

Town and County of Nantucket Select Board • County Commissioners

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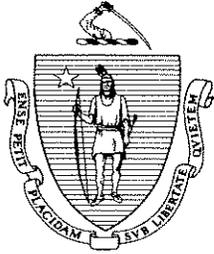
C. Elizabeth Gibson
Town & County Manager

***AGENDA FOR THE MEETING OF THE
SELECT BOARD
MAY 12, 2020 - 2:00 PM
REMOTE PARTICIPATION VIA ZOOM AND YOU TUBE
PURSUANT TO GOVERNOR BAKER'S MARCH 12, 2020
ORDER REGARDING OPEN MEETING LAW
NANTUCKET, MASSACHUSETTS***

YOU TUBE LINK:

<https://youtu.be/44HOQPe0dj0>

- I. CALL TO ORDER***
- II. JOINT MEETING WITH FINANCE COMMITTEE***
 1. Discussion Regarding Rescheduling 2020 Annual Town Meeting.
- III. ADJOURNMENT***



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

**ORDER SUSPENDING CERTAIN PROVISIONS
OF THE OPEN MEETING LAW, G. L. c. 30A, § 20**

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”); and

WHEREAS, many important functions of State and Local Government are executed by “public bodies,” as that term is defined in G. L. c. 30A, § 18, in meetings that are open to the public, consistent with the requirements of law and sound public policy and in order to ensure active public engagement with, contribution to, and oversight of the functions of government; and

WHEREAS, both the Federal Centers for Disease Control and Prevention (“CDC”) and the Massachusetts Department of Public Health (“DPH”) have advised residents to take extra measures to put distance between themselves and other people to further reduce the risk of being exposed to COVID-19. Additionally, the CDC and DPH have advised high-risk individuals, including people over the age of 60, anyone with underlying health conditions or a weakened immune system, and pregnant women, to avoid large gatherings.

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise authority over public assemblages as necessary to protect the health and safety of persons; and

WHEREAS, low-cost telephone, social media, and other internet-based technologies are currently available that will permit the convening of a public body through virtual means and allow real-time public access to the activities of the public body; and

WHEREAS section 20 of chapter 30A and implementing regulations issued by the Attorney General currently authorize remote participation by members of a public body, subject to certain limitations;

NOW THEREFORE, I hereby order the following:

(1) A public body, as defined in section 18 of chapter 30A of the General Laws, is hereby relieved from the requirement of section 20 of chapter 30A that it conduct its meetings in a public place that is open and physically accessible to the public, provided that the public body makes provision to ensure public access to the deliberations of the public body for interested members of the public through adequate, alternative means.

Adequate, alternative means of public access shall mean measures that provide transparency and permit timely and effective public access to the deliberations of the public body. Such means may include, without limitation, providing public access through telephone, internet, or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body while those activities are occurring. Where allowance for active, real-time participation by members of the public is a specific requirement of a general or special law or regulation, or a local ordinance or by-law, pursuant to which the proceeding is conducted, any alternative means of public access must provide for such participation.

A municipal public body that for reasons of economic hardship and despite best efforts is unable to provide alternative means of public access that will enable the public to follow the proceedings of the municipal public body as those activities are occurring in real time may instead post on its municipal website a full and complete transcript, recording, or other comprehensive record of the proceedings as soon as practicable upon conclusion of the proceedings. This paragraph shall not apply to proceedings that are conducted pursuant to a general or special law or regulation, or a local ordinance or by-law, that requires allowance for active participation by members of the public.

A public body must offer its selected alternative means of access to its proceedings without subscription, toll, or similar charge to the public.

(2) Public bodies are hereby authorized to allow remote participation by all members in any meeting of the public body. The requirement that a quorum of the body and the chair be physically present at a specified meeting location, as provided in G. L. c. 30A, § 20(d) and in 940 CMR 29.10(4)(b), is hereby suspended.

(3) A public body that elects to conduct its proceedings under the relief provided in sections (1) or (2) above shall ensure that any party entitled or required to appear before it shall be able to do so through remote means, as if the party were a member of the public body and participating remotely as provided in section (2).

(4) All other provisions of sections 18 to 25 of chapter 30A and the Attorney General's implementing regulations shall otherwise remain unchanged and fully applicable to the activities of public bodies.

This Order is effective immediately and shall remain in effect until rescinded or until the State of Emergency is terminated, whichever happens first.

Given in Boston at 6:40 PM this 12th day of
March, two thousand and twenty.

A handwritten signature in cursive script that reads "Charles D. Baker". The signature is written in dark ink and is positioned above a horizontal line.

