designate the number and type of election boards for the various precincts according to the provisions of this section.

(B) Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

(1) For any municipal primary, general or special election, the Town Council shall nominate as many eligible persons for the poll clerks and election commissioners as are required, giving due consideration to any recommendations made by voters of the Town or by candidates on the ballot.

(2) The governing body responsible for appointing election officials is:

(a) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(b) The board of education for any special election ordered by the board of education conducted apart from any other election;

(c) The municipal governing body for any primary, general or special municipal election ordered by the Town Council.

(3) When acting pursuant to (2)(c) above, the Town Council shall appoint the election officials for each designated election board no later than the forty-ninth day before the election.

(4) At the same time as the appointment of election officials, or at a subsequent meeting, the Town Council shall appoint persons as alternates: Provided, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official, or is instructed to attend and actually attends training as an alternate and, if called to do so, also serves at the polls on election day. The Town Council may determine the number of persons who may be instructed to attend training as alternates.

(5) The Town Recorder shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.

(6) Within seven days following appointment, the Town Recorder shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment, and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(7) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the Town Recorder his or her agreement to serve within fourteen days following the date of appointment is considered vacant and the Recorder shall proceed to fill the vacancies according to the provisions of this section.

(8) If an appointed election official fails to appear at the polling place by forty-five minutes past five o'clock a.m. on election day, the election officials present shall contact the office of the Town Recorder for assistance in filling the vacancy and the Recorder shall proceed as follows:

(a) The Recorder may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person of the same political party as the party that nominated the person originally appointed;

(b) If the election officials present are unable to contact the Recorder within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(c) If two teams of election officials, as defined in subsection (A) of this Section 5-110, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

5-111 Election officials; eligibility, suspension of eligibility

(A) To be eligible to be appointed or serve as an election official in any municipal election held in the Town, a person:

(1) Must be a registered voter of the Town: Provided, That if the required number of persons eligible to serve as election officials for a municipal election are not available or are not willing to serve as election officials for a municipal election, a registered voter of the county in which the municipality is located may serve as an election official for elections held within the municipality.

(2) Must be able to read and write the English language;

(3) May not be a candidate on the ballot in the election;

(4) May not be the parent, child, sibling or spouse of a candidate on the ballot in the precinct where the official serves;

(5) May not be a person prohibited from serving as an election official pursuant to any other federal or state statute; and

(6) May not have been previously convicted of a violation of any election law.

(B) The Town Council may, upon majority vote, suspend the eligibility to serve as election official in any election for four years, for the following reasons:

(1) Failure to appear at the polling place at the designated time without proper notice and just cause;

(2) Failure to perform the duties of an election official as required by law;

(3) Improper interference with a voter casting a ballot, or violating the secrecy of the voter's ballot;

(4) Being under the influence of alcohol or drugs while serving as an election official; or

(5) Having anything wagered or bet on an election.

(C) The Town Council may, upon majority vote, suspend the eligibility to serve as an election official in any election for two years, upon petition of twenty-five registered voters of the precinct where the official last served and upon presentation of evidence of any of the grounds set forth in subsection (B) of this section: Provided, That the petition requesting the suspension of the election official is filed with the Town Council at least ninety days prior to an election date. The names of those persons signing the petition must be kept confidential.

Section 5-111 Same - Qualifications

No person shall be eligible to be appointed as a commissioner of election or as a poll clerk in any election precinct who is not a qualified voter in the town in which such precinct is situated; or who has any thing of value bet or wagered on the result; or who is a candidate to be voted for at the ensuing election; or who is addicted to drunkenness; or who is not of good character and standing; or who has served or acted in the capacity of deputy sheriff within six months prior to the date of holding any such municipal election.

Section 5-112 Same.- Oaths; Authority to Administer

Each commissioner of election and poll clerk, appointed or selected as aforesaid, shall, before entering upon the discharge of his duties, take and

(See Page 43 for Sample Oaths)

Signature and official title of person
before whom sworn

Said oaths may be taken before any person authorized to administer oaths, but if no other person be present at any place of holding any election, they may be taken before, and administered by, one of the commissioners of such election so appointed who in turn may take the same before another of such commissioners. Either of the commissioners may administer the oaths to the poll clerks. For the purposes of this chapter all commissioners of election are authorized to administer oaths. Such oaths shall appear completed and certified on one of the poll books of every election precinct.

Section 5-113 Days and Hours of Election

Regular municipal elections shall be held in this Town on the first Tuesday in June of each even numbered year unless this date is the same as a state or county election. Then, the municipal election will be held on the first Tuesday in May.

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Special elections shall be held on the days provided by law therefore.

At every Town election the polls shall be opened at each precinct on the day of such election at six-thirty o'clock in the forenoon and be closed at seven-thirty o'clock in the evening.

Section 5-114 Compensation of Election Officials; Expenses AMENDED 03/11/08

Each ballot commissioner shall be allowed and paid a sum, to be fixed by the Town Council, not exceeding twenty dollars for each day he shall serve as such. Each commissioner of election and poll clerk shall be allowed and paid a sum, to be fixed by the Town Council, not exceeding ten dollars for one day's services for attending the school of instructions for election officials and a sum not exceeding twenty dollars for this services at any one election: Provided, that each commissioner of election and poll clerk shall be paid and allowed a sum not exceeding ten dollars for his services at any special election hereinafter specified and described. The commissioners of election obtaining and delivering the election supplies, shall be allowed and paid an additional sum, likewise fixed by the town council, not exceeding ten dollars for all such services at any one election and, in addition, shall be allowed and paid mileage at the rate of twenty cents per mile necessarily traveled in the performance of such services. The compensation of election officers, cost of printing ballots, and all other expenses incurred in holding and making the returns of election, other than special elections, shall be audited by the town council and paid out of the town treasury.

