



# 2011 Town Election Guidebook

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# MUNICIPAL PRIMARY ELECTIONS

A primary is an election where the voters who are affiliated with the two major political parties (Democratic Party and Republican Party) choose the nominees of their parties for election the following November. There is no primary conducted to nominate independent candidates or candidates of other political parties.

In Indiana, all **cities, all towns with a population of 3,500 or more, and all towns of any size population located wholly or partially within Marion County** conduct a primary if there is a contest within that political party for nomination to a city or town office (IC 3-10-6). If there is not a contest within a party for any nomination, then that party will not conduct a primary within the city or town. It is even possible for there not to be a contest within either major political party for any nomination. In that case, no primary will be conducted with a city or town at all. Instead, the nominees of the political parties will automatically be placed on the municipal election ballot as a result of filing their declaration of candidacy for that city office with the County Circuit Court Clerk. ***Detailed procedures describing how to file as a candidate in a primary and how to conduct a primary election in a city or large town may be found in the 2011 Candidate Guide and the 2011 Election Administrator's Guidebook.*** These publications are available online at [www.in.gov/sos/elections/2397.htm](http://www.in.gov/sos/elections/2397.htm).

In a **town with a population of less than 3,500, and which is not located within Marion County**, the town may adopt an ordinance under state law (IC 3-8-5-2) to provide for the nomination of Democratic and Republican Party candidates in a town primary election. A candidate for town office may also file a declaration as a candidate of the Libertarian Party, by filing a petition as an independent or other minor party candidate, or by filing a declaration as a write-in candidate. The procedures for filing as a candidate will be discussed in more detail later in this Guidebook.

An ordinance to provide for the nomination of Democratic and Republican Party candidates in a town primary election must be adopted no later than **January 1, 2011**. The town clerk-treasurer must file a copy of the ordinance with the office of the circuit court clerk of the county that contains the greatest percentage of the town's population.

If the town council adopts a municipal primary ordinance, then the county election board conducts the primary election for the town according to the statutes governing primary elections and candidates will be required to use the forms and file by the deadline applicable to a primary election. For example, a candidate running in 2011 primary election must file a declaration of candidacy (**STATE FORM CAN-42**) no sooner than January 19, 2011 and no later than noon **February 18, 2011**. (IC 3-8-2-4)

If the town adopts an ordinance providing for a municipal primary, the town may not change the method of nominating candidates for town office more than one time in any twelve year period. (IC 3-8-5-2(e)) Therefore, if the town adopts a municipal primary ordinance on December 31, 2010, this ordinance must remain in effect until December 31, 2022.

Democratic and Republican Party candidates in town with a population of less than 3,500 outside of Marion County that have not adopted an ordinance providing for a municipal primary will be nominated in a town convention. Information about the procedures to file as a candidate in a town convention, and how to conduct a town convention, will be discussed in more detail later in this Guidebook.

# TERMS OF OFFICE AND TOWN COUNCIL DISTRICTS

As a general rule, town council members and town clerk-treasurers serve four (4) year terms that begin on January 1 following their election. Special provisions apply in newly incorporated towns and towns that adopt an ordinance to change the schedule for electing town officials. (See "Staggered Terms and Changing the Year of Elections" on Page 5)

In addition, the "holdover" provision of the Constitution of the State of Indiana provides that a person holds office until a successor has been elected and qualified. In other words, if there are no candidates for a given office (or not enough candidates for all the town council seats) then the current office holder serves another four year term. (Article 15, Section 3 and IC 3-10-7-6) As a result, a small town may not have an election conducted for many years if no candidate chooses to file for office during the filing period set by state law.

If fewer at-large town council members are elected than there are at-large seats to be filled, the town council determines which incumbent at-large members will holdover for another four year term. This decision must be made by the town council no later than December 31 following the election. (IC 3-13-9-5.6)

## Town Council Districts

Often informally called "wards", Indiana law provides several options for dividing a town into council districts (IC 36-5-2-5) as follows:

Option 1 – Towns with districts in which a candidate must reside to run as a candidate for the district and in which voters must reside to vote for the district candidate.

Option 2 – Towns that have no town council districts, including towns that have abolished town council districts (towns with less than 3,500 in population may abolish town council districts). A candidate in these towns runs "at-large" and may live anywhere in town to run for town council and all the voters of the town vote for all candidates for town council.

Option 3 - Towns with districts in which candidates must reside to run as a candidate for the district but all the voters in the town may vote for candidates in all district races.

Option 4 – Towns with some districts seats (as described in Option 1 or Option 3) and some at-large seats where candidates may live anywhere in town to run for the at-large seat and all the voters of the town may vote for all of the at-large seats.

Upon incorporation of the town by the county commissioners, a town may be divided by the commissioners into at least three (3), but not more than seven (7) districts, or the commissioners can provide that all town council members are to be elected at-large. (IC 36-5-1-10.1)

After the original town council districts (if any) are created, the town council has the authority to adopt an ordinance to change town council district boundaries. A town with town districts is required to adopt an ordinance the second year following the federal census. **If a town currently has council districts, the town will next be required to establish new council districts in 2012 pursuant to standards and procedures in state law.** (IC 36-5-2-4.1) A town with less than 3,500 in population may abolish its council districts and have all of its members elected at large. (IC 36-5-2-4.1(h)) An ordinance abolishing council districts may not be adopted or repealed during a year in which a municipal election is held.

If a town council desires to change town council districts it must do so **on or November 8 of a year preceding a year in which a municipal is scheduled to be held**. The town may not change the boundaries of a council district after this November 8 deadline through the day following the date on which the municipal election is held except to assign annexed territory to a municipal legislative body district in an annexation ordinance. (IC 3-11-1.5-31) An ordinance establishing, changing or abolishing districts must be filed with the circuit court clerk of the appropriate county. Annexation ordinances must also be filed with the circuit court clerk. (IC 36-4-3-22)

## **Changing the Number of Town Council Members**

Towns can also increase or decrease the number of council members by following the procedures outlined in state law. (IC 36-5-2-4.2) These steps include a resolution, a ballot referendum, and a local ordinance.

## **Staggered Terms and Changing Year of Elections**

Towns may stagger the terms of town offices and change the year in which some or all town offices are elected. Some towns stagger terms to prevent the turnover of all town officers after one election.

To stagger terms, the town council must pass an ordinance in the year preceding a municipal election. The deadline for staggering terms for the 2011 town elections is **midnight, December 31, 2010**.

The ordinance must specify the years in which town elections will be held. Town elections may be scheduled to occur in a general election year (2012, 2014) or a municipal election year (2011 or 2015), or both. However, a town election may not be scheduled to occur in those years immediately following a presidential election (2013, 2017).

The ordinance must also specify which offices, including seats on the town council, will be staggered and elected in each year. Initially, holders of these offices will serve less than a four-year term. The ordinance may not establish a term that lasts more than four years.

In general, a large town (a town with a population of 3,500 or more) may only stagger the terms of council members so that no more than 50% of its members are elected in a general election year. (IC 3-10-6-2.5)

In contrast, a small town (a town with a population of less than 3,500) has more flexibility in scheduling its elections. For example, a small town may provide that some or all town offices elected in the 2011 election serve an initial one or three-year term so that the successors to the town officials elected in 2011 are elected in 2012, 2014, or both. Upon completion of the initial shortened term of one or three years, successors to the town officials elected in 2011 to hold shortened one or three-year terms will be elected to full four-year terms. (IC 3-10-7-2.9)

In fact, a small town may change the year of the election for all its offices so that all offices are elected in a general election year. This will result in a turnover of all town offices after one election, however, the election for all town offices will occur in a general election year (2012, 2014) rather than a municipal election year. (2011, 2015) For example, for a town that elects all town offices in 2011, a small town could adopt an ordinance that provides that all town offices elected in 2011 will serve an initial three-year term. The successors of all town offices would then be elected in 2014 and every four years after (2018, 2022).

Ordinances establishing staggered terms and changing the times of elections must be passed in the year preceding the municipal election and may not be repealed earlier than twelve years after its adoption. (IC 3-10-7-2.7; IC 3-10-7-2.9)

The county election board shall conduct the elections for town office that occur during general election years and may not assess the town for the cost of the election. (IC 3-5-3-11)

## **Precincts and Polling Places**

Precincts are geographical areas established for the purpose of voting. Unlike town council districts, which are established by the town council, the county executive (the board of county commissioners or the Mayor of Indianapolis in Marion County) establishes precinct boundary lines by filing a precinct establishment order with the Indiana Election Division for approval. The town cannot alter precinct boundary lines for the purpose of conducting town elections. (IC 3-11-1.5-2; IC 3-11-1.5-24)

Generally, each precinct located wholly or partially within a town must have its own voting place. However, the county executive (or town council president) may establish one polling place administered by one team of precinct election officials (inspector, judges, poll clerks, and sheriffs) for two adjoining precincts if the county election board (or town election board) adopts an order approving this procedure by unanimous vote. (IC 3-11-8-4.3; IC 3-10-7-21; IC 3-10-7-22) Having one team of precinct election officials administer two precincts in this manner will reduce election expenses like room rental, wages, meals, and election training. However, if precinct election officials administer more than one precinct, the ballots and vote totals cast in each precinct are required to be kept and reported separately.

