

**SYNOPSIS OF AMENDING THE CODE OF SOUTH BETHANY, CHAPTER 138,
"VOTING, ABSENTEE", TO COMPLY WITH STATE LAW
ORDINANCE 199-20 (SECOND READING)**

(Sponsored by Mayor Saxton)

This ordinance amends Chapter 138, "Voting, Absentee", to comply with State Law.



ORDINANCE NO. 199-20

AN ORDINANCE TO AMEND the Code of the Town of South Bethany, Chapter 138, **Voting, Absentee**, to comply with State law.

BE IT HEREBY ENACTED by the Council of the Town of South Bethany, Sussex County, a majority thereof concurring in Council duly met, that Chapter 138 ("Voting, Absentee") be amended as follows (additions are **highlighted** and deletions **marked through**):

**CHAPTER 138
Voting, Absentee**

§ 138-1. Authority.

This chapter is authorized by § C-~~64B~~ of the Town Charter **and Title 15, Delaware Code, Chapter 75, Subchapter V.**

§ 138-2. Purpose. *Absentee voting.*

Any qualified voter of the Town may vote by absentee ballot at any Town election. Absentee voting shall be conducted in accordance with the procedures set forth in Title 15, Delaware Code, Chapter 75 ("Municipal Elections"), Subchapter V ("Absentee Voting in Municipal Elections Except for the City of Wilmington"), as the same may hereby be amended from time to time, and any other existing or future corresponding provisions of law.

~~The purpose of this chapter is to enable any qualified voter of the town, who shall be unable to appear to cast his/her ballot at the regular polling place on the day of any annual municipal election, special election or referendum, to vote by absentee ballot in that election, provided that the voter qualifies under one of the provisions of § 138-3 of this chapter.~~

§ 138-3. Persons eligible to vote by absentee ballot.

Any natural person shall be qualified to vote in any annual municipal election, special election or referendum who, on voting day, shall:

- A. Have attained 18 years of age
- B. Be a citizen of the United States.

- C. Be registered under the Town’s voter registration ordinance (if one is in effect); and
- D. ~~Have been~~ **Be** one of the following:
 - (1) A freeholder in the Town, as defined herein, for a period of 90 consecutive days immediately preceding the date of the election. A “freeholder” shall be deemed to include any natural person who holds title of record either in his/her own name or as trustee to a fee simple estate or a life estate in and to real property located within the corporate limits of the Town.
 - (2) The spouse of a freeholder, whether their name is on the deed or not.
 - (3) A resident of the Town. A “resident” shall mean any natural person who has been physically residing within the corporate limits of the Town for at least **thirty (30) days** ~~nine months, consecutively or nonconsecutively, of the twelve-month period~~ immediately preceding the date of the election and who ~~is physically residing~~ **maintains physical residency** within the Town on the date of the election.
 - (4) Provided, however, anything herein to the contrary notwithstanding, not more than eight persons per property shall be entitled to vote either as a “freeholder” or as the spouse of a “freeholder” under Subsection D(1) and (2) immediately preceding.

NOTE: Amendments to this subsection are made to comply with requirements of Delaware State Code, Title 15, Section 7754(a).

Determination of voter eligibility. The Board of Elections is responsible to determine voter qualifications as prescribed in this subsection.

~~§ 138-4. Request for ballot.~~

- ~~A. Any person who is qualified, under § 138-3 of this chapter, to vote in a town election may cast his/her vote by absentee ballot if he/she is unable to appear at the regular polling place on the day of the election. Such person shall make a request to the Town Manager for an official absentee ballot to be voted at such election. Such request can be made in one of the following four ways:~~

- ~~(1) — Appear in person in the Town Office; receive the ballot and all other absentee material; and vote.~~
- ~~(2) — Appear in person in the Town Office; receive the ballot and all other absentee material; remove the ballot from the Town Office and vote the ballot elsewhere; and cause the voted ballot to be returned to the Town Office by the time the polls close on the day of the election.~~
- ~~(3) — Written request by mail, e-mail or fax; receive the ballot and all other absentee material; vote the ballot; and cause the voted ballot to be returned to the Town Office by the time the polls close on day of the election.~~
- ~~(4) — Verbal request by phone; receive the ballot and all other absentee material; vote the ballot; and cause the voted ballot to be returned to the Town Office by the time the polls close on the day of the election.~~

~~B. — Any person requesting to vote by absentee ballot cannot vote or attempt to vote at the regular polling place on the day of the election.~~

~~§ 138-5. — Distribution of ballots, envelopes and instructions.~~

- ~~A. — The Town Manager shall, not more than 45 days nor less than 14 days prior to any election, mail to all voters, who have previously made a request, an official ballot enclosed in an official envelope along with a voucher enveloped marked "voucher envelope," a copy of the instructions to absentee voters and a mailing envelope marked "mailing envelope." Nothing contained in this section shall prevent the issuance of an absentee ballot to those lawfully entitled thereto prior to 4:00 p.m. of the day preceding the election when the request is made in person by the qualified voter.~~
- ~~B. — The risk that absentee ballot materials may not be received in time to be voted before the closing of the polls shall be upon the voter who failed to make a timely request for such absentee ballot.~~

~~§ 138-6. — Affidavit of eligibility on voucher envelope.~~

~~There shall be printed on the face of each voucher envelope an affidavit in substantially the following form:~~

~~I, _____, do solemnly swear (affirm), under penalty of perjury, that I have not received or accepted, or offered to receive or accept, any money or other item of value as compensation, inducement or reward for the giving or withholding of a vote at this election, nor that I am acting under duress or threat of duress or harm.~~