**AN ORDINANCE TO AMEND SECTION 5-114 OF CHAPTER 1 OF TITLE 5
OF THE CODE OF SHEPHERDSTOWN, WEST VIRGINIA, BY
INCREASING THE AMOUNTS OF COMPENSATION PAID TO ELECTION
OFFICERS**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Section 5-1 14 of Chapter 1 Title 5 of the Town Code, entitled "Compensation of Election Officials; Expenses" is hereby amended and re-enacted by increasing the amounts of compensation paid to election officers for their services and mileage; accordingly, Section 5-114 of Chapter 1 Title 5 shall read in part as follows:

SECTION 5-114: COMPENSATION OF ELECTION OFFICIALS; EXPENSES

(a) Each ballot commissioner is to be paid a sum, to be fixed by the Town Council, not exceeding one hundred twenty- five dollars for each day he or she serves as ballot commissioner, but in no case may a ballot commissioner receive allowance for more than ten days' services for any one primary, general or special election.

(b) Each commissioner of election and poll clerk is to be paid a sum, to be fixed by the Town Council, not exceeding one hundred twenty-five dollars for one day's services for attending the school of instruction for election officials if the commissioner or poll clerk provides at least one day's service during an election and a sum not exceeding one hundred seventy-five dollars for his or her services at any one election.

(c) Each alternate commissioner of election and poll clerk may be paid a sum, to be fixed by the Town Council, not exceeding fifty dollars for one day's services for attending the school of instruction for election officials: Provided, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day.

(d) The commissioners of election or poll clerks obtaining and delivering the election supplies and returning them, are to be paid an additional sum, fixed by the Town Council, not exceeding one hundred twenty-five dollars for his or her services pursuant to this subsection at any one election. In addition, he or she is to be paid mileage up to the rate of reimbursement authorized by the travel management rule of the department of administration for each mile necessarily traveled in the performance of his or her services.

(e) The compensation of election officers, cost of printing ballots and all other expenses incurred in holding and making the return of elections are to be audited by the Town Council and paid out of the Town treasury.

Section 5-115 Registration, Cancellation and Reinstatement

A permanent registration system shall hereby be established. No voter so registered shall be required to register again for any election while he continues to reside at the same address, or having moved from such address, is properly transferred by giving notice of such move to the county clerk as to the change of address.

Within one hundred and twenty days following any election, the clerk of the county commission shall, as evidenced by the presence or absence of signatures on the poll books for such election, correct any errors or omissions on the voter registration records appertaining to such election resulting from the poll clerks erroneously checking or failing to check the registration records, and, within the same time period following each statewide primary and general election and at the same time that such checkup is made as is by this paragraph required, the clerk shall cancel the registration of each person who has failed to vote at least once during a period covering two statewide primary and general elections as indicated by his registration record. Any person who has had his registration for that reason cancelled shall, by letter, be given proper notice thereof by the clerk of the county commission, to the effect that in order to vote he must register again or execute and file, not later than twenty-nine days before the next election, with the clerk, an affidavit, the form of which shall be prescribed by the secretary of state, stating that he desires to be reinstated as a qualified voter at the same address and the clerk shall replace the registration card of the voter in the registration records. A blank form of such affidavit shall be included with and accompany the aforesaid notice to the voter.

Section 5-116 Persons Eligible to Vote Absentee Voter's Ballots

The following persons who are duly registered and otherwise qualified to vote may vote an absentee voter's ballot in any municipal election in accordance with the provisions of the chapter:

- (1) Any person who by reason of physical disability, illness or injury will be unable to vote in person at the polls in such election.
- (2) Any person who is (a) a member of the armed forces while in the active service, and his spouse and dependents, or (b) a member of the merchant marine of the United States, and his spouse and dependents, or (c) a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and his spouse and dependents when residing with or accompanying him.
- (3) Any person, other than a person meeting the qualifications described in subdivision (2), who is required to be absent from this municipality in which he is registered to vote during the entire time the polls are open in such election.
Any person who has been appointed to serve as an election commissioner or poll clerk in a precinct other than the one in which he is registered to vote.

Section 5-117 Absentee Voting Methods

An absentee voter's ballot may be voted by mail or by personal appearance at the office of the Mayor of this Town as provided in this section.

Any person described in subdivisions 0), (2) and (4) of section (5-116) of the chapter may vote an absent voter's ballot by mail; and any person described in

subdivision (3) of section (5-116) of this chapter may vote an absent voter's ballot by mail if:

- (a) His application for an absent voter's ballot directs that the absent voter's ballot be mailed to an out-of-town address,
- (b) The envelope in which his absent voter's ballot is mailed is

postmarked at an address outside the Town, and

- (c) He is required to be absent from the Town in which he is registered to vote during regular business hours of the office of the mayor of this municipality of said county throughout the period, or throughout the remainder of the period, of voting an absent voter's ballot by personal appearance at said mayor's office.

Any person described in subdivisions (2), (3) and (4) of section (5-116) of this chapter, and any person described in subdivision (1) of section (5-116) of this chapter whose physical disability on the date of the election is anticipated by reason of commitment to a hospital, institution or other confinement for childbirth or other medical reasons, may vote an absent ballot by personal appearance at the office of the Mayor of this town.

Section 5-118 Obtaining an Absentee Voter's Ballot

A person desiring to vote an absentee voter's ballot by mail, may not more than sixty days prior to the date of any municipal election make application by mail to the Recorder of this municipality in which he is registered to vote for an official absentee voter's ballot or ballots to be voted at such election, except that the Recorder of this municipality shall not honor any such application for an absentee voter's ballot received by him after the fourth day next preceding the date of the election. In computing such fourth day, the day of conducting the election shall be excluded. The application to be used by persons who wish to vote an absentee voter's ballot by mail shall be prescribed by the secretary of state and shall be in substantially the following form:

APPLICATION FOR VOTING AN ABSENTEE VOTER'S BALLOT BY MAIL

KNOWING THAT I CAN BE FINED NOT MORE THAN ONE THOUSAND DOLLARS OR IMPRISONED IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE THAN ONE YEAR OR BOTH SUCH FINE AND IMPRISONMENT FOR KNOWINGLY MAKING A FALSE STATEMENT OR PRESENTATION HEREIN, I,

_____, hereby declare that I am now, or will have been a resident of the State of West Virginia for twelve months, and of the town of _____, for sixty days, next preceding the date of the ensuing election to be held on the _____ day of _____, 19 __; that I now reside at _____
(full address)

in the magisterial district of _____ in said county; that I am a duly qualified voter entitled to vote in such election; that I am registered in the precinct of my residence as provided by law; (strike out numbered paragraphs not applicable and complete the numbered paragraph which is applicable):

(1) I will be unable to vote in person at the polls at election day because of _____, as
(particulars of physical disability, illness or injury)
evidenced below by the statement of duly licensed physician or chiropractor.

