



Town of Milton

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ORDINANCE NO. 2022- 001

**AN ORDINANCE AMENDING TOWN CODE, CHAPTER 5, ENTITLED "ABSENTEE BALLOTS",
RELATED TO THE SAME.**

WHEREAS, Section 7 of the Town Charter of the Town of Milton establishes the manner of holding the annual municipal election, including Title 15 Delaware Code shall be followed in the following section where applicable"; and

WHEREAS, the Town of Milton currently has codified its process for absentee ballots in Town Code Chapter 5; and

WHEREAS, the Town of Milton seeks to amend Chapter 5, entitled "Absentee Ballots", in order to comport with the Delaware Code;

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Mayor and Town Council of the Town of Milton, a majority thereof concurring, that the following revisions hereby be incorporated into the noted Sections of Chapter 5 of the Town Code, with additions shown by underline and deletions shown by strike through as follows:

§ 5-1. Casting of ballot permitted.

Any qualified voter of the Town who shall be unable to appear to cast his ballot at any annual municipal election at the regular polling place in the Town for any ~~of the following~~ reasons permitted under 15 Del. C. § 7571, as amended, shall be entitled to cast an absentee ballot and to have his vote counted:

- ~~A. Because such person is in the public service of the United States or of this state;~~
- ~~B. Because such person will be unavoidably absent from the Town on the day of the annual municipal election;~~
- ~~C. Because such person is sick or has a physical disability;~~
- ~~D. Because such person is absent from the Town while on vacation;~~
- ~~E. Because such person is unable to vote at a certain time or on a certain day because of the tenets or teachings of his religion;~~

~~F. Because of the nature of such person's business or occupation, including the business or occupation of providing care to a parent, spouse or that person's child who is living at home and requires constant care due to illness or injury.~~

~~§ 5-2. Affidavit required Request for ballot.~~

~~Any voter desiring to obtain an absentee ballot because of any of the reasons set forth in § 5-1 of this chapter 15 Del. C. § 7571, as amended, shall file or cause to be filed with the Town Clerk a written statement pursuant to 15 Del. C. § 7572, as amended, an affidavit, subscribed and sworn to before an officer authorized to administer oaths, and dated not earlier than 30 days nor later than the day before the next ensuing annual municipal election, setting forth the reason why such person needs to vote by absentee ballot. Such affidavit shall be filed with the Town Clerk of the Town not later than 12:00 noon, prevailing time, on the day immediately preceding the day of the next ensuing annual municipal election before the Town Clerk shall mail or deliver to the voter the official ballot.~~

~~§ 5-3. Mailing or delivery of official ballot by Town Clerk.~~

~~Upon receipt from a voter of the request as required by the provisions of § 5-2 of this chapter, the Town Clerk shall confirm that the elector qualifies for an absentee ballot and process the request pursuant to 15 Del. C. § 7573, as amended, not more than 60 days nor less than four days prior to the annual municipal election and within three days after the ballots, envelopes and instructions for absentee voters become available, shall mail to the voter, postage prepaid, or deliver personally to the voter an official ballot enclosed in an official envelope and a copy of the instruction to absentee voters. Nothing contained in this section shall prevent the issuance of an absentee ballot to those lawfully entitled thereto prior to 12:00 noon, prevailing time, on the day prior to the annual municipal election.~~

~~§ 5-4. Form of affidavit [Reserved].~~

~~Each applicant for an absentee ballot shall file an affidavit in substantially the following form:
"I do solemnly swear (affirm) that I am a resident of the Town of Milton and have resided there at least~~

~~_____ years preceding the day of the annual municipal election in which this ballot is to be voted; and my local address is _____ in Milton.~~

~~That I will be absent from the Town on the day of the annual municipal election because of () being in the Armed Forces of the United States, () public service of this state, () nature of my business or occupation, () sickness or physical disability, () vacation and absence from the Town or () unable to vote at a certain time on a certain date because of tenets or teachings of my religion and for the reason indicated, I cannot appear at the polling place of the Town of Milton in which I am a qualified voter and for the reason indicated I request an absentee ballot.~~

Signature of voter

~~SWORN TO AND SUBSCRIBED before me, this _____ day of _____, A.D. 20__.~~

Notary Public"

§ 5-5. Responsibility of Town Clerk.

