

Chapter 5

ELECTIONS*

* **Charter References:** Wards, § 2; elections, §§ 8--12.

Cross References: Administration, Ch. 2; city council, § 2-21 et seq.; administrative department, § 2-236 et seq.; city clerk and records department, § 2-266 et seq.

Sec. 5-1. Composition of the city council.

The city council shall consist of nine (9) councilpersons, two (2) elected from each of the four (4) wards of the city, and a mayor elected at large, unless the Charter shall be amended to provide otherwise.

(Code 1977, § 2:101; Ord. of 10-5-87)

Charter References: Composition of council, § 3.

Sec. 5-2. Date of election.

The biennial meeting of each ward, hereinafter known as the regular municipal election, shall be held on the first Tuesday following the first Monday in November of every odd-numbered year, at such place in the city as may be fixed by the city council. The supervisors of the checklists shall prepare a checklist for each ward for use at such meetings. At each regular municipal election, one (1) councilperson shall be elected from each ward for a four-year term of office.

(Code 1977, § 2:102; Ord. of 10-5-87)

Charter References: Similar provisions, §§ 10, 11.

Sec. 5-3. Nonpartisan election of mayor and council.

The mayor and members of the city council who are to be elected by the voters of the city or of any ward therein, at any regular municipal election or, in the case of the mayor, at any special election called for the purpose of filling a vacancy in the office of mayor, shall be elected on a nonpartisan ballot.

(Code 1977, § 2:103)

Charter References: Similar provision, § 11.

Sec. 5-4. Form of ballots.

The city clerk shall prepare the ballots to be used for the election of the mayor and members of the city council in form and manner of folding as nearly alike as possible to the ballots prepared by the secretary of state for use at state biennial elections.

(Code 1977, § 2:104)

Sec. 5-5. Filing of notice of candidacy.

The ballot shall contain the names of all who file notice of candidacy with the city clerk as candidates for mayor or for councilperson. Such filing shall take place not before 9:00 a.m. of the forty-fifth day before the election nor later than 4:00 p.m. of the fifth Monday before the election. (Code 1977, § 2:104.2; Ord. of 10-5-87)

Sec. 5-6. Requirements for notice of candidacy.

The notice of candidacy shall be entitled "Notice of the Candidacy of (insert full legal name of candidate) for the office of (insert mayor or councilman and ward number) of the City of Berlin, New Hampshire". Such notice shall be signed by the candidate in the presence of the city clerk. Lines shall be provided on such notice for the signature of the candidate, for his or her legal address, for the date of signing, and for the signature of the city clerk as witness. No name shall be printed on the ballot unless such notice of candidacy shall be filed as prescribed herein.

(Code 1977, § 2:104.3)

Sec. 5-7. Requirements for ballots.

(a) Upon the official ballots, the names of the candidates for the same office shall be grouped and printed in the alphabetical order of their surnames. Only the full legal name of each candidate shall appear on the ballots, except that the candidate may use a middle initial instead of his or her full middle name. No nicknames shall be included in the name of any candidate. Nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate. No ballot shall have printed thereon any party or political designation or mark, and there shall not be appended to the name of any candidate any such party or political designation or mark, or anything indicating his or her views or opinions. Over each group of candidates for the same office shall be a statement of the office for which they are candidates and a direction to the voters as to the number of candidates to be voted for. Under each group shall be left as many blank spaces as there are persons to be elected to such office at such regular or special municipal election. Opposite each printed name shall be a square.

(b) The voter shall indicate his choice by making a cross in the square opposite the printed name of each candidate for whom he desires to vote, or by writing the name of any person or persons for whom he desires to vote in the appropriate blank space or spaces and making a cross in the square opposite the written-in name.

(Code 1977, § 2:104.1)

Sec. 5-8. Sample ballots.

The city clerk shall, at least seven (7) days before the election, cause to be printed a sufficient number of sample ballots, upon paper of different color and clearly marked "SAMPLE BALLOT", but otherwise identical to the ballot to be used at the election, and shall distribute the same to qualified voters at his office and fifty (50) to each candidate for councilperson in each ward upon the

candidate's request, and fifty (50) for each ward to each candidate for mayor upon the candidate's request.

(Code 1977, § 2:105; Ord. of 10-5-87)

Sec. 5-9. Qualifications of candidates.

No person shall be a candidate for election as councilperson who has not been a resident of the city for at least one (1) year immediately preceding his election, and who is not a duly qualified voter in the ward from which he is seeking election. No person shall be a candidate for mayor who is not a duly qualified voter in the city and who has not been a resident of the city for at least two (2) years immediately preceding his election.

(Code 1977, § 2:106; Ord. of 10-5-87)

Sec. 5-10. Polling hours and places.

The polls shall be open in each ward for each regular or special municipal election during the hours designated by the city council in conformance with state law.

(Code 1977, § 2:107; Ord. No. 5-14-90)

Sec. 5-11. Counting of ballots.

