

Vacancies and Forfeiture of Office:

(Replacing Article III, Section 3.11 of the Current Charter)- Forfeiture of Office

Sec. ____: VACANCIES AND FILLING VACANCIES:

A vacancy shall occur on a board, commission or committee for any of the following reasons:

1. Death, resignation or a permanent physical or mental disability that results in an Elected or Appointed Official's inability to perform the required duties of his/her/office;
2. Failure to take the oath of office within 30 days of a person's election or appointment to office;
3. An Elected or Appointed official's ceasing to have his/her domicile within the Town;
4. Recall of an Elected Official from office pursuant to Article 7 of this Charter;
5. Forfeiture of an Elected or Appointed Official's position, as specified in Section ____ below.

When a vacancy in an appointed office has occurred for any of these reasons, the Select Board shall appoint a qualified person to fill the vacancy within 60 days of its occurrence. When a vacancy occurs in an elected position, that position shall be filled at the next special or general election.

Sec. ____: FORFEITURE OF OFFICE:

Public service in any elected or appointed position is a privilege that carries with it a corresponding responsibility to work honestly and diligently in the best interests of the Town and its residents; and to act, at all times, in conformity with the requirements of this Charter. Accordingly, an Elected or Appointed Official may be subject to forfeiture of his/her office or position for any of the following reasons:

1. Failure to attend 3 or more consecutive, regularly scheduled meetings, or 25% or more of meetings held during any 6-month period, of the board, commission or committee upon which the Elected or Appointed Official sits, when that failure has not been previously approved or subsequently approved by that board, commission or committee;
2. Malfeasance in office;
3. A pattern of Misfeasance or Nonfeasance in office;
4. Failure to disclose a conflict of interest, as defined under Maine state law;
5. **Failure to follow the code of ethics set out in Article ____, Section ____ of this Charter, and any other code of ethics that is applicable to a particular appointed or elected office or position; TABLE UNTIL DECISION ON WHETHER TO INCLUDE CODE OF ETHICS IN THE CHARTER**
6. Conviction of a "qualifying crime," as defined in the "Definitions" contained in Article 2 of this Charter; or

Sec. ____: FORFEITURE OF OFFICE PROCESS:

1. If an Elected or Appointed Official is alleged to have engaged in any of the types of misconduct detailed above, the board, commission or committee upon which the Official sits shall first give that Official the opportunity to explain his/her conduct if the Official so requests. The board, commission or committee shall, by majority vote (not including the Official at issue, who shall not participate in the vote), determine whether that explanation is satisfactory, or, if it is not,

shall refer the matter to the Select Board for a public hearing on whether that Official's office or position is forfeit.

2. If a member of the Select Board is alleged to have forfeited his/her office for any of the reasons stated above, the member shall recuse himself/herself from voting on the matter. The hearing shall be held within 30 Calendar Days of the referral to the Select Board by the board, commission or committee upon which the Official sits. The Official has the right to be heard, and to be represented by counsel, if desired.
 3. Within 10 Business Days after the hearing has been held, the Select Board shall issue a written, dated, decision: (a) explaining why the Official's office or position is not forfeit; or (b) explaining why the Official has forfeited his/her office or position.
 4. If the Select Board's decision is that forfeiture is required, the Official shall have 30 Calendar Days from the date of the Select Board's written decision within which to file an appeal to the Superior Court of York County.
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For reference:

Current Kennebunk language:

Sec. 3.11 Vacancies; Forfeitures of Office; Filling of Vacancies (As amended 11-07-90 and 11-04-97)