Upon receipt by the Town Clerk of a proper request under the affidavit in substantially the form set forth in § 5-4 of this chapter, the Town Clerk shall provide to each elector to whom it sends an absentee ballot an envelope pursuant to 15 Del. C. § 7574, as amended. ~~deliver or mail, with postage prepaid, to the voter who has applied for an absentee ballot an official ballot and an official envelope. There shall be printed on the face of the official envelope an affidavit in substantially the following form:~~

~~"I do solemnly swear (affirm) that I am a resident of The Town of Milton and that my local address is~~

~~_____ in Milton. I do solemnly swear (affirm) that I have not received nor accepted nor have I offered to receive or accept, paid or transferred or delivered or offered or promised to pay, transfer or deliver or contributed or offered to promise to contribute to another to be paid or used any money or other valuable thing such as compensation, inducement or reward for the giving or withholding of this vote at this annual municipal election.~~

~~I do solemnly swear (affirm) that I mark my ballot in secret.~~

Signature of voter

~~SWORN TO AND SUBSCRIBED before me, this _____ day of _____, A.D. 20__.~~

Notary Public"

§ 5-6. Procedure by voter upon receiving ballot.

The absentee voter shall complete the absentee ballot and return it to the Town pursuant to 15 Del. C. § 7575, as amended ~~make and subscribe to the affidavit printed on the official envelope before an officer authorized by law to administer oaths, and such voter shall thereupon mark his ballot in such a manner that the officer cannot know how the ballot is marked, and the ballot shall then and in the presence of the officer be deposited by the voter in the official envelope and securely sealed. Thereupon, the official envelope containing the marked ballot shall be delivered to the Town Clerk or mailed to the Town Clerk with postage prepaid. In either case, the ballot must be received by the Town Clerk of the Town of Milton before the close of business on the day immediately preceding the day of the annual municipal election and not thereafter.~~

§ 5-7. Time limit for return of ballot; ballot~~Ballot~~ received after required time.

Any absentee ballot shall be returned in compliance with 15 Del. C. § 7576, as amended, to be counted; the Town Clerk shall retain any late ballots in compliance with the same ~~received by the Town Clerk of the Town after the close of business on the day before the annual municipal election shall not be forwarded to the Board of Election, but the Town Clerk shall endorse on the official envelope containing such ballot the time such was received and shall retain all such ballots unopened and so endorsed until the last day of June next after the annual municipal election and longer if directed to do so by proper authority.~~

§ 5-8. Procedure by officials upon receiving ballot.

Upon receipt of the ~~official~~ ballot envelope from the absentee voter, the Town Clerk shall follow the procedure set forth in 15 Del. C. § 7577, as amended ~~forthwith enclose the official envelope as received by him and unopened in a special carrier envelope, the Town Clerk having first written his usual signature on the special carrier envelope. The Town Clerk shall forthwith securely seal the special carrier envelope, and in ink the Town Clerk shall write his full name thereon in the proper place as indicated in this chapter and shall securely keep the same in his office until delivered as required in this chapter. Neither the Mayor nor any member of the Council of the Town nor any other person shall open or attempt to open the official envelope containing the ballot of the absentee voter or to change or alter, or attempt to do so, the envelope or any writing, printing or anything whatsoever thereon.~~

§ 5-9. Delivery of ballot to Board of Election.

When an absentee voter's ballot is received by the Town Clerk, the official envelope containing the marked ballot, sealed in the special carrier envelope of the Town, shall be enclosed and sealed in a package and safely kept in ~~his~~ the Town Clerk's office until the day of the election and delivered to the Board of Election after the opening of the polls on the election day and at least one hour before the closing of the polls. The Town Clerk shall deliver all such absentee voters' ballots separately enclosed in a special carrier envelope to the Board of Election at the polls taking their seat of the Board of Election for the delivery of such a ballot or ballots.

