



TO: Barry Tibbetts; Bob Burns

FROM: Mark A. Bower, Esq.; Ryan D. Lizzanecz, Esq.

RE: Chart: Major legal differences between an elected and appointed Town Clerk

DATE: August 8, 2024

ISSUE	ELECTED CLERK	APPOINTED CLERK	TOWN MANAGER APPOINTMENT	STATUTORY SECTION(S)
What professional qualifications and years of professional experience are required of the Town Clerk?	None.	Qualifications, including experience, are set by the Town Council and job description.	Qualifications, including experience, are set by the Town Manager and included in the job description.	Charter, Art. 2, Sec. 12
Does the Town Clerk need to be a resident of the Town?	Yes.	Not necessarily. Only if the Town Council decides that this is a requirement (or if otherwise required by Charter).	Not necessarily. Only if the Town Manager decides that this is a requirement (or if otherwise required by Charter).	Charter, Art. 2, Sec. 12(A).
How are the duties of the Town Clerk determined?	Duties, aside from those required by state statute, are determined by the Town Charter. Other duties, such as the Clerk's hours of operation and daily attendance, are up to the discretion of the Clerk	Duties and job description, aside from those required by statute, are decided by the Town Council and recommended by Human Resources. For example, the Clerk's hours of	Duties and job description, aside from those required by statute, are decided by the Town Manager and recommended by Human Resources. For example, the Clerk's	Charter, Art. 2, Sec. 12 30-A M.R.S. § 2526 22 M.R.S. § 2702

	(subject to state law or Town Ordinance/Charter).	operation, attendance policies and other matters will be decided by the Town Council and personnel policy.	hours of operation, attendance policies and other matters will be decided by the Town Manager and personnel policy.	
How is the Town Clerk held accountable to the public?	Held accountable by the public via direct election.	Answers to the Town Council and is held accountable to the public through Council review.	Answers to the Town Manager and Human Resources Director.	30-A M.R.S. § 2526 30-A M.R.S. § 2601
How is the Town Clerk removed from office?	Removed by recall vote pursuant to the Town's recall ordinance. The Town would need to engage an outside Clerk to administer the recall.	Removed by the Town Council for cause after notice and hearing (e.g., non-performance of duties or personnel policy violations). The Clerk cannot be removed by a recall in this scenario.	Removed by the Town Manager for cause after notice and hearing.	Windham Code Ch. 169 30-A M.R.S. § 2601 30-A M.R.S. § 2602 30-A M.R.S. § 2636(14)
How is the Town Clerk's wage/salary determined?	Salary is set by Town Council, per Charter.	Salary/wages set by the Town Council and included in the job description.	Salary/wages set by the Town Council and included in the job description.	Charter, Art. 2, Sec. 12
Who appoints the Deputy Town Clerks?	Appoints the Deputy Town Clerks.	Appoints the Deputy Town Clerks, subject to any requirements outlined by the personnel policy or contract.		30-A M.R.S. § 2603
Who determines what training the	The Clerk can determine the training staff complete in their office, but staff, per the Charter, are also subject to oversight by the Town Manager. For instance, the Town Manager may require certain training.			30-A M.R.S. § 2603(2) Charter, Art. 3, Sec. 2(A)(1)-(2).

Town Clerk's staff complete?				
What happens to existing staff and appointments should a new Town Clerk be elected/appointed?	<p>Any deputy and/or assistant clerk's term runs concurrent to the principals, whether appointed or elected. If the elected clerk loses an election (or if an appointed clerk is removed), the deputiesassistants lose legal authority unless appointed to operate in the interim by the Town Council. A newly elected or appointed clerk could decide not to rehire the deputiesassistants (subject to the Town Manager's oversight).</p> <p>All applicable employment laws and regulations apply to any discharge/discipline of an assistant or deputy clerk and any such action must comply with due process requirements. The Town Manager may, pursuant to the Town Charter, discipline and discharge the assistant and deputy clerks.</p>			30-A M.R.S. § 2603 30-A M.R.S. § 2654 Charter, Art. 3, Sec. 2(A)(1)-(2).
If the Clerk can hire deputies and assistants, does the Clerk need to follow the personnel policy while hiring?	<p>Yes. The Town's personnel policy explicitly provides rules for all employees of the Town (including bans on nepotism, etc.). The Town cannot be compelled to violate the personnel policy at the whim of the Clerk.</p>			Windham, Me., Personnel Policy (2023).
Who supervises the Town Clerk's staff?	The Elected Clerk alongside the Town Manager.	The Appointed Clerk alongside the Town Manager.		
Are Town Clerks held accountable to the personnel policy?	The personnel policy explicitly exempts elected Town Officials. The Clerk cannot be fired by the Town Council for violating the personnel policy, but they can be removed by a recall	The Appointed Clerk can be required to follow the personnel policy and removed from office by the Council for failure to follow it.	The Appointed Clerk can be required to follow the personnel policy and removed from office by the Town Manager for failure to follow it.	Windham Code Ch. 169 30-A M.R.S. § 2505 30-A M.R.S. § 2601 30-A M.R.S. § 2602



	vote pursuant to the Town's recall ordinance.			
Is the Town Clerk required to take Town Council minutes?	No.	Only if the Town Council decides to make this a part of the qualifications for the position.	Only if the Town Manager decides to make this a part of the qualifications for the position.	Charter, Art. 2, Sec. 12.
What is the minimum age of the Town Clerk?	18 years old.			Charter, Art. 2, Sec. 12.
Is the Town Clerk bonded?	This is up to the discretion of the Town Council and/or Town Manager depending on who is appointing the Clerk. The Town Council can also require an Elected Clerk to be bonded.			30-A M.R.S. § 2651
What is the term of the Town Clerk?	Two years.	Determined by the employment contract signed with the Town.		Charter, Art. 2, Sec. 3. 30-A M.R.S. § 2601
Can the Town Clerk hold a second job?	Yes. Absent a Charter or ordinance provision there is nothing barring the Elected Clerk from holding a second job, provided there is no incompatibility of offices.	Maybe. The Town Council and/or Manager could make the Appointed Clerk agree to not hold another position of employment so long as they are employed by the Town, as a condition of their employment.		Charter, Art. 2, Sec. 3.



Is the Town Clerk required to process motor vehicle registrations and/or tax payments?	No. there is nothing in the Town Charter, ordinances, or state statute that require the elected clerk to process motor vehicle registrations and tax payments.	Maybe. The Town Council and/or Manager could make the Appointed Clerk agree to process motor vehicle registration and/or tax payments as a condition of their employment.	Charter, Art. 2, Sec. 3.
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