(2) I anticipate commitment to a hospital, institution or other confinement on or about the _____ day of _____, 19 __, for the following medical reasons _____, as evidenced below by the statement of duly licensed physician or chiropractor, and by reason thereof will not be

able to vote in person at the polls in such election.

(3) I expect to be absent from the aforementioned Town in which I am registered to vote during the entire time the polls are open in such election, and I am (check one applicable):

A member of the armed forces in the active service.

A spouse or dependent of a member of the armed forces in active service.

A member of the merchant marine of the United States.

A spouse or dependent of a member of the merchant marine of the United States.

A citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.

A spouse or dependent residing with or accompanying a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.

(4) I am required to be absent from the aforementioned town in which I am registered during the entire time the polls are open in such election for the reason or reasons hereafter stated; I am not in any of the categories referred to in paragraph (3) above, I am required to be absent from said town during regular business hours of the mayor of the town of said municipality throughout the period or throughout the remainder of the period of voting an absentee voter's ballot by personal appearance at said office. _____

(state reason (s) for required absence from town on election day)

(5) I have been appointed

(election commissioner or poll clerk]

in precinct No. _____ in said election, which precinct is not the precinct in which I am registered to vote. In consideration of the foregoing qualifications, I hereby make application for an official absentee voter's ballot (or ballots if more than one are to be used) to be voted by me at such election, and request that such ballot or ballots be mailed to me at the following address:

(full address for mailing purposes)

(Complete the following paragraph only if assistance will be needed in voting absentee voter's ballot):

I further declare that I will need assistance in voting an absentee voter's ballot for the following reasons _____

(illiteracy or exact nature of physical disability, illness or injury) I hereby declare under the penalties for false swearing that the statements and declarations contained in this application are true and correct to the best of my knowledge and belief.

(signature of applicant) (or in case the applicant is illiterate he shall make his mark and have it witnessed on the following lines:)

(mark of applicant)

(signature of witness)

If the person applying for an absentee voter's ballot by mail be unable to sign his application because of illiteracy, he shall make his mark on the signature line above provided for an illiterate applicant which mark shall be witnessed.

The following declaration must be completed and signed if the reason specified in the above application for being unable to vote in person at such election is physical disability, illness or injury or is anticipated confinement in a hospital, institution or other place for medical reasons.

STATEMENT OF PHYSICIAN (CHIROPRACTOR)

I, _____, hereby declare that I am a physician (chiropractor) duly licensed to practice in the State of _____; that I last examined _____ the applicant whose signature appears on the application above on the _____ day of _____, 19____; and that in my opinion (strike out numbered paragraph not applicable and complete the numbered paragraph which is applicable).

(1) The applicant will, because of _____
(state particulars of physical disability, illness or injury)
be unable to go to the polls on the _____ day of
19 ____; the date of the election,

(2) The applicant will, because of _____
(state for what medical reasons)

be confined in _____, on or about the

(specify hospital, institution or other place)
day of _____, 19____, and will because of such reasons not be able to go to the polls on the _____ day of _____, 19____, the date of the election.

(complete the following paragraph if applicant for absentee voter's ballot will need assistance in voting such ballot, based upon physical disability, illness or injury).

I am of the further opinion that applicant _____
(will) (will/not)
because of the aforementioned physical disability, illness or injury need assistance in voting an absentee voter's ballot.

Signature of Physician (Chiropractor)

In lieu of the application for an absentee voter's ballot provided above, those persons specified in subdivision (2) of section (5-116) of this chapter may use the application for absentee ballot form recommended by, and issued under authority of, the federal Voting Assistance Act of 1955, as amended.

Upon receipt of a properly completed copy of such form, the Recorder of the town shall process the same as he would any other application for an absentee voter's ballot by mail. Any such properly completed copy may be returned only to the Recorder of the Town of this municipality in which the applicant is a registered voter.

Immediately upon receipt of a completed application for voting an absentee voter's ballot by mail, the recorder of the town shall determine:

- (1) Whether the application for voting such ballot has been completed as required by law;
- (2) Whether he has evidence that any of the statements contained in the application are not true; and
- (3) Whether the applicant is in fact duly registered in the precinct of his residence as provided by law and insofar as registration is concerned would be permitted to vote at the polls in such election.

If the determination of the Recorder of the Town as to (1) or (3) is in the negative or as to (2) is in the affirmative, the recorder shall notify the applicant at the time he mails the absentee voter's ballot to him that he will challenge the applicant's privilege to vote an absentee voter's ballot by mail for reasons which he shall indicate and upon receipt of the applicant's absentee voter's ballot the Recorder shall challenge such ballot.

Upon determination by the Recorder of the Town that the applicant is entitled to vote an absentee voter's ballot by mail or that the applicant will be permitted to vote an absentee voter's ballot by mail with such ballot to be challenged by the Recorder, the Recorder shall between the thirtieth day and the fourth day next prior to the election in which the absentee voting supplies; provided, that the Recorder shall not, after the fifteenth day next prior to such election, mail such ballot to an applicant whose address is shown to be outside the continental limits of the United States:

- (a) One official absentee voter's ballot (or ballots if more than one are to be used) which has been prepared in accordance with law for use in such election;
- (b) One absentee voter's ballot envelope No. 1, unsealed, which shall have no writing thereon except the designation "Absentee Voter's Ballot Envelope No. 1."
- (c) one absentee voter's ballot envelope No. 2, unsealed.

