KP LAW
THE LEADER IN PUBLIC SECTOR LAW
eUpdate

November 3, 2026
Biennial State Election

November 2, 2026. We are almost there! Running an election is never an easy task, requiring significant cooperation between the municipal clerk and/or election official, and many, many additional municipal departments. A state election is a function of LOCAL government, working together, and at its very best!

So, thank you to all who make Election Day a success, providing space, setting up and taking down polling places, getting ballots and the right supplies to each polling place, for the hours spent training and then taking shifts at early voting in person and on Election Day, and after Election Day until certification of the election results! A few reminders for Tuesday.

Multiple Ballot Cards

As you know, this year, each ballot is made up of multiple cards – for most municipalities two, and, in some, three. This creates election-related administrative challenges not typically faced by most municipalities. Here are a few tips:

- Encourage inspectors at the check-in table to remind voters that there are two ballot cards and that both cards should be placed in the ballot box;
- Encourage inspectors at the ballot box to remind voters that there are two ballot cards, and, if a voter has only one, instruct the voter to go back to the marking unit to retrieve the second card;
- If a voter refuses to return to the marking unit for the second ballot card, have staff available immediately do a sweep of the marking stations (have staff available to do more frequent sweeps for literature voters may have brought with them, and for abandoned ballots);
- Any ballot card identified in a marking unit sweep should be labeled “abandoned” and put in a “spoiled ballot” or “abandoned ballot” envelope;
- If processing early vote by mail or absentee ballots, and only one ballot card has been returned, note that in the clerk’s book (but not the name of the voter); blanks will be added as “votes” for those on “missing” card; and
- If one ballot card is processed by the ballot box, but the second is returned to the voter:
    - (1) offer the voter the opportunity to complete a new ballot card matching the unprocessed card, with poll worker marking unprocessed ballot card as “spoiled”, placing it in the “spoiled ballot” envelope; or,
    - (2) if the voter refuses, then the second ballot card should be placed in the auxiliary bin and hand counted; in either case, however, the event should be noted in the clerk’s book.

Election Results

Election results are more complicated than many people understand. The “results” from a state election are not just the total of the votes cast on Election Day. Instead, they comprise the following.

A. Election Day – Ballots Counted at Polls by Tabulator

(1) Votes cast in person and by absentee, vote by mail, and early in person voters, processed through tabulator;

- These are the initial reported votes (the Tally Tape is printed directly from the tabulator, sometimes referred to as the "Unofficial Results" on the night of the election and on-line);

(2) Write-in and hand count ballot votes counted after the polls close;

- Initial adjustments made to Tally Tape for the new "Total Tally";

B. Election Day – Additional Votes Counted and Added to Total Tally

(3) Ballots cast in the tabulator during "advance processing", if applicable, with results provided by precinct and added to Total Tally (typically printed in office of Clerk/Election Official, but can vary);

(4) Ballots cast by absentee and early vote by mail voters whose ballots are received on Election Day prior to the close of polls, or such earlier cut-off time set by the Clerk/Election Official (including a decision in advance to process these post-election), but are not sent to polls; can be counted in the office of the Clerk/Election Official after the close of the polls or at a future time no earlier than 5:00 p.m. on November 6, 2026 (see below);

C. <u>After</u> Election Day: Counted No Earlier than 5:00 p.m. on November 6, 2026 (and with at least 3-days notice to the Elections Division) – Additional Votes Counted and Added to Total Tally as Adjusted Based Upon A and B, above

(5) Votes cast by absentee or early vote by mail voters received on November 3rd <u>and</u> any received prior to 5:00 p.m. on the 3rd day after the election, or November 6, 2026 <u>with a legible postmark of November 3rd or earlier</u>; and

(6) UOCAVA ballots mailed from outside the United States with a legible postmark of November 3rd or earlier that are received not later than 5:00 p.m. on the 10th day following the election, or November 13, 2026; these votes must be counted at a meeting of the Board of Registrars or Election Commission, which meeting must be posted in accordance with the Open Meeting Law at least 48-weekday hours in advance.

Ballots Received After Election Day that Are Not Postmarked or are Received After November 6, 2026

All envelopes received by the Clerk/Election Official postmarked after November 3, 2026, or received after November 3rd without a postmark, must be rejected. The envelope may not be not be opened, and must be marked, "Rejected: Received Too Late". Late ballots must be retained, unopened, for 22 months (same as for the other state election materials).

Recount Timeframes

State-wide Recount: A state-wide recount for an office or question to be voted upon by all voters in the state may be requested by filing a petition, signed by no less than 1,000 registered voters, with the Secretary of the Commonwealth no later than 15 days following the election, November 18, 2026. The petitions must first be filed with the registrars of voters or election commissioners no later than 5:00 p.m. on the 10th day after the election, November 13, 2026. Your office <u>must be open</u> until the deadline, or, other arrangements must be made. If the vote margin in the office or question is less than .5% of all the votes cast, then a recount is ordered; otherwise, the petitions are voided.

District-wide Recount: For district offices and questions appearing on a state election ballot, a district-wide recount can be requested in the same manner, and subject to the same deadlines, as are applicable for a state-wide recount,

except that the petition must be signed by the number of voters equal to ¼ of the number of voters required to sign nomination papers for state primary candidates in the relevant district.

Recount of Local Ballot Question: If a question appears on the state ballot in a single city or town, a recount may be requested in the typical manner, with a recount held in each precinct in a town or ward in a city for which a recount petition has been filed with the Town Clerk and signed by 10 or more registered voters from that precinct/ward.

Other Important Post-Election Information

- It is not required that absentee and early voting ballots eligible to be counted after Election Day be processed at a meeting of the Board of Registrars or Election Commission.
  - It is required that such ballots be counted in a setting that is open to the public, and for which at least three days written notice has been provided to the State Elections Division listing the date, time and place that such ballots will be counted.
- It is required that so-called UOCAVA ballots be counted at a meeting of the Board of Registrars or Election Commission.
- If a decision is made to count UOCAVA and otherwise eligible ballots at the same time, it may make sense to post a single meeting of the Board of Registrars or Election Commissioners for a time and date after 5:00 p.m. on November 13, 2026 and through November 17, 2026 (one day before the deadline – just in case).
- If a meeting is held for both purposes, the agenda for the meeting notice could take a form similar to the below:
  A. Provide for counting, by machine or by hand, as appropriate, all ballots legally eligible and required to be counted in connection with the November 3, 2026, State Election; and
  B. Verify new vote totals, adding votes counted at this meeting to total tally of votes already counted;
  C. Certify final State Election results in [insert name of municipality].
- Remind your poll closing teams to be careful and thorough – it makes a huge different in a recount.
- AV7 and EV7 envelopes must be sealed with ballots all other election materials; they can only be reviewed at a recount.
- Unlike most public records, you cannot provide a copy of the checked voter list unless you receive a written request. If you unseal the voter list for that purpose, make a record of the time and who is present, and a copy for your use.
- Used and unused ballots and other election materials required to be sealed must remain sealed for 22 months before they can be destroyed.

Good luck to everyone tomorrow!

KP Attorneys Lauren Goldberg, Devan Braun, and Michael D'Ortenzio support election officials throughout the year on a wide variety of elections matters. Please reach out to Lauren (617.654.1759), Devan (617.654.1703), or Michael (617.654.1779) as needed with any election-related questions – they will be on standby tomorrow should you have pressing questions.

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