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CLIENT ALERT
COVID-19 AND MUNICIPAL OPERATIONS
March 16, 2020

The advice we are receiving from national and state experts on the recommended response to COVID-19 is changing rapidly. With Town Meeting and budgetary approval upon us, though, we offer our most current responses to some of the frequently asked questions we have received.

Q. What do we do about meetings of municipal boards and committees?

A. On March 15th, effective March 17th, the Governor has issued an [Executive Order](#)¹ that **prohibits** gatherings of over 25 or more people in a single space. The Order expressly includes but is not limited to community and civic events when such numbers would gather in a gymnasium, meeting hall, or any other indoor space. Even if your board or committee is unlikely to convene with 25 or more people, the guidance from public health officials is that people should not be meeting at all in person. You may meet remotely if necessary, per the Governor's Executive Order of March 12th. If not necessary, the meeting should be rescheduled.

Q. What if the meeting includes a public hearing?

A. Per the Governor's [Executive Order of March 12th](#)², boards and commissions may meet remotely. If the meeting includes a public hearing and the Board or Committee is unable to arrange for remote participation, the Board or Committee should reach out to the applicant and get written agreement to continue the hearing or to extend the deadline for reaching a decision. If the applicant does not agree and the proceeding is subject to a statutory deadline (such as the *Wetlands Protection Act* 21-day deadline to open a hearing) the hearing can be continued only to a date within the statutorily required time frame; otherwise a constructive grant of approval may occur. In order to ensure that any interested member of the public is duly informed about the continuance, the meeting must be opened in order to announce the continuance of the hearing to a future date certain. Fewer than a quorum (or a Town staff member with authority delegated by the Chair) can open the meeting to continue the hearing to a future date. We advise, however, that the Board or Committee re-notice the hearing if possible.

Q. Can a quorum meet remotely?

A. Yes, under the March 12th Executive Order issued by the Governor.

¹ <https://www.mass.gov/doc/march-15-2020-large-gatherings-25-and-restaurants-order/download>

² <https://www.mass.gov/doc/open-meeting-law-order-march-12-2020/download>

Q. Can elections be postponed?

A. If you wish to postpone your election, you must file a complaint in Superior Court and obtain a court order or obtain passage of a special act from the legislature. No local board or official can postpone an election.

Q. Can Town Meeting be postponed?

A. The Governor's March 15th Executive Order exempts from its prohibition the gathering of any municipal legislative body. Town Meeting is thus exempt. If the local officials, however would like to postpone Town Meeting and the warrant has not been posted, G.L. c. 39, § 9, then the Select Board may vote to postpone Town Meeting. If the warrant has already been posted, then as of 3 pm on March 16, our best advice is that the Moderator, in consultation with public safety officials and the Select Board, may determine that there is a public safety emergency and postpone Town Meeting. The Moderator announces his determination and reschedules it to a time, place, and date certain, which cannot be later than 30 days after the announcement of the recess. Notice must be filed with the Town Clerk. A public safety official designated by the Select Board must then send a letter to the Attorney General informing her of the recess. This process is set forth in G.L. c. 39, § 10A. If you would like to postpone for a later time, then you should seek passage of a special act or obtain a court order. We are aware, however, that there is pending emergency legislation that affects Town Meeting postponements and will update this Alert if legislation is adopted.

Q. How are Town services funded if Town Meeting doesn't approve a budget by June 30?

A. There is no mechanism in place at this time, other than for regional school budgets, for continuing resolutions in the event that an annual budget has not been approved. While the Governor has submitted a [special legislation package³](#) to the General Court to municipal governance challenges related to the pandemic, those measures have not yet passed as of this writing.

Q. Who has authority to close public schools?

A. The superintendent of schools has the authority to close public schools in each municipality. The Governor has that authority statewide. On March 15, 2020, the Governor ordered that all public elementary and secondary schools close until from the end of the school day on March 16, 2020 until at least April 6, 2020.

Q. Who has authority to close Town Hall?

A. The Board of Health has the authority to restrict access to or close Town Hall. It should consult with the Town Manager or Administrator.

Q. What should I do about town employees?

³ H. 4572, <https://malegislature.gov/Bills/191/H4572>

A. There is no one size fits all answer. You should consider adopting a policy so that there can be no claim of disparate treatment. Your policy should address:

1. Are certain essential employees, who are identified in the policy, required to report to work?
2. Must non-essential employees stay home?
3. If employees are required or choose to stay home, will they be paid?
4. Will employees who stay home only be paid if they can work from home?
5. Must employees who don't report to work required to exhaust paid vacation or sick leave first?
6. For how long will this policy remain in place? For example, is it coterminous with the expiration of the state emergency, the national emergency, the Governor's March 15th Order, or some other metric?

Q. What should we do about bid openings?

A. The Attorney General's Director of Regulatory & Compliance Division advises that per the Governor's declared state of emergency, in person bid opening are not required under G.L. c. 30B. You should hold a virtual bid opening and live stream the opening. The opening need not be at town hall. The opening should be recorded and posted to the town website. If that is not possible, then the bid opening should still occur and be witnessed, either in person or virtually. Bids must be recorded. The bids must still have been sealed before opening, and the names of the bidders and amount offered should be read aloud. Both the Attorney General's office and the Inspector General's office are available for technical assistance.

E-bidding is permissible. If your municipality has not procured an e-bidding service, then you may require that all bids be submitted by mail only, then have them picked up and opened by a town employee on the date and time specified in the bid documents. The bids should then be scanned and uploaded to the Town's website as soon as possible for public access.

Please contact us as further questions arise. We are here to help.