Upon receipt of an absentee voter's ballot by mail, the voter shall mark the ballot:

After the voter has voted his absentee voter's ballot, he shall (1) enclose the same in absentee voter's ballot envelope No. 1, and seal that envelope, (2) enclose sealed absentee voter's ballot envelope No. 1 in absentee voter's ballot envelope No. 2 and seal that envelope, (3) complete and sign the forms, if any, on absentee voter's ballot envelope No. 2 according to the instructions thereon, and (4) mail, postage prepaid, sealed absentee voter's ballot envelope No. 2 to the recorder of the municipality.

Upon receipt of such sealed envelope, the Recorder shall {1} enter onto the envelope such information as may be required of him according to the instructions thereon; (2) enter his challenge, if any, to the absentee voter's ballot; (3) enter the required information into a record of persons making application for and voting an absentee voter's

ballot by personal appearance or by mail (the form of which record and the information to be entered therein shall be prescribed by the secretary of state); and (4) place such sealed envelope in a secure location in his office, there to remain until delivered to the polling place in accordance with the provisions of this chapter or in case of - a challenged ballot to the town council sitting as a board of canvassers.

Section 5-119 Delivery of Absentee Voter's Ballots to Polling Places

The absentee voter's ballot of each precinct, together with the applications therefore, the affidavits made in connection with assistance in voting, and such forms, lists and records as may be designated by the secretary of state, shall be delivered in a sealed carrier envelope to the election commissioner of the precinct at the time he picks up the official ballots and other election supplies.

An absentee voter's ballot shall be delivered by the Recorder of the Town to the election commissioners of the precinct in which the voter thereof is registered or if not found to be registered to the election commissioner of the precinct in which his residence as stated on the voter's application is located.

Absentee voter's ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct shall be delivered to the election commissioner of the precinct by the Recorder in person, or by messenger, before the closing of the polls, provided such ballots are received by the recorder in time to make such delivery.

Section 5-120 Preparation, Number and Handling of Absentee Voter's Ballots

Absentee voter's ballots shall be in all respects like other ballots. Not less than forty-five days prior to the date on which any municipal election is to be held, the Recorder of the Town shall estimate and determine the number of the number of absentee voter's ballots of all kinds which will be required in his Town for any such election. The ballots for the election for all officers, or ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, shall be prepared and printed under the direction of the board of ballot commissioners constituted as provided in Section (5-108) of this title. The several town boards of ballot commissioners shall prepare and have printed, in such number as they shall determine, such absentee voter's ballots as are to be printed under their directions as hereinbefore provided, and such ballots shall be delivered the Recorder of the Town of this municipality not less than thirty days prior to the day of the election at which they are to be used. Before any ballot is mailed or delivered, the Recorder of the Town shall affix his official seal and he and the other members of the board of ballot commissioners shall place their signatures near the lower left-hand corner on the back thereof. An absentee voter's ballot not containing such seal and signatures shall be invalid and shall be subject to challenge by any election commissioner poll clerk.

The Recorder of the Town shall be primarily responsible for the preparation, mailing, receiving, delivering and otherwise handling of all absentee voter's ballots. He shall keep such record, as may be prescribed by the secretary of state, of all ballots so delivered for the purpose of absentee voting, as well

as all ballots, if any, marked before him, and shall deliver to the commissioner of election to whom the ballots for the precinct are delivered and at the time of delivery of such ballots a certificate stating the number of ballots delivered or mailed to absentee voters, and those marked before him, if any, and the names of the voters to whom such ballots have been delivered or mailed, or by whom they have been marked, if marked before him.

Section 5-121 Filing Announcements of Candidates; Requirements

Any person who is eligible to hold an office shall fill with the recorder, a certificate declaring himself a candidate for the nomination for such office; which certificate shall be in form or effect as follows:

I, _____, hereby certify that I am a candidate for the nomination for the office of _____ and desire my name printed on the official ballot to be voted at the municipal election to be held on the ___ day of _____, 19 __; that I am a legally qualified voter of the county of _____, State of West Virginia; that my residence is number of _____ street in the town of _____ in _____ county in said State; that I am eligible to hold the said office; that I am a candidate for said office in good faith.

Candidate

Signed and acknowledged before me this _____ day of _____, 19

Signature and official title of person before whom signed

Such announcement shall be signed and acknowledged by the candidate before some officer qualified to administer oaths, who shall certify the same.

Such certificate shall be filed with the recorder, during the period established by Town Council.

Section 5-122 Filing Fees and Their Disposition

No person who becomes a candidate for election to office in any municipal election shall be required to pay a filing fee.

Section 5-123 Certification and posting of Candidacies

During the week next following the last Saturday of the third month preceding the day fixed for the election, the Recorder shall arrange the names

of all the candidates, who have filed announcements with him, as provided in this chapter and shall forthwith certify the same under his name and the lesser seal of the town, and file the same in his office.

Such certificate of candidates shall show the name and residence of each candidate, the office for which he is a candidate. The Recorder shall post a duplicate of such certification in a conspicuous place in his office and keep same posted until after the election.

Section 5-124 Publication and Printing of Ballots; Number

Between the sixtieth and the thirtieth days next prior to the date of the election, the ballot commissioners of this Town shall prepare from the lists and certificates of announcements, as provided in this chapter, a sample official ballot, placing thereon the names of all the candidates to be voted for at such election. During the two weeks next preceding the election they shall publish such sample official ballot as a Class 2-0 legal advertisement, and the publication area for such publication shall be the town. The second publication shall be on the last day upon which each newspaper is published before the election.

The ballot commissioners shall determine the total number of official ballots required for conducting the elections in the all of the election precincts of the town and shall cause same to be printed at least thirty days next preceding the date of the election and made ready for delivery to the several precincts along with other election supplies. The number of official ballots prepared for delivery to a precinct shall not exceed one and one-twentieth times the number of registered voters in that precinct.

