

2021 Town/School Meetings, Elections, and Business Sessions  
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**STATE OF NEW HAMPSHIRE  
OFFICE OF THE GOVERNOR**

**CHRISTOPHER T. SUNUNU**  
Governor

**STATE OF NEW HAMPSHIRE  
BY HIS EXCELLENCY  
CHRISTOPHER T. SUNUNU, GOVERNOR**

**Emergency Order #83 pursuant to Executive Order 2020-04 as extended by Executive Orders, 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24 and 2020-25**

**Temporary provisions to respond to timing challenges related to the enactment of Senate Bill 2 in the 2021 Legislative Session**

**WHEREAS**, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

**WHEREAS**, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, an order declaring a state of emergency due to the Novel Coronavirus (COVID-19); and

**WHEREAS**, during the 2020 legislative session, in response to the COVID-19 emergency, the General Court passed and the Governor signed House Bill 1266, an act making temporary modifications to the absentee voter registration, absentee ballot application, and absentee voting processes in response to the novel coronavirus (Covid-19) disease; and

**WHEREAS**, the provisions of HB 1266 applied only to the September 2020 primary and November 2020 general elections; and

**WHEREAS**, numerous towns throughout New Hampshire have requested that certain provisions in HB 1266 be reenacted on a temporary basis to apply to the 2021 town meetings and elections; and

**WHEREAS**, in addition to certain provisions of HB 1266, towns have also requested the ability to postpone their 2021 town meetings and elections if such postponement becomes necessary due to concerns regarding COVID-19; and

**WHEREAS**, in response to the requests of New Hampshire's towns, the General Court has introduced Senate Bill 2, an act allowing the preprocessing of absentee ballots for certain 2021 elections and allowing for the postponement of annual town meetings in calendar year 2021 where concerns exist during the COVID-19 health emergency; and

**WHEREAS**, Senate Bill 2 passed the Senate by a vote of 24-0 on January 6, 2021; and

**WHEREAS**, the House of Representatives has scheduled a public hearing on Senate Bill 2 and expects to pass the bill in early February 2021; and

**WHEREAS**, some towns in New Hampshire have stated that an early February enactment date for Senate Bill 2 would be too late for these towns to set their schedules and determine their procedures for their 2021 town meetings and elections, and these towns have requested an Emergency Order from the Governor to bridge the gap between the current date and the final enactment of Senate Bill 2; and

**WHEREAS**, in consultation with the Senate President and the Speaker of the House, the Governor has determined that Senate Bill 2 is likely to be enacted and that an emergency order is necessary to bridge the gap and fulfill the timing needs of certain New Hampshire towns.

**NOW, THEREFORE, pursuant to Section 18 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24 and 2020-25 it is hereby ordered, effective immediately, that:**

1. Notwithstanding any law or other regulation to the contrary, for all 2021 town elections, the requirements of RSA 658:9 may be satisfied by alternative requirements issued by the secretary of state in consultation with the attorney general and the commissioner of the department of health and human services or designee.
2. Notwithstanding any law or other regulation to the contrary, the following provisions regarding the processing of absentee ballots shall apply to all 2021 town elections:
  - (a) Processing of previously received absentee ballots shall begin at 1:00 p.m. unless a different time, that is no earlier than one hour after the opening of the polls, is posted and announced in accordance with paragraph II of RSA 659:49. The processing of the absentee ballots shall not unnecessarily interfere with normal voting procedures, nor shall the polls be closed at any time for the processing of such ballots during normal polling hours. Absentee ballots which are received after the start time for processing absentee ballots and prior to 5:00 p.m. on the day of the election shall be processed as soon after receipt as possible. Under no circumstances shall absentee ballots be counted prior to the closing of the polls.
  - (b) Notwithstanding the provisions of section 2(a) of this Order, the moderator, or his or her designee, shall post the time at which the processing of absentee ballots shall begin at the polling place and one other public location at least 24 hours before the polls open. In addition, when the polls open the moderator shall announce the time at which the processing of absentee ballots shall begin.
  - (c) The moderator, or his or her designee, may begin the processing of absentee ballots prior to the opening of the polls provided that the clerk shall post, in an appropriate public place and prior to election day, notice of the time and place of the processing. If the moderator chooses to do so it shall be posted in 2 appropriate public places, one of which shall be the public body's Internet website, if such exists, or shall be printed in a