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts

2020 Annual Town Meeting Logistics

As of 5/11/20

Assumptions

- # Attendees: Scenario 1 – 300–500; Scenario 2 – 500-700
- Non-voters will not be permitted to attend
- This will be a “pared down” ATM, with articles divided into “Critical for Town Operations” and “Not Critical for Town Operations”
- This will last 1 night (or day)
- We figure out how to have a “pre-town meeting” using Zoom Webinar

Town Meeting Date Recommendations (in priority order)

1. Any day the week of June 22 (if weekday, start at 4pm; weekend start at 9am)
2. Mon, June 29 – 4pm
3. Tues, June 30 – 4pm
4. Wed, Aug 12 – 4pm
5. Sat, Aug 15 – 9am

Space Evaluations/Needs

Facilities (School, Emergency Mgt? Public Health)

Review, Evaluate and Prioritize each space using a criteria checklist to include:

- Capacity of each space & capacity of each space* with Social Distancing (example: MPW Auditorium holds 780, with SD it holds “X”)
- What is needed to make the space functional for ATM (# chairs & do we have them on hand, hand sanitizing stations, egress restrictions/limitations, is signage needed, restroom availability/limitations)
- Cleaning: what will be needed for each room & other spaces that people might use (bathrooms, hallways, the actual spaces including seats etc)
- Airflow assessment
- Security needs
- Technology (see below)
- Where do people go for a break?
- “Deep cleaning” (before & after?)
- Do we need PPE for the attendees?
- Do we screen the attendees? (who would do this?)

*MPW Auditorium, NHS Gym, CPS Gym, LGI; B&G Club

Technology Team (Karen McGonigle, Mike Alvarez, NCTV, School IT & Facilities, Mary & Al)

Review & Evaluate, including what it would/will take to accomplish set-up, including:

- What equipment is needed for each space – what do we have & what do we need (between the Town, School, NCTV)

- Who will need to do what?
- Tech needs during ATM. What is needed? Someone assigned to each room to monitor and troubleshoot?
- E-voting requirements: if we have multiple spaces we are going to use, what additional equipment, resources and costs would there be?

Logistics/Attendee Issues (Moderator, Town Clerk & Asst, Town Manager)

- Availability of E-Voting technology (& associated cost)
- Need for “greeters”/“runners” (students?)
- Need for election/town meeting works to check people in?
- Location of the Town officials (SB, FC, PB, Town staff)
- How to divide people among the spaces (alphabet method? First come-first serve?)
- # Alternate Moderators
- # Alternate Clerks
- Id any voter participation issues – are there going to be speaking differences between “regular” ATM and this?
- Do we develop a handout for how ATM will run with COVID19 prevention measures in place?

Outstanding

- Are we still going to have a STM (that could be difficult with respect to use of the school)
- What to put on the Nov election ballot
- Would we consider a STE outside of the Nov election ballot

Need from Select Board/FinCom

- A date for ATM
- New motions for certain articles from FinCom
- Agreement to “pare down” town meeting to all but the most critical
- Determination as to STM or hold off until 2021 ATM (or, hold on this?)
- Before Wed, 8/5, need to determine if we are putting ballot questions on the Nov election ballot (if so, which, can only do 3*)

*if any did not pass at the ATE and/or ATM & we want to “try again” (depending on the outcomes at ATE/ATM) (also only Prop 2 ½ questions can be on the November ballot, not non-binding)

TO: C. Elizabeth Gibson, Nantucket Town Manager (*By Electronic Mail Only*)
FROM: John W. Giorgio, KP-Law, Town Counsel
RE: Covid 19 - Options for Scheduling Annual Town Meeting and Annual Town Election
DATE: May 5, 2020

You have asked me to outline the options that the Select Board may want to consider in terms of rescheduling the Annual Town Meeting and the Annual Town Election and how those options may affect the Proposition 2 and ½ ballot questions.

The current State of Emergency declared by the Governor has resulted in the enactment of two Acts so far. They are Chapter 45 of the Acts of 2020, which allows municipalities to postpone annual elections to a date that is on or before June 30, 2020, and Chapter 53 of the Acts of 2020, allowing towns to postpone annual town meetings beyond June 30, 2020. In my opinion, the Town has two viable options for the scheduling of the Annual Town Meeting and Annual Town Election. First, however, I would like to emphasize several considerations:

1. Because the combined town meeting and election warrant has already been posted, the Town Moderator has exercised her authority under G.L. c. 39, §10A, to issue successive declarations of recess and continuance of the Annual Town Meeting. Pursuant to Section 2 of Chapter 53, the law now allows the Moderator to issue an unlimited number of successive additional declarations of no more than thirty days each. Currently, the Moderator has, pursuant to G.L. c. 39, §10A, recessed the Annual Town Meeting until May 30, 2020, but an additional recess will likely be warranted.
2. If the Annual Town Meeting is further recessed to a date later than June 30, 2020, Section 5 of Chapter 53 includes provisions that would allow the Select Board to adopt a spending plan, without an appropriation by town meeting. The spending plan may designate expenditure of funds “from any fund or account of an amount sufficient for the operation of the town ... during the month of July [2020] not less than 1/12th of the total budget approved by the town... in the most recent fiscal year pursuant to a plan approved by the board of selectmen.” Any such plan requires the additional approval of the Department of Revenue, and the plan may continue for successive months while the emergency continues to prevent the adoption of a budget by town meeting.
3. Section 6 of Chapter 53 also allows the Town, with the approval of the Bureau of Accounts of the Department of Revenue, to appropriate the balance of its free cash certified as of June 30, 2019, as funding source for adoption of the Town’s Fiscal Year 2021 budget including the undesignated fund balance in an enterprise fund or