Section 5-125 Candidacies not Certified

If by satisfactory evidence it shall appear to the ballot commissioners of this town that announcements have been made in conformity with the provisions of this title and no certificate thereof has been received by them, they shall include such persons among the names of candidates to be printed upon the ballots, as in this chapter provided.

Section 5-126 Sample Ballots

There shall be printed across the face of the sample ballots, in large letters, the words "sample ballot," and no sample ballot shall be voted or counted in any election.

Section 5-127 Form and Contents of Ballots

Official ballots shall contain at the left of each column of names of candidates, a perpendicular column, and shall be so printed as to leave a square at the left of each name on the ballot.

The Recorder shall arrange the names of the candidates to be printed on the ballot by random selection under the title of the respective offices upon the ballot.

In printing each set of ballots the position of the names of the candidates shall be changed in each office division as many times as there are

candidates in that office division. As nearly as possible an equal number of ballots shall be printed after each change. In making the change of position, the printer shall take the line of type containing the first name in the office division concerned and place it at the bottom of the list of names in that division and move up the column so that the name that before was second shall be first after the change. After the ballots are printed, they shall be kept in separate piles, one pile for each change in position, and shall then be gathered by taking one from each pile. Sample ballots shall be in the same form as the official ballot, but the order of the names thereon need not be alternated.

All ballots used in elections shall be printed on paper conforming as nearly as practicable in weight, texture, and color to the sample furnished by the secretary of state, and the paper shall be sufficiently thick so that the printing cannot be discernible from the back. On the back of the ballot shall be printed in black ink, and in plain legible, black face pica type, the work "ballot." Under this designation shall be printed two blank lines followed by the words "poll clerks."

CHAPTER 2 - Conduct of Elections

Section 5-201 Preparing Election Facility Procedures AMENDED 04/09/07

The following procedures shall be followed in preparing the election facility:

- (1) Five individuals shall be selected by the governing body and they shall constitute the receiving board. Two of the individuals shall be deemed as clerks and three individuals shall be deemed as commissioners.
- (2) The five members of the receiving board shall take the oath prescribed in Section (5-112) of this title.
- (3) The commissioners shall check to make certain that the ballot boxes are empty and then shall proceed to place two locks on each ballot box, with a separate commissioner keeping they key to each of the ballot box locks.
- (4) The two clerks shall check to make certain that all election supplies are present and available, then the ballots shall be brought out and made available to the voters.
- (5) The receiving board shall post instructions and sample ballots inside the polling place and at least 60 feet away from the polling place.
- (6) The receiving board shall raise the flag and place a sign outside indicating that a polling place is located on these premises.
- (7) If a member of the receiving board is unable to discharge his duties, the governing body shall fill the vacancy by appointing another individual.

Section 5-202 Disposition of Ballot to Voter and Return to Ballot Box

When a voter approaches the receiving board to vote, one clerk shall fill out a poll slip, which shall include the registration number of the voter, and the other clerk shall check the voter's registration record by comparing the signature and physical description of the voter and then

**AN ORDINANCE AMENDING
SECTION 5-201 OF CHAPTER 2 OF TITLE 5
OF THE CODE OF SHEPHERDSTOWN, WEST VIRGINIA
RELATING TO MUNICIPAL ELECTIONS**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Section 5-201 of Chapter 2 of Title 5, entitled "Preparing Election Facility; Procedures", is hereby amended to read as follows:

Section 5-201 Preparing Election Facility; Procedures

The following procedures shall be followed in opening and closing the polls at the election facility:

- (1) The receiving board shall take the oath prescribed in Section 5-112 of this title.
- (2) At the time of opening the polls in all precincts wherein voting machines are not to be used, the election commissioners shall examine the ballot box and ascertain that there are no ballots in the same, and they shall thereupon securely lock the box and give one key to one of the commissioners and one to a commissioner of the opposite political party, who shall hold the same, and such boxes shall not be again opened until the time to begin counting the votes arrives and for that purpose.
- (3) At or before opening the polls, the commissioners of election shall open the package containing the ballots in such manner as to preserve the seals intact and thereupon deliver all of the ballots to the poll clerk.
- (4) The poll clerks shall check to make certain that all election supplies are present and available, then the ballots shall be brought out and made available to the voters.
- (5) The commissioners of election shall post one instruction card in each voting booth giving instructions to the voters on how to prepare the ballots for deposit in the ballot boxes and how to obtain a new ballot in place of one accidentally spoiled.
- (6) The commissioners of election shall post one or more other cards of general information along with a sample ballot at places inside and outside of the voting place where voters pass or wait to vote.
- (7) The receiving board shall raise the flag and place a sign outside indicating that a polling place is located on these premises.

- (8) Before any voter is permitted to vote, the commissioners of election shall proclaim that such election is opened.
- (9) When the polls are closed, proclamation must be made of the fact by one of the commissioners of election to the people outside, in a loud and audible tone of voice, and a minute of such proclamation and of the time when it was made must be entered on the pollbooks by the clerks.
- (10) The election commissioner shall permit those electors to vote who are present at the polling place prior to the hour specified for the closing of the polls: Provided, That at that time they are in a line awaiting their turn to vote within the voting room itself or, if the line extends outside of the voting room itself, within that line. In that event an election commissioner from each party shall immediately after the closing proclamation begin with the last voter in line and together supply the voters within the line with waiting-voter permits which shall be prescribed by the secretary of state. Each voter shall sign his permit in the presence of both commissioners who shall then likewise affix their signatures to the permit in the presence of the voter and each other. After each such voter in line has received and signed his permit and the election commissioners have affixed their signatures thereto, voting shall be resumed. Each voter shall present his permit to one of the poll clerks so that the signature thereon may be compared to the voter's signature when he signs the pollbook. Each permit so presented shall be attached to the page in the pollbook on which the voter affixed his signature. In no case shall any person who arrives at the polling place after the closing hour be given a waiting-voter permit or be allowed to vote. After the final voter presents his waiting-voter permit and casts his ballot no more ballots shall be cast or received.