newspaper of general circulation in the city or town at least 48 hours, excluding Sundays and legal holidays, prior to such meeting. A copy of the notice shall be provided to the secretary of state. The partial processing of absentee ballots prior to an election shall occur on the Thursday, Friday, Saturday, or Monday prior to the date of the election after the posting of the checklist. The moderator shall be assisted by at least 3 other election officers as defined under RSA 652:14. Members of the general public may observe this process. Under no circumstances shall absentee ballots be counted prior to the opening of the polls.

- (d) Once notice of the processing has been posted, all absentee ballots received by the end of the day preceding the posted time for the meeting shall be partially processed. Only one session for the partial processing of absentee ballots may be scheduled prior to an election.
3. Notwithstanding any law or other regulation to the contrary, the following provisions regarding the postponement of annual town meetings and elections shall apply for any such meetings and elections conducted in the calendar year 2021:
- (a) Notwithstanding any law to the contrary, for calendar year 2021, where concern exists for conducting the annual meeting and election during the COVID-19 health emergency, the governing body of a town, school district, or village district, in consultation with the moderator and the clerk, may postpone the official ballot voting day to the second Tuesday of April, May, June, or July. The governing body may also postpone the business or deliberative session of the annual meeting to one or more dates later in 2021. The prohibition in RSA 40:4, II(c) on delaying the deliberative session more than 72 hours and the requirement in RSA 669:1-a that the election be rescheduled to the Tuesday 2 weeks following the original date shall not apply.
  - (b) The governing body shall provide notice to voters of the date or dates promptly after making the decision to postpone. The governing body shall also re-post notice at least 14 days before the date(s) of the rescheduled official ballot voting day and business or deliberative session. At a minimum, notice shall be posted on the town, school, or village district website, if such exists, and in 2 public places. Any hearings, notices, or other actions required to be taken before the annual meeting shall be deemed sufficient if taken the legally required number of days before the postponed session.
  - (c) In the event of postponement, the terms of office of elected officials whose terms expire in 2021 shall continue until the completion of the postponed election and meeting. The governing body in both calendar year and fiscal year towns or districts may make expenditures between January 1 and the date a budget is adopted which are reasonable in light of prior year's appropriations and expenditures for the same purpose during the same time period. Such budget shall be adopted no later than September 1, 2021, and any interim expenditure not authorized in the adopted budget shall cease. This spending authority shall be read in harmony with emergency order 56 issued by the governor on June 25, 2020.



4. The provisions of Sections 1-2 of this Order shall remain in effect until the enactment of Senate Bill 2. In the event that any provisions of the final enacted version of Senate Bill 2 conflict with any part of Sections 1-2 of this Order, the provisions of the final enacted version of Senate Bill 2 shall control.
5. The Provisions of Section 3 of this Order shall remain in effect until the enactment of Senate Bill 2. In the event that any provisions of the final enacted version of Senate Bill 2 conflict with any part of Sections 1-2 of this Order, the provisions of the final enacted version of Senate Bill 2 shall control, provided that any town which has given notice of the postponement of its meeting and election prior to the enactment of Senate Bill 2 may elect to be governed by the provisions of Section 3 of this Order notwithstanding a conflict between the provisions of Senate Bill 2 and Section 3 of this Order.

Given under my hand and seal at the Executive Chambers in Concord, this 22nd day of January, in the year of Our Lord, two thousand and twenty-one, and the independence of the United States of America, two hundred and forty-five.