- 1) A vacancy in a Town Office or on any board or commission may occur by the following means: non-acceptance, death, resignation, permanent disability, incompetency, failure to qualify for the office within 10 days after written demand by the Select Board, failure of the Town to elect a person to office, removal from office in any manner provided by law, and forfeiture of office as provided in this Charter.
- 2) Elected officials or appointees to a board or commission shall forfeit their office if they:
 - a) Lack at any time during their term of office any qualifications for the office prescribed by the Charter or by the Constitution and laws of the State of Maine,
 - b) Violate any express prohibition of this Charter,
 - c) Are convicted of a crime punishable by imprisonment for more than 30 days whether or not such imprisonment actually occurs.
 - d) (i) with respect to all boards or commissions other than the Select Board, fail to attend the greater of three (3) consecutive regular meetings of the board or commission or more than 25% of all meetings within any 6 month period, unless such absences are determined not to be grounds for forfeiture pursuant to Section 3.11(4). Relief under Section 3.11(4) shall be available only to members of appointed boards and commissions and not to members of elected boards and commissions or to members of boards and commissions containing both elected and appointed members. (ii) with respect to the Select Board, fail to attend more than 25% of all meetings within any six-month period.
 - e) Fail to perform the duties of the office; or f) Elected and appointed officials have thirty (30) days from the date of their election or notification of appointment to be sworn in to office except for good cause. Good cause shall be determined by the Select Board, other than the Board member-elect, if applicable. [Amended 11/2/2010]

- 3) The determination of when a vacancy exists shall be made by the Select Board no later than its next regularly scheduled meeting. Upon such determination, a vacancy shall be deemed to 'occur' for purposes of filling such vacancy pursuant to Section 3.11(5). The determination of whether a forfeiture has occurred shall be made by the Select Board by appropriate proceedings of a judicial nature and after written notice and hearing. After receipt of such written notice, where the reason of alleged forfeiture is failure to attend the requisite number of meetings, the six month period for determining whether the member failed to attend the requisite percentage of all meetings shall end on the date of such written

notice, and no subsequent meetings may be included in determining whether a forfeiture has occurred. When the forfeiture involves a member of an elected or appointed board or commission, notice of the hearing shall be given to all other individuals who are members of the board or commission at the time the alleged grounds for forfeiture occurred.

4) a) The failure of an appointed board or commission member to attend the greater of three consecutive regular meetings of the board or commission or more than 25% of all meetings within any six month period shall not result in forfeiture of office if the Select Board determines that the absences were justified and that forfeiture is not in the best interests of the Town. In making this determination, the Select Board shall consider all relevant evidence, including but not limited to the following: i) whether the reason for the absence was within or- beyond the board/commission member's control; ii) whether the absence interfered with the efficient operational functioning of the board; iii) whether the board/commission member could have given advance notice; iv) the attendance history of the board/commission member. b) The board/commission member shall have the burden of establishing by a preponderance of the evidence that the absences were justified and forfeiture is not in the best interests of the Town.

5) When a vacancy occurs in any appointed Town office or position, the original appointing authority shall appoint a qualified person to fill the vacancy within 60 days. When the vacancy occurs in any elected Town office or position and the vacancy occurs more than 120 days prior to the next Annual Town Meeting, the vacancy for the unexpired portion of the term shall be filled by a Special Town Meeting to be held within 75 days of the vacancy. If such a vacancy occurs 120 days or less prior to the next Annual Town Meeting, the vacancy shall be filled for the unexpired portion of the term at the next Annual Town Meeting.

From Arundel:

2.6 FORFEITURE OF OFFICE An elected official may forfeit their office and be subject to the recall provisions in Section 14.3 if they: a. lack at any time during their tenure of office, any qualifications for the office prescribed by this Charter or by law; b. intentionally violates any expressed prohibition of this Charter; c. fails to fulfill the requirements of their office, including (but not limited to) failure to attend regular meetings or actively participate in the functioning of the board or committee [Amended 11/8/05]; or d. are convicted of a crime or offense which is reasonably related to their ability to serve as a municipal official/officer. [Amended 11-8-22]

14.1 PERSONAL INTEREST

14.1.1 In accordance with Title 30-A M.R.S.A. Section 2605, any official or employee of the Town who has financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the Town, or in the sale of any land, material, supplies, or services to the Town or who is a contractor supplying the Town with services or material shall make known the interest and shall refrain from voting upon or otherwise participating in their capacity as an officer or employee in making such sale or the making or performing of such contract.

