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*MIYARES AND HARRINGTON LLP*  
*CLIENT ALERT*  
COVID-19 AND MUNICIPAL OPERATIONS  
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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 15<sup>th</sup>, effective March 17<sup>th</sup>, the Governor issued an [Executive Order](#)<sup>1</sup> 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 12<sup>th</sup>. 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 12<sup>th</sup>](#)<sup>2</sup>, 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. 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 that the Board or Committee re-notice the hearing if possible. If Town Hall is closed, notices of the date to which the hearing is continued should be posted online and at the entrances to Town Hall and whatever other posting locations are still publicly accessible.

Although the Supreme Judicial Court issued a tolling [Order](#)<sup>3</sup> that extends certain deadlines until April 21, 2020, that Order does not give relief to statutory deadlines for action imposed on local boards and committees.

**Q. Can a quorum meet remotely?**

A. Yes, under the March 12<sup>th</sup> Executive Order issued by the Governor.

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

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

<sup>3</sup> <https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-order-limiting-in-person-appearances-in-state>

**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 15<sup>th</sup> 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 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 package<sup>4</sup>](#) 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. 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. If the closure is not extended by the Governor, the local superintendent may extend the closure.

**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 – stay home, work from home, come in?**

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<sup>4</sup> H. 4572, <https://malegislature.gov/Bills/191/H4572>

A. There is no one size fits all answer. You should adopt 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 15<sup>th</sup> Order, or some other metric?

Some employees must be paid even if they are home and cannot work full-time. Others need not be paid. This is a highly complex area of the law. In addition, state and federal laws have been passed or are under consideration that will affect wage and salary rules. On March 18<sup>th</sup>, effective April 2<sup>nd</sup>, President Trump signed into law the Families First Coronavirus Response Act. It requires employers to provide two weeks of paid leave but permits exception for employers of first responders from certain aspects of the law. Consult your counsel regarding the law's effect on your employees.

**Q. What if we have employees who are classified by the state and federal guidance as higher-risk of complications from COVID-19 (for example, employees with underlying health conditions or of advanced age)?**

A. If an employee alerts their supervisor that they fall into the higher-risk category as defined by state and federal guidance, our recommendation is that you treat this information in the same manner as a request for a reasonable accommodation under the Americans with Disabilities Act, and, to the extent that telecommuting is a reasonable accommodation, that should be allowed.

**Q. Must we pay our employees on the day that we send them home?**

A. The Wage and Hour laws still apply. Therefore, if you require your employees to stay home temporarily, *on the date of the order*, you must pay the employee for all hours worked up to the hour they are sent home and you must pay all accrued vacation hours. You are only excused from paying the vacation time if the employee informs you that they would like to save it for later use. While there are some exceptions, this is the generally applicable law at the time of this writing.

**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 openings 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 be scanned and uploaded to the Town's website as soon as possible for public access.

### **Q. What about submission of bids?**

A. Bids cannot be emailed or faxed, because they can only be opened on the designated date and time. If your municipality has the capacity, you can provide a portal in which bids may be uploaded. Otherwise, bids should be dropped off to a secure location or mailed. Bid checks should be mailed or uploaded.

### **Q. What are the procedures for emergency procurement?**

A. The Attorney General's office issued this advice on March 19<sup>th</sup>:

There are emergency provisions regarding building construction in G.L. c. 149, sec. 44J(6) and sec. 44A(4), both of which require a waiver from DCAMM. Here is the waiver procedure:

<https://www.mass.gov/how-to/emergency-waiver-request>

The emergency procedures for public works construction are found at G.L. c. 30, sec. 39M:

"In cases of extreme emergency: (1) caused by enemy attack, sabotage or other such hostile actions or (2) resulting from an imminent security threat explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe, an awarding authority may, without competitive bids and notwithstanding any general or special law, award contracts otherwise subject to this subsection to perform work and to purchase or rent materials and equipment, all as may be necessary for temporary repair and restoration to service of any and all public work in order to preserve the health and safety of persons or property; provided, that this exception shall not apply to any permanent reconstruction, alteration, remodeling or repair of any public work."

Note that DCAMM is not involved in public works emergency waivers - that decision is made by the awarding authority.

### **Q. Can an awarding authority postpone a scheduled bid opening?**

A. Yes. You may issue an addendum prior to the scheduled date to postpone the bid opening.

**Q. What about inspections to enforce or administer the State Building Code?**

A. It is expected that some inspections will need to occur. On March 17<sup>th</sup>, the state Office of Public Safety and Inspections issued guidance that inspectors consult with the local Board of Health on the best practices, including personal protective equipment, to use while performing their duties. Inspectors should postpone all non-essential inspections of buildings with populations considered high-risk, such as nursing homes and hospitals. District State Building Inspectors are available to assist with any questions or problems. You may contact Daniel P. Walsh, Assistant Chief of Inspections – Building and Engineering at 617-826-5236 or email [dan.p.walsh@mass.gov](mailto:dan.p.walsh@mass.gov).

**Q: Our local Board of Health or Health Agent has learned that a resident tested positive or is self-quarantined due to exposure to COVID-19. May it share the information?**

A: The Commissioner of Public Health issued an order on March 18, 2020, that allows local boards of health to release **addresses** of those persons living in their jurisdiction **who the local board of health has been informed have tested positive for COVID-19**. This information will be disclosed only to the official with the responsibility for administering the response to emergency calls in their jurisdiction (the “Receiving Entity”). The local board of health cannot release the names of such persons. Any information discussed shall only be used as necessary for responding to emergency calls. The Receiving Entity must ensure that the information is maintained confidentially and made available only to those who need to know in order to operate emergency response services. Such information may not be retained by the Receiving Entity beyond the termination of the state of emergency.

This order allowing the sharing of information **does not apply** if the local board of health is aware only that a person at an address has isolated or quarantined because of an exposure, or is symptomatic, but has not yet tested positive for COVID-19. In that instance, first responders should rely on the information provided by dispatchers, who should be asking callers if anyone in the household is isolated, quarantined, or symptomatic of COVID-19.

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