subscribe an oath, respectively, to the following effect:

(Commissioner's Oath)

State of West Virginia
County
Town

I. A _____ B _____, do solemnly swear I will support the Constitution of the United States and the Constitution of this State; and I will faithfully and impartially discharge the duties of commissioner of election assigned by law; that I will not knowingly permit any person to vote who is not qualified, and will not knowingly refuse the vote of any qualified voter, or cause any delay to a person offering to vote further than is necessary to procure satisfactory information of the qualification of such person as a voter, that I have been a resident of the State of West Virginia for one year, and of the county and magisterial district and this town in which I am to act as commissioner of election, for ,sjxty days next preceding this date; that I will not disclose nor communicate to any person how any voter has voted at such election, nor how any ballot has been folded, marked, printed or stamped; that I have nothing of value bet or wagered upon the result of said election; that I have not received any promise, agreement or understanding that I am to receive appointment as deputy from any candidate to be voted for at such election; that I do not have any agreement, understanding or arrangement that I shall receive any sum of money or any portion of the salary, fees or emoluments of any office for which any candidate is to be voted for at such election; that I am not a candidate at this election. So help me God.

Subscribe and sworn to before me this _____ day of 19__.

Signature and official title of
person before whom sworn

(Clerk's Oath)

State of West Virginia, _____ town, ss:

I, _____, do solemnly swear that I will faithfully and honestly discharge my duties as clerk of the election now about to be held in precinct no. _____, in the district of _____ town of _____, State of West Virginia; that I will not disclose nor communicate to any person how any elector voted, or how any ballot was folded, marked, printed or stamped; that I do not have any premise, agreement or understanding that I am to be appointed as deputy by any candidate to be voted for at such election; that I do not have any agreement, understanding or arrangement that I shall receive any sum of money or any portion of the salary, fees or emoluments from any office for which any candidate is to be voted for at such election, should such candidate be elected at such elections or any subsequent election. So help me God.

Subscribed and sworn to before me this _____ day of
19__.

checking to see if any previous challenges exist on the voter's registration record.

Both clerks shall then sign the back of the ballot and shall mark the voter's registration record, indicating that the voter has voted.

After marking his ballot, the voter shall hand his ballot to a commissioner who shall check the number of the ballot and make sure it has been duly signed. The commissioner shall then hand the ballot to a second commissioner who shall check the same. The second commissioner shall then put the ballot in the ballot box.

Section 5-203 Challenging Votes

A clerk may challenge a person's vote if:

- (1) The person is not on the registration record;
- (2) The person has moved from his registered precinct more than 30 days before the election;
- (3) The person has changed his name more than 30 days before the election;
- (4) The person's signature does not match the signature on the registration record;
- (5) Any doubt arises about the person's ability to vote.

It shall be unlawful for a clerk to make a frivolous challenge and such conduct may be punished by a fine not to exceed two hundred dollars (\$200).

Section 5-204 Assisting Voter

Voters who are either illiterate or blind may obtain assistance in voting. If the person is illiterate, then both poll clerks shall assist him. If the person is blind, then he may choose anyone to assist him.

It shall be forbidden for anyone to discuss politics within 60 feet of the polling place, and it shall also be forbidden for anyone, except the voter, to be within five (5) feet of the voting booth.

Section 5-205 Board of Clerks Leaving Duty

The receiving board should try to remain at their posts at all times. If they must leave, they should return promptly. If one of the poll clerks leaves, it shall be permissible for him to sign the ballots until a voter desires to vote.

Section 5-206 Spoiling of Ballot

If a voter mismarks his ballot, he may obtain a new ballot and one of the poll clerks shall destroy and record the mismarked ballot.

Section 5-207 Counting Board AMENDED 04/09/02

The counting board shall be comprised of five individuals who are selected by the governing body. Two individuals shall be designated as clerks and three individuals shall be designated as commissioners.

**AN ORDINANCE AMENDING
SECTION 5-207 OF CHAPTER 1 OF TITLE 5
OF THE CODE OF SHEPHERDSTOWN, WEST VIRGINIA
RELATING TO MUNICIPAL ELECTIONS**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Section 5-207 of Chapter 1 of Title 5, entitled "Counting Board", is hereby amended to read as follows and re-designated as "Ballot Counting Procedures":

Section 5-207 Ballot Counting Procedures

(A) Single Election Board. When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this Chapter 2 of Title 5. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election, and join in making out the certificates of the result of the election provided for in this title. They shall not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall first process the absentee ballots according to the provisions of Section 5-209 of this chapter. After the absentee ballots to be counted have been deposited in the ballot box, the election officers shall proceed to ascertain the result of the election in the following manner:

(1) The receiving board shall ascertain from the poll books and record on the proper form the total number of voters who have voted. The number of ballots challenged shall be counted and subtracted from the total, which result should equal the number of ballots deposited in the ballot box. The commissioners and clerks shall also report, over their signatures, the number of ballots spoiled and the number of ballots not voted.

(2) The procedure for counting ballots, whether performed throughout the day by the counting board as provided in subsection (B) of this section, or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(a) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(b) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose, without unfolding it. If properly signed, the commissioner shall hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for election for any

person other than an official write-in candidate shall be disregarded. When a voter casts a straight ticket vote and also casts a write-in vote for an office, the straight ticket vote for that office shall be rejected, whether or not a vote can be counted for a write-in candidate;

(c) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots as they are removed, and whenever the number shall equal the number of voters entered on the poll book minus the number of challenged ballots, as determined according to subsection (A)(l) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same, or allowing anyone to examine or know the contents thereof, and the number of excess ballots shall be recorded on the envelope;

(d) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose, so as to show the number of votes received by each candidate for each office and for and against each issue on the ballot; and

(e) When the reading of the votes is completed, the ballot shall be immediately strung on a thread.

