

KENDALL, WALTON & BURROWS
Interoffice Memorandum

TO: FILE/Town Board

FROM: KWB

DATE: February 9, 2023

RE: T/Lyme
Permissive Referendum FAQ
45930.0001

There are certain questions which we are asked rather often regarding resolutions subject to permissive referendum. In an effort to demystify this topic, we have created the following list of frequently asked questions.

(1) What does referendum mean?

- a. "Referendum" is just a fancy word for "vote".

(2) When does the Town Clerk need to post and publish notice following the Town Board's adoption of a resolution subject to permissive referendum?

- a. The Town Clerk must post and publish within ten (10) days after the adoption.

(3) How does the Town Clerk satisfy the posting requirement?

- a. The Town Clerk satisfies the posting requirement by adding a physical copy of the resolution/notice to the Town Bulletin Board and by adding the same to the Town website.

(4) How does the Town Clerk satisfy the publishing requirement?

- a. The Town Clerk satisfies the publishing requirement by having the Town's selected newspaper (such as the Watertown Daily Times) publish the substance of the resolution and the notice.

(5) When does a resolution subject to permissive referendum become effective?

- a. A resolution subject to permissive referendum is ineffective until the thirty (30)

day referendum period has passed without the submission of an authenticated petition.

(6) Where can I find a petition?

- a. The Town Clerk has sample petitions available for use.

(7) Where do I file the petition?

- a. A completed petition must be filed with the Town Clerk.

(8) Is the resolution effective if a sufficient petition is filed with the Town Clerk within the thirty (30) day period?

- a. If within thirty (30) days after adopting the resolution, a petition which is acknowledged, proved, or authenticated by electors of the Town qualified to vote upon a proposition to raise and expend money is filed with the Town Clerk, no such resolution shall be effective until approved by the affirmative vote of a majority of the qualified electors of such Town or District affected.

(9) How many signatures are needed for a petition to be deemed complete?

- a. A petition must be signed by a number equal to at least five (5) percent of the total votes cast for governor in the Town at the last general election held for the election of state officers, but which shall not be less than one hundred (100) in a Town of the first class, nor less than twenty-five (25) in a Town of the second class.
- b. Towns are divided into classes according to population, as shown by the latest federal or state census or enumeration, as follows:
 - i. First Class. Towns containing a population of ten thousand or more, excepting towns in Broome and Suffolk counties, and excepting also the town of Potsdam in St. Lawrence county and the town of Ulster in Ulster county, and such other towns as may determine to become towns of the first class pursuant to the provisions of this article. Every town in the county of Westchester shall be a town of the first class.

- ii. Second Class. Towns containing a population of less than ten thousand, excepting towns in Westchester county and such towns as shall have determined to become towns of the first class pursuant to the provisions of this article. Every town in the counties of Suffolk and Broome and the town of Potsdam in the county of St. Lawrence and the town of Ulster in Ulster county shall be a town of the second class.

(10) What if I need more sheets of paper for my petition?

- a. A petition may be made using separate sheets. The signatures on each sheet shall be authenticated in the manner provided by Election Law. The several sheets when signed, authenticated, and fastened together and offered for filing shall be deemed to constitute one (1) petition.

(11) What happens if a petition is in all respects sufficient?

- a. Should it be determined that the aforementioned petition is in all respects sufficient, a special Town election shall be held not less than ninety (90) nor more than one hundred and five (105) days after the petition is filed with the Town Clerk.

(12) How will I know where and when the special election will be held?

- a. The Town Board shall adopt a resolution at least twenty (20) days before every special town election designating the hours of opening and closing the polls, the place or places where the election will be held, and setting forth each matter to be voted upon. Further, the Town Clerk must provide notice of such special election through publication and posting, as described above.

(13) How long do the polls need to remain open?

- a. The polls must remain open for at least six (6) consecutive hours between eight o'clock in the morning and eight o'clock in the evening.

(14) How is the voting at the special election done?

- a. The voting must be done by ballot.

(15) Am I eligible to vote in the special election?

- a. In order to vote in the special election, an individual must be a citizen of the United States, be eighteen (18) years of age or older, be a resident of New York State and the subject County, be a resident of the subject municipality, and own property within the proposed district.

(16) I will not be able to attend the special election in person. Is absentee voting available?

- a. No statute permits absentee voting at an election under Town Law Article 12-A where the subject Town has not adopted personal registration for special elections.

(17) What if I only live in the Town seasonally?

- a. There is no existing statutory authority which authorizes a town to issue absentee ballots to seasonal property owners for a special election.

(18) I am an unregistered voter, but I am otherwise qualified. Am I able to vote in the special election?

- a. An unregistered voter, otherwise qualified, may vote on a proposition submitted at a special town election.

(19) What if I am eligible to vote and I own more than one (1) parcel of property within the proposed district area, own property with another person, rent property, or own property through a partnership or corporation?

- a. Persons who do not own taxable real property located in a proposed water district are not entitled to a vote in a special election.
- b. Partnerships and corporations owning taxable real property located in a proposed water district are only entitled to a single vote.
- c. Any person or entity owning more than one (1) parcel within the proposed district is only entitled to a single vote.

- d. Each tenant by the entirety, tenant in common, and joint tenant owning taxable real property located in a proposed water district is entitled to a vote, meaning if a parcel is owned by more than one person (such as a married couple), each person would be entitled to their own vote.
- e. Tenants are not entitled to a vote.

Disclaimer: This is a list of frequently asked questions and is in no way exhaustive. Further, issues of residency and domicile may need to be determined on an individual case-by-case basis and may not necessarily conform entirely to the general statements made within this document. This document is merely intended to broadly address complex issues which may require an in-depth analysis.