In addition, a county election board (or town election board) may omit certain precinct officers (poll clerks, sheriffs, or both) by adopting a resolution by unanimous vote. This resolution must specify which or the remaining precinct election offices will perform the duties of the clerks or sheriffs. (IC 3-6-6-38)

School buildings, fire stations, and all other public buildings shall be made available for polling places without charge. (IC 3-10-7-21; 3-11-8-4) Whatever polling place is selected, state and federal law requires that all polling places be accessible to disabled persons. (IC 3-11-8-6)

# GETTING ON THE BALLOT

## Candidate Qualifications

To run for a town office, a person must meet certain qualifications before he or she can become a candidate. Qualifications vary depending on the office. In all towns fewer than 3,500 in population, there are at least two different elected positions: town council member and town clerk-treasurer. Towns that have created a town court by ordinance will also elect a town judge. (IC 33-35-1-1)

While the town clerk-treasurer (and town judge, if applicable) serves the entire town, towns have several options available if the town chooses to divide the town into council districts. See "Town Council Districts" on page 5)

**A candidate for town council or town clerk-treasurer must be a registered voter in the district the candidate seeks to represent** no later than the deadline for filing a declaration of candidacy or petition of nomination. (IC 3-8-1-1) A different requirement applies to a candidate for judge of a town court.

Candidates for town council must:

1. reside within the town; and
2. reside in the district they seek to represent, if applicable. (IC 3-8-1-29)

Once town council members assume office they must continue to reside in the town and district, if applicable, and forfeit office if they cease to be a resident of the town or district. Council members can then be removed from office by a court or by the town council itself using special procedures under state law. (IC 34-17-1; IC 36-5-2-6.5(3); IC 5-8-5)

Candidates for town clerk-treasurer must:

1. reside within the town; and
2. forfeit office if they cease to be a resident of the town. (IC 36-5-6-3)

In general, a person may file as a candidate for town office in one of three different ways. First, a candidate of the Democratic, Libertarian, or Republican Party may file a declaration as a member of one of these three parties. (IC 3-8-5)

Second, a candidate may appear on the ballot by filing a petition of nomination. (IC 3-8-6) A candidates running as independent, or a candidate running as a candidate of a minor party (other than Libertarian Party) use this method.

Finally, a candidate may file a declaration to be a write-in candidate. (IC 3-8-2-4) **Individuals running as a write-in candidate should remember that their names will not appear on the ballot.** Voters may cast a vote for a write-in candidate by writing in the name of the write-in candidate on the ballot.

## Town Conventions

As described above, the general rule is that Democratic, Libertarian, and Republican Parties hold town conventions to nominate candidates for local office in towns under 3,500 in population when there is competition between candidates of the same party.

A town convention is organized and conducted by implementing the following steps.

**Step 1: Declarations of candidacy.** A person who desires to be nominated for a town office as a Democratic, Libertarian, or Republican candidate must file a declaration of candidacy (see Appendix **STATE FORM CAN-16**) with the circuit court clerk between **January 3, 2011 and noon, August 1, 2011**. For a town that has established a town election board, the circuit court clerk must certify to the town clerk-treasurer and release to the public a list of all candidates for all offices following the filing deadline. (IC 3-8-5-10.5; see Appendix **State Form CAN-17**). If there is no competition within a political party for the nomination to a town office, then the candidate of that party who filed by the deadline will automatically appear on the November town election ballot for that political party. If there is no competition within a political party for **any** town office then that party will not conduct a town convention and all the candidates who filed for that party will appear on the November town election ballot. (IC 3-8-5-14)

**Step 2: Organize the town committee.** The appropriate county chairman must appoint a registered voter of the town to serve as chairman of the town committee. The chairman of the town committee may not be an officeholder of the town. (IC 3-8-5-3) The town chairman appoints a registered voter of the town to serve as the secretary of the town committee.

**Step 3: Calling the town convention.** The town chairman is responsible for organizing, calling, and conducting the convention. The convention should be held in the town. However, the town convention can be held elsewhere within the county if no suitable location exists in the town. **The convention must be held no later than August 20, 2011.** The town chairman must file notice of the town convention with the circuit court clerk of the appropriate county (where the largest part of the town's population lives). Notice must be posted at least three days in three prominent places in the town, including the town clerk-treasurer's office. The notice must state the date, time and place of the town convention. (see Appendix **STATE FORM CAN-15**) A convention must be held if there are more candidates who file as candidates for the same party for the same office than the number of candidates to be elected on the November election ballot for that office (two Democratic Party candidates for town clerk-treasurer or four Republican Party candidates for three town council at-large positions, for example). (IC 3-8-5-10)

If the county chairman determines that an emergency requires the rescheduling of a town convention after notice of the convention has been given, the county chairman shall promptly file a notice in the county election board office and in the office of the town clerk-treasurer, stating the date, time, and place of the rescheduled convention (IC 3-8-5-10(e)).

The county election board shall furnish the secretary of the town convention with a list of all of the town's voters. (IC 3-8-5-11) The list must state the date that an individual became a voter of the town if the individual became a voter of the town the same year the town convention is held. An individual who wants to vote in a town convention must register with the secretary of the town convention and subscribe to a statement that the individual is affiliated with the party conducting the convention before being permitted to vote in the convention. The secretary of the convention shall note on the list when an individual registers with the secretary. (IC 3-8-5-11(b))

**Step 4: Conducting the town convention.** The town committee chairman and secretary serve different roles at the convention. If either is unable or unwilling to participate in the convention, a replacement for the chairman, secretary, or both, is selected from the eligible voters attending the convention. (IC 3-8-5-12) If the town chairman is unable or unwilling to participate in the convention, the secretary acts as chairman until the convention elects a chairman from among the eligible voters attending the convention.

Registered voters of the town affiliated with that party holding a town convention may attend and vote at the convention. Additionally, the voter must comply with any other requirement for determining political party affiliation set forth in the rules of the major political party conducting the convention. The town



chairman must make an initial determination regarding who is eligible to participate and vote at the convention. If an individual objects to the determination of the chairman, the matter shall be put to the vote of all those individuals whose eligibility to vote is not in dispute. (IC 3-8-5-12 (b))

A person may not attend and vote at more than one party's town convention. (IC 3-8-5-11) A person who votes at more than one town convention commits a Class A misdemeanor and is subject to prosecution. (IC 3-14-2-30)

The chairman must also propose convention rules for adoption by the town convention voters. At the very least, the rules must provide (IC 3-8-5-12):

1. the voting method to be used;
2. a method for resolving tie votes;
3. a method for narrowing the list of candidates if no candidate receives a majority of votes cast; and
4. the rights of nonvoting observers and media attending the convention.

Proxy or absentee voting is not allowed at a town convention. In addition, nothing in the law permits candidates to be nominated from the floor of a town convention.

To be nominated, candidates must receive a majority of votes cast by voters present and voting at the convention.

Step 5: **Certifying the nominees.** Following the convention the chairman and secretary must complete in writing a certificate of nomination (see Appendix **STATE FORM CAN-18**) stating:

1. the name each nominee as the nominee wants the nominee's name to appear on the ballot (this is indicated on the person's declaration of candidacy);
2. the residence address of each nominee;
3. the office for which each person was nominated;
4. that each nominee is legally qualified to hold office; and

The certificate must be notarized and signed by the chairman and secretary of the convention. It is then filed with the circuit court clerk of the appropriate county **no later than noon, August 29, 2011**. The circuit court clerk must then file a copy of the certificate of nomination with the town clerk-treasurer **no later than noon, September 6, 2011**. (IC 3-8-5-13)

Step 6: **Withdrawal of a town convention nominee.** Candidates nominated at a town convention may withdraw their nomination by filing a notice to withdraw with the town election board or circuit court clerk. (IC 3-8-5-14.5; **STATE FORM CAN-46**)

A notice to withdraw must:

1. name the candidate;
2. name the office the candidate is seeking;
3. be signed by the candidate and notarized; and
4. be filed **no later than noon, three days following the adjournment of the convention**.

## **Petitions of Nomination**

A second way of getting on the ballot is through the circulation of a petition of nomination signed by registered voters of the town. (IC 3-8-5-2) This method is reserved for those candidates who choose not to affiliate with the Democratic, Libertarian, or Republican parties. Many candidates for town office file in

this manner to avoid partisan politics. *However, any qualified citizen has the right to file as a political party candidate even if it has been the town's tradition to have only "independent" or "third party" candidates.*

Candidates seeking nomination through a petition must acquire the signatures of registered voters who are qualified to vote for the candidate at the time of signing the petition. In other words, petitioners must be a registered voter of the town or the town district if the candidate is running for a district office where only the voters who live in the district vote for the district candidate. (IC 3-8-6-2; IC 3-5-2-19)

A candidate's petition must be signed by a number of voters that is equal to two percent (2%) of the total vote cast in the last election for secretary of state in the election district they seek to represent. Fractions of whole numbers do not count. (IC 3-8-6-3)

To illustrate how this two percent (2%) requirement is calculated assume there is a town named "Hoosierville." Hoosierville is composed of two precincts. The break down of votes cast for secretary of state in 2010 in these two Hoosierville precincts is as follows:

Candidates	Precinct 1	Precinct 2	Totals
Vop Osili	54	85	139
Charlie White	97	81	178
Mike Wherry	17	21	38

355 total votes (139+178+38) were cast for all candidates for secretary of state in these two precincts. 355 multiplied by 2% (355 x .02) equals 7.10. Therefore, a candidate will be required to obtain the signatures of 7 voters of the town on a petition of nomination to qualify for an at-large seat on the Hoosierville town council.

