

***\*Important COVID-19 Information for 2021 Town Meetings:***

In response to the concerns posed by COVID-19, the Vermont Legislature passed Act 162, **which allows a legislative body to vote to use Australian ballot for any town meeting in 2021 (annual and/or special town meetings).**

The temporary law allows municipalities that normally vote from the floor on Town Meeting Day to instead use the Australian ballot by vote of the legislative body. Under current law, only a vote of a municipality's voters may allow the switch to an Australian ballot system. Municipalities whose meeting locations don't allow for social distancing may find the switch to an Australian ballot system helpful during the ongoing pandemic. Although the legislation mainly addresses next year's town meeting, it allows all annual or special meetings to be conducted via Australian ballot for all of 2021.

Please see our other COVID-19 Town Meeting resources at <https://www.vlct.org/municipal-assistance/municipal-topics/town-meeting>. We recommend reviewing the Town Meeting COVID-19 FAQs first, which are online at <https://www.vlct.org/town-meeting-covid-19-faqs>.

**What is Australian ballot voting?**

Australian ballot voting is one method of voting at local elections recognized by Vermont general law. The term "Australian ballot" refers to a system of secret voting on warned articles using a pre-printed ballot. The Australian ballot system involves opening the polls during or after a special or annual municipal meeting for an extended period of time for the purpose of voting. 17 V.S.A. § 2103(4). The town clerk is the presiding officer for all Australian ballot elections. 17 V.S.A. § 2680. Australian ballot voting is distinguishable from "floor voting" and voting by "paper ballot," both of which occur during traditional, open style town meetings where a moderator facilitates the discussion and voting on town business. Voting by paper ballot involves writing "yes" or "no" in response to a question or writing the name of a candidate who is running for office on a piece of paper rather than voting on a pre-printed Australian ballot.

**When is it used?**

Aside from the temporary COVID-19 related changes described above, the Australian ballot method of voting only applies when specifically required by statute, municipal governance charter, or when the law explicitly enables voters to use it for certain items of town business. The three general subjects that the law enables voters to vote by Australian ballot include the election of officers, budget article(s), and public question(s).

A budget article is any article that directly expends or appropriates municipal funds. A public question article is any article that does not deal with either the election of officers or the expenditure of funds. A vote to use Australian ballot voting for the election of officers applies to all officers, whereas a vote for its use for budget and public questions can apply either to single, multiple, or all related questions. Articles to change the method of voting from floor vote to Australian ballot for these purposes must be in substantially the follow forms:

**Vote whether to use Australian ballot to elect officers.**

- Shall [*insert name of municipality*] elect its town officers by Australian ballot pursuant to 17 V.S.A. § 2680(b)?

A vote to elect town officers by Australian ballot would override the previously mandated state method. For instance, state law directs that selectboard members, listers, and auditors must be elected “by ballot.” 17 V.S.A. § 2646. That means the town must elect those officers using paper ballots, unless it votes to elect them by Australian ballot.

**Vote whether to use Australian ballot for budget articles.**

- Shall the [*insert name of municipality*] adopt all budget articles by Australian ballot pursuant to 17 V.S.A. § 2680(c)?

or

- Shall [*insert name of municipality*] adopt its [*insert one or more specific budget articles, e.g., highway budget article*] by Australian ballot pursuant to 17 V.S.A. § 2680(c)?

**Vote whether to use Australian ballot for public question(s)**

- Shall [*insert name of municipality*] vote on all public questions by Australian ballot pursuant to 17 V.S.A. § 2680(d)?

or

- Shall [*insert name of municipality*] vote on [*insert the specific public question*] by Australian ballot pursuant to 17 V.S.A. § 2680(d)?

If a town has yet to adopt the Australian ballot method of voting for use on all public questions and votes its public questions from the floor, then the vote on whether to adopt it for any of the three subjects referenced above would be from the floor. 17 V.S.A. § 2680(d)(1).

Typically, when a town has made the decision to vote by Australian ballot, that system goes into effect at the next meeting after the vote was held. This system of voting will continue to be used unless and until it is rescinded by the voters at a special or annual town meeting warned for that purpose. However, as an exception in 2021 due to COVID-19, Act 192 allows the legislative body to decide whether to use Australian ballot for any and all town meetings.

Several discrete circumstances exist when towns are enabled to use Australian ballot voting, regardless of whether they have adopted its use on all public questions. For example, a town may vote to adopt or amend its town plan by Australian ballot. 24 V.S.A. § 4385(c).<sup>1</sup>

On occasion, towns must use Australian ballot regardless of their preferences. Instances when towns are required by law to use Australian ballot include voting on:

- governance charter amendments. 17 V.S.A. § 2645(a)(7);
- municipal mergers. 24 V.S.A. § 1485(c);
- entrance into a union municipal district such as a solid waste district. 24 V.S.A. § 4863.
- bond votes. 24 V.S.A. § 1758;
- borrowing for public improvements or the acquisition of capital assets when the term is more than five years. 24 V.S.A. § 1786a(c); and
- the decision to appoint rather than elect a constable. 17 V.S.A. § 2651a(a).