14.1.2 Any official or employee who willfully conceals such financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit their office or position. 30 Amended November 8, 2022

14.1.3 Violation of this section, with the knowledge, expressed or implied, of the person or corporation contracting with or making a sale to the Town, shall render the contract or sale voidable by the Board.

14.4 FORFEITURE OF OFFICE An appointed official shall forfeit their office if he: a. lacks, at any time during their tenure of office, any eligibility or other qualifications for the office prescribed by this Charter or by law; b. intentionally violates any expressed prohibition of this Charter; c. fails to fulfill the requirements of their office, including (but not limited to) failure to attend regular meetings or actively participate in the functioning of the board or committee [Amended 11/8/05]; or Amended November 8,

2022 d. are convicted of a crime or offense which is reasonably related to their ability to serve as a municipal official/officer (*note forfeiture of office is found in two sections of the charter*)

From Kennebunkport:

Forfeiture of office.

(1) A Selectman shall forfeit his office if he:

(a) Lacks at any time during his term of office any qualification for the office described by this code or by statute;

(b) Is convicted of a felony or a crime involving moral turpitude;

(c) Misses three consecutive regularly scheduled meetings of the Board for reasons other than those of health. If illness or health reasons are claimed, the Board may request verification from a doctor; or

(d) Misses five regularly scheduled meetings in any three-month period.

(2) If a Selectman's absence is due to extenuating circumstances as determined by a majority of the Board, the requirements of Subsection **D(1)(c)** and **(d)** above may be waived.

Appointees to a board or committee shall forfeit their office if they:

(1) Lack at any time during their term of office any qualifications for the office prescribed by the Administrative Code or by the Constitution and Laws of the State of Maine;

(2) Violate any express prohibition of this code;

(3) Are convicted of a crime punishable by imprisonment for more than 30 days whether or not such imprisonment actually occurs;

(4) With respect to all boards or committees other than the Board of Selectmen, fail to attend the greater of three consecutive regular meetings of the board or committee or more than 25% of all meetings within any six-month period, unless such absences are determined not to be grounds for forfeiture pursuant to Subsection **E**;

(5) Fail to disclose a conflict of interest; or

(6) Fail to perform the duties of the office.

D. Determination of forfeiture. The determination of whether a forfeiture has occurred shall be made by the Board of Selectmen by appropriate proceedings of a judicial nature and after written notice and hearing. After receipt of such written notice, where the reason of alleged forfeiture is failure to attend the requisite number of meetings, the six-month period for determining whether the member failed to attend the requisite percentage of all meetings shall end on the date of such written notice, and no subsequent meetings may be included in determining whether a forfeiture has occurred. Notice of the hearing shall be given to all other individuals who are members of the board or committee at the time the alleged grounds for forfeiture occurred. The determination of when a vacancy exists shall be made by the Board of Selectmen no later than its next regularly scheduled meeting. Upon such determination, a vacancy shall be deemed to "occur" for purposes of filling such vacancy.

E. Attendance.

(1) The failure of an appointed board or committee member to attend the greater of three consecutive regular meetings of the board or committee or more than 25% of all meetings within any six-month period shall not result in forfeiture of office if the Board of Selectmen determines that the absences were justified and that forfeiture is not in the best interests of the Town. In making this determination, the Board of Selectmen shall consider all relevant evidence, including but not limited to the following:

(a) Whether the reason for the absence was within or beyond the board/committee member's control.

(b) Whether the absence interfered with the efficient operational functioning of the board or committee.

(c) Whether the board/committee member could have given advance notice.

(d) The attendance history of the board/committee member.

(2) The board/committee member shall have the burden of establishing by a preponderance of the evidence that the absences were justified and forfeiture is not in the best interests of the Town.