Frequently, a small town will be included entirely within a precinct that consists of an entire township so that the precinct contains both voters in the town and voters in the unincorporated areas of the township. In this situation it may be impossible to calculate the 2% figure for the town. However, if a candidate for town office obtains enough signatures on a petition to equal the 2% required for the entire township, then the petitioner is certain to have obtained enough signatures to meet the 2% required to run for town office.

A petition of nomination must include:

1. the candidate's name, as the candidate wants the candidate's name to appear on the ballot;
2. the address of each candidate, including the mailing address, if different from the residence address of the candidate;
3. the office they are seeking;
4. whether the candidate is affiliated with the same political party as any other candidate or group of candidates that has filed or will be filing a petition of nomination. **Note: An independent candidate may not include the name of any other candidate on the petition or request to be placed on the ballot as associated with any other candidate for town office.** (IC 3-8-6-4; see Appendix **STATE FORM CAN-44**)

A candidate may identify a political party name on the petition and include a symbol for the political party. Once a petition is certified, the name and any symbol will appear on the ballot. (IC 3-8-6-5)

The signature pages of a petition must include:

1. the person's signature;
2. their name of the person legibly printed;
3. the date the person signed the petition; and
4. the person's residence address. (IC 3-8-6-6)

A candidate seeking nomination through the petition process should acquire more than the minimum number of required petition signatures. Those who sign the petition may not either be registered to vote or registered to vote in the relevant election district. In addition, the county voter registration office may find it difficult to certify a signature where there is no printed name or address or the name and address is not legible.

A petition of nomination can be filed with the county voter registration office between **January 3, 2011 and noon, June 30, 2011**. All petitions must be accompanied by the candidate's written consent to become a candidate. (IC 3-8-6-10; see Appendix **STATE FORM CAN-45**)

After verification of the candidate's petition, the county voter registration office must certify to the county election board (or town election board and clerk-treasurer) the number of valid signatures on each petition of nomination. Petitions must be certified by **noon, July 15, 2011**. (IC 3-8-6-10)

A petition of nomination can be withdrawn, but only by the candidate and only if withdrawn by noon, July 15, 2011. (IC 3-8-6-13.5; see Appendix **STATE FORM CAN-46**)

## **Write-In Candidates**

Another manner of candidate nomination is as write-in candidate. This method allows a person to run for office without filing as a major party candidate, being nominated at a town convention, or by a petition of nomination.

To be eligible, a candidate must file a declaration of intent to be a write-in candidate with the circuit court clerk. (IC 3-8-2-2.5) (see Appendix **STATE FORM CAN-51**) Once filed, a write-in candidate is subject to the same laws that apply to other candidates. However, unlike all other candidates, the write-in candidate's name will not appear on the ballot. Instead, a voter must write the name of the candidate on the ballot in the space provided for write-in votes. Only votes cast for declared write-in candidates shall be counted and certified. (IC 3-12-1-1.7)

Candidates can file a declaration of intent to be a write-in candidate for the 2011 municipal election between **January 3, 2011 and noon, July 5, 2011**. (IC 3-8-2-4)

A write-in candidate may withdraw their declaration of intent no later than **noon, July 15, 2011**. (IC 3-8-2-2.7) (see Appendix **STATE FORM CAN-46**)

## **Filling Ballot Vacancies**

Another way for a candidate to get on the ballot is to fill a ballot vacancy for a party. If a vacancy occurs for any reason before the 30<sup>th</sup> day before the town election, and the candidate had been nominated through a town convention of the Democratic or Republican party, the precinct committeemen who are eligible to vote for the office will hold a caucus to select a replacement, or the county chairman or the county executive committee (chairman, vice chairman, secretary and treasurer) may fill the ballot vacancy if authorized to do so by the political party's county committee. (IC 3-13-1-6)

Libertarian Party candidates vacancies are filled by the state committee of that party. (IC 3-10-7-21; IC 3-13-1-20; IC 3-13-1-15)

Late ballot vacancies are those that occur after the thirty-first day before the election. A late ballot vacancy occurs when:

1. a candidate nominated by one of the major political parties dies;
2. a candidate moves from the election district and must withdraw;
3. a candidate is disqualified; or
4. a candidate is ordered to withdraw by a court. (IC 3-13-2-1)

County chairman fill late ballot vacancies. (IC 3-13-2-5) The Libertarian Party state committee fills late candidate vacancies (IC 3-12-2-12).

In those instances where the candidate was nominated through petition of nomination and was a member of a party other than the Democratic, Libertarian, or Republican parties, the presiding officer of that party may appoint someone to fill the vacancy. (IC 3-13-1-18) Vacancies of these party candidates must be filled **no later than August 29, 2011**. (IC 3-8-5-13) After this date, there is no provision in the law to fill vacancies that occur within local parties for any reason. Another candidate may not be substituted for a candidate who files as an independent candidate. (IC 3-8-6-17)

## **Determining Whether an Election is Required**

Before an election can be held in a town, at least two nominees must be seeking the nomination of the same office. While this statement may sound simplistic, statutory and constitutional provisions come into play when no candidates or only the incumbent declares for a local office.

In general, primary elections are not held for the candidates of major parties (the Democratic and Republican Parties) in towns under 3,500 in population unless the town has adopted an ordinance to nominate candidates at a primary election under IC 3-8-5-2. (See the "Municipal Primary Election" section in this *Guidebook*).

After all the deadlines to become a candidate for town office have passed, the town must determine whether it is necessary to conduct a municipal election on November 8, 2011. **A town may not conduct an election when there are no contests between competing candidates for any office in the town.** For example, where only one candidate may be elected to the office (town clerk-treasurer) and only one candidate is competing for the office, there is no contest for the office of town clerk-treasurer. Likewise, where more than one candidate may be elected to the office (three town council members who all run at-large, for example) and only three candidates are competing for the office, there is no contest for the office for town council. A town must wait until the expiration of all candidate filing deadlines, including deadlines applicable to town conventions, petitions of nomination, write-in candidates, and ballot vacancy candidates before determining whether an election may be held under state law.

With one exception, if there is a contested race for any office, all names must appear on the ballot. The one exception being that if there is a contest for an office that is voted on by only the residents of a particular district (a town council district where only the residents of the district vote for the office, for example), and there is no election for an office to be voted on by the voters of the entire town (town clerk-treasurer, for example), then the county election board (or town election board) may, by unanimous vote, adopt a resolution that only the names of candidates in the town council district shall be printed on the ballot. If this occurs, the names of all unopposed candidates for an election to be voted on by all voters of the town will **not** be placed on the ballot. (IC 3-10-7-6)

## **Persons Who Holdover in Office**

When there are no nominees for an office where only one candidate may be elected (town clerk-treasurer, for example), the person currently serving in the position remains in office automatically for another four year term. The Constitution of the State of Indiana specifies that an officeholder remains in office until a qualified successor is elected. (Article 15, Section 3) Where more than one candidate may be elected to the office (three town council members who all run at-large, for example), the town council shall determine, not later than December 31 following the election, the incumbent council member or members who remain in office. (IC 3-13-9-5.6)

# **TOWN ELECTION BOARDS AND GENERAL PROCEDURES**

## **Who Conducts Election in a Small Town?**

In general, the county election board will conduct elections for all the cities and towns in a county. The county election board shall conduct the election in a small town (a town with a population of less than 3,500) in 2011 unless the town council adopts a resolution between **January 1, 2011 and August 8, 2011** to establish a town election board to conduct the town election. The resolution must be filed with the circuit court clerk no later than **noon August 22, 2011**. If adopted, the resolution will expire **December 31, 2011**. (IC 3-10-7-5.5)

## **Town Election Board**

If a resolution is adopted to establish a town board, the town election board is responsible for administering the municipal election. The town election board has the same powers and duties in conducting the town election as the county election board has when conducting a general election. (IC 3-10-7-21)

The town election board consists of a town chairman appointed by the Democratic Party county chairman, a town chairman appointed by the Republican Party county chairman, and the town clerk-treasurer. (IC 3-10-7-7) The town election board must select one of its appointed members to serve as chairman of the town election board. The clerk-treasurer serves as secretary to the town election board. (IC 3-10-7-11)

The town election board should not be confused with the town political party committees established to administer the town conventions. It should also not be confused with the town council.

## **Organization and Meetings of Town Election Board**

The chairman calls meetings of the town election board when necessary to perform its duties. If the chairman refuses or is unable to call meetings, the two remaining town election board members may meet and conduct business. (IC 3-10-7-12) Minutes must be kept of all meetings, including a record of each member's vote on all questions that come before the board. (IC 3-10-7-13) The meetings and minutes are subject to the State Open Door and Public Records laws.

For town elections to come off smoothly, it is important for the town election board to prepare a plan for the election and work with other election officials. One of the first tasks a town election board should do is contact the circuit court clerk, county chairmen of the Democratic and Republican Party, and the county election board. Each of these boards or individuals has a role to play in the election.

