

## **Updated Guidance:**

### **The Coronavirus and Town Meetings & Elections [Updated 3/18/20 2:00]**

On March 17, 2020, the Maine Legislature enacted emergency legislation (LD 2167) addressing municipal elections, budgets, spending authority and disbursements. As a result, we have issued updated guidance on these issues:

#### **Can a secret ballot election be cancelled?**

Yes. Emergency legislation enacted by the Maine Legislature provides a temporary process to postpone and reschedule a secret ballot election and/or referendum election. Retroactive to March 1, 2020 and ending January 1, 2021, the municipal officers may postpone the date of a scheduled municipal secret ballot election and/or referendum when nomination papers have already been issued or filed or the referendum has already been scheduled.

- In order to cancel the election/referendum, the municipal officers must post notice in a conspicuous public location at least 2 days prior to the date of the election/referendum. The notice must be signed by a majority of the board and must either:
  - (1) state a specific date and time during which the polls will be open to complete the election; or
  - (2) state that the date of a rescheduled election will be determined by the board.

A sample public notice postponing the election/referendum is located at the end of this FAQ.

- If the notice postponing election/referendum does not state a new date for the rescheduled election, then in order to reschedule the election, the board will need to approve and post a new warrant pursuant to 30-A M.R.S. § 2523 at least 7 days prior to the date of the rescheduled election.
- If ballots have already been printed for the postponed election, the municipality may use those ballots for the rescheduled election even though they include the date of the original election.
- If absentee ballots relating to the postponed election/referendum have been issued and returned, the municipality must use the ballots printed for the originally scheduled election. The municipal clerk must safeguard and secure any absentee ballots already returned until the date of the rescheduled election and process them at that time as required by Title 21-A. During the interim period between the originally scheduled election and rescheduled election, the clerk may continue to issue and accept absentee ballots and applications and allow voting in the presence of the clerk pursuant to Title 21-A.

#### **Guidelines for postponing a secret ballot election:**

- If no warrant has been posted calling the secret ballot election, the board may vote not to post the warrant, and post the notice described above postponing the election.

- If the warrant has been posted less than 7 days, the board may vote to take the warrant down and post the notice described above postponing the election.
- If the warrant has been posted 7 or more days, and the board is rescheduling to a date certain, the board should leave the warrant up, but post the public notice described above postponing the election. If the board postpones without specifying a date, the board may wish to take the warrant down and post the public notice described above.

### **Can a traditional “open” town meeting be cancelled or postponed?**

If the warrant for the meeting has not been publicly posted for the requisite 7 days, it may, at the direction of the municipal officers (selectmen or councilors), be taken down wherever posted, thus calling off the meeting. If the warrant has been posted for 7 or more days, however, there remains no formal procedure under Maine law for cancelling the meeting. Although the meeting cannot be cancelled, as few as 2 voters and the clerk can open the meeting, elect and swear in a moderator, and then move to immediately adjourn the meeting without acting on any other business. If the majority of voters present agree, the meeting has effectively been cancelled.

[*Note:* The afternoon of 3/18/20 Governor Mills issued an Executive Order prohibiting most gatherings of 10 or more persons. See: <https://www.maine.gov/governor/mills/news/governor-mills-takes-further-steps-respond-covid-19-protect-health-and-safety-maine-people>. The order does not expressly prohibit town meetings exceeding 10 persons, however, the health concerns underlying the directive are applicable to those meetings as well. Given these concerns municipal officers should take steps to avoid any gathering of 10 persons, including at an open town meeting. See guidance below.]

### **Guidelines for postponing an open town meeting:**

- If no warrant has yet been posted, the board may delay posting the warrant until concerns regarding COVID-19 have passed.
- If the warrant has been posted for fewer than 7 days, the board may vote to take the warrant down, thus cancelling the meeting.
- If the warrant has been posted 7 or more days, the board may wish to cancel the meeting by notifying voters that it plans to postpone the meeting by having a few persons open the meeting and make a motion to adjourn. However, the Governor’s 3/18/20 prohibition on gatherings of 10+ persons likely provides authority to post a notice of cancellation without opening and adjourning the meeting, if officials have concerns as to the possibility of 10 or more voters attending.