F. Filling a vacancy. When a vacancy occurs in any appointed Town office or position, the Board of Selectmen shall appoint a qualified person to fill the vacancy within 60 days.

G. Town employees. Employees of the Town of Kennebunkport may not serve on standing boards and commissions, except by ex officio appointment. This limitation does not apply to individuals who are hired by the Town to serve as temporary election workers or wardens, occasional part-time or temporary employees, or volunteer fire and reserve police personnel. Such individuals may serve on a board or commission unrelated to their work for the Town.

Kittery:

2.12. Vacancies; forfeiture of office; filling of vacancies.

(1) Vacancies. A vacancy in a council office occurs by one or more of the following means:

(a) Nonacceptance;

(b) Resignation;

(c) Death;

(d) Failure to qualify for the office within 10 days after written demand by the municipal officers;

(e) Failure of the municipality to elect a person to office;

(f) Forfeiture of office;

(g) Recall and removal; or

(h) Any other manner authorized by law or this charter.

(2) Forfeiture of office. A councilor forfeits office if the councilor:

(a) Lacks any qualification for the office prescribed by this charter or by law,

(b) Violates any express prohibition of this charter,

(c) Is convicted of a crime involving moral turpitude, or

(d) Fails to attend 3 consecutive regular meetings of the council without being excused by the council.

(3) Filling of vacancies. If for any reason a vacancy exists in the membership of the town council more than 6 months prior to the next regular municipal election, the vacancy is to be filled by a special election for the unexpired portion of the term. In the event such vacancy occurs fewer than 6 months prior to the next regular municipal election, the vacancy may be filled for the unexpired portion of the term by a special election to be called by the municipal officers. Any such special elections must be conducted in accordance with the provisions of Article X.

Lyman:

2.4 - Vacancies in Elected Offices The office of an elected official other than a member of the Board or an RSU 57 School Board Director shall become vacant upon the resignation, death, or removal from office in a manner authorized by law or upon forfeiture of office. Elected officials shall forfeit their office if they lack any qualifications for the office as described by law, by this Charter and by the personnel criteria, or if they are convicted of a felony at any time during their term of office. If a vacancy shall occur in an elective office other than a member of the Board or an RSU 57 School Board Director, the Board shall call a special election within ninety (90) days of such vacancy for the purpose of electing a qualified person to fill the vacancy for the balance of the unexpired term. If, for any unseen reason, a vacancy occurs within the first one hundred eighty (180) days of the fiscal year, the Board shall hold a special election. A qualified person may be temporarily appointed by the Board for a period of no longer than six (6) months. For the office of RSU 57 Director, vacancies shall be determined by 20-A M.R.S.A. § 1474.

3.7 – Vacancies or Forfeiture of Office, Filling of Vacancies 3.7.1 - Vacancy The office of any Selectperson shall become vacant upon non-acceptance, resignation, death, recall, legally judged incompetence,

failure to qualify for the office, permanent disability, removal from office, forfeiture of office or failure of the municipality to elect a person to the office. If a seat on the Board becomes vacant more than ninety (90) days prior to the next annual Town Meeting election, the Board shall call a special election to fill the unexpired term.

3.7.2 - Forfeiture of Office Persons shall forfeit the office of Selectperson if they: a. Lack at any time any qualification for the office as prescribed by this Charter or by law. b. Intentionally violate any expressed provision of this Charter; or are convicted of a felony. c. Failure to take the required classes as prescribed by this Charter.

3.7.3 - Record of Attendance Unexcused absence from three (3) consecutive Board meetings shall be grounds for forfeiture of office. Upon exceeding this time frame the sitting Board shall determine the seat vacant and shall immediately start the process to fill that vacancy.

Ogunquit:

Section 309 Vacancies: forfeiture of office; filling vacancies

309.1 Vacancies

The office of a Select Board member shall become vacant upon: failure to qualify for office within ten (10) days after written demand by the Town Clerk; nonacceptance; resignation; death; removal of residence from the Municipality; removal in a manner authorized by law or this Charter; or forfeiture of office.

