

Municipal Alert
June 19, 2020

Third COVID-19 Municipal Relief Law
Part I: Town Meetings & Elections

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On June 4, 2020, the Massachusetts Legislature enacted “An Act Relative to Municipal Governance During the COVID-19 Emergency.” The Governor signed the bill into law on June 5, 2020. This bill is the third in a series of legislation designed to mitigate the challenges that the coronavirus pandemic has created for municipal operations, budgets, and governance. The legislation largely addresses municipal elections, town meetings, and municipal finance questions. This client alert summarizes the legislation’s increased flexibility regarding town meetings and elections. A second client alert will address the law’s provisions regarding municipal finance.

Municipal Caucuses & Elections

The first COVID-19 municipal legislation passed on March 23, 2020 permitted the postponement of municipal caucuses and elections. However, rescheduled elections had to be held on or before June 30, 2020. The newest legislation extends that timeline, providing that municipal caucuses and elections scheduled between March 23, 2020 and June 30, 2020 may be continued until August 1, 2020.

The legislation also gives power to the select board, town council, or board of registrars to vote to eliminate a municipal caucus scheduled between March 23, 2020 and July 31, 2020. The voting body may eliminate the caucus if it determines that holding the caucus would be a threat to the public health and safety. Candidates will then be nominated through nomination papers.

Town Meeting Quorums

As town meeting season quickly approaches, the law gives towns significant abilities to adapt their town meetings to the current conditions. In anticipation of lower than normal attendance at town meetings, the legislature devised a mechanism to permit town meetings to proceed with fewer than an otherwise required number of voters.. First, the select board, in consultation with the town moderator, may vote to reduce the necessary quorum at a town meeting held during the Governor’s state of emergency. At least 7 days prior to reducing the quorum, the select board must provide public notice of its intention to consider adjusting the quorum. The select board may vote to reduce the quorum to no less than 10 percent of the number of voters otherwise required. If the quorum is adjusted, the town clerk must notify the Attorney General of the reduction within 10 days of the vote.



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Remote Representative Town Meetings

Second, the bill allows the moderator of a representative town meeting to call for the town meeting to be held through remote participation, such as through video or telephone conferencing. In order to hold the meeting remotely, the town moderator must determine that it is not possible to safely assemble the town meeting members and the public. The moderator may then make a written request of the select board. The request must include:

- The moderator's determination regarding safety and request to hold a town meeting through remote participation;
- The video or telephone conferencing platform the moderator has determined to use to hold the town meeting;
- Confirmation that the moderator has consulted with the local disability commission or coordinator for the federal Americans with Disabilities Act compliance; and
- A certification by the moderator that the moderator has tested the video or telephone conferencing platform and that the platform satisfactorily enables the town meeting to be conducted in substantially the same manner as if the meeting occurred in person at a physical location.

Within 10 days after receiving the moderator's request, the select board must vote to determine if the town meeting will be held remotely. If approved, notice must be provided of the remote town meeting, including notice to the Attorney General. Notice requirements to the public and town meeting members will differ depending on if a warrant has been issued prior to the select board's vote.

The video or telephone conference platform must meet a number of criteria in order to be used for a remote representative town meeting. Specifically, the platform must provide the ability for:

- The moderator, town meeting members, town officials, and other interested members of the public to identify and hear the moderator and each participant;
- The ability to determine whether a quorum is present;
- A town meeting member, town official, or individual to request recognition by the moderator without prior authorization;
- The moderator to determine when a town meeting member wishes to be recognized to speak, make a motion, raise a point of order, or object to a request for unanimous consent;
- The moderator to recognize a town meeting member, town official, or other individual to speak and to enable that person to speak;
- The ability to conduct a roll call vote;
- Any interested members of the public to access the meeting remotely for purposes of witnessing the deliberations and actions taken at the town meeting; and



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- The town meeting to be recorded.

Prior to conducting any business at the remote town meeting, the town meeting members must vote on whether or not to continue the town meeting remotely through the chosen platform. If the town meeting votes in the affirmative, the town meeting shall proceed by remote participation to address the articles included in the warrant. Actions taken pursuant to the remote town meeting will be upheld as if it had been conducted in person. If the town meeting votes not to continue remotely, then the town meeting must adjourn to a date, time, and place if one was specified in the aforementioned notice of the remote meeting. If a physical location was not specified in the notice, the town meeting is immediately dissolved and the select board may call town meeting pursuant to a new warrant providing for a physical location.

Remotely held town meetings must ensure that votes are taken by a means that allows the moderator to accurately and securely record the votes, including by roll call, electronic voting, ballot, vote by phone, or a combination. The votes must be recorded and kept with town meeting minutes. The remote town meeting must also be recorded and made publically available on the town’s website for at least 90 days following the meeting.

Town Meetings Outside of Town

Lastly, the legislation permits a select board, with the approval of the moderator, to vote to hold town meeting outside of the geographic limits of the town. The select board must determine prior to the vote that it is not possible to ensure health and safety by conducting a town meeting within the town limits. However, elections or other matters determined by ballot at an election must be held within the town. Notice of the town meeting’s location must be publically posted at least 10 days before the town meeting.

This third COVID-19 municipal legislation provides greater flexibility to municipalities to determine what steps are most appropriate so that elections and town meetings can proceed in a way that protects the health and safety of their residents. Municipalities must work closely with legal counsel as well as public health and safety officials and other relevant municipal officials to determine which procedures are best-suited for their specific community.



This Client Alert was prepared by Karis North and Rachel Mills and was reviewed by Sarah Spatafore and David DeLuca. If you have any questions, please contact Karis North, Rachel Mills, or the attorney assigned to your account, or call (617) 479-5000.

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MURPHY HESSE
TOOMEY & LEHANE LLP

Attorneys at Law

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