- special revenue account. This funding source will be available even if the Annual Town Meeting is held after June 30, 2020.
4. Section 8 of Chapter 53 allows the Town to expend in Fiscal Year 2021 from each revolving account in an amount not to exceed the spending limit established for Fiscal Year 2020. Once the Annual Town Meeting is held, the spending limits for FY 2021 must be voted.
 5. Pursuant to Section 1 of Chapter 53 of the Acts of 2020, the Select Board has postponed the Annual Election until June 16, 2020. This year, in addition to the election of officers, the annual election ballot contains seven Proposition 2 and ½ questions, including an override for Our Island Home, and several debt and capital outlay exclusions.
 6. There is a federal and state election scheduled for November 3, 2020. The Secretary of State allows a municipality to include on the state ballot up to three Proposition 2 and ½ questions. The Town is required to notify the Secretary of State, including providing the wording of the ballot questions, by the first week in August.
 7. Although the two Acts discussed above provide some flexibility with respect to the annual town meeting and annual town election, there may be further legislative action in the future that could affect the options available to the Town. For example, the Massachusetts Senate is currently considering a bill, which, if enacted, would provide several tools to towns, including allowing the Select Board to reduce the quorum requirements at any town meeting. Although Nantucket does not have a quorum requirement for the Annual Town Meeting, it does have quorum requirements for a special town meeting. Although not applicable in Nantucket, the bill also provides for remote participation in a representative town meeting.

Option 1

The Moderator, after consulting with the Select Board, issues further successive recesses of the Annual Town Meeting until a date in late September or early October. The Annual Election could be held on June 16, 2020 as currently planned, or the election could be further postponed to a date no later than June 30, 2020. (Please note that under current law, the annual town election must be held no later than June 30th.)

Under this option, the Town would submit a spending plan to the Department of Revenue that would allow the Town, beginning on July 1, 2020, to expend funds to continue municipal operations pursuant to a monthly 1/12th spending plan until a budget is adopted at the Annual Town Meeting held in September or October.

The Town could also consider scheduling its anticipated Fall Special Town Meeting for the same day as the delayed Annual Town Meeting.

Under this option, however, the voters will be voting on ballot questions at the June 16th Annual Election without having the benefit of learning about the projects during the debate at the Annual Town Meeting. This may make it more difficult to expect that the voters will have sufficient information on which to base their votes. It may, therefore, be prudent to include more voter information opportunities with respect to the ballot questions, but taking care to comply with the regulations of the Office of Campaign and Political Finance regarding expenditure of taxpayer funds regarding ballot questions.

If one or more of the ballot questions voted at the now-scheduled June 16th Annual Election do not pass, the Town, as a back-up, could request that the Secretary of State add up to three of the ballot questions that did not pass to the November 3rd state election ballot. Under this scenario, however, the warrant articles that relate to the three ballot questions should be voted at the Special Town Meeting because the Town only has until September 15th to approve ballot questions where the appropriation vote was made at an annual town meeting and was contingent on the passage of a ballot question. By contrast, if the appropriation is voted at a special town meeting, the Town has 90 days to vote the ballot question. This timing would work for the November 3, 2020 state election. If the Town wants to seek a ballot vote on more than three questions, a special town election would have to be scheduled.

Option 2:

The Select Board continues with the current plan, which is to hold the Annual Town Meeting on May 30, 2020 and the Annual Town Election on June 16, 2020. A slight variation on this option would be to further postpone the Annual Town Meeting to sometime in June and to coordinate the dates of the town meeting and the election so that the town meeting occurs before the election. This sequencing would allow voters to have the benefit of the town meeting debate before voting on the ballot questions. The Select Board and the Moderator would have to come to an agreement on the dates of the town meeting and the election. In this regard, c. 45 of the Acts of 2020 requires the Select Board to provide notice of the rescheduled annual election at least 20 days prior to the election.

This option would also allow for a streamlined Annual Town Meeting in June with the intent of addressing only the essential articles necessary to keep the Town functioning from a financial standpoint (only deal with the operating budget, enterprise funds, revolving funds, and essential capital items.) As is the usual practice in Nantucket, after the Town votes approval of the non-called articles, a motion could be made by the Finance Committee, the Planning Board, and/or the Select Board to pass over certain of the called articles, including zoning and general bylaws, home rule petition articles, real estate articles and petitioned articles. If that motion

passes by a simple majority vote, the number of articles to debate at town meeting may be minimal.

In order to facilitate such a motion, the Select Board may want to commit to the petitioners of the citizen articles currently on the warrant that the Board will place them on the warrant for a Fall Special Town meeting as a courtesy. This would avoid the need for the petitioners to gather 100 signatures on a new petition, which is the number required for a Special Town Meeting, rather than the 10 signatures for an annual town meeting.

Please let me know if you have any questions.

719633/NANT/0750