309.2 Forfeiture of office

At any time during a term, a member shall forfeit office by an affirmative vote of at least four (4) Select Board members following notice and hearing for any of the following reasons:

A. Violation of any express prohibition of the Town Charter or violation of the Code of Ethics as adopted by the Select Board.

B. Conviction of a crime the conduct of which occurs during the member's term of office.

C. A member of the Select Board who has been absent, from twenty percent (20%) of the Select Board's regular, special, and executive meetings during any 6-month period shall be eligible for forfeiture of office after notice. The Town Manager or their designee shall be responsible for maintaining accurate attendance records.

309.3 Filling of vacancies A. If for any reason a vacancy occurs in the membership of the Select Board more than one hundred and twenty (120) calendar days prior to the next Annual Town Meeting, the vacancy shall be filled at a Special Town Meeting called by the Select Board for the unexpired portion of the term, such Special Town Meeting to be held within 60 days. In the event such vacancy occurs less than one hundred twenty (120) calendar days prior to the next Annual Town Meeting, the vacancy is to be filled for the unexpired portion of the term at the next Annual Town Meeting. Any such special election shall be conducted in accordance with the statutes of the State of Maine plus consideration of quorum requirements as detailed in Article II sections 204 and 205. When an election is being held to fill an unexpired term at the same time as a general election to fill other Select Board positions, all positions shall be considered "at large," with the candidates receiving the highest vote totals elected to the longest terms. B. In the event of a tied election result, the Select Board shall schedule a special runoff election to be held within 60 days. C. In the event of multiple vacancies totaling three or more at one time, a special election shall be called within 30 calendar days. During the period prior to the special election, the Chairperson of the Planning Board, Chairperson of the Zoning Board of Appeals, and the Chairperson of the Board of Assessment Review successively shall serve on the Select Board to make a quorum.

Waterboro:

Section 309 – Forfeiture of Office. A Selectman shall forfeit office if, after notice and hearing, during the term of office three (3) members of the board determine the Selectman: A. Lacks at any time any qualifications for the office prescribed in this Charter, or B. Willfully violates any express prohibition of this Charter, or C. Is convicted of a crime for which the Selectman may be imprisoned for one year or longer, or D. Fails to attend three consecutive regular meetings of the Board without being excused for cause by the Board of Selectmen. Said hearing may at either party's request include sworn testimony and the opportunity for cross examination of witnesses.

Wells:

Sec. 2.11. Vacancy; forfeiture of office; filling of vacancies.

(1) Vacancy. A vacancy in the Board of Selectmen shall occur by one or more of the following means:

- (a) Non-acceptance;
- (b) Resignation;
- (c) Death;
- (d) Failure to qualify for the office within 10 days after written demand by the municipal officers;
- (e) Failure of the municipality to elect a person to office;
- (f) Forfeiture of office;
- (g) Recall and removal; or
- (h) Any other manner authorized by law or this Charter.

(2) Forfeiture of office. A Selectman shall forfeit his/her position if the Selectman:

- (a) Lacks any qualification for the office prescribed by this Charter or by law;
- (b) Violates any express prohibition of this Charter; or
- (c) Fails to attend three consecutive regular meetings of the Board of Selectmen without being excused by the Board of Selectmen.

(3) Filling of vacancies. If for any reason a vacancy shall exist in the membership of the Board of Selectmen for more than six months prior to the next regular municipal election, the vacancy shall be filled by a special election for the unexpired portion of the term. In the event such vacancy occurs less than six months prior to the next regular municipal election, the vacancy may be filled for the unexpired portion of the term by a special election to be called by the municipal officers. Any such special elections shall be conducted in accordance with the provisions of Article XI.

York:

Section 3: VACANCIES, FORFEITURE OF OFFICE, FILLING OF VACANCIES

A. A vacancy in a Town office or on any board, commission or committee may occur by the following means: non-acceptance, death, recall, resignation, permanent disability or incompetence, failure to qualify for the office within 10 days after written demand by the Selectboard, failure of the town to elect a person to office, removal from office in any manner provided by law and forfeiture of office as provided in this Charter.

