

LATEST COVID-19 RELATED MUNICIPAL RELIEF LEGISLATION

June 6, 2020

During the ongoing COVID-19 public health crises, the Legislature has adopted various relief measures to assist communities in maintaining local government operations, including extending the time for holding town meetings during the current State of Emergency, providing mechanisms to address FY20 and FY21 budget issues, and allowing communities with annual elections occurring before June 1st to continue those elections. As the pandemic continues, however, additional relief measures have proven essential.

On June 4, 2020, the Legislature passed “An Act Relative to Municipal Governance During the COVID-19 Emergency,” a much-anticipated bill that has been under debate since last month. As of this writing, we understand that the bill has been signed by the Governor. This additional municipal relief legislation: expands the time period through which municipalities may postpone annual elections, through August 1, 2020; allows towns to hold town meetings outside their geographical limits; permits towns with representative town meetings to hold those meetings “virtually;” and establishes a process by which the select board may vote to temporarily lower town meeting quorum requirements established under local charter or by-law. The Act also addresses other budget and municipal finance related matters. This eUpdate summarizes the important legislative measures contained within this new Act, most relevant to our municipal clients.

The information contained herein is current as of the date of issuance. Where the state and federal governments are regularly enacting new or updated laws, regulations, and guidance in response to the COVID-19 crisis, we recommend that you consult with counsel regularly to ensure that you have the most up-to-date information.

MUNICIPAL ELECTIONS

Postponement of Elections and Caucuses through August 1, 2020 (Sections 1 and 2): With the enactment of this Act, communities with elections or caucuses between March 23 and June 30, 2020 will be allowed to postpone those caucuses or elections to a date certain on or before August 1, 2020. The rescheduled caucus or election must be held in accordance with the provisions of [Chapter 45 of the Acts of 2020](#). Our earlier [eUpdate](#) discussed the implementation of Chapter 45, which unfortunately only applied to communities with elections regularly scheduled before June 1, 2020. This Act fills the gap created by Chapter 45, and expands application of Chapter 45 to communities with elections that would normally occur June 1st or later, allowing them to postpone elections or caucuses to the same degree as previously as provided under Chapter 45 to communities with earlier elections or caucuses.

Cancellation of Municipal Caucuses and Use of Nomination Papers (Section 3): Under the Act, the select board, town council, or board of registrars may vote to *eliminate* entirely municipal caucuses that were scheduled to occur between March 23 and July 31, 2020, if it is determined by said board that holding the caucus would constitute a threat to public health and safety due to COVID-19. In communities that cancel their caucuses,

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nomination papers will be used to nominate candidates in accordance with state law, G.L. c.53, §§7, 10. The nomination papers must be:

- (a) signed by at least ten (10) registered voters of the town;
- (b) (1) made available 49 days before the election, in accordance with the usual schedule set forth in state law; or
- (2) where the 49th day prior to the date of the election has passed,
 - a. nomination papers shall be made available immediately; and returned to the registrars on the date designated by the town clerk (between 32 and 36 days before the election)
 - b. candidates then will be notified if their names will be on the ballot on the next business day after the filing deadline, and the time for filing withdrawals and objections to said candidates will expire at 5 p.m. the following business day

Absentee and early voting by mail for all elections held by August 1, 2020 (Sections 4 and 5): Chapter 45 expanded eligibility of persons taking precautions related to COVID-19 to use absentee ballots by deeming such persons, “unable by reason of physical disability to cast their vote in person at a polling location”. The Act extended this to elections through and including August 1, 2020. Additionally, the law extended until August 1, 2020 the ability of *any* eligible voter to vote early by mail for any annual or special municipal or state election held on or before that date.

Ratification of previous actions taken (Sections 15 and 16): Chapter 45 did not authorize communities with elections and caucuses initially scheduled by bylaw or charter after May 30, 2020 to delay the date thereof. The Act ratifies, i.e., deems consistent with law, actions taken by such communities to postpone municipal caucuses, and elections for those elections occurring June 1st or later. Additionally, and importantly, if any community acting under Chapter 45 to delay their election also delayed relevant deadlines for taking out or filing nomination papers or giving notice to the Town Clerk of a ballot question, such action is also deemed consistent with law.

