



**Town of Arlington
Legal Department**

Douglas W. Heim
Town Counsel

50 Pleasant Street
Arlington, MA 02476
Phone: 781.316.3150
Fax: 781.316.3159
E-mail: dheim@town.arlington.ma.us
Website: www.arlingtonma.gov

To: Select Board

Cc: Adam Chapdelaine, Town Manager; John Leone, Town Moderator , Janice Weber,
Assistant Town Clerk

From: Douglas W. Heim, Town Counsel

Date: March 19, 2020

Re: COVID-19 Emergency and Postponing Town Election and Town Meeting

Members of the Board, as you may recall, I have previously written to provide the Town's limited options for the conduct of Town Meeting during the present Coronavirus/COVID-19 State of Emergency. I write now to provide further updates on that score, and to outline the Town's options for postponing the Town Election, presently scheduled for April 4, 2020.

Town Meeting

As you may recall, both State law and Title I Article 1, Section 6 of our Town Bylaws present a variety of challenges to safely holding Town Meeting in the context of our present public health emergency. Among other things, a quorum of 25 % Town Meeting Members (62 members) must be present to do any business at Town Meeting, and a minimum of 85 persons

must be present to vote on substantive matters that require a 2/3rds vote. While some consideration has been given to the legality of a “virtual” town meetings, operational challenges in conducting such a meeting of more than 252 persons are significant.

A. Postponing the Meeting

The Town Moderator has the authority under G.L. c. 39 sec. 10A to declare a recess of Town Meeting to a time, place, and date certain of up to thirty (30) days without convening Town Meeting where he determines that a public safety emergency renders Members unable to attend the Meeting after consultation with public safety officials and the Select Board. I anticipate that the Moderator will engage in such consultation with you at your March 23, 2020 meeting.

B. Legislative Relief

As noted in my March 11, 2020 Memorandum to you, postponement for a lengthy period presents its own challenges given the legal mandates for the timeline for Town Meeting and appropriations and dissolution. Governor Baker has introduced “An Act to Address Challenges in Town Governance Resulting from COVID-19,” H.4572, to provide relief from many of these constraints during the State of Emergency. If passed, the Act would:

- Resolve any ambiguity regarding the application of c. 39 sec. 10A to the COVID-19 Emergency.
- Authorize the Select Board to extend Town Meeting beyond the statutory deadline of June 31st where a State of Emergency is ongoing;
- Authorize the Select Boards to temporarily lower Town Meeting quorum rules set forth in both State law and the Town Bylaws *for the duration of this State of Emergency only*;

- Allow continued month-to-month spending into Fiscal Year 2021 based on the prior fiscal year budget with approval of the Division of Local Services during a State of Emergency, so long as the emergency prevents the adoption of Town and School budgets;
- Allow access to the “free cash” balance for Fiscal Year 2021 spending with approval of the Division of Local Services. This would be based on the July 2019 certified balance and could continue until a Fiscal Year 2021 Budget is adopted;
- Allow municipal spending from revolving funds at the level set by their Fiscal Year 2020 appropriation until a Fiscal Year 2021 Budget is adopted; and
- Authorize a three-year amortization period for deficit spending incurred as a result of the COVID-19 crisis.

As of this writing, the Legislature is holding hearings on H.4572 today, and there is optimism that it will pass, providing Arlington significant relief from choosing between holding a Town Meeting to maintain operating budgets and optimally protecting Town Meeting Member health.

Town Election

In brief, at present the only mechanism for postponing the Town’s April 4, 2020 Election is a Court Order. To date, two communities obtained such orders in Norfolk County – Wellesley and Braintree.¹ Secretary of State Galvin requested legislation last week that would authorize the Secretary in consultation with Town officials to postpone or suspend a local election for up to forty-five days (or longer under certain circumstances). Such legislation sets forth details for how such a postponement would work and affords both courts and communities a degree of

¹ Wellesley sought and obtained an Order on March 16, 2020, one-day before their scheduled March 17, 2020, almost certainly due to the rapidly evolving nature of this emergency. For obvious reasons, I do not advise such a narrow window if we are to seek such an Order for Arlington.

certitude of process. Similarly, municipal advocacy organizations are also pursuing special legislation to authorize all local officials to postpone 2020 municipal elections to a date certain in a uniform fashion without the Secretary's approval.

It is this Office's opinion after engaging in dialogue with other municipal counsel throughout the Commonwealth, that a uniform approach to postponing municipal elections presents a superior option to seeking a Court Order community-by-community. However, if the Legislature does not pass either form of election relief by the middle of next week, Arlington will have little choice but to act in such a fashion to provide sufficient time to obtain an Order from Middlesex Superior Court under the Court's modified rules during this State of Emergency, and engage in the necessary public messaging to provide the public, poll workers, and candidates the clarity and assurance they deserve.

Understanding that there is little precedent for the instant circumstance, a postponement request to the Court would likely require the Board of Registrars for the Town of Arlington in consultation with the Town Clerk's Office to vote to authorize and request that the Town Counsel file a complaint and request for an injunction postponing Town Election to a date to be determined no later than June 30th. In an abundance of caution however, I also request your vote to support such a discussion and vote by the Board Registrars in tandem with the contemplated Declaration of a State of Emergency in the Town of Arlington. If such action were to become necessary, I would hope the Board of Registrars could convene no later than March 26, 2020. If they were inclined to pursue a request for an injunction, I would hope to file such a complaint with the Court the same day.