**GOVERNOR OF NEW HAMPSHIRE**

**CHAPTER 8**  
**HB 1129 - FINAL VERSION**

11Mar2020... 0696h  
06/16/2020 1480s  
06/16/2020 1524s

2020 SESSION

20-2107  
11/06

HOUSE BILL                    ***1129***

AN ACT                    relative to notice requirements for certain municipal public hearings, providing for optional town meeting procedures during the state of emergency declared in response to the novel coronavirus disease (Covid-19), and relative to online reporting of CARES Act disbursements.

SPONSORS:            Rep. Coursin, Rock. 1; Rep. Barnes, Rock. 8; Rep. Ladd, Graf. 4; Rep. Gilman, Rock. 18; Rep. Dutzy, Hills. 30

COMMITTEE:          Municipal and County Government

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AMENDED ANALYSIS

This bill changes the notice requirements for certain municipal public hearings by allowing notice of the hearing to be posted on the municipal website. The bill also temporarily permits legislative bodies with a fiscal year ending in June to make certain expenditures prior to the adoption of an official budget, temporarily provides for a virtual annual meeting procedure, and requires online reporting of CARES Act disbursements.

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Explanation:          Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

**CHAPTER 8**  
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20-2107  
11/06

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty*

AN ACT                    relative to notice requirements for certain municipal public hearings, providing for optional town meeting procedures during the state of emergency declared in response to the novel coronavirus disease (Covid-19), and relative to online reporting of CARES Act disbursements.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1            8:1 Planning and Zoning; Notice Requirements for Public Hearing. Amend RSA 675:7, I to read  
2 as follows:

3            I.**(a)** Notice shall be given for the time and place of each public hearing held under RSA  
4 675:2-4 and RSA 675:6 at least 10 calendar days before the hearing. The notice required under this  
5 section shall not include the day notice is posted or the day of the public hearing. Notice of each  
6 public hearing shall be published in a paper of general circulation in the municipality and shall be  
7 posted in at least 2 public places. Any person owning property in the municipality may request  
8 notice of all public hearings on proposed amendments to the zoning ordinance, and the municipality  
9 shall provide notice, at no cost to the person, electronically or by first class mail.

10            ***(b) In lieu of publication in a paper of general circulation pursuant to***  
11 ***subparagraph (a), notice may be posted on the municipality's Internet website, if such***  
12 ***exists. If notice is posted on the municipality's website in lieu of publication in a paper of***  
13 ***general circulation, the notice shall:***

14            ***(1) Appear prominently on the website's home page, or a link directly to the***  
15 ***notice shall appear prominently on the home page;***

16            ***(2) Be posted at the time stated in subparagraph (a) and shall remain on the***  
17 ***website until the conclusion of the hearing; and***

18            ***(3) Be posted in 2 other public places.***

19            8:2 Temporary Municipal Spending Authority; State of Emergency. Due to the state of  
20 emergency declared as a result of the novel coronavirus disease (Covid-19), the provisions of RSA  
21 32:13, II shall also apply to towns and districts, as defined in RSA 32:3, with a July to June fiscal  
22 year, so that such towns or districts may make expenditures between July 1 and the date a budget is  
23 adopted which are reasonable in light of prior year's appropriations and expenditures during the  
24 same time period.

25            8:3 Temporary Optional Town Meeting Procedures; State of Emergency. Towns, village  
26 districts, and school districts that are unable to hold in-person annual meetings in 2020 or 2021 due  
27 to novel coronavirus disease (Covid-19) may conduct virtual meetings in accordance with this



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1 section. At the option of the governing body, the town or school district meeting may be convened  
2 and proceed to approve the posted 2020 or 2021 warrant in the following fashion:

3 I. The governing body shall host a live virtual meeting and information session, during  
4 which the proposed optional town or school district meeting procedures shall be outlined and  
5 warrant articles discussed. At least 7 days prior to this informational session, notice shall be mailed  
6 to all registered voters describing the procedures to be followed for conducting an annual meeting  
7 pursuant to this section. After the live, virtual meeting is adjourned, questions and comments from  
8 the public shall be solicited and received via electronic mail, voice mail, text message, or by other  
9 electronic means.