(B) Double Election Boards. In all precincts wherein two election boards shall have been appointed, the receiving board shall attend at the opening of the polls, shall open the polls, and shall proceed with the election. The counting board shall attend at the voting place no later than 9:30 a.m., shall take the oath prescribed in Section 5-112 of this title, and shall take charge of the ballot box containing the ballots theretofore cast in that precinct. They shall retire to a partitioned room or space in the voting place and there proceed to count and tabulate the ballots cast, as they shall find them deposited in the ballot box. The receiving board shall continue to receive the vote of electors in the other box, until such time as the counting board shall have finished counting and tabulating the ballots cast in the first ballot box. The counting board shall, before exchanging the ballot boxes as herein provided, seal the ballots counted by it in envelopes to be provided for the purpose, which shall not be opened until the two boards shall together proceed with counting, tabulating and summarizing the votes as by this title provided. The two boards shall then exchange the first box for the second box, and so continue until the hour of closing the polls arrives.

The five members of the counting board shall take the oath prescribed in Section (5-112) of this title.

If a member of the counting board is unable to discharge his duties, the governing body shall fill the vacancy by appointing another individual.

The counting board shall arrive and begin counting at 9:30 a.m., on the day of the election. They shall count the votes in only one ballot box at a time and they shall wait until there is a sufficient number of ballots within the ballot box as is necessary to protect the secrecy of the ballot. One ballot box shall always be available for the disposition of ballots.

The receiving board may also serve as the counting board. In this case, however, the board shall wait until the polls have closed before they can begin counting.

Section 5-208 Closing of Polls

The polls shall close at 7:30 p.m., on the day of the election.

Section 5-209 Handling of Absentee Ballots

The following procedure shall be used once the polls have been closed:

- (1) The receiving board clerks shall count the number of destroyed ballots and the number of unused ballots and record them;
- (2) The receiving board clerks shall check the absentee ballots to see if challenges should be made;
- (3) The receiving board clerks shall make up a poll slip for each absentee ballot;
- (4) The receiving board clerks shall take the number one envelope, containing the absentee ballot, from the number two ballot and shuffle them;
- (5) Both receiving board clerks shall sign each absentee ballot and shall note in the registration record that the individual has voted. They shall then put the absentee ballots in the ballot box.

Section 5-210 Votes Tallied

It shall be the duty of the commissioners of the counting board to count the votes and the duty of the clerks of the counting board to record the votes on tally sheets. There shall be two tally sheets.

During the course of counting, if the intention of the voter is understood, then the counting board shall count his vote.

Once the counting of the votes is completed, certificates, of results shall be sent to the municipal recorder and the secretary of state and one copy shall be posted at the polling place. All marked ballots shall be sent to the governing body which serves as the canvassing board.

Section 5-211 Write-in Votes

If the voter decides to vote for any person whose name does not appear on the ticket, he may substitute that name by writing it in with a black (lead)

pencil or other means in the proper place, and making a cross mark in the blank space at the left of the name so written.

CHAPTER 3 - Post Election Procedures

Section 5-301 Return of Supplies and Certificates

Within twelve hours after completion of the counting; tabulation and declaration of the result of the election in each precinct, one of the commissioners at such precinct, designated for that purpose, shall return to the Recorder the ballot boxes, registration list and the several packages of ballots, poll books, tally sheets, certificates, and all other election supplies and returns, except he shall deliver to the recorder, within the same time, packages containing one poll book, and one tally sheet, prepared and sealed which shall be kept for the town council.

Section 5-302 Precinct Returns; Certificates; Procedures

As soon as the results are ascertained, the commissioners of election and poll clerks at each place of voting shall make out and sign four certificates thereof, in the following form or to the following effect: "We, the undersigned, who acted as commissioners and poll clerks of the election held at precinct No. _____ in the district _____, and county of _____, on the _____ day of _____, do certify that, having been first duly sworn, we have fairly and impartially held the said election according to law, and the result thereof is as follows: For the office of _____, (here designate the office, as for example, "Delegate for the county of Barbour," or Senator for the first senatorial district,¹ "Judge for the first circuit," "Representative in the Congress of the United States for the first congressional district," "Governor of the State," "Judge of the supreme court of appeals," "Justice of the Peace,"¹ and so forth, as the case may be), 'A.B. received _____ votes, C.D. _____ votes, E.F. _____ votes,¹ and so on throughout stating, according to the truth, the full name of every person voted for, for every office, and in words at length, and also in figures, the number of votes received; and concluding as follows; Given under our hands this _____ day of _____." The certificates shall contain complete returns of the polls taken at such place of voting for every office to be filled, and shall be sealed and disposed of as is provided in Section (5-210) of this title for certificates as to the result of a election. When the certificates are signed, the ballots shall be enclosed by the commissioners in an envelope which they shall seal up, and write their names in ink across the place or places where it is sealed, and endorsed in ink on the outside of the envelope as follows: "Ballots of the election held at precinct No. _____, in the district of _____, and county of _____, town of _____, the _____ day of

Section 5-303 Canvass of Returns; Recounts; Preservation and Subsequent _____ . Destruction of Ballots, Records, etc.

