

For:

Introduction 12/3/18

Public Hearing N/A

Adoption 2/4/19

**THE TOWN OF MOUNT AIRY, MARYLAND**

**ORDINANCE NO. 2018-20**

**AN ORDINANCE TO AMEND PART I  
OF THE CODE OF THE TOWN OF MOUNT AIRY  
ENTITLED "ADMINISTRATIVE LEGISLATION",  
CHAPTER 10 ENTITLED "ELECTIONS"  
CREATING NEW ARTICLE IIA ENTITLED  
"PROVISIONAL BALLOTS" AND SECTION  
10-21A ENTITLED "PROVISIONAL BALLOT VOTING"  
AND BY AMENDING ARTICLE IV ENTITLED  
"CHALLENGES", SECTION 10-25 ENTITLED  
"CHALLENGE OF RIGHT TO VOTE"**

**WHEREAS**, the Election Law Article of the Maryland Code has adopted and mandated a provisional ballot process whereby a voter whose right to vote in a State and/or county election has been challenged is permitted to cast a provisional ballot subject to later determination as to whether the ballot should be counted; and

**WHEREAS**, the Election Law Article provisions on provisional ballot voting is not applicable to municipal elections; and

**WHEREAS**, the Town Council has determined it to be in the best interests of the Town and its residents to adopt for Town elections a provisional ballot process that mirrors what is provided for such in the Election Article of the Maryland Code for State and county elections.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF MOUNT AIRY:**

Section 1. That Part I, Chapter 10 to the Town Code, creating new Article IIA, Section 10-21A of the Code as follows:

**ARTICLE IIA**

**Provisional Ballots**

**§10-21A. Provisional ballot voting.**

**A. For the purposes of this Article and Section, the term "Provisional Ballot" means a ballot that is cast by an individual but not counted until the individual's qualifications to vote have been confirmed by the Town Board of Supervisors of Elections.**

B. An individual is eligible to cast a Provisional Ballot if:

- (1) The individual declares in a written affirmation submitted with the Provisional Ballot that the individual is a registered voter and is eligible to vote in the Town election; and
  - (a) The individual's name does not appear on the election registry;
  - (b) An election official asserts that the individual is not eligible to vote; or
  - (c) The individual does not have the necessary government issued identification, and:
    - (i) Registered by mail and has not previously met the identification requirements, or
    - (ii) Where there is a challenge to the voter's identity.

C. An individual eligible to cast a Provisional Ballot pursuant to Subsection B above shall be issued and may cast a Provisional Ballot at the polling place on the day of a Town Election.

D. Before an individual is permitted to cast a Provisional Ballot:

- (1) The individual shall complete and sign a Provisional Ballot application prescribed by the Town's Board of Supervisors of Elections, which shall be completed and signed by the individual seeking to vote under the penalties of perjury, and which shall be attached to or printed on a Provisional Ballot envelope into which the ballot shall be placed and sealed pursuant to Subsection F, below; and
- (2) The election official issuing the Provisional Ballot shall ~~recored~~ give the individual written information advising the individual that, and describing how, the individual will be able to ascertain whether the vote was counted and, if it was not counted, the reason it was not.

E. The Provisional Ballot application shall at a minimum contain:

- (1) The name and address of the individual issued a Provisional Ballot;
- (2) An oath, under the penalties of perjury, by the individual seeking to vote stating that he or she is qualified to vote in the Town election and that the other information provided by the individual in the application is true and complete;
- (3) The name and address of the person(s), including any election judge(s), making challenge to the individual's right to vote; and