TOWN MEETINGS

Lowering of Quorum Requirements (Section 7): The Act provides a temporary mechanism for the select board, in consultation with and approval of the moderator, to lower a town meeting quorum requirement established by law, charter, or by-law, to no less than 10% of the number otherwise required to establish a quorum. This temporary quorum reduction applies to both representative and open town meetings, where such meetings are held during the current Governor-declared State of Emergency. In order to lower the quorum for a town meeting held during this State of Emergency, the following process must be followed:

- a) The select board and moderator confer and agree to a lowering of the quorum, to no less than 10% of the current quorum requirement. (This conferral and agreement can occur prior to or simultaneously with the select board meeting at which it will vote to lower the quorum, as described in (c), below).
- b) The select board publishes notice of its intention to reduce or otherwise adjust the quorum requirement not less than seven (7) days before the vote of the select board. This vote must be taken at a meeting held in compliance with the Open Meeting Law (OML). However, unlike the normal 48-hours advance posting of meeting notices otherwise required under the OML, the notice of a meeting to vote on a reduced quorum is required to be posted at least seven (7) days prior to the meeting. Notice may also be published in other ways (via website, social media platforms, on local cable access channels, etc.).

- c) The select board meets to discuss and vote upon lowering the quorum requirement. Where the select board meeting is held virtually, the Act requires that “real time” access be provided to the meeting, so that interested members of the public may listen to and/or watch the board’s discussion, deliberation, and vote as it is occurring. Note that this imposes a standard more rigorous than under the Governor’s March 12, 2020 [“Order Suspending Certain Provisions of the Open Meeting, G.L. c. 30A, §20,”](#) under which it is sufficient to later post a record of the meeting if, due to economic hardship and despite best efforts, a public body is unable to provide real time access to virtual public meetings.
- d) After a select board votes to lower the quorum, the town clerk must notify the attorney general of the adjusted quorum requirement, within ten (10) days of the vote.

Location of Town Meeting (Section 9): Generally, in accord with G.L. c.39, §9, unless permitted by a special act, charter, or by-law provision, town meetings must be held within the geographic limits of the town. However, during this State of Emergency, the Act authorizes a select board, in consultation and with the approval of the moderator, to vote to hold town meeting outside the geographic limits of the town if it determines that it is not possible to adequately conduct town meeting in a location within the town in a manner that ensures health and safety. Importantly, a meeting for the election by ballot of federal, state, or other officers or the determination of other matters by ballot at an election must still be held within the geographic limits of the town. Where the select board votes to hold town meeting outside of town under the authority provided by this Act, it must “publicly post” notice of the new location of town meeting not less than ten (10) days before the date of the meeting.

Virtual Town Meetings (Section 8): The possibility of conducting a “virtual” town meeting has been widely discussed and debated as a result of the COVID-19 pandemic. Until now, there was no legal authority to conduct a remote or virtual town meeting, absent a special act or court order permitting same. The Act expressly allows towns with a **representative** town meeting to conduct virtual town meetings during the State of Emergency, upon agreement of the select board and moderator, but subject to the consent of town meeting members at the outset of town meeting (as explained further below). Moreover, the Act requires that any virtual town meeting be recorded, and importantly, that this recording be available on the town’s website for not less than ninety (90) days after the conclusion of the town meeting.

Of course, conducting a town meeting virtually requires a significant degree of pre-planning and testing. Section 8 of the Act establishes a process for the conduct of a virtual town meeting, held through any appropriate “video or telephone conferencing platform.” The statutory requirements described below represent the minimum requirements for a virtual town meeting, although other measures will likely be necessary to ensure a smooth and effective virtual town meeting.