B. An elected official or appointee to a board, commission or committee shall forfeit said office if said person:

- 1. Lacks at any time during their term of office any qualifications for office prescribed by the laws of the State of Maine, the Constitution or this Charter;
- 2. Violates any express prohibitions of this Charter; Town of York, Maine Town of York Home Rule Charter 38
- 3. Is convicted of a crime or offense which is reasonably related to the ability to serve in the capacity to which said person was elected or appointed;
- 4. Fails to attend three consecutive regular meetings of the board, commission or committee without being excused by the board, commission or committee;

5. Is determined by proper proceedings of a judicial nature, after notice and hearing, to have failed to perform the duties of their office;

6. Fails to disclose a conflict of interest.

C. The determination of when a vacancy exists and/or whether a forfeiture of any elected office or a forfeiture of an appointment to a board, commission or committee has occurred shall be made by the Selectboard in accordance with the above criteria, except that the Superintending School Committee shall make such a determination with regards to its members.

D. When there is a vacancy in any Town office or position appointed pursuant to Article III of this Charter, the Town Manager or the Selectboard, whichever is the appointing authority, shall appoint a qualified person to fill the vacancy for the remainder of the unexpired term. Except in cases of recall governed by Article VII, when a vacancy occurs in any Town office or position elected pursuant to Article III of this Charter, other than in the office of the Selectboard, the Selectboard may appoint a qualified person to fill the vacancy who shall serve until a successor is elected in accordance with this section. A vacancy in the office of Selectboard shall continue until a successor is elected. When there is a vacancy in an elected office, the Selectboard shall call a Special General Referendum to fill the vacancy within thirty (30) days after the vacancy occurs except that if the vacancy occurs at least seventy (70) and not more than one hundred twenty (120) days before the date of the election of Town officials at the Budget Referendum, the successor shall be elected then. Any successor elected pursuant to this section shall serve for the remainder of the unexpired term. No person appointed to fill a vacancy may be a candidate in the election for a successor.

E. In the event that a sufficient number of members of a board, commission or committee resign so as not to have a quorum of members remaining, the board, commission or committee shall continue to conduct its business until the vacant positions become filled in accordance with Article V Section 3 of this Charter. However, no policy matters shall be enacted or changed in the absence of a quorum of the membership

From Old Orchard Beach Charter - Sec. 914. - Violations of the Charter. (NOTE: NO "FORFEITURE OF OFFICE" SHOWN IN CHARTER)

Any elected or appointed municipal official, or officer, employee or member of a Town board, commission or committee who knowingly violates a provision of this Charter is subject to sanctions, as follows:

Upon receipt of a verified written complaint filed by five (5) voters of the Town, the Town Council shall, within thirty (30) days, conduct a hearing to determine whether a violation has occurred. The municipal official, or officer, employee or member of a Town board, commission or committee accused of the violation must be given notice and the opportunity to be heard.

In the event that more than one municipal official, or officer, employee or member of a Town board, commission or committee is named in the complaint, the Council shall hear and decide the complaint against each official, or officer, employee or member of a Town board, commission or committee separately. If the complaint alleges a violation by a member of the Town Council, such Councilor shall be recused from the matter.

If the Council finds that the official, or officer, employee or member of a Town board, commission or committee has knowingly acted contrary to the provisions of this Charter, the Council may impose such sanctions as it deems appropriate, including such monetary penalties for the violation of this section as the Council may have previously established by ordinance.

Sanctions imposed by the Council may also include removal from office, position or employment, provided all applicable provisions of this Charter, ordinances and State law governing removals of municipal officials, or officers, employees or members of a Town board, commission or committee are observed.

Failure to pay monetary penalties imposed by the Town Council under this section is a civil violation punishable and enforceable in court in the same manner as violations of municipal ordinances.

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