- (4) A statement of the nature of the challenge to the individual's right to vote signed by the person making challenge under the penalties of perjury
- F. A Provisional Ballot shall be accompanied by instructions, prescribed by the Town Board of Supervisors of Elections, for marking and returning the ballot, and shall be marked "Provisional Ballot".
- G. When voted, a Provisional Ballot shall be enclosed and sealed in an envelope designated "Provisional Ballot", and which may have printed on it the Provisional Ballot application to be completed and signed by the individual seeking to vote under the penalties of perjury.
- H. The Town Board of Supervisors of Elections shall promptly, but in no event more than 24 hours after the polls close, or within 24 hours after the County Board of Elections Office next opens after the polls close in the event that the County Board of Elections is closed during that 24 hour period, make a determination as to whether a Provisional Ballot that has been cast shall be counted. A Provisional Ballot shall be counted unless all members of the Town Board of Supervisors of Elections agree that the vote should not be counted. Each individual casting a Provisional Ballot shall then promptly, but in no event more than the 24 hours after the close of the polls period specified above, be sent written notification of the action taken on the Provisional Ballot and the reasons therefor. The Board of Supervisors of Elections' determination on whether to count a Provisional Ballot shall be subject to further challenge as set forth in Section 10-27 below after announcement of final election results.
- I. Whether to announce election results before and/or after making determinations as to whether Provisional Ballots shall be counted shall be in the sound discretion of the Chairman of the Town Board of Supervisors of Elections, except that election results announced before determinations and/or counting of Provisional Ballots shall be preliminary only and only the final announcement of election results after the counting of all Provisional Ballots that the Board has determined should be counted shall trigger the 48 hour periods for applications for recount or contest as set forth respectively in Sections 10-26 and 10-27.
- J. The Town Board of Supervisors of Elections, using forms approved by the Board, shall create and maintain a full record of Provisional Ballot voting, including:
- (1) The Provisional Ballot application;
  - (2) The action taken with regard to the Provisional Ballot; and the reasons therefor;
  - (3) Any Provisional Ballot that is rejected by the Board of Supervisors of Elections sealed inside the Provisional Ballot application envelope;

- (4) The envelope and ballot for any Provisional Ballot accepted and counted, with Provisional Ballots accepted and counted kept segregated from the remainder of the ballots counted;
- (5) A record of the vote of the Board of Supervisors of Elections as to whether the ballot should be counted; and
- (6) A copy of the notice to each individual voting by Provisional Ballot as to the action taken on the ballot and the reasons therefor.

~~K. The records that are required to be created and maintained by the Board of Supervisors of Elections pursuant to Subsection J above shall be maintained and preserved permanently, except that such records may be transferred in the regular course to the Maryland State Archives.~~

L.K. A voter casting a Provisional Ballot may receive assistance under the circumstances, and subject to the conditions, set forth in Section 10-21 above.

M.L. Public access to Provisional Ballot applications prior to announcement of final election results shall be prohibited. Public access after announcement of final election results shall thereafter be permitted, except that Provisional Ballots rejected by the Board of Supervisors of Elections shall remain in their sealed envelopes.

Section 2. That Part I, Chapter 10, Article IV of the Town Code by repealing and reenacting with changes Section 10-25 of the Code as follows:

**§10-25. Challenge of right to vote.**

~~A. No Town of Mount Airy qualified voter's right shall be challenged at the poll on any ground but identity.~~

A.B. Subject to the provisions concerning Provisional Ballot set forth in Article IIA, Section 10-21A above, ~~W~~when the right of any person to vote shall be challenged, the challenge shall be made and its validity determined immediately before such person enters the voting booth. The person, to include any election judge(s), challenging an individual's right to vote shall assign the reason for the challenge under penalties of perjury. The challenged voter shall respond truthfully under penalty of perjury. Unless all members of the Board agree to uphold the challenge, the voter shall be permitted to vote, and the vote shall be received accordingly.

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that

this Ordinance shall take effect retroactively to the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Introduced this 3rd day of December, 2018.

Enacted this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

ATTEST:

\_\_\_\_\_  
Jason Poirier, Secretary

\_\_\_\_\_  
Peter R. Helt, President of the Town Council

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:

\_\_\_\_\_  
Jason Poirier, Secretary

\_\_\_\_\_  
Patrick T. Rockinberg, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.

This \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Thomas V. McCarron, Town Attorney