The town election board is responsible for securing voting supplies, printing ballots, tallying votes, keeping accurate records, and coordinating absentee voting. Party chairmen are responsible for nominating certain election officials and filling ballot vacancies. The county election board and circuit court clerk are responsible for providing voter registration information and election equipment and materials. The county election board may hear appeals of decisions made by the town election board.

The town election board has the authority to hire clerks, custodians, and other employees to assist in administering the election. While nothing in the law requires that towns hire additional employees, the town election board fixes the employees salaries, duties, and rank. (IC 3-10-7-16)

The town election board can also appoint deputy election commissioners. Deputy election commissioners must be residents of the town and serve at the pleasure of the town election board. If the town election board chooses to appoint deputy election commissioners, the county chairmen of the Democratic and Republican parties each shall designate one half of the commissioners. (IC 3-10-7-15)

Whenever called upon by the town election board, the town marshal must assist the board in enforcing all election laws and the discharge of their duties. (IC 3-10-7-19)

## **Election Records**

As secretary of the town election board, the clerk-treasurer is responsible for keeping a record of the board's minutes, meeting notices, and agendas for each board meeting. These records must be compiled and retained according to the same requirements for town council meetings under the Open Door Law. (IC 5-14-1.5)

In addition, after the town election board has completed a canvass of all the votes cast in an election, **the town election board shall immediately file the poll lists, ballots, tally sheets, and other election forms with the circuit court clerk of the county** containing the greatest percentage of population of the town for preservation and voter list maintenance in accordance with state law. (IC 3-10-7-33)

Federal and state law requires that election materials be kept for twenty-two (22) months after the election. (IC 3-10-1-31.1) Except for one ballot and one provisional ballot that should be retained for the town's records, unused ballots can be destroyed after noon 17 days after the election. (IC 3-11-3-31)

## **Appealing Town Election Board Decision**

Any registered voter in the town may appeal any decision of the clerk-treasurer or the town election board to the county election board. The appeal must be in writing, describe the grounds for the appeal, and include any relevant documents. The county election board must render a decision within ten days of receiving the appeal. (IC 3-10-7-35)

## **Precinct Election Officials**

Precinct election officials are nominated by the appointed Democratic and Republican Party members of the town election board. The town election board shall appoint the nominated precinct election officials for each precinct or voting place. (IC 3-10-7-27; IC 3-10-7-22) Each precinct election official must be residents of the town. (IC 3-10-7-22) All precinct election officials have the same powers and duties, and are subject to the same qualifications and penalties, as their counterparts in a general county election. (IC 3-10-7-23)

The board must appoint a precinct election board consisting of one inspector and two judges of opposite political parties. The inspector is appointed by the appointed town election board member representing the political party whose candidate received the most votes in that county for the office of secretary of state in the last general election for that office in 2010. (IC 3-10-7-26) The circuit court clerk of the appropriate county can provide this information.

The town election board will also appoint two poll clerks and two election sheriffs of opposite political parties. (IC 3-10-7-24) However, the town election board may adopt a resolution (by unanimous vote of

the entire board) to eliminate poll clerks, sheriffs, or both in specified precincts or in all the precincts of the town. The board must designate which precinct election officials must perform the duties of the omitted poll clerks or sheriffs. (IC 3-6-6-38) Two assistant poll clerks may also be appointed if the town election board deems such positions necessary. (IC 3-10-7-24)

If a precinct election board administers more than one precinct, the precinct election board must keep the ballots cast in each precinct separate from the ballots cast in any other precinct, so that the votes cast for each candidate and on each public question in each of the precincts administered by the board may be determined. (IC 3-10-7-22(c))

In addition to these precinct officials, each political party that has a candidate on the ballot may appoint one challenger and one pollbook holder for each precinct in the town. Challengers and pollbook holders are not paid by the town. (IC 3-10-7-29)

## **Ballot Type and Voting Method**

The town election board shall determine how votes will be cast in the election- by traditional hand-counted paper ballot, by optical scan ballot card, on electronic voting machines, or by some combination of these different ways to cast a vote. Whatever method is used, there are statutory requirements that must be followed. The general requirements are listed in different chapters of the Indiana election code as follows:

1. Traditional hand-counted paper (IC 3-11-2; IC 3-11-11);
2. Optical Scan Ballot Card (IC 3-11-13); and
3. Electronic voting system (IC 3-11-14).

The town election board may request to use the county's voting equipment. The county must provide the use of the voting equipment if it is available. However, the town must pay moving expenses and for any loss or damage to the equipment. (IC 3-10-7-31) If the town uses a voting system other than traditional hand-counted paper ballots, the system must have been previously approved for use in Indiana by the Indiana election commission.

**Whatever voting system is used in an election, the town election board is required to arrange to have at least one accessible voting machine available for in-person absentee voting and at least one accessible voting machine available at each polling place on Election Day so that voters with disabilities, including blind voters and visually impaired voters, may cast a ballot privately and independently.** (IC 3-11-15-13.3(d); IC 3-11-9-6; IC 3-11-10-12.5) This requirement can be met by providing a specially equipped electronic voting machine. Every county in Indiana was required to purchase these machines as a result of the federal Help America Vote Act of 2002.

## **Town Election Expenses**

The allocation of town election expenses depends on whether the town election board or county election board conducts the town election. In addition, if the town election board conducts the town election the board may enter into an agreement with the county for election supplies and equipment. Even if the county election board conducts the town's election the town may enter into an agreement with the county to establish the reimbursement the town will owe to the county for conducting the town election.



### Expenses Where Town Election Board Conducts Election

If the town establishes a town election board, the appointed members may be compensated for serving on the town election board. The town council determines the compensation. (IC 3-10-7-20) However, state law does not require that appointed members receive pay. In addition, there is no provision for additional compensation for the clerk-treasurer for serving as secretary for the town election board. In addition, the town election board may appoint and compensate deputy election commissioners and any other employees it may need to administer an election.

If the town election board conducts the town's election, the election materials, supplies and equipment are purchased in accordance with the town budget as set by the town council. All purchases must conform to state purchasing laws, and payments are made only upon filing a claim with the clerk-treasurer and verified and approved by the town election board. (IC 3-10-7-17)

Upon request of the town election board, the county election board shall furnish any available equipment necessary for a town election and the town shall pay the county the expense of moving the equipment to and from the polls and for any loss of or damage to the equipment. (IC 3-10-7-31)

### Expenses Where County Election Board Conducts Election

Towns with a population of less than 3,500 are permitted by law to enter into a contractual agreement with the county to establish the amount the town will reimburse the county for conducting the town's election. For the 2011 town election, this agreement must be made no later than **September 21, 2011**. (IC 3-10-7-4) State law does not dictate the contents of the agreement, only that both parties agree to its terms. (see Appendix- Sample Agreement)

The agreement permitted under this statute should be limited to one election. Subsequent elections would be covered by a separate agreement. The amount the county is reimbursed for its expenses should be specified in the agreement. Entering into an agreement with the county election board does not change how candidates are nominated for town elections. (IC 3-10-7-4)

If the county conducts the election for the town and there is not an agreement with the county to establish the amount the town will reimburse the county for conducting the election, certain election expenses directly attributable to the town's election are billed by the county to the town. (IC 3-5-3-7; 3-5-3-8; 3-5-3-9). In addition, other more general expenses are apportioned between the county and all municipalities in the county. The town will be billed for these general expenses based on the total number of voters who cast a ballot in the municipal primary or municipal election in all of the municipalities in the county. (see Appendix- County Election Board Worksheet) This apportionment of costs does not apply to a town which has entered into an agreement with the county to establish the amount the town will reimburse the county for conducting the election. (IC 3-5-3-11)

# VOTER REGISTRATION

This chapter describes some of the key dates and unique features of the voter registration process.

## Regular Registration Procedures

Indiana law provides that a voter only needs to register to vote once. In most cases, the only time a person would need to re-register is if they have moved from the precinct where they most recently voted. A person who has been disenfranchised following conviction of a crime must re-register after release from imprisonment. (IC 3-7-13-7)

For a municipal election year, registration is open between December 1, 2010 and **April 4, 2011**. Registration closes prior to any primary election, but reopens May 17, 2011 and continues until **October 11, 2011** for the November municipal election. (IC 3-7-13-10) These same time periods apply even in towns with a population of less than 3,500 that do not have primaries.

Because a person must be registered before they can vote, the town election board will need accurate and current voter registration lists from the county voter registration office. These lists of registered voters must be prepared and distributed **no later than ten days before the election** by the county clerk's office. Lists must be prepared for each precinct in the town. (IC 3-7-29-1)

Because of the confusion that may exist regarding precincts and town boundaries, town election boards may want to obtain, review and organize these lists as early as possible. Accurate and easily referenced voter registration lists in the statewide voter registration system should minimize some of the potential problems. A key element to reducing these problems is cooperation between the town clerk-treasurer and the county voter registration office. Working together and sharing information will help both to discharge their statutory duties more easily and with less potential for error. The town will likely be assessed the cost of preparing these lists.

## National Voter Registration Act

Passed by Congress in 1993 and implemented by Indiana in 1995, the NVRA or "motor voter" law creates several new sites for registering to vote. A person can now register to vote at the license branch (IC 3-7-14), public assistance agencies (IC 3-7-15), agencies serving the disabled (IC 3-7-16), and armed forces recruitment offices (IC 3-7-17)

The town clerk-treasurer's office is designated as a site where mail-in voter registration forms must be available to the public. (IC 3-7-24-9) The office must also post a notice in a prominent location easily visible to the public indicating that mail-in voter registration forms are available at the office (IC 3-7-24-17). The clerk-treasurer's office is not required to accept these forms, or mail or deliver them to the county voter registration office (IC 3-7-24-16).