10 II. Within 7 days of the information session, the governing body shall hold another live  
11 virtual meeting to consider and address comments received from the public. The governing body  
12 shall then discuss, debate, and be permitted to amend the posted warrant. The final warrant, as  
13 amended, shall then be made available electronically for printing by voters to be brought to the  
14 voting session, which shall be scheduled for a date and time to be determined by the governing body.

15 III. Voting on final warrant articles shall be by secret ballot cast by voters through drive-up  
16 procedures to ensure appropriate social distancing. In a town or district that uses the official ballot  
17 for the election of officers and has not yet held its town or district election, an official ballot will be  
18 printed for the election of officers and other items that are required to be placed on the official ballot.  
19 All other warrant articles will be printed on a separate ballot ("the alternative ballot").

20 IV. The first article on the alternative ballot shall ask whether voters approve these optional  
21 meeting procedures. If the optional procedures are not approved by a simple majority, all other  
22 warrant articles shall be deemed disapproved. However, the election of officers and action on other  
23 items on the initial ballot will be effective. If the optional voting procedures are approved, then all  
24 other votes on warrant articles shall be deemed the final action of the meeting, provided that if the  
25 operating budget warrant article is not approved, the governing body may vote to:

- 26 (a) Convene a meeting before September 1 to adopt an operating budget; or  
27 (b) Elect to deem that the meeting has adopted the previous year's operating budget  
28 article, not including separate warrant articles.

29 V. In a town or district using the official ballot referendum (SB 2) form of annual meeting  
30 that has held its deliberative session but has not yet held its official ballot voting sessions, the  
31 governing body may choose to use the drive up procedures in paragraph III for the official ballot  
32 voting session, and paragraphs I and II shall not apply.

33 8:4 Online Access to Budget Information and Reports; CARES Act Funding. Beginning July 1,  
34 2020, the commissioner of the department of administrative services, or the governor's office for  
35 economic relief and recovery, shall separately report on the state website the disbursement of all  
36 CARES Act funds, in a check register format, including the amount of the payment, the date of the  
37 payment, the person or entity to whom the payment was made, the title and number of the

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1     accounting unit and class code, the title and number of the expense account, and a brief description  
2     of said disbursement.

3             8:5 Effective Date.

4             I. Section 1 of this act shall take effect 60 days after its passage.

              II. The remainder of this act shall take effect upon its passage.

Approved: July 10, 2020

Effective Date:

I. Section 1 shall take effect September 8, 2020.

II. Remainder shall take effect July 10, 2020



**STATE OF NEW HAMPSHIRE  
OFFICE OF THE GOVERNOR**

**CHRISTOPHER T. SUNUNU**  
Governor

**STATE OF NEW HAMPSHIRE  
BY HIS EXCELLENCY  
CHRISTOPHER T. SUNUNU, GOVERNOR**

**Emergency Order #12 Pursuant to Executive Order 2020-04**

**Temporary modification of public access to meetings under RSA 91-A**

**Pursuant to Section 18 of Executive Order 2020-04 it is hereby ordered, effective immediately, that:**

1. Pursuant to Executive Order 2020-04, paragraph 8 provides: "State and local government bodies are permitted and encouraged to utilize the emergency meeting provisions of RSA 91-A to conduct meetings through electronic means while preserving, to the extent feasible, the public's right to notice of such meetings and ability to observe and listen contemporaneously."
2. Pursuant to Emergency Order #2 issued pursuant to Executive Order 2020-04, gatherings of fifty people or more are prohibited.
3. To implement these orders and recommendations, the requirement in RSA 91-A:2, III(b), that a quorum of a public body be physically present unless immediate action is imperative, is waived for the duration of the State of Emergency declared in Executive Order 2020-04.
4. To further implement these orders and recommendations, the requirement in RSA 91-A:2, III(c), that each part of a meeting of a public body be audible or otherwise discernible to the public "at the location specified in the meeting notice as the location of the meeting," is waived for the duration of the State of Emergency declared in Executive Order 2020-04 so long as the public body:
  - a) Provides public access to the meeting by telephone, with additional access possibilities by video or other electronic means;
  - b) Provides public notice of the necessary information for accessing the meeting;
  - c) Provides a mechanism for the public to alert the public body during the meeting if there are problems with access; and
  - d) Adjourns the meeting if the public is unable to access the meeting.