As soon as the polls are closed following each regular or special municipal election, the ward officers shall immediately open the ballot boxes, take the ballots therefrom, and count them in public view, and enter the total number thereof on the tally sheet provided therefor by the city clerk. They shall also carefully enter the number of votes for each candidate on the tally sheet and the ballots and tally sheets used at such election shall be sealed up in the manner provided by law in the case of general biennial elections and returned within one (1) hour after such sealing to the city clerk. Within the same time period, a return of the result of the vote in each ward for officers to be chosen at such election, certified by the moderator, shall be made to the city clerk on blanks provided by him or her for that purpose. The city clerk shall immediately record all such returns, and the same, together with his or her record thereof, shall be open to the inspection of any citizen.

(Code 1977, § 2:108)

Sec. 5-12. Declaration of election.

The city council shall meet within six (6) calendar days after the municipal election at a specially declared meeting. The city clerk shall submit to them his or her record of the returns of the election. The council shall canvass the returns and declare the qualified candidates having the largest number of votes for each office to be elected as councilperson or mayor, as the case may be, and shall cause said persons to be notified of their election.

(Code 1977, § 2:109; Ord. of 10-5-87)

Sec. 5-13. Recount.

Within seven (7) calendar days thereafter the city council shall, subject to rules and regulations as it may prescribe, upon request of any candidate recount the ballots cast in the election. The

council shall also hear and determine any election contest on the ground of fraud or misconduct therein, and to assist therein shall have the power to subpoena witnesses and compel the production of all pertinent books, records, and papers. In such cases the council may adjourn from time to time, but not later than the time appointed for the installation of new officers.
(Code 1977, § 2:110; Ord. of 10-5-87)

Sec. 5-14. Tie vote.

In case of a tie vote the tie shall be determined by lot by the city clerk in the presence of the candidates who are tied, if, upon notice from him or her, they elect to be present.
(Code 1977, § 2:111)

Sec. 5-15. Date terms begin.

The term of office of the mayor and members of the city council shall begin from the third Monday in January following their election in a regular municipal election and shall run until their qualified successors are chosen.
(Code 1977, § 2:112; Ord. of 10-5-87)

Sec. 5-16. Oaths of office.

At 8:00 p.m. on the third Monday in January following a regular municipal election, the mayor and members of the city council chosen in the election, along with the councilperson whose terms of office are still in effect, shall meet in their capacity as the city council. The newly chosen officers shall take their respective oaths, administered by the city clerk or city attorney in accordance with the laws of the state. The new city council shall organize itself, adopt rules for the transaction of business, and transact any other business required by law or ordinance to be transacted at such meeting.
(Code 1977, § 2:113; Ord. of 10-5-87)

Sec. 5-17. Vacancy in the office of mayor--Election by council.

(a) In the event of a vacancy in the office of mayor due to death, resignation, removal from the city, or any other cause occurring within six (6) months of the date of the next regular municipal election, the council shall elect one (1) of their number chairman, who shall have all the powers and perform all the duties of mayor, or during such vacancy, and who shall receive the salary of mayor during such period.

(b) In the case of a vacancy, the council shall elect one of their number by the recorded votes of at least a majority of all members of the city council at their next regular meeting or at a special meeting called for the express purpose of filling the vacancy to be held within fourteen (14) days of the creation of the vacancy. The councilperson elected to fill the vacancy in the office of mayor shall serve for the duration of the unexpired term and until his successor is elected and qualified.

(c) At the time his successor is elected and duly qualified, the councilperson acting as mayor shall return to his position as a member of the council and shall serve for the remainder of the term for which he was elected, provided such term has not expired.

(Code 1977, § 2:114.1; Ord. of 10-5-87)

Sec. 5-18. Same--Election by voters.

If a vacancy occurs from any cause in the office of mayor more than six (6) months prior to the date of the next regular municipal election, the city council may order a special election to fill such vacancy for the unexpired term. The same procedures and provisions shall apply for any such special elections as are provided herein for regular municipal elections. If the mayor is elected in a special election called for the purpose of filling a vacancy, he shall be duly qualified as soon as is practicable, but only after the completion of any recount which may be requested, and only after all requirements of state law, the Charter, and city ordinances have been satisfied. After being duly qualified, he shall serve for the duration of the unexpired term and until his successor has been elected and duly qualified.

(Code 1977, § 2:114.2)

Sec. 5-19. Costs of special elections.

To cover the costs of special municipal elections, the city council shall approve at the time the vouchers for such elections are issued such sums as are necessary, the same to be taken from any unexpended balances at the end of the fiscal year, or carried forward as a deficit to the next year and then cared for by a special appropriation.

(Code 1977, § 2:115)

Sec. 5-20. Vacancy in the office of councilperson.

Vacancies occurring in the office of councilperson from any cause shall be filled until the next election with the election of some qualified person from the ward where the vacancy occurs by the recorded votes of at least a majority of all members of the council at the next regular meeting or at a special meeting called for the express purpose of filling the vacancy within thirty (30) days following the creation of the vacancy, unless the charter shall be amended to provide otherwise.

(Code 1977, § 2:116; Ord. of 10-5-87)

Editors Note: See § 7 of the ordinance adopting this Code.

Sec. 5-21. State law.

Except as otherwise provided herein, state law shall control all election and voting matters and procedures.

* **Charter References:** Wards, § 2; elections, §§ 8--12.

Cross References: Administration, Ch. 2; city council, § 2-21 et seq.; administrative department, § 2-236 et seq.; city clerk and records department, § 2-266 et seq.