## **ABSENTEE VOTING**

In addition to casting a ballot on Election Day, voters may apply to vote by absentee ballot before Election Day. (IC 3-11-4-2) (**STATE FORMS ABS-1, ABS-2, ABS-15**) Depending upon the circumstances, a voter may vote absentee in-person in the town clerk-treasurers office, by mail, or by absentee traveling board. Military and overseas voters may even vote by fax or email.

The town election board should contact the county clerk's office and obtain a quantity of application forms as soon as the board is established. A special absentee ballot application (**STATE FORM ABS-15**) is also available for military and overseas voters. In addition, absentee ballot applications are also available on the Election Division's website at <http://www.state.in.us/sos/elections/2402.htm>.

All absentee ballots must include the official seal and signature of the town clerk-treasurer and the initials of either both members of the absentee voter board or the appointed members of the town election board. (IC 3-11-4-19) **NOTE: Whenever the clerk-treasurer is a candidate on the ballot for any office, the name and signature of the town clerk-treasurer may not appear on the ballot for authentication or other purpose. Instead, the ballot printer must substitute a uniform device prescribed by the Indiana Election Commission for that purpose (IC 3-5-4-9). Contact the Election Division if you need a copy of this uniform device or other information concerning this requirement.**

### **Voting Absentee In-Person**

If a town is conducting its election, a person may apply to vote absentee in-person in the office of the town clerk-treasurer without stating a reason. (IC 3-11-4-1) Unless otherwise ordered by the town election board, voting in person can be done between October 10, 2011 (if the office is open on Columbus Day, and if not then on October 11) and **noon November 7, 2011**, the day before the town election. Absentee voting in the clerk's office must also be held on the two Saturdays preceding the election for at least seven (7) hours. (October 29 and November 5, 2011). In counties with a population of less than 20,000, the seven hour requirement can be reduced to four hours. (IC 3-11-10-26)

However, as a practical matter, providing for in-person absentee voting as otherwise required by law in many small towns may be practically difficult and costly. As a result, a town election board may, by unanimous vote of all of its members, and after making certain findings required by law, establish specific days and times for casting an absentee ballot in person in the town clerk-treasurer's office that are less than otherwise required by law. (IC 3-11-10-26.5) Examples range from "only on Wednesdays in the office of the town clerk-treasurer" or "the two Saturdays before Election Day." A town election board may obtain a sample resolution from the Indiana Election Division for this purpose.

### **Voting Absentee by Mail**

A voter may also cast a vote by mail. However, a voter voting an absentee ballot by mail is eligible to cast an absentee ballot only if one of the following reasons is indicated on the absentee ballot application:

1. The voter has a specific, reasonable expectation of being absent from the county on election day during the entire twelve hours that the polls are open.
2. The voter is absent from the voter's precinct of residence on election day because of duties as an election official.
3. The voter is confined to their home, a health care facility, or the hospital because of injury or illness during the entire twelve hours that the polls are open.

4. The voter is a disabled voter.
5. The voter is caring for an individual confined to their place of residence during the entire twelve hours that the polls are open.
6. The voter is an elderly voter (age 65 or older).
7. The voter is scheduled to work the entire twelve hours that the polls are open.
8. The voter is observing a religious discipline or religious holiday during the entire twelve hours that the polls are open.
9. The voter is eligible to vote under IC 3-10-11 or IC 3-10-12.
10. The voter is an address confidentiality program participant.
11. The voter is a member of the military or a public safety officer. (IC 3-11-10-24)

Applications to vote by mail can be completed and delivered to the town election board in person, by mail, or by FAX. In addition, military and overseas voters may deliver an absentee ballot application to the town election board by scanning a copy of their application and attaching the application to an email sent to the town clerk-treasurer. Absentee ballot applications to vote absentee by mail in the town election must be received by the town election board no earlier than **May 17, 2011** and no later than **October 31, 2011**.

Except when an absentee application is challenged, mailed absentee ballots must be sent, postage fully prepaid, on the day the application was received or within five days after receipt of the ballots. (IC 3-11-4-18)

A person voting an absentee ballot by mail must:

1. mark the ballot in the presence of no other person who can see how the voter voted;
2. fold each ballot so that no other person can determine how it was voted;
3. enclose the voted ballot in the envelope provided and seal the envelope;
4. sign the voter's name on the outside of the envelope; and
5. mail the ballot to the town election board or deliver it in person. (IC 3-11-10-1)

An absentee voter voting by mail may delivery the ballot to the town election board in person or by mail. In addition, the voter's attorney in fact or a member of the voter's household may return a voter's absentee ballot. However, it is a criminal offense for other individuals to do so. (IC 3-14-2-16).

If the absentee ballot is returned by a member of the voter's household, or the voter's attorney in fact, that person must complete an affidavit documenting that they are a member of the voter's household or the attorney in fact. This requirement does not apply if the voter's attorney in fact has previously filed the power of attorney from the voter with the election board. (IC 3-11-10-24; **STATE FORM ABS-19**)

### **Voting Absentee by Traveling Board**

A qualified voter confined within the county because of illness or injury, a voter caring for a confined person, or a disabled voter whose precinct is not accessible to the voter may vote an absentee ballot before a traveling absentee board that travels to where the voter is located. An absentee ballot voted before a traveling absentee board must be cast on **any of the twelve (12) days** immediately preceding the election. (IC 3-11-10-25) The deadline to apply to vote before a traveling absentee board is **noon November 7, 2011**

A disabled voter who is unable to make a voting mark on the ballot or sign the absentee ballot secrecy envelope **MUST** vote before a traveling absentee board. (IC 3-11-10-24)

## **Military and Overseas Voters**

Military and Overseas voters may vote by fax or email. The request to vote absentee by fax or email may be made on a Federal Post Card Application (**FEDERAL FORM 76A**) or a special military/overseas absentee ballot application (**STATE FORM ABS-15**). A request may be delivered to the town election board by mail, email, or fax but must be submitted no later than noon **November 7, 2011**. (IC 3-11-4-3; IC 3-11-4-4; IC 3-11-4-6).

If an application to vote by email or fax is approved by the town election board, the board will fax (or scan and email) a cover sheet (**STATE FORM ABS-9**) and an absentee ballot. The military or overseas voter must complete the ABS-9 and mark the absentee ballot and return these to the town election board by email or fax.

The county election board will then take the emailed or faxed ballot and place it in a special absentee ballot envelope (**STATE FORM ABS-10**) and attach the voters absentee ballot application and completed ABS-9 to the outside of the envelope. This emailed or faxed ballot is then processed like any other absentee ballot.

An absentee ballot received **by mail** from an overseas voter or a military voter who is stationed outside of the United States will not be considered as arriving too late to be counted if the ballot is postmarked no later than election day, and is received by the noon 10 day deadline for counting provisional ballots. (IC 3-12-1-17)

## **Absentee Ballot Application Assistance**

A person may provide another person with a "pre-completed" absentee ballot application with the following items provided:

- 1) the voter's name;
- 2) registration or mailing address;
- 3) date of birth; and
- 4) voter identification number.

However, a person is prohibited from providing another person with an absentee ballot application with the following items "pre-completed" on the application:

- 1) the address to mail the ballot (other than the individual's own registration address);
- 2) the party ballot choice in a primary election;
- 3) the types of absentee ballots (such as presidential only, or school board only); and
- 4) the reason why the voter is qualified to vote absentee by mail or before a traveling board.

If a person assists another person in completing any of the items listed in paragraphs 1-4 in the preceding paragraph, the person assisting must state the following information, under oath, on the absentee ballot application in the area provided:

- 1) The name, address, and telephone numbers of the person assisting.
- 2) The date of the assistance.
- 3) That the individual assisting complied with state laws regarding submitting applications (such as timeliness).
- 4) That the person assisting had no reason to believe that the applicant was ineligible or did not properly complete and sign the application.

A person who receives an absentee ballot application from another person must file the application with the county election board by noon 7 days after receiving it, or by the applicable absentee ballot application deadline, whichever occurs first. However, this requirement for timely delivery does not apply to a postal employee or to an employee of a bonded courier company.

A person, other than a postal employee or an employee of a bonded courier company, who files an absentee ballot application other than the person's own application, must complete and file an affidavit (**STATE FORM ABS-17**) stating the following:

- 1) The name, address, and telephone number of the person filing the application.
- 2) That the individual filing the application complied with state laws regarding submitting applications.
- 3) That the person filing the application had no reason to believe that the applicant was ineligible or did not properly complete and sign the application.
- 4) That the affidavit is completed under the penalties of perjury (with those penalties being set out on the affidavit).