Given under my hand and seal at the Executive Chambers in Concord, this 23rd day of March, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.

  
**GOVERNOR OF NEW HAMPSHIRE**





**STATE OF NEW HAMPSHIRE  
OFFICE OF THE GOVERNOR**

**CHRISTOPHER T. SUNUNU**  
Governor

**STATE OF NEW HAMPSHIRE  
BY HIS EXCELLENCY  
CHRISTOPHER T. SUNUNU, GOVERNOR**

**Emergency Order #23 Pursuant to Executive Order 2020-04**

**Temporary modification of municipal and local government statutory requirements**

**WHEREAS**, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

**WHEREAS**, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, An order declaring a state of emergency due to the Novel Coronavirus (COVID-19); and

**WHEREAS**, experts indicate that COVID-19 is most commonly spread from an infected symptomatic person to others through respiratory droplets, including:

- Through the air by coughing and sneezing;
- Close personal contact, such as touching or shaking hands;
- Touching an object or surface with the virus on it, then touching your mouth, nose, or eyes before washing your hands.

**WHEREAS**, the CDC reports that COVID-19 may be spread before an infected person shows symptoms of the virus; and

**WHEREAS**, in the days since the Governor declared a State of Emergency, the COVID-19 outbreak in New Hampshire has expanded significantly; and

**WHEREAS**, the Department of Health and Human Services, Division of Public Health has found that community-based transmission of COVID-19 continues to increase in the State and has been identified in the majority of counties; and

**WHEREAS**, in response to the public health emergency, Executive Order 2020-04, and the other emergency orders related to COVID-19, many New Hampshire municipalities are operating through a limited or "virtual" manner; and

**WHEREAS**, municipalities are facing unprecedented challenges in continuing to operate local government and provide necessary services to the citizens of this state; and

**WHEREAS**, these challenges require municipal and local governmental bodies to have flexibility in order to remain operational.

**Now therefore, pursuant to Section 18 of Executive Order 2020-04 it is hereby ordered, effective immediately, that:**

1. Municipal and local governmental governing bodies are permitted to use RSA 41:29, I(a) to non-contemporaneously sign manifests outside a public meeting. This permission shall be extended to all public bodies, allowing them to sign manifests and all other documents necessary for the continued operations of local government. Municipal and local governmental bodies are relieved from the statutory requirements of RSA 294-E:18. All local governmental agencies are hereby permitted to send and accept electronic signatures consistent with RSA Chapter 294-E and the Electronic Signatures in Global and National Commerce Act, Public Law 106-229.
2. Municipal and local governmental bodies are relieved from any statutory, local, or charter provisions requiring them to meet on a particular schedule or a certain number of times within a given time frame, including, but not limited to, the requirement that planning boards hold one regular meeting in each month, pursuant to RSA 673:10, II.
3. Municipalities that postpone their town meetings or elections shall not be required to repeat statutory hearings, including hearings on bonds over \$100,000, pursuant to RSA 33:8-a.
4. If a municipality's budget is insufficient to fund expenditures associated with addressing the COVID-19 pandemic, the governing body is authorized, once authorization from the Department of Revenue Administration ("DRA") has been obtained, to make such expenditure to the extent other revenues or unrestricted fund balance is available to meet those expenses. During the current health emergency, the public hearing requirement under RSA 32:11, I, for the expenditure of money in excess of an appropriation due to an unusual circumstance is hereby waived. The governing body must still submit an application to the Commissioner of the DRA pursuant to RSA 32:11, I. Upon approval by the governing body to submit an application to DRA for an overexpenditure, DRA shall review the application and notify the requesting governing body of its decision within 2 business days of DRA's receipt of the application. Applications to DRA can be submitted by email to the Director of the Municipal and Property Division of the DRA.
5. Municipal or local governmental bodies are relieved from complying with statutory or local deadlines or deadlines set forth in a municipal charter for taking actions on applications and requests including, but not limited to:
  - a) Deadlines for accepting, hearing, and acting on planning board applications under RSA 676:4 and for zoning board of adjustment applications under RSA 676:7;
  - b) Requirement to make public records immediately available under RSA 91-A:4, IV, but must still comply with the requirements under RSA 91-A:4, IV(b); and