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<sup>1</sup> A “rural town” may also require that its zoning bylaws be adopted by Australian ballot. 24 V.S.A. § 4442(c)(2). A rural town is a town having a population of fewer than 2,500 persons or a town having between 2,500 and 5,000 that has chosen to be considered a rural town. The vote to be considered a rural town must be by Australian ballot. 24 V.S.A. § 4303(25).

## **Electing Officers by Australian Ballot**

Ordinarily, when officers are elected by Australian ballot, they must first be nominated by petition. Petitions must clearly state the candidate's name, the office sought, and the length of the term. The petition must be signed by 30 voters or one percent of the legal voters in town (whichever number is less) and must be filed with the town clerk within the time prescribed by 17 V.S.A. § 2681. The recent passage of Act 162 in response to the COVID-19 pandemic, however, eliminates the requirement for candidates to collect voter signatures in order to get their names on the ballot for any local election held at a special or annual town meeting in 2021. Instead, a candidate just needs to make a request to be placed on the ballot to the town clerk. Note that Act 162 did not waive the consent form requirement. Therefore, any candidate wishing to add their name to the ballot must complete the consent form and submit it to the town clerk.

Ballots for local elections must meet the standards set forth in 17 V.S.A. § 2681a, and the town is responsible for the expense of preparing them. When officer elections are voted by Australian ballot, the person receiving the highest number of votes shall be declared elected. A write-in candidate must receive 30 votes or one percent of the registered voters (whichever is less) in order to win. 17 V.S.A. § 2682a. If no one runs by petition and no write-in candidate receives the requisite number of votes, the selectboard may appoint a voter to fill the office until the next annual meeting. 17 V.S.A. § 2682. If there is a tie vote, a run-off election is held to choose between the tied candidates. 17 V.S.A. § 2682b.

A process for recounts of votes for local officials and for an appeal of the result of the recount are provided in 17 V.S.A. §§ 2683-2687. In addition, any voter may demand a recount on any question voted by Australian ballot if the margin of vote was less than five percent of the total votes cast. 17 V.S.A. § 2688.

## **Informational Hearings**

The process for using the Australian ballot system requires a public informational hearing as a precursor to the vote. The selectboard must hold an informational hearing when a town uses this system of voting on any public or budget question. The informational hearing, which is administered by the selectboard, must be held within the 10 days immediately preceding the town meeting at which the Australian ballot system of voting is to be used. The purpose of the informational hearing is to afford the electorate an opportunity to discuss the article(s) on which they will be voting. The hearing serves as the debate component that would otherwise accompany voting when conducted from the floor. 17 V.S.A. § 2680(g).

The informational hearing must be warned at least 10 days in advance by posting notice of the hearing in at least two public places in town and in the town clerk's office. Unlike town meeting, which is a meeting of the voters, an informational meeting is a meeting of a public body (i.e., the selectboard). Consequently, information hearings may be conducted by electronic means under the existing provisions of Vermont's Open Meeting Law as modified by the temporary COVID-19 measures of Act 92. 17 V.S.A. § 2680(g)(1). Please refer to our resources on the Town Meeting Topics page for a model notice for remote informational meetings at <https://www.vlct.org/municipal-assistance/municipal-topics/town-meeting>.

Note that if the town has voted to change the date of its annual town meeting to one of the three days preceding the first Tuesday in March, then the public informational hearing may be held in conjunction with that town meeting, in which case the moderator presides. 17 V.S.A. § 2680(g)(2)(B).

An informational hearing must only be held when a town "has voted to adopt the Australian ballot system of voting on any public question or budget..." or, in 2021, when the legislative body has voted to adopt Australian ballot for its meetings. See Act 162 and 17 V.S.A. § 2680(g)(1). Otherwise, the town does not have to hold an informational hearing, even where the use of the Australian ballot voting is required. For instance, towns must vote by Australian ballot on the question of borrowing for a term of more than five years; however, the controlling statute does not require that an informational hearing be held. An informational hearing is also not required when a town votes its zoning bylaws by Australian ballot; this is because the statutory authority and requirements for adopting bylaws by Australian ballot are different from the authority and requirements for voting on public questions via Australian ballot. While not required by statute, an informational hearing can be held in such instances and sometimes would be well advised.

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If you have additional questions relating to Australian ballot voting, please visit the Office of the Secretary of State's Elections Division on the web at <https://sos.vermont.gov/elections/election-info-resources/town-meeting-local-elections/> <http://www.sec.state.vt.us/elections>.