Prior to Town Meeting:

- (a) First, the moderator must determine that an in-person town meeting cannot be held safely and in compliance with applicable state and local orders, directives, and guidance concerning public assemblies. If the moderator makes that determination, she must submit a written request to the select board stating as much, requesting that town meeting be held through remote participation in accordance with Section 8 of the Act. This written request shall also: (1) identify a virtual platform to be used; (2) indicate that she has conferred with the local disability commission or coordinator for compliance with the Americans with Disabilities Act (to ensure access by persons with disabilities); and (3) certify that the moderator has tested the application to be used and that it satisfactorily enables town meeting to be conducted “in substantially the same manner” as if the meeting occurred in person at a physical location, and in

accordance with the operational and functional requirements identified below (see “*Capabilities of the Video or Telephone Conferencing Platform*”).

- (b) Not later than ten (10) days from its receipt of the moderator’s written request, the select board must vote to determine whether the town meeting will be held remotely.
- (c) If the town meeting warrant has already been posted, for a meeting to occur by June 30, 2020, at the same meeting at which the select board approves the moderator’s request and votes to hold a virtual town meeting, it must also approve and issue a notice stating: (1) that the town meeting will be held virtually; (2) the date and time of the meeting; and (3) any information necessary to permit any person to access and witness the town meeting deliberations. This notice must include the moderator’s written request, and is filed and posted in the same manner as a moderator’s declaration of recess and continuance of town meeting under G.L.c.39, §10A(b).¹ This notice may also identify a date, time and place for town meeting to be resumed if town meeting does not vote to continue the town meeting remotely at the outset of the meeting. It must also be distributed to each town meeting member, and “publicly posted” no later than ten (10) days prior to the date of the remote town meeting.
- (d) If the warrant has not been issued, the posted warrant must expressly state: (1) the date and time of the meeting; (2) that the meeting will be held remotely, and identifying the video or telephone conferencing platform requested by the moderator; and (3) any information necessary to permit any person to access and witness the town meeting deliberations. The warrant may also identify a date, time and place for town meeting to be resumed if town meeting does not vote to continue the town meeting remotely at the outset of the meeting. The moderator’s request to hold a virtual town meeting must be appended to the warrant. All other provisions of G.L. c.39, §10, the town charter, and town by-laws remain applicable to a subsequently-issued warrant.
- (e) If the request is approved, the town clerk must submit certified copies of the moderator’s request and the select board vote to the attorney general no later than five (5) business days after the vote to hold the town meeting remotely.
- (f) Registered voters residing in town wishing to participate in a virtual town meeting must submit a request to participate to the town clerk no less than 48 hours prior to town meeting. Upon receipt of such a request, the town clerk verifies the requester’s voter registration status, and then provides the requester with instructions for participating in the remote town meeting.

At the Start of Town Meeting:

The first matter of business is a vote by town meeting members whether to continue with the virtual town meeting. If the members vote to continue the virtual town meeting, it may proceed, but if they do not vote to continue the meeting, it must be adjourned to the date and time identified in the notice or warrant described above. If said notice or warrant did not contain a continuation date and time, the town meeting must be

¹ i.e., filed with the municipal clerk; posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk’s office is located; posted by a constable or other person directed by the moderator in the same manner and same places as the warrant was posted; and posted at the main entrance of the place where the in-person town meeting would have otherwise been held; posted on the municipal website; and through any electronic, broadcast or print media convenient to circulate the notice.

dissolved and the select board must issue another warrant, for an in-person town meeting to be held at a physical location pursuant to G.L. c.39, §10, or any other applicable provisions of law, town charter and by-laws.

Capabilities of the Video or Telephone Conferencing Platform

The Act specifies certain minimum capabilities that the video or telephone conferencing platform must provide. In sum, the Act requires that the video or telephone conferencing platform used for a virtual town meeting must provide the ability for:

- The moderator and all participants (members, town officials, and the public) to hear and identify all other participants in the virtual town meeting;
- The ability to determine whether a quorum is present;
- The moderator to recognize town meeting members, town officials or other individuals and enable , and the moderator to be able to recognize those that wish to speak, without prior authorization (and, to the extent feasible, that the request is visible or audible in real time and upon review of the recording);
- The moderator to determine when town meeting members make a motion, raise a point of order, or object to a request for unanimous consent;
- Conducting roll call votes, by means that the moderator determines accurately and securely records the votes of those entitled to vote;²
- Remote access to the meeting by members of the public who wish to witness the deliberations and votes (i.e. live-streaming); and
- Recording the meeting.