### **What if the town has a bifurcated meeting (secret ballot election and open town meeting)?**

Each portion of the bifurcated meeting should be postponed or cancelled following guidance specific to each portion of the meeting – open portion and secret ballot election portion.

**If the municipal budget meeting is postponed, will the board have authority to spend funds?**

Yes. The emergency legislation enacted yesterday provides spending authority if the annual budget meeting is delayed due to COVID-19 health concerns. Specifically, if the annual municipal budget meeting is delayed beyond the date the annual budget is customarily submitted to the legislative body for approval due to public health concerns arising from the coronavirus (COVID-19), the prior year's approved budget is deemed the budget for the ensuing year until a final budget is approved.

The emergency legislation also allows for property taxes to be committed. If a final budget is not timely approved due to COVID-19 health concerns, and the municipal officers determine that property taxes must be committed in a timely manner to the collector, the municipal assessor or assessors may commit property taxes on the basis of the previous year's budget amounts.

**What about municipalities with a charter addressing secret ballot elections, referendums or spending authority?**

The authorities granted under the emergency legislation apply notwithstanding any law or municipal charter provision to the contrary. These provisions will address most issues for charter communities. However, consultation with legal counsel may be necessary.

**Must the municipal officers continue to have public meetings to approve disbursement warrants?**

No. The emergency legislation authorizes the municipal treasurer to disburse money on the authority of a warrant drawn for that purpose seen and signed individually by a majority of the municipal officers outside of a public meeting. This authority extends for the duration of the state of emergency declared by the Governor due to the outbreak of COVID-19 and for 30 days following the termination of that state of emergency.

**If municipal elections are postponed, do current officials remain in office?**

Elected officials generally "hold over" in office until their successors are elected and sworn. Therefore, if annual elections are postponed, the current elected officials will remain in office continue to have authority to act. The rules are different for appointed officials. If an appointed official's term expires, he/she does not hold over in office and would need to be re-appointed with new appointment papers.

**Can voters vote by absentee ballot at a traditional open town meeting?**

No, Maine law governs the conduct of town meetings, and the law does not authorize absentee ballots or absentee voting at traditional open town meetings. Only registered voters who are physically present at the meeting at the time a particular vote is called may vote on that item.

Absentee voting is permitted at any secret ballot election, where voters go the polls during polling hours and mark their ballots in the privacy of a voting booth.

**Can voters vote remotely or by proxy at a traditional “open” town meeting?**

No, Maine law does not authorize voting either remotely or by proxy (by authorizing a friend, relative or agent to cast their vote) at a traditional open town meeting. Again, only registered voters who are physically present at the meeting may vote. (But also again, absentee voting is permitted at a secret ballot election.)

**How can voters vote by absentee ballot at a secret ballot election?**

Registered voters may submit an application for an absentee ballot to the municipal clerk as early as three months before the election. Once absentee ballots become available 30 days before the election, the clerk must send an absentee ballot to every applicant. Absentee ballots may not be issued after the third business day before the election, however, unless the voter meets one of four statutory exceptions. A voter may also, without submitting an application, vote by absentee ballot in the presence of the clerk. MMA’s *Town Meetings & Elections Manual* discusses absentee voting procedures in detail.

**Where can MMA members receive more information?**

Members are encouraged to contact MMA Legal Services for specific advice on these topics at 800-452-8786 or [legal@memun.org](mailto:legal@memun.org). Additional guidance is located on MMA’s “Coronavirus Updates and Resources” page at [www.memun.org](http://www.memun.org).

Maine Municipal Association  
Legal Services Department  
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