The county election board shall record the date and time the affidavit was filed. (IC 3-11-4-2)

### **Challenging an Absentee Ballot Application**

A member of the town election board or a member of the absentee voter board, may challenge an absentee ballot application by completing and filing a challenge affidavit (**STATE FORM ABS-20**) alleging that the application: (1) was not submitted by a voter of the precinct; (2) contains a false statement; or (3) was not executed or filed in accordance with state or federal law (including the laws described in the preceding section). If an absentee ballot application is challenged, the matter must be referred to the town election board for a prompt decision to either approve or deny the application. (IC 3-11-4-18.5)

### **Appointment of Absentee Voter Boards**

Towns may appoint as many absentee boards, including traveling absentee boards, that the town election board deems necessary for conducting absentee voting. Absentee voter boards consist of two people, one from each of the two major political parties. A person is not eligible to serve on an absentee voter board if the person is:

1. unable to read or write the English language;
2. has any property bet or wagered on the outcome of the election;
3. is a candidate to be voted upon at the election; or
4. is related to a candidate, unless the candidate is unopposed. (IC 3-11-10-36)

Ten days before the beginning of absentee voting, the town election board must notify the respective county chairmen of the Democratic and Republican Parties of the number of absentee voter boards that will be appointed. Once the party chairmen are notified, they must make written recommendations for appointments to the absentee voter boards no later than three days of the start of in-person absentee voting in the office of the town clerk-treasurer. The town election board must appoint those individuals recommended by the county chairmen for appointment. If the county chairmen fail to make recommendations within the statutory time frame, the town election board may appoint any voter who resides in the town. (IC 3-11-10-37)

A member of an absentee voter board must receive training from the town election board before beginning to perform the member's duties. (IC 3-11-10-39)

An absentee board member is entitled to compensation. The town election board may establish a per diem and reimbursement for mileage. (IC 3-11-10-38) .

# ELECTION DAY AND POST-ELECTION ACTIVITIES

The town election board must prepare for and perform a number of duties on Election Day. Leading up to Election Day the board must decide which method or methods of voting will be used. (See section titled "Ballot Type and Voting Method") The town election board will also be responsible for tabulating ballots election night and certifying the results.

## The Polling Place

The polls are open from **6:00 a.m. to 6:00 p.m.** on Election Day. (IC 3-11-8-8) Election officials should follow prevailing local time in the county.

The inspector must announce the opening and closing of the polls to people outside the polling place in a loud tone of voice. (IC 3-11-8-9) Any voters that have passed the challengers, signed the poll list, are in the act of voting, or are in the chute at closing time shall be permitted to vote. The inspector will line up all waiting voters in the chute and the poll clerks will record their names. (IC 3-11-8-11)

The "chute" is defined as the area that extends 50 feet from the entrance to the room where voting is being conducted. Under special circumstances, the chute can be less than 50 feet (such as when this would extend the polls into a public street, for example). (See IC 3-5-2-10)

The following are permitted in the voting room on Election Day:

1. Members of the precinct election board (inspector and two judges)
2. Poll clerks and assistant poll clerks
3. Election sheriffs
4. Deputy election commissioners
5. Pollbook holders and challengers
6. Watchers
7. Voters for the purpose of voting
8. Minor children accompanying voters
9. Individual assisting a voter in the manner prescribed by state law (see IC 3-11-9)
10. Member of the County Election Board or Town Election Board, when acting on behalf of the Board.
11. Mechanic authorized to repair a voting system, if the mechanic has credentials signed by each member of the County Election Board or Town Election Board.
12. Either of the following who have been issued credentials signed by the county election board
  - a. The county chairman
  - b. The county vice-chairman.
13. The Secretary of State, as chief election officer of the state, unless that individual is a candidate for nomination or election to an office at the election. (IC 3-11-8-15)

## Ballots

A town may use paper traditional hand-counted paper ballots, optical scan ballot cards, or electronic voting systems, or a combination of these methods of voting. The details for designing a ballot for each voting method are specified in detail in the election code. Likewise, the procedures for casting and counting a vote cast on traditional hand-counted paper ballots (IC 3-11-11; 3-12-2), optical scan ballot cards (3-11-13; 3-12-3), and electronic voting systems (IC 3-11-14; IC 3-12-3.5) are set out in detail in the election code.



For example, traditional hand-counted paper ballots must be printed on the same size, quality, and color of paper, and be thick enough so that the printing cannot be read from the back of the ballot. (IC 3-11-2-3) Candidates are listed on the ballot under their party name and emblem. (IC 3-11-2-5) Candidates of the political party that received the most votes for secretary of state in the last election in the county are listed first; candidates of the party that received the second highest number of votes are listed next, and so on. Third party and independent candidates are listed in the order in which they filed their petition of nomination.

If a declared write-in candidate for an office has filed, then a column or row for write-in voting must be placed after the party and independent candidates for that office. If no declared write-in candidate has filed for an office, then the election board may print the paper ballots without including any space for a voter to cast a vote for a write-in candidate for that office. (IC 3-11-2-16)

At the extreme top of the ballot, the following statement must be printed: "It is a crime to falsify this ballot or to violate Indiana election laws." (IC 3-11-2-7) Voting instructions are printed at the top of the ballot below this statute in English and any other language that the board considers necessary. (IC 3-11-2-8) Instructions must include how to cast a straight party vote and how to cast a write-in vote, if a declared write-in candidate has filed. (IC 3-11-2-10) The names of candidates must be placed three-fourths of an inch apart from center to center of the name. A square, three-eighths of an inch on each side should be placed immediately to the left of each candidate's name. (IC 3-11-2-10) Party emblems must be enclosed in a circle that is at least three-fourths of an inch in diameter. (IC 3-11-2-9)

Unlike absentee ballots, traditional hand-counted paper ballots used on election day are not required to contain the seal and signature (or facsimile signature) of the town clerk-treasurer. However, ballots cast on Election Day must be initialed by the poll clerks in the precinct before the ballot is provided to the voter. (IC 3-11-11-4)

## **Tabulating Election Results**

State law specifies procedures for counting ballots. For example, when counting ballots cast on traditional hand-counted paper ballots the inspector and judge from the opposite party view the ballots as they are read and counted. (IC 3-12-2-2) Either official may protest any ballot that is not properly endorsed, is mutilated or bears distinguishing marks. (IC 3-12-1-3; 3-12-2-3) **However, the voter's intent is the primary factor in determining the validity of a ballot. In general, if the voter's intent can be determined on the ballot or any part of the ballot, it should be counted.** (IC 3-12-1-1)

A ballot that:

1. has a mark in or touching the circle containing a political party device is counted as a straight party vote (IC 3-12-1-8);
2. has a mark in or touching the circle or square next to a candidate's name is counted as a vote for that candidate. However, if the mark does not touch the circle or square the vote should not be counted (IC 3-12-1-9);
3. has a voter's name, initials, a number, or any other symbol which would enable a person to determine who cast the ballot should not be counted (IC 3-12-1-10);
4. contains a straight party vote and a vote for individual candidates of **the same party**, only the straight party vote **should be counted** (IC 3-12-1-7); or
5. contains a straight party vote and a vote for an individual candidates of **another party** in a race where only one candidate may be elected, the straight party vote **should not be counted** and only those votes cast for individual candidates should be counted. (IC 3-12-1-7)

**State law regarding how to count votes in a situation where the voter indicates a straight party vote and individual votes for candidates of a party inconsistent with the straight party vote in multiple candidate at-large races was changed in 2007 and is complex. Contact the Indiana election division for further information.** (IC 3-12-1-7(c), (d), and (e))

Disputed ballots must be endorsed by each of the poll clerks and the word(s) "counted" or "not counted" written on the back. (IC 3-12-2-4)

Likewise, as a general rule absentee ballots are counted in the polling place unless the town election board passes a unanimous resolution to count absentee ballots at a central location at least 60 days before the election. (IC 3-11.5-5-1) The inspector in the precinct must begin processing absentee ballots during Election Day by examining each absentee ballot envelope to determine if the absentee ballot is valid. Valid absentee ballots are removed from the absentee ballot envelope and placed in a ballot box in a way so as not to disclose how a particular absentee voter voted. At some point during Election Day or when the polls are closed the absentee ballots are removed from the ballot box and counted by the precinct election board.

In contrast, absentee ballots cast on electronic voting systems must be counted at a central location. Instead of sending absentee ballots cast on electronic voting systems to the precinct, lists of absentee voters are provided to the precinct so that the names of these absentee voters may be entered into the pollbook.

Detailed procedures for processing absentee ballots are contained in the **2011 Election Day Handbook** or contact the Indiana election division for further information.

At the close of the count in the precinct, the inspector will seal all ballots, tally sheets, poll lists, and other election documents in a paper envelope or bag. (IC 3-12-2-8) The inspector and judge of the opposite political party will then deliver it to the town clerk-treasurer. (IC 3-12-2-9)

**NOTE: A ballot cast in a town election may be challenged in the precinct on Election Day, such as when a voter's eligibility is questioned (residence in the town, for example), or when a voter declines or is unable to produce photo identification. (See IC 3-5-2-40.5 and <http://www.in.gov/sos/elections/2401.htm>)**

**There are special forms that must be completed and procedures that must be followed when a provisional ballot is cast. When a voter's ballot is challenged, and the voter casts a provisional ballot, the election board must decide, no later than noon ten (10) days after Election Day, whether or not the voter's provisional ballot should be counted or rejected.**

**For further information about the provisional ballot process consult the *2011 Election Administrator's Manual*, pages 61-69, available online at <http://www.in.gov/sos/elections/2397.htm>.**

## **Finalizing Election Results: Provisional Ballots**

Once the inspector and judge have delivered the bag or envelope to the town clerk-treasurer, the town election board is charged with examining and certifying the election results of the town. For towns with more than one precinct, the town election board is responsible for combining the precinct results and reporting the final vote count. The town election board must follow the same procedures of canvassing returns as the county election board.