BUDGET/FINANCE PROVISIONS

As an adjunct to the municipal finance provisions of Chapter 53 of the Acts of 2020, which we previously [summarized](#), Sections 10 and 11 of this Act further address municipal finance issues impacted by the ongoing pandemic and related State of Emergency.

Dedication of Revenues (Section 10):

- (a) For fiscal year 2021, a town or city may suspend the dedication of revenues to one (1) or more special funds for FY21 when such revenues are dedicated to a stabilization fund (G.L. c.40, §5B) or dedicated to a special fund pursuant to special law. Such revenues for FY21 shall be credited to the general fund of the city or town. This does not apply to surcharges assessed pursuant to G.L. c.40, §39M, G.L. c.44B, or any other special fund.
- (b) For FY21, a city, town, or district may appropriate funds from any stabilization fund created pursuant to G.L. c.40, §5B or special fund established by special law for any lawful purpose *notwithstanding the specific purpose of the fund*.

² While the Act does not mandate that all votes at a virtual representative town meeting must be conducted by “roll call”, it does require that where a roll call vote is conducted, the vote of each town meeting member shall be recorded and kept with the minutes of the town meeting.

- (c) In towns with a town meeting form of government, the options under (a) and (b) above, require a 2/3rds vote of the select board or town council. In cities, these options are exercised by 2/3rds vote of the city or town council with the approval of the mayor or manager. An option exercised pursuant to subsection (b) shall also require the approval of a city or town's school committee when the stabilization fund has been established for educational purposes.

Process for Adoption of an Annual Budget in Cities (Section 11):

General Laws Chapter 44, Section 32 establishes the processes by which a city with a mayor/city council form of government adopts a fiscal year budget. This statute allows for a so-called "month to month" budget, for up to three months, in the event that the city has been unable to approve an operating budget for the fiscal year "because of circumstances beyond its control." Thus, while a city has the ability to continue funding its operations even if it is unable to approve a FY21 budget by June 30th due to the current pandemic, the statute contains a time deadline for the mayor to submit her budget proposal to the city council to no later than 170 days after the "annual organization of the city government."

Section 11 of the Act extends this 170-day deadline, for up to an additional 60 days after the termination of the Governor's March 10, 2020 declaration of a State of Emergency, if the mayor has been unable to submit an annual budget for FY21 to the city council due to the outbreak of COVID-19. However, within 30 days after the termination of the declaration of emergency or on July 31, 2020, whichever is earlier, the mayor must submit the annual budget for FY21 to the city council, and the time periods set forth G.L. c.44,§32 otherwise apply thereafter not inconsistent with this section. Section 11 also confirms that the mayor may submit to the city council a continuing appropriation budget on a month-by-month basis for a period not to exceed 3 months if the city has not approved an annual budget for FY21 by June 30, 2020.

OTHER PROVISIONS

The Act also contains provisions permitting municipal and regional school districts to continue making payments on FY20 vendor service contracts under certain conditions, creates a mechanism by which the Commissioner of Elementary and Secondary Education may issue so-called "emergency educator licenses" during the current State of Emergency and for 180 days after the termination of the emergency. Finally, the Act makes a technical amendment to Chapter 53 of the Acts of 2020, clarifying that, provided that payment is received by June 30, 2020 cities, towns and districts, are prohibited from terminating essential services due to late payments of taxes or other charges added to a tax.

We will continue to keep you updated on additional developments in the face of this rapidly evolving pandemic. A reminder that we have established a **Coronavirus "hotline,"** at coronavirusinfo@k-plaw.com. A dedicated team of our attorneys is available through this hotline e-mail address to answer the most frequently-asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries.

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