- c) Deadlines for conducting inspections for permits and building code and fire code compliance.
6. In municipalities that have adopted an enforcement mechanism pursuant to RSA 674:51 and are not presently offering any building permits and construction inspection functions, contractors may follow these guidelines to keep construction progressing:
- a) Complete typical paperwork relating to the requested construction permit or building inspection. Permit applications with submittal documents shall be submitted to the Building Official by first class mail, drop box, if provided, or by electronic submission such as email where available.
  - b) Make and keep record of all reasonable attempts to communicate with municipal officials to determine the availability of services and follow instructions from municipal officials if typical or modified arrangements are offered.
  - c) If, as a result of exigent circumstances relating to COVID-19, a building official is unable to or refuses to issue any building construction or building systems permit pursuant to and within the time frame provided by RSA 676:13, III, the permit applicant or contractor may, ten days after written notification to the Building Official, commence construction pursuant to the prepared project plans and documentations as if a proper building permit has been issued.
  - d) The contractor may only proceed without a permit or approval with the prior written approval of the client. Written approval by the client must be separate from the contractor's standard contract and must state in at least 10 point bold font that the client understands that if they choose to proceed with the project, the contractor's plans will not be reviewed or preapproved by a town building official. Written approval must also specify whether or not the client can be charged for any remedial work necessary upon ultimate inspection.
  - e) If a construction inspection is refused or cannot be reasonably or timely offered (i.e., within five (5) working days), the applicant or contractor may continue with construction work in accord with issued permits after documenting completed work and materials using photographic and/or video methods to preserve evidence for subsequent review. Work should be left unconcealed and visible for later inspection to the greatest extent practicable. Should the photographic or video documenting not show all necessary aspects of the inspection process needed to demonstrate code compliance, nothing in this order prohibits the Building Official to take all necessary actions to verify compliance with applicable codes.
  - f) Once a municipality resumes operations, the applicant or contractor shall communicate with municipal officials to provide updates regarding the status of commenced or progressed construction and obtain after-the-fact inspections and/or documentation of the same.