~~§ 138-7. — Envelope specifications.~~

~~A. — The voucher envelope shall be of the type known as a "security mailing envelope" and shall be such as to securely protect the contents thereof from tampering, removal or substitution without detection. Such envelopes shall be successively numbered beginning with Number 1, printed in red ink, in the upper right-hand corner thereof.~~

~~B. — The mailing envelope shall be large enough to carry the voucher envelope.~~

~~§ 138-8. — Instructions to absentee voter.~~

~~The Town Manager shall prepare a list of instructions to assist an absentee voter in properly marking and returning his/her ballot under the provisions of this chapter, which shall be known as "Instructions to Absentee Voter."~~

~~§ 138-9. — Voting procedure; execution of affidavit; return of ballot.~~

~~The absentee voter, who qualified for his/her ballot under § 138-3 of this chapter, shall mark his/her ballot and deposit the ballot in the official envelope. The voter shall then deposit the official envelope containing the ballot in the voucher envelope and securely seal the voucher envelope. The voter shall then execute the self-administered affidavit on the voucher envelope. Thereupon, the voter shall enclose the voucher envelope containing the marked ballot in the mailing envelope received by the voter from the Town Office, and he/she shall then securely seal the mailing envelope and mail it or deliver it to the Town Office by the time the polls close on the day of the election and not thereafter.~~

~~§ 138-10. Time limit for return of ballot; late ballots.~~

~~The absentee voter shall return his/her marked ballot enclosed in the voucher envelope to the Town Office by the time the polls close on the day of the election. Any absentee ballot received by the Town Office after the polls close on that day shall not be counted, but the Town Office shall endorse on the voucher envelope containing such ballot the time such was received and shall retain all such envelopes unopened and so endorsed in the Town Office for a minimum period of six months.~~

~~§ 138-11. Procedure on receipt of absentee ballot by Town Office.~~

- ~~A. Upon receipt of the mailing envelope from the absentee voter, the Town Manager, or a person so authorized to do so, shall open only the mailing envelope and take therefrom the voucher envelope containing the ballot of the absentee voter, and a record shall be made that such voter has cast his/her vote by absentee ballot by ascertaining, from the envelope, the number to which the ballot was assigned and recording the date the ballot was received on a form prescribed by the Town of South Bethany, which shall be known as the "Absentee Ballot Voucher Log."~~
- ~~B. No member of the Town Office or any other person shall open or attempt to open the enclosed voucher envelope containing the ballot of the absentee voter, or change or alter, or attempt to do so, the envelope or any writing, printing or anything thereon.~~
- ~~C. When an absentee voter's ballot is received, the voucher envelope containing the marked ballot shall be safely and securely kept in the Town Office until the day of the election, when it shall be delivered to the polling place.~~
- ~~D. Upon close of such election, the votes shall be counted by the Election Board. The Election Board shall open the voucher envelope in such a manner as not to deface or destroy the number thereof, or the self-administered affidavit thereon, and take therefrom the official envelope containing the marked ballot and whereupon the official envelopes shall be removed, opened and counted in accordance with law.~~

~~E. — The custody of election records and all ballots cast shall be maintained in the Town Office for a minimum period of six months.~~

~~§ 138-12. — Rejected ballots.~~

~~A. — In the case that the affidavit of the absentee voter is found to be insufficient, or the absentee voter is not a qualified voter in the Town of South Bethany, or the voucher envelope is open or has been opened and resealed, or it is evident that the voucher envelope has been tampered with or altered, such vote shall not be accepted or counted. If the voucher envelope has not been opened at the time the election officials decide that the ballot contained therein should be rejected for any of the foregoing reasons, it shall not be opened by the election officials, but they shall endorse thereon "rejected" (giving reason therefor), and if the voucher envelope has been opened and the ballot is rejected, the official envelope containing the ballot shall be placed in the same voucher envelope from which it was taken and officers shall endorse on the voucher envelope "rejected" (giving reason therefor).~~

~~B. — Whenever it is made to appear by due proof of the election officials that any absentee voter who has marked and forwarded his/her ballot has died, the voucher 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.~~

~~§ 138-13. — Penalties for offenses.~~

~~A. — Whoever willfully makes a false affidavit shall be guilty of perjury and, upon conviction, shall be punished in such cases as provided by law.~~

~~B. — Whoever other than election officials on the day of the election and at the polls opens or attempts to open any sealed voucher or mailing envelope; or prints or causes to be printed any envelope identical or purportedly similar to the voucher envelope or either mailing envelope, other than the printing of such envelopes by the official printer selected by the Town Manager for the printing of such envelopes pursuant to this chapter; or aids or abets, or attempts to aid or abet, any fraud in connection with any vote cast, or to be cast, under this~~

~~chapter, shall be punished for such crime as provided by law.~~

~~C. Whoever fraudulently signs the name of a voter to the affidavit or any voucher envelope shall be guilty of forgery and shall be punished for such crime as provided by law.~~

Effective date: This ordinance shall become effective upon the date of adoption.

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF SOUTH BETHANY, SUSSEX COUNTY, DELAWARE, ON THE ____ OF _____ 2020.

SEAL:

Tim Saxton, Mayor

Carol Stevenson, Council Secretary

ATTEST: _____

1st Reading: 2/27/20
2nd Reading: 3/13/20

Sponsored by Mayor Saxton
TS:psh:Ordinance 199-20
Second Reading