The town election board must determine the validity of any provisional ballot and add the results of any provisional ballot that is counted to the relevant precinct.

Upon completion of the canvass, including the processing of any provisional ballots, the town election board must prepare a certificate designating:

1. the name of each candidate;
2. the name of each office;
3. the number of votes each candidate received;
4. the total number of votes cast; and
5. declare the candidate receiving the highest number of votes for each office to be the winner. (IC 3-10-7-34)

The town election board shall present the certificate to the town clerk-treasurer. Upon request, the town clerk treasurer will issue a certificate of election to each person elected. (IC 3-10-7-34)

However, a certificate of election may not be issued until **noon, November 28, 2011** when the period for filing a recount or contest has expired. (IC 3-5-2-2; 3-12-5-16)

## **Recounts and Contests**

A candidate (or a county party chairman) may file a lawsuit to have the votes cast in a town election “re-counted,” or to have the election “contested,” with the court ordering a special election to be conducted. The state laws concerning recounts and contests are found at Indiana Code 3-12-6 and 3-12-8. The candidate or chairman is responsible for understanding and complying with these complex statutes and should consult with their own attorney to be properly advised. The town election board may wish to discuss the question of legal representation with the town attorney early in the election year to see if the town attorney will be available to act for the election board in any litigation.

## **Oath of Office and Bond**

Before beginning service as member of the town council or a town clerk-treasurer, the successful candidate must swear an oath of office and file the oath with the circuit court clerk. (See back of **STATE FORM CEB-32 and CEB-33**) (IC 5-4-1) Any person qualified to administer an oath, such as a notary public, can swear in a town official. (See List on back of STATE FORM CEB-32 and CEB-33) The oath may be taken and filed at any time after the candidate receives the certificate of election. There is no requirement to wait until January 1, 2012 to swear and file the oath. The oath must be filed with the circuit court clerk no later than **Tuesday January 31, 2012**.

Successful candidates for town judges do not receive a certificate of election. Instead, they receive a commission signed by the governor. The Indiana election division will arrange with the governor’s office to obtain commissions for successful candidates for town judge. Therefore, either the circuit court clerk or town clerk-treasurer will need to provide information regarding successful candidates for town judge to the Indiana election division. Town judges must also take and file an oath of office. However, instead of filing the oath of office with the circuit court clerk all judges, including town judges, must file their oath of office with the Indiana election division.

A successful candidate should also consult the town clerk-treasurer or town attorney regarding the need to file an official bond (IC 5-4-2). Many towns have “blanket-bonds” which cover all town officials. However, an individual surety bond may be required. This varies from town to town and so the current town officials, or their town attorney, may be the best source of information about this question.

# APPENDIX A: AGREEMENT TO PROVIDE ELECTION ADMINISTRATION SERVICES

(SAMPLE)

WHEREAS, IC 3-6-5-14 vests with the County Election Board the power and responsibility to conduct all elections and administer election laws with the county except as provided in IC 3-8-5 and IC 3-10-7;

WHEREAS, IC 3-8-5 governs the nomination of candidates for town office in certain towns with a population of less than three thousand five hundred (3,500);

WHEREAS, IC 3-10-7-4 allows the town council in towns with a population less than three thousand five hundred (3,500) to enter into a written agreement with the County Election Board to conduct the election of town officers;

WHEREAS, the Town of \_\_\_\_\_ desires that the \_\_\_\_\_ County Election Board conduct this election;

Now, therefore, it is agreed as follows:

The \_\_\_\_\_ County Election Board shall conduct the Town of \_\_\_\_\_ election for the year 20\_\_\_\_. The Town of \_\_\_\_\_ shall pay to the County of \_\_\_\_\_ for election and registration services \$\_\_\_\_\_ dollars. This payment is intended to cover all election and registration services provided by the \_\_\_\_\_ County Election Board to the Town of \_\_\_\_\_. Payment shall be made to the \_\_\_\_\_ County Auditor on or before \_\_\_\_\_. This agreement covers only the election specified above.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Town Council of the \_\_\_\_\_  
Town of \_\_\_\_\_ \_\_\_\_\_ County Election Board

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\_\_\_\_\_ ATTEST: Town Clerk-Treasurer  
\_\_\_\_\_

# INDIANA DEMOCRATIC PARTY TOWN CONVENTION RULES OF PROCEDURE

Indiana Code 3-8-5-12 requires town conventions to establish rules of procedure necessary for the convention to conduct its business. The Indiana Democratic Party recommends the use of the following Rules of Procedure for Democratic Town Conventions.

- RULE 1** The first item of convention business is to determine which individuals are eligible to vote at this convention. To be eligible to vote, an individual must comply with both of the following requirements:
- (1) The individual must be a registered voter of this town, according to the list of voters supplied by the county voter registration office.
  - (2) The individual must sign a statement, under penalties of perjury, stating the following:
    - (A) The individual is a member of the Democratic Party, and no other party.
    - (B) The individual either:
      - (i) voted the Democratic Party ballot at the 2010 primary election and supported a majority of the candidates nominated by the Democratic Party in the 2010 general election; OR
      - (ii) if the individual did not vote the Democratic Party ballot at the 2010 primary election, that the individual intends to vote for a majority of the Democratic Party's nominees at the 2011 municipal election.
- RULE 2** The town chair shall determine who is eligible to vote at this convention by comparing the list of registered voters with the signed statement signed by each individual who wishes to vote. The chair shall then announce to the convention whether or not all persons who have signed a statement are eligible to vote at the convention. If the chair determines that everyone who has signed the statement is eligible, the convention shall proceed to the next item of business.
- RULE 3** If the town chair determines that one or more persons who have signed statements are not eligible, the chair shall announce the names of those persons to the convention, and shall ask if there is any objection to the chair's ruling. An objection is not required to be seconded. If any person objects to the chair's ruling, the chair shall put the following question to the voters whose eligibility is not in question: "Does John Smith meet the requirements to participate as a Democratic voter in this convention?" The voters shall indicate "YES" or "NO." The secretary of the convention shall count the numbers for both "YES" and "NO" and report the results to the convention. The chair shall repeat this process for each individual whose eligibility is in dispute.
- RULE 4** After the chair and convention determine who is eligible to vote, the convention shall proceed to the adoption of these rules. The chair must submit copies of these proposed rules to the eligible members of the convention before a vote is taken to adopt the rules. The chair shall ask if there is debate or question regarding the proposed rules. At the conclusion of debate, the chair shall entertain a motion for adoption of these rules, with any amendments agreed to by the convention. If seconded, this motion shall immediately be put to a voice vote, without further debate.

- RULE 5** The convention shall permit nonvoting observers, media representatives, and other interested individuals to attend the convention and observe it in action. However, the chair may restrict the access of any such individual to the area where ballots are being processed or counted.
- RULE 6** Each candidate for nomination by the convention may appoint one (1) individual to be a candidate watcher by notifying the chair of this appointment before nomination and balloting for candidates. The chair shall announce the names of the candidate watchers to the convention before proceeding to the nomination of candidates. A candidate watcher may witness any and all activities of the tellers and the chair in conducting the business of the convention.
- RULE 7** The chair shall keep order at the convention, and may appoint one or more sergeants-at-arms to assist the chair in preserving order. If any individual, whether or not an eligible voter, disrupts or attempts to disrupt the work of the convention, the chair shall first call that individual to order, and warn the individual that future disruption will result in the individual's expulsion from the convention. If an individual continues or resumes the disruptive actions, the chair shall then order the person expelled from the convention, and if the person does not leave the convention promptly and voluntarily, shall call upon the sergeants-at-arms or any available law enforcement officers to remove the person as a trespasser. The chair is authorized on behalf of the Party to file any necessary complaint with the prosecuting attorney of the county to hold this individual responsible for the trespass or the disruption of the convention.
- RULE 8** The third item of convention business shall be the certification of candidates. The chair shall read the names of the candidates who have filed for nomination to each town office for which there is a contest, and the date on which each candidate filed with the circuit court clerk of the county. The chair shall recognize each candidate, in order of filing, to speak to the convention for a total of five minutes. If the candidate is unable or unwilling to speak, the chair may recognize one or more supporters of the candidate to speak, but for no more than five minutes in total.
- RULE 9** In accordance with state law, the chair shall decline to recognize any person for the purpose of nominating a candidate who has not previously filed a declaration of candidacy with the county before the deadline set by statute.
- RULE 10** After the end of the candidate presentations for this office, the chair shall designate two persons to serve as tellers to conduct the election. The secretary of the convention may serve as one of the tellers.
- RULE 11** The chair shall then direct the tellers to distribute one paper ballot to each eligible member of the convention. When each member has voted the ballot, a teller shall collect the ballot. When all members who wish to vote have returned their ballots to the tellers, the tellers shall count the ballots in an area in the convention room designated by the chair (or in another location, subject to the approval of all candidate watchers). Candidate watchers may observe this count, but may not handle ballots.