- g) Proceeding with construction under paragraph (c) above in the absence of proper and customary building permits and inspections shall be considered a practice of last resort to commence and keep New Hampshire construction projects, vital to the economy, active and progressing during these extraordinary times.
  - h) The contractor shall bear responsibility for arranging review of photographic and/or video evidence, and obtaining proper documentation of completion at such time as normal municipal inspection services resume. The contractor remains responsible and liable for meeting minimum code requirements of the building and fire codes, as adopted in New Hampshire. The contractor further bears the risk that construction work must be altered or repaired after-the-fact to achieve code compliance. Nothing in this order prohibits the Building Official from taking all necessary actions to verify compliance with applicable codes.
  - i) Municipal officials shall operate in good faith to administer these interim practices, however, no municipal official or municipality shall be liable to the contractor or any third party for any failure on the part of a contractor to comply with these provisions or the failure to construct pursuant to applicable codes.
7. Marriage licenses that would expire during the state of emergency are hereby extended 60 days from the end of the state of emergency.
8. Municipal or local governmental bodies are permitted to transition to phone, online, and limited appointment-only services to allow for proper social distancing as defined by the Center for Disease Control. This includes, but is not limited to, vital records requests and applications, as well as applications for welfare and other municipal services.
9. The requirement that the business meeting must conclude before newly elected officers and officials can assume office under RSA 42:3 is hereby waived. Municipal and local governmental bodies are permitted to swear-in newly elected officers and officials, and those individuals may assume office before the business meeting has concluded. Additionally, in light of Emergency Order #16 (prohibiting scheduled gatherings of 10 or more attendees), municipal and local governmental bodies are permitted to administer oaths of office by electronic means. This is provided the following protocol is followed:
- a) The person giving the oath must know the person taking the oath or he/she must establish his/her identity.
  - b) If both the person taking the oath and the person receiving the oath has the capability, best practice is to use Skype/FaceTime or a similar audio/video service that will allow parties to see and hear the other. If a video interface is in use, the person showing a photo ID through the video can establish identity.
  - c) If only telephone communication is practical, there must be a witness present with the person taking the oath. The person receiving the oath must obtain the name

and address of the witness and receive a statement from the witness that: (i) the witness verifies the identity of the person taking the oath; and (ii) that the witnesses observed the oath taking. The person receiving the oath should document on the oath form the name and address of the witness. The witness can be a family member, co-worker, caregiver, or any other person.

- d) The person taking the oath should document on the oath form, or on paper attached to the oath form, that the oath was taken virtually or by phone. If an authorized official other than the clerk takes the oath, the person taking the oath must deliver the completed oath form to the clerk for town/district records.
- e) Instruct the person taking the oath that he/she must come to the clerk's office and affirm the oath taking by signing the oath form, at the point in the future when doing so is appropriate.
- f) The clerk should notify the chair of the board or commission that the person taking the oath was elected to, that the oath has been taken and the person has assumed office.

Given under my hand and seal at the Executive Chambers in Concord, this 1st day of April, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.

  
GOVERNOR OF NEW HAMPSHIRE





**STATE OF NEW HAMPSHIRE  
OFFICE OF THE GOVERNOR**

**CHRISTOPHER T. SUNUNU**  
Governor

**STATE OF NEW HAMPSHIRE  
BY HIS EXCELLENCY  
CHRISTOPHER T. SUNUNU, GOVERNOR**

**Emergency Order #38 Pursuant to Executive Order 2020-04 as Extended by Executive  
Orders 2020-05 and 2020-08**

**Temporary modification of school board and district statutory requirements**

**WHEREAS**, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

**WHEREAS**, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, An order declaring a state of emergency due to the Novel Coronavirus (COVID-19); and

**WHEREAS**, experts indicate that COVID-19 is most commonly spread from an infected symptomatic person to others through respiratory droplets, including:

- Through the air by coughing and sneezing;
- Close personal contact, such as touching or shaking hands;
- Touching an object or surface with the virus on it, then touching your mouth, nose, or eyes before washing your hands.

**WHEREAS**, the CDC reports that COVID-19 may be spread before an infected person shows symptoms of the virus; and

**WHEREAS**, in the days since the Governor declared a State of Emergency, the COVID-19 outbreak in New Hampshire has expanded significantly; and

**WHEREAS**, the Department of Health and Human Services, Division of Public Health has found that community-based transmission of COVID-19 continues to increase in the State and has been identified in the majority of counties; and

**WHEREAS**, on April 20, 2020 the United States Department of Education granted the State of New Hampshire a waiver from all federal educational assessments for 2019-2020 school year; and

**WHEREAS**, New Hampshire schools face unprecedented challenges in complying with state and federal assessment requirements and the implementation of mandated policies



given the disruption to schools and the rapid transition to remote instruction; and

**WHEREAS**, Emergency Order #1 has required K-12 school districts to transition to temporary remote instruction and support and Emergency Order #32 extended remote instruction until the end of the school year; and