§ 5-10. Refusal of ballot by Board of Election~~Counting procedure for absentee ballots.~~

The Board of Election shall follow the procedure set forth in 15 Del. C. §§ 7578 through 7579, as amended ~~refuse to receive any absentee voter's ballot from any person other than the Town Clerk or a duly authorized agent of the Town Clerk and shall receive no other ballots other than those ballots enclosed in the sealed package delivered by the Town Clerk to the Board of Election and shall refuse to receive and act upon any such ballot that is not enclosed in an envelope bearing the signature, in ink, of the Town Clerk as required by this chapter.~~

§ 5-11. Procedure by inspector upon receiving ballot ~~for carrier envelopes.~~

The Town Clerk shall ensure that carrier envelopes are available and processed pursuant to 15 Del. C. § 7580, as amended ~~At anytime between the opening and closing of the polls on the day of the annual municipal election, the inspector shall open the package delivered by the Town Clerk and ascertain the name of the absentee voter as appears by the executed affidavit~~

~~of the absentee voter on the official envelope enclosing the marked ballot; whereupon he shall announce the absentee voter's name for the purpose of challenging and upon the determination that such person is a duly qualified voter of the Town and that such person has not voted in person at the annual municipal election, he shall open the official envelope containing such absentee voter's ballot in such a manner as not to deface or destroy the number thereof or the affidavit thereon and shall take therefrom the official ballot. The Clerk shall enter the name and address of the absentee voter on the poll list. The ballot shall then be voted by depositing same in the ballot box provided for receipt of absentee ballots and the proper notations of such vote shall then be recorded in the election records in the same manner as if the voter had appeared to cast his vote in person. All official envelopes from which ballots have been taken and voted and all official envelopes containing ballots which have been rejected or endorsed as provided by this chapter shall be preserved by the Board of Election and the close of the count shall be locked in the ballot box.~~

§ 5-12. Vote challenged.

~~The vote of any absentee voter may be challenged pursuant to 15 Del. C. § 7581, as amended for cause, and further the vote of any absentee voter may be challenged on the ground that the affidavit filed by the voter in accordance with the provisions of this chapter is false or that the voter who was allegedly absent from the Town was not absent from the Town for the entire time that the polls were open on the day of the annual municipal election. Upon challenge, proceedings shall be as in the case of other challenges.~~

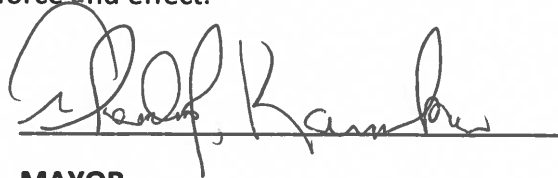
§ 5-13. Rejection of ballots votes; death of voter.

Ballots shall only be rejected based on 15 Del. C. § 7582, as amended, and processed pursuant to the same ~~A. In case the affidavit of the absentee voter is found to be insufficient or the absentee voter is not a duly qualified voter of the Town or the official envelope is opened or has been opened and resealed or it is evident that the official envelope has been tampered with or altered or such ballot has been forwarded to the polls by someone other than the Town Clerk of the Town or his duly authorized agent, such vote shall not be accepted or counted.~~

~~B. If the official envelope has not been opened at the time the Board of Election decides that the altered ballot contained therein should be rejected for any of the foregoing reasons, it shall not be opened by the Board of Election, but they shall endorse thereon "rejected" (giving the reason therefor) and that the official envelope has been opened and the ballot rejected; the official envelope containing the ballot shall be replaced in the same carrier envelope from which it was taken and the election officer shall endorse on that envelope "rejected" (giving reason therefor). Whenever it is made to appear by due proof to the Board of Election that any absentee voter who has marked and forwarded his ballot has died, the official envelope containing the ballot shall not be opened, but shall be marked "rejected, dead" and shall be preserved and disposed of as other rejected ballots.~~

I, **THEODORE J. KANAKOS**, Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Mayor and Town Council of the Town of

Milton at its meeting held on the **7th day of February, 2022**, at which a quorum was present and voting throughout and that the same is still in full force and effect.

A handwritten signature in black ink, appearing to read "D. Randolph", is written over a horizontal line.

MAYOR

Synopsis

The Ordinance amends Town Code Chapter 5 related to absentee ballots in order to comply with the Delaware Code, specifically Title 15, Chapter 75, Subchapter V governing absentee voting in municipal elections except for the City of Wilmington.