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First Statewide Elections Directive

Election Procedures for Statewide Elections in 2020

Pursuant to the authority granted in Act 92 (2020) and Act 135, (2020) the Secretary of State issues the below Directive for the 2020 primary and general elections.

This Directive reflects our best effort to balance every Vermonter's constitutional right to vote with the health and safety concerns we all share in these unprecedented and unpredictable times during this COVID-19 health crisis.

Further, this Directive departs as little as possible from our voting traditions and our safe and secure voting processes while proactively ensuring no Vermonter has to choose between their health and their right to vote.

The intent of this Directive is not to cast doubt upon our recovery prospects - we have no way of knowing what the coming months will bring. However, we do know if there is a resurgence a few months from now, as we are already seeing, it will be too late to act to avoid compromising Vermonter's health and the exercise of their sacred franchise.

Notwithstanding any provisions of law contained in Title 17 of the Vermont Statutes Annotated to the contrary, and pursuant to the authority granted to the Secretary of State by Act 92 (2020) and Act 135 (2020), the Secretary of State issues the following directive with regards to election processes for the August Statewide Primary and November General Election in the year 2020:

- **For both the August Primary and November General Election:**

- **Ballot Return.** Ballots may not be returned to the Clerk by any candidate whose name appears on the ballot for that election, or any campaign staff member of any such candidate, unless that candidate or campaign staff member: (a) is returning their own ballot; (b) is returning the ballot of an immediate family member, as defined in 17 V.S.A. §2532 (a person's spouse, children, brothers, sisters, parents, spouse's parents, grandparents, and spouse's grandparents), who has requested their assistance with the return of that ballot, (c) is returning the ballot of a voter for whom the candidate or campaign staff member is a caretaker, and who has requested their assistance with the return of that ballot; or (d) is a Justice of the Peace performing his or her official duties pursuant to 17 V.S.A. §2538. The Municipal Clerk or other Local Election Official (LEO) accepting the return of ballots shall not be required to enforce this provision but shall report any suspected violations to the Secretary of State's Office who shall refer them to the Attorney General's Office for investigation. Candidates violating this section may be subject to the penalties found at 17 V.S.A. §2017.

- **Ballot Processing.** LEOs may process ballots returned by mail or voted in the Clerk’s office through the tabulator or into a secure ballot box during the 30 days preceding election.
 - At a minimum, ballots shall be processed in the presence of at least two election officials who, if possible, shall be from different parties.
 - The process shall be conducted in accordance with guidance issued in conjunction with the Directive by the Secretary of State’s Office.
 - The process shall be conducted during normal business hours if practicable or, if conducting the process at a time other than normal business hours or at a time when your office is closed due to COVID-19, notice of the date(s), time(s), and location of the processing shall be posted at the Clerk’s office and two other public places at least three days in advance.
 - Any member of the public requesting to observe the process shall be provided an opportunity to do so. Upon request of a member of the public to observe the process, if in-person observation by members of the public is not possible due to restrictions related to COVID-19, the process may be live-streamed in some manner to allow for remote viewing or may be recorded and the recording provided to those who request it for viewing.
 - In towns that count their ballots by hand, the voted ballots shall be deposited in a secure ballot box to be commingled with any ballots cast at the polls on Election Day and counted after the close of the polls.
 - Pursuant to this Directive, strict chain of custody procedures regarding voted ballots, ballot boxes, and tabulators shall be issued by the Secretary of State for conducting this process.

- **Outdoor Polling Places.** Polling places may be held outside. A bad weather alternative must be available at the same physical location as the outdoor polling place. All rules governing interior polling places contained in current law shall apply to the exterior polling places. The accessible voting system must be available for those who request to use it. Candidates and members of the public that would otherwise be allowed to campaign outside the polling place must be kept a reasonable distance from the area where voting is occurring such that any campaigning does not disrupt or interfere in any way with the voting process.

- **Drive-Through Polling Places.** Polling places may be conducted by a drive-through voting method. Any such drive-up voting procedure shall enable voters to complete the voting process without leaving their vehicle. Walk-up voters must also be accommodated when a drive-through polling place is being used. An opportunity for a person to register to vote, if necessary, must be provided prior to the voter being provided a ballot. The accessible voting system must be available for those who request to use it. Each voter shall be:
 - Checked off the entrance checklist by an election official in the same manner as the voter would be in a standard polling place;
 - Provided a ballot to vote and directed to an identified location where their vehicle may be parked during the voting process;
 - Able to deposit their ballot directly into a secure ballot box that may be brought to the window of the vehicle or located in such a manner that it can be accessed from the vehicle, or be provided an envelope or folder in which to place their voted ballot before handing it back to an election official for processing; and,
 - Checked off an exit checklist, in towns that use them, before leaving the voting location.

