



**New Hampshire Municipal Association  
COVID-19: Public Meetings, Town Meetings & Elections UPDATE  
March 18, 2020**

On Monday, the governor declared that [the State of New Hampshire is prohibiting scheduled public gatherings over 50 people](#). This is particularly challenging for municipalities, since [NHMA](#) and the [Attorney General/Governor](#) have advised that public meetings still require a public location where the meeting is “open to the public,” even if all the public body members are participating remotely.

So, what can municipalities do? Under the current law, public bodies cannot prohibit people from attending the meeting at the public location. But they can take the following steps to reduce attendance:

- Provide alternative means of participating in the meeting and strongly encourage citizens to use them.
  - Live streaming of meetings.
  - Allowing the public to call in to the public body’s conference, or using other technology, like Microsoft Teams, Skype, etc.
  - Encouraging people to submit written comments or testimony to be read at the meeting so that they don’t have to attend the meeting to participate.
- Don’t hold meeting or hearings that you don’t have to. Can your council or board postpone that discussion about a new ordinance, or the library renovation, or other non-emergency issues? No one wants to put off municipal business, but that is the nature of the current circumstances.
  - This is more difficult for towns *without* city or town managers or a mayor-alderman form of government. Towns where the select board conducts most general business of the town, including approval of manifests<sup>1</sup> and supervising employees, will likely still need to meet. And, in these towns, “usual town business” will likely qualify as an “emergency,” allowing the board to meet electronically without a quorum physically present in one location, because some of their business is necessary to keep the town running. However, in that situation, the remaining requirements of RSA 91-A:2, III, must still be observed, as outlined in the memoranda by [NHMA](#) and the [Attorney General/Governor](#).

### **Annual town meetings.**

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<sup>1</sup> Note, however, that governing bodies can avoid the necessity of convening a meeting to approve a manifest by using RSA 41:29, I(a), which allows for the noncontemporaneous signing of a manifest:

“I. The town treasurer shall have custody of all moneys belonging to the town, and shall pay out the same only as follows:

(a) Upon orders of the selectmen in a public meeting **or by a noncontemporaneously signed manifest signed by a majority of the board; . . .”**

The governor's order prohibits "scheduled gatherings of 50 people or more for social, spiritual and recreational activities, including but not limited community, civic, public, . . . and similar activities" until April 6. We are seeking clarification from the governor's office on whether town meetings that have been postponed and are scheduled to occur between now and April 6 are affected by the order. Until we receive any different information, we believe the prohibition does apply to town meetings.

In very small towns where attendance at the annual meeting is unlikely to hit 50, this may not be a problem. For any other town with a meeting scheduled between now and April 6, local officials should be prepared to postpone the meeting; this would be done by the moderator in consultation with other local officials under the emergency provision in [RSA 40:4, II\(a\)](#). We do not recommend that you take action to postpone immediately; we suggest waiting until closer to the day scheduled for the meeting to see whether there are any updates from the governor. A meeting may be postponed any time before its scheduled start time. We suggest that village districts take a similar approach.

Towns with meetings scheduled after April 6 should not take action to postpone now, but should be prepared to do so if the prohibition on large gatherings is extended.

### **Elections.**

Some towns have local elections scheduled in April or May. The first of these would be on April 14. Unless town officials can be reasonably certain that no more than 50 people at a time will be in the room where the election is being held, they should start thinking about postponing the election, in case the prohibition on large gatherings is extended beyond April 6. This would be done under [RSA 669:1 and 1-a](#). We intend to seek further clarification from the governor's office on this issue, and also to ask about allowing all voters to vote in elections by absentee ballot.

### **Swearing in elected officials.**

We have received several questions about the swearing in of officials who were elected Tuesday, March 10, 2020. Specifically, towns that have postponed their business sessions are wondering whether newly elected officials should be sworn in and take office now, or not until after the postponed business session.

[RSA 42:3](#) states that officials may be sworn in only after the business session of town meeting. However, [RSA 42:6](#) states that officials must take office within 30 days of being elected (or within 6 days of receiving notice via the Town Clerk). Given the current Covid-19 situation, and the unique emergency it has created, RSA 42:3 and RSA 42:6 appear to be in conflict as it is unlikely that towns which postponed their business sessions will be able to conduct those within the 30 day timeframe of RSA 42:6.

We have received word that the Attorney General's and Secretary of State's Offices are working on guidance that seeks to resolve this conflict. We will update this memorandum and our Covid-19 webpage with that guidance when it is issued.

### **Bond hearing date.**

Municipalities with warrant articles funded by bonds or notes in excess of \$100,000 should review the number of days between the date of their previously held public hearing on the bond and the date of their postponed town meeting to determine whether another public hearing needs to be held. RSA 33:8-a requires that a public hearing on any proposed municipal bond or note in excess of \$100,000 be held “at least **15 days**, but not more than **60 days** prior to the meeting . . . at which the bond or note issue is to be voted upon.” For example, if a municipality held the bond hearing on February 8, 2020, and has postponed its town meeting until April 11, 2020, then an additional public hearing on the bond issue is required since the time period between the public hearing and the meeting at which the bond vote will occur exceeds 60 days. Also note that the public hearing must be at least 15 days before the town meeting, *and* notice of the hearing must be published in a newspaper of general circulation at least 7 days in advance of the public hearing. In this example of an April 11 postponed town meeting date, the hearing must be held not later than March 27 (15 days before the town meeting); if the hearing is held on that date, notice must be published in the newspaper not later than March 20.

Note, however, that RSA 40:4, II(c), regarding the postponement of town meeting, states that the original date of a business session or official ballot voting day shall continue to be deemed the date for purposes of satisfying statutory meeting date requirements, it is unclear whether that statute applies to the scheduling formula in RSA 33:8-a. If it does, then the additional public hearing proposed above is not necessary.

Although the conservative and safest approach is to hold an additional public hearing on the proposed bond issue, municipalities are encouraged to consult with bond counsel regarding the apparent conflict between RSA 33:8-a and RSA 40:4, II(c).

### **Spending prior to adoption of the budget.**

Municipalities are reminded that the governing body is authorized to spend money prior to the adoption of the budget by town meeting, within certain limitations. RSA 32:13 says that expenditures during the period between January 1 and the date a budget is adopted shall be “reasonable in light of the prior year’s appropriations and expenditures for the same purposes during the same time period.” This means that the governing body can approve expenditures during the period until the budget is adopted that are generally the same as those that were approved and expended during the same period in the previous year. For example, if town meeting has been postponed until April 11, 2020, the governing body is authorized to approve expenditures similar to the purposes and amounts expended last year during the period January 1 through April 11, not just through the date of last year’s town meeting. However, RSA 32:13 does not authorize expenditures for any new projects or new purposes, since appropriations for such items have the potential of being rejected by the voters.