- RULE 12** The tellers shall provide the chair with a written report specifying the number of votes cast for each candidate. The chair shall then announce the results of the ballot. If a candidate has received a majority vote of those casting a vote for a candidate, the chair shall declare that the candidate has been nominated as the Democratic Party candidate for this office.
- RULE 13** If any ballot results in a tie vote between the candidates receiving the highest number of votes, the chair may cast the deciding vote, or may call for another ballot.
- RULE 14** If no candidate receives a majority of the votes cast for a candidate on the first ballot, then a second ballot is conducted. However, the candidate who received the fewest number of votes on the first ballot is eliminated from further consideration by the convention. If no candidate receives a majority of the votes cast for a candidate on the second ballot, the candidate with the fewest votes on the second ballot is eliminated, beginning with the third ballot, and so forth on each following ballot, until a candidate receives a majority of the votes cast for a candidate.
- RULE 15** If the convention is to nominate a Democratic Party candidate for more than one contested town office, the convention shall conduct the voting in the following order:  
 (1) Town Clerk-Treasurer.  
 (2) Town Council Members, with members elected at large followed by members elected from a district or ward.  
 (3) Town Judge.
- RULE 16** These rules take effect immediately upon approval by the convention and are effective retroactively regarding the procedures used to determine the eligibility of persons to vote at the convention.

**ADOPTED, THIS THE \_\_\_\_\_ DAY OF AUGUST, 2011:**

\_\_\_\_\_  
**Printed Name**  
**Town Chair**  
**Democratic Party of the Town of \_\_\_\_\_**  
 \_\_\_\_\_ **County, Indiana**

**ATTEST:**

\_\_\_\_\_  
**Printed Name**  
**Town Secretary**  
**Democratic Party of the Town of \_\_\_\_\_**  
 \_\_\_\_\_ **County, Indiana**

# REPUBLICAN PARTY TOWN CONVENTION RULES OF PROCEDURE

These rules are adopted under Indiana Code 3-8-5-12 to establish procedures necessary for the convention to conduct business.

Rule 1. The first item of convention business is to determine which individuals are eligible to vote at this convention. To be eligible to vote, an individual must comply with both of the following requirements:

- (1) The individual must be a registered voter of this town, according to the list of voters supplied by the county voter registration office.
- (2) The individual must sign a statement, under penalties of perjury, stating the following:
  - a. The person is a member of the Republican Party and no other party;
  - b. The individual:
    - i. voted the Republican Party ballot at the 2010 primary election according to the records of the county voter registration office and supported a majority of the candidates nominated by the Republican Party in the 2010 general election OR;
    - ii. if the individual did not vote a Republican Party ballot in the 2010 primary election according to the records of the county voter registration office, that the individual intends to vote for a majority of the Republican Party's nominees in the 2011 municipal election.

Rule 2. The town chairman shall determine who is eligible to vote at the convention by comparing the list of registered voters with the signed statement signed by each individual who wishes to vote. The chairman shall then announce to the convention whether or not all persons who have signed a statement are eligible to vote at the convention. If the chairman determines that everyone who has signed the statement is eligible, the convention shall proceed to the next item of business.

Rule 3. If the town chairman determines that one or more persons who have signed statements are not eligible, the chairman shall announce the names of those persons to the convention, and ask if there is any objection to the chairman's ruling. An objection is not required to be seconded. If any person objects to the chairman's ruling, the chairman shall put the following question to the voters whose eligibility is not in question: "Does *John Smith* meet the requirements to participate as a Republican voter in the convention?" The voters shall stand to indicate "YES" or "NO." The secretary of the convention shall count the numbers standing for both "YES" and "NO" and report the results to the convention. The chairman shall repeat this process for each individual whose eligibility is in dispute.

Rule 4. After the chairman and convention determines who is eligible to vote, the convention shall proceed to the adoption of these rules. The chairman must submit copies of these proposed rules to the eligible members of the convention before a vote is taken to adopt the rules. The chairman shall ask if there is debate or question regarding the proposed rules. At the conclusion of debate, the chair shall entertain a motion for adoption of these rules, with any amendments agreed to by the convention. If seconded, this motion shall immediately be put to a vote without further debate.



Rule 5. The Convention shall permit nonvoting observers, media representatives, and other interested individuals to attend the convention and observe it in action. However, the chair may restrict the access of any such individual to the area where ballots are being processed or counted.

Rule 6. Each candidate for nomination by the convention may appoint one (1) individual to be a candidate watcher by notifying the chairman of this appointment before nomination and balloting for candidates. The chairman shall announce the names of the candidate watchers to the convention before proceeding to the nomination of candidates. A candidate watcher may witness any and all activities of the tellers and the chairman in conducting the business of the convention.

Rule 7. The chairman shall keep order at the convention, and may appoint one or more sergeant-at-arms to assist the chair in preserving order. If any individual, whether or not an eligible voter, disrupts or attempts to disrupt the work of the convention, the chairman shall first call that individual to order, and warn the individual that future disruption will result in the individual's expulsion from the convention. If an individual continues or resumes the disruptive actions, the chairman shall then order the person expelled from the convention, and if the person does not leave the convention promptly and voluntarily, shall call upon the sergeant-at-arms or any available law enforcement officers to remove the person as a trespasser. The chairman is authorized on behalf of the Party to file any necessary complaint with the prosecuting attorney of the county to hold the individual responsible for the trespass or the disruption of the convention.

Rule 8. The third item of convention business shall be the certification of candidates. The chairman shall read the names of the candidates who have filed for nomination to each town office for which there is a contest, and the date on which each candidate filed with the circuit court clerk of the county. The chairman shall recognize each candidate, in order of filing, to speak to the convention for a total of five minutes. If the candidate is unable or unwilling to speak, the chairman may recognize one or more supporters of the candidate to speak, but for no more than five minutes in total.

Rule 10. In accordance with state law, the chairman shall decline to recognize any person for the purpose of nominating a candidate who has not previously filed a declaration of candidacy with the county before the deadline set by statute.

Rule 11. At the end of the candidate presentations for this office, the chairman shall designate two persons to serve as tellers to conduct the election. The secretary of the convention may serve as one of the tellers.

Rule 12. The chairman shall then direct the tellers to distribute one paper ballot to each eligible member of the convention. When each member has voted a ballot, a teller shall collect the ballot. When all members who wish to vote have returned their ballot to the tellers, the tellers shall count the ballots in an area in the convention room designated by the chairman (or in another location, subject to the approval of the candidate watchers). Candidate watchers may observe this count, but may not handle ballots.

Rule 13. The tellers shall provide the chairman with a written report specifying the number of votes cast for each candidate. The chairman shall then announce the results of the ballot. If a candidate has received a majority vote of those casting a vote for a candidate, the chairman shall declare that the candidate has been nominated as the Republican Party candidate for this office.

Rule 14. If any ballot results in a tie vote between the candidates receiving the highest number of votes, the chairman may cast the deciding vote, or may call for another ballot.

Rule 15. If no candidate receives a majority of the votes cast for a candidate on the first ballot, then a second ballot is conducted. However, the candidate who received the fewest number of votes on the first ballot is eliminated from further consideration by the convention. If no candidate receives a majority of the votes cast for a candidate on the second ballot, the candidate with the fewest votes on the second ballot is eliminated, beginning with the third ballot, and so forth on each following ballot, until a candidate receives a majority of the votes cast for a candidate.

Rule 16. If the convention is to nominate a Republican Party candidate for more than one contested town office, the convention shall conduct the voting in the following order:

- (1) Town Clerk-Treasurer
- (2) Town Council Members, with the members elected at large followed by members elected from a district or ward.
- (3) Town Judge.

Rule 17. These rules take effect immediately upon approval by the convention and are effective retroactively regarding the procedures used to determine the eligibility of persons to vote at the convention.

ADOPTED THIS \_\_\_\_\_ DAY OF AUGUST, 2011.

\_\_\_\_\_  
Printed Name:  
Town Chairman  
Republican Party of the Town of \_\_\_\_\_  
\_\_\_\_\_ County, Indiana

ATTEST:

\_\_\_\_\_  
Printed Name:  
Town Secretary  
Republican Party of the Town of \_\_\_\_\_  
\_\_\_\_\_ County, Indiana

## APPENDIX C: ELECTION FORMS

- CAN-15**      **Call for Town Convention**  
(State Form 46421; R7/9-02)
- CAN-16**      **Town Office Declaration of Candidacy by a Democratic, Libertarian, or Republican Party Candidate**  
(State Form 46422; R12/10-09)
- CAN-17**      **Circuit Court Clerk Certification of Town Candidates**  
(State Form 46424; R12/11-10)
- CAN-18**      **Town Convention Certificate of Nomination**  
(State Form 46423; R12/11-10)
- CAN-42**      **Declaration of Candidacy for Municipal Primary Nomination**  
(State Form 48870; R3/10-10)
- CAN-44**      **Petition of Nomination for City or Town Office**  
(State Form 49024; R4/10-10)
- CAN-45**      **Consent of Independent or Minor Political Party Candidate Nominated by Petition for a City or Town Office**  
(State Form 49027; R4/10-10)
- CAN-46**      **Municipal Election Candidate Withdrawal**  
(State Form 49041; R5/10-10)
- CAN-51**      **Declaration of Intent to be a Write-In Candidate for City or Town Office**  
(State Form 49043; R4/10-10)

***County Election Board Worksheet –  
Based on County Form 151; Revised 03-03 Indiana Election Division***