- **Outdoor Voting Ballot Handling.** If a polling place is being conducted outside or by a drive thru method, ballots may be periodically transferred from a ballot box used for those procedures to another secure container for counting after the close of the polls or to election officials who are processing ballots through the tabulator. Any such transfer shall be done in the presence of two election officials, if possible, of different parties.
- **Overseas Voters with Disrupted USPS Service.** Military or overseas voters who are in a country for which mail service to the US has been suspended, and who have no other means of returning their ballot by mail, may return their ballot directly to the Clerk by email. The marked ballot should be returned as a PDF or photo file attached to an email to the Clerk. A photo or scanned image of a signed certificate containing the language included on the standard absentee ballot certificate envelope shall be returned by the voter along with the ballot. The LEO shall notify the Secretary of State's office prior to allowing any military or overseas voter to return their ballot by this method.
- **Change of Polling Place.** The location of a polling place may be changed no less than 15 days prior to the election. The Board of Civil Authority (BCA) must vote to change the location and the Secretary of State must be notified within 24 hours. The polling location shall also be updated in the Vermont Election Management System, by the Clerk, within 24 hours of the BCA approving the change. Every reasonable effort should be made to inform the public of the new location. These efforts should include but are not limited to, posting notice of the new location:
 - In all locations where the original Warning was posted;
 - In additional locations in the town or city such as general stores, transfer stations, and other locations that are frequently used by residents;
 - On the town or city website, if one exists;
 - On a town or city list serve or other online forum such as Front Porch Forum; or
 - If the BCA deems it necessary, by publication in a newspaper no less than 5 days prior to the election.

Emergency Change of Polling Place. If less than 15 days before the election, the location of the polling place may only be changed in accordance with 17 V.S.A. §2502(C)(2), which allows such a change only in the case of an emergency.

- **Election Officials from other Towns.** The BCA may appoint election officials who are not registered voters or residents of the town, including 16 and 17-year-olds pursuant to 17 V.S.A. 2454, if necessary, due to shortages in poll workers. Any election official must be a resident of Vermont.
- **Home Delivery of Ballots.** In-home delivery of ballots by Justices of the Peace in accordance with 17 V.S.A. §2538 is only required if a town or city has two Justices of the Peace that are willing, able, and available to provide this service. Justices of the Peace performing this service are not required to enter the home and must be allowed to observe the voting process as is required of them from a safe distance outside the home. Justices may be unable to perform this service if the voter is located in a hospital or other health care or long-term care facility that is not allowing visitors or members of the public to enter. Ballots should be mailed or electronically delivered to voters in any such facility upon their request.
- **Masks.** If a mask is required to enter a polling location, LEOs should make disposable masks available. If a voter refuses to wear a mask to enter that location, an alternative means of casting a ballot must be provided to the voter. Voters may be provided a ballot and certificate envelope in order to vote

their ballot outside or in their vehicle and may return the voted ballot to an election official in the signed certificate envelope to be brought inside the polling place and processed. Other reasonable alternative procedures may be implemented that allow a voter who refuses to wear a mask to cast their ballot in a distanced area within the polling place, if possible, or without entering inside the polling place.

- **Appearing In-Person without a Ballot on Election Day After Receiving One by Mail.** If a voter who has been mailed an absentee ballot requests to vote in person at the polls on Election Day, and the checklist indicates that they have not returned a ballot or otherwise voted in that election, the voter shall be allowed to cast a ballot at the polls. The voter will not be required to produce the ballot that was mailed to them in order to vote on Election Day. The voter will be required to sign an affidavit that they have not previously returned the ballot sent to them or cast any other ballot.
- **Processing Mailed Ballots on Election Day at the Polling Place.** Notwithstanding the language in 17 V.S.A. §2546(b), and in cases where ballots have not previously been processed into the tabulator or ballot box during the 30 days preceding the election, when processing ballots returned by mail at the polling place, a minimum of two election officials shall be present for that processing. The certificate envelopes shall be opened, and ballots cast through the tabulator or into the ballot box in a manner that protects the privacy of the votes cast by the voter.

- **For the August Primary only:**

- **Programming Costs.** The Secretary of State’s office will pay for the total programming costs for any towns that choose to use their tabulator for the August Primary.
- **Unvoted Ballots.** The unvoted ballots returned by voters may be discarded during the 30 days preceding the election as ballots are being processed, once the voter has been checked off the checklist. The unvoted ballots must be disposed of in a manner that renders them unable to be voted.
- **Local Issue Ballots.** If a municipality is holding a local election on the same day as the August Primary, the legislative body may vote to send ballots for that election to any voter who requests a ballot for the August Primary.

- **For the November General Election only:**

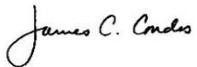
- **Mailed Ballots.** A ballot will be mailed to every active voter on the statewide voter checklist. “Active” voters are any voters that have not been sent a challenge letter by the BCA asking the voter to affirm their residency, or who have responded to any such letter and have affirmed their residence.
 - Ballots will be mailed to all active registered voters starting Friday, September 18.
 - Ballots will be mailed or otherwise delivered to all military and overseas voters no later than the September 19 deadline mandated by federal law.
 - All ballots will be mailed from a central location by the Secretary of State’s Office.
 - For mailing purposes, the Secretary of State will use the mailing address contained in any pending request for a General Election ballot first, and if none will use the mailing address in the voter’s record second, and if none the legal address in the voter’s record.
 - The issue date for all ballots will be recorded in the statewide election management system by the Secretary of State on a batch basis as they are sent. Clerks will only be required to record the date that ballots are returned. Clerks will be required to enter the request, issue, and

return date for any ballots requested by voters after the statewide mailing is sent, including for those voters who may register after that date.

- Postage for the mailing of ballots and the return of ballots to the Clerks by voters will be paid by the Secretary of State's office. All envelopes will be pre-paid.

This Directive is subject to modifications and addition through further directives as deemed necessary by the Secretary of State in response to the changing nature of the COVID-19 virus and its impact on public health and safety during our elections in 2020.

The Secretary of State, in collaboration with the Department of Health, will issue guidance and/or further addendums to this Directive regarding safe procedures for the conduct of polling places based on current CDC guidance. This may include the safe conduct of poll workers, hand-counting of ballots, polling place social distancing, masking, and cleaning of polling places and equipment.



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