The town council shall be ex officio a board of canvassers, and, as such, shall keep in a well-bound book, marked "election record," a complete

record of all their proceedings in ascertaining and declaring the result of every election in our respective town. They shall convene as such canvassing board at the Town Hall on the fifth day (Sundays excepted) after every election held in this town, and the officers in whose custody the ballots, poll books, registration records, tally sheets and certificates have been placed shall lay the same before them for examination. They may, if deemed necessary, require the attendance of any of the commissioners, poll clerks or other persons present at the election, to appear and testify respecting the same, and make such other orders as shall seem proper, to procure correct returns and ascertain the true result of the election in their town; but in such case all the questions to the witnesses and all the answers thereto, and evidence, shall be taken down in writing and filed and preserved. All orders made shall be entered upon the record. They may adjourn from time to time, but no longer than absolutely necessary, and, when a majority of the commissioners are not present, their meeting shall stand adjourned until the next day, and so from day to day, until a quorum be present. The board shall proceed to open each sealed package of ballots so laid before them, and without unfolding them, count the number in each package and enter the same upon their record. The ballots shall then be again sealed up carefully in a new envelope, and each member of the board shall write his name across the place where such envelope is sealed. After canvassing the returns of the election, the board shall, upon the demand of any candidate voted for at such election, open and examine any one or more of the sealed packages of ballots, and recount the same; but in such case they shall seal the same again, along with the envelope above named, and the recorder of the town and each member of the board shall write his name across the place or places where it is sealed, and endorse in ink, on the outside: "Ballots of the election held at precinct No. _____, in the district of _____, and the county of _____, in the town of _____, on the _____ day of _____." Every candidate who demands such recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of such recount in the event the result of the election be not changed by such recount; but the amount of such bond shall in no case exceed three hundred dollars. When they have made their certificates and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absentee voter ballots, registration records, poll books, tally sheets, and precinct certificates with the recorder of the town for whom they were received, who shall carefully preserve the same for sixty days, and if there be no contest pending as to any such election, and their further preservation be not required by any order of a court, such ballots, poll books, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots; and if there be such contest pending, they shall be so destroyed as soon as the contest is ended: Provided, that the poll books shall be preserved until such time as the recorder of the town has completed the duties imposed upon him by Section (5-115) of this title. If the result of the election be not changed by such recount, the costs and expenses thereof shall be paid by the party at whose instance the same was made.

Section 5-304 Disposition of Certificates; Procedure Thereon

The separate certificates of the board of canvassers shall be given to the Recorder of the Town who shall notify the winner of the election.

Section 5-305 Tie Vote Procedure

When two or more person shall receive an equal number of votes for Councilman or other Town officer, such tie shall be decided by the Council in being.

Section 5-306 Contest of Elections; Notices; Time

In all cases of contested elections, the Town Council shall be the judge of the election, qualifications and returns of their own members, and of all Town officers.

A person intending to contest the election of a Town office or any office that shall hereafter be created to be filled by the voters of the town, shall, within ten days after the result of the election is declared, give the contestee notice in writing of such intention, and a list of the votes he will dispute, with the objections to each, and of the votes rejected for which he will contend. If the contestant objects to the legality of the election, or the qualification of the person returned as elected, the notice shall set forth the facts which such objection is founded. The person whose election is so contested shall, within ten days after receiving such notice, deliver to the contestant a like list of the votes he will dispute, with the objections to each, and of the rejected votes for which he will contend; and, if he has any objection to the qualification of the contestant, he shall specify in writing the facts on which the objection is founded. Each party shall append to his notice an affidavit that he verily believes the matters and things set forth to be true. If new facts be discovered by either party after he has given notice as aforesaid, he may, within ten days after such discovery, give an additional notice to his adversary, with the specifications and affidavit prescribed in this section.

Section 5-307 Town Council to Hear Election Contests; Procedure; Review

The Town Council shall hear and decide election contests initiated pursuant to the provisions of the preceding section (5-306). Subpoenas for witnesses for either party shall be issued by the Recorder of the Town, and served as in other cases, and the witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as witnesses attending a circuit court in a civil suit. The notice of contest shall be presented to the Town Council at its first term after the same is delivered to the person whose election is contested, and the same shall be docketed for trial in such Council. At the trial of such contest, the Council shall hear all such legal and proper evidence that may be brought before it by either party, and may, if deemed necessary, require the production of the poll books, certificates and ballots deposited with its recorder, and examine the same. The hearing may be continued by the Council from time to time, if it be shown that justice and right require it, but not beyond three months of the day of the election. At the final trial of such contest the Council shall declare the true result of such election, and cause the same to be entered on the records of the Council. When the result of the election is declared, as aforesaid, a certified copy of the order declaring such result shall, if required, be delivered by the Recorder of the Town to the person declared elected, if such be the result of the trial, and such copy shall be received in all courts and places as legal evidence of the result of the election therein declared. Either the contestant or

contestee shall have the right of appeal to the circuit court of the county from the final order or decision of the Town Council in such proceeding, upon the filing of a bond with good personal security, by the party desiring the appeal, to be approved by the Town Council, in a sum deemed sufficient by such Council with condition to the effect that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the circuit court on such appeal. But such appeal shall not be granted unless the party desiring the appeal shall make application for such appeal, and file such bond, within thirty days from the entering of the final order in such proceeding; and the circuit court may at any time require a new bond or increase the penalty thereof when the court deems it necessary. When such appeal is taken to the circuit court, as hereinbefore provided, it shall be heard and determined upon the original papers, evidence, depositions and records filed before and considered by the Town Council and the circuit court shall decide the contest upon the merits. From the decision of the circuit court, an appeal shall lie to the supreme court of appeals, as in other cases, but such appeal shall be heard upon the original papers and copies of all orders made, without requiring the same to be printed.

Section 5-308 Costs in Election Contests

The cost of every contested election shall include only the expenses of serving notices, taking depositions and the allowances to witnesses; and shall be noted at the foot of every deposition or set of depositions, by the person taking the same. If the contestant fails in setting aside the election, there shall be awarded against him the amount of such costs incurred or expended by the person who v/as returned or declared elected. Otherwise, each party shall pay his own costs; unless it appears that the person returned or declared elected was guilty of fraud or malpractice in the election, or in procuring such return or declaration, in which case costs shall be awarded against him in favor of the contestant. Where costs are awarded in favor of either party, the amount thereof shall be ascertained under direction of the Council, or court, which decided the case, and a certificate thereof, authenticated by the signature of the presiding officer, shall be delivered to the party in whose favor they are awarded, which certificate shall have the force of a judgment, and if such costs be not paid within ten days after the date thereof, the Recorder of the Town in which the party against whom the costs were awarded resides, may issue execution of such certificate, upon its delivery to such Recorder, in like manner as upon a judgment of the circuit court.