**WHEREAS**, these challenges require school districts and school boards to have flexibility in order to remain operational; and

**WHEREAS**, the remote instruction and support environment complicates the administration or proctoring of standardized tests used in federal and state educational assessments in a format that would provide reliable results; and

**WHEREAS**, the state's assessment accountability regime is specifically tailored to a classroom instruction environment and the Department of Education needs flexibility in applying assessment and accountability provisions, including but not limited to the timing of such provisions, to an evolving remote instruction and support environment; and

**WHEREAS**, the Department of Education requires data on the efficacy of the remote instruction and support model in order to facilitate a shift back to traditional classroom instruction and to aid in the continued or occasional provision of remote instruction and support.

**Now therefore, pursuant to Section 18 of Executive Order 2020-04 as extended by Executive Orders 2020-05 and 2020-08, it is hereby ordered, effective immediately, that:**

1. RSA 32:13, II authorizes local governing bodies to make expenditures between January 1 and the date a budget is adopted which are reasonable in light of prior year's appropriations and expenditures for the same purposes during the same time period. This authority also applies to school districts and school boards. As such, school districts and school boards are permitted to make expenditures prior to their Annual Meeting for the duration of the State of Emergency declared in Executive Order 2020-04 and as Extended by Executive Orders 2020-05 and 2020-08.

2. If a school district's budget is insufficient to fund expenditures associated with addressing the COVID-19 pandemic, the governing body is authorized, once authorization from the Department of Education ("DOE") has been obtained, to make such expenditure to the extent other revenues or unrestricted fund balance are available to meet those expenses. During the current health emergency, the public hearing requirement under RSA 32:11, I, for the expenditure of money in excess of an appropriation due to an unusual circumstance is hereby waived. The governing body must still submit an application to the DOE Commissioner pursuant to RSA 32:11, I, and a copy of such application to the Department of Revenue Administration pursuant to RSA 32:11, IV. Upon approval by the governing body to submit an application to DOE for an overexpenditure, DOE shall review the application and notify the requesting governing body of its decision within 2 business days of DOE's receipt of the application. Applications to DOE can be submitted by email to the Director of the Division of Education Analytics and Resources of the DOE.

3. Under RSA 189:14-a, a teacher who has a professional standards certificate from the state board of education and who has taught for one or more years in the same school district shall be notified in writing on or before April 15 or within 15 days of the adoption of the district budget by the legislative body, whichever is later, if that teacher is not to be renominated or reelected, provided that no notification shall occur later than the Friday following the second Tuesday in May. The requirement that no notification shall occur later than the second Tuesday in May is hereby waived.

4. The Commissioner of Education is granted authority to waive or modify as appropriate to accommodate the remote instruction and support environment the following educational, assessment, reporting, evaluation, and accountability requirements:

- a) The assessment program set forth at RSA 193-C, et seq. (Statewide Educational Improvement and Assessment)
- b) The requirements set forth in RSA 193-E:3 (Delivery of an Adequate Education);
- c) The requirements set forth in RSA 193-E:3-b (Accountability for the Opportunity for an Adequate Education);
- d) The requirements set forth in RSA 193-E:3-c (Performance-Based Accountability System);
- e) The requirements set forth in RSA 193-E:3-d (Performance-Based School Accountability System; Verification Process);
- f) The requirements set forth in RSA 193-A:6, II and III (Records; Evaluation); and
- g) The performance measuring requirements of RSA 193-H, et seq. (School Performance and Accountability)

Any waivers or modifications issued by the Commissioner pursuant to this paragraph 4 will be communicated to all school districts and will be posted on the Department of Education website.

5. Emergency Order #23 permitted newly elected officers and officials to assume office before the end of the business meeting. Consistent with Order #23, the requirement that newly elected school district officers take office at the close of either the annual town meeting or school district meeting under RSA 671:22 is hereby waived. Additionally, in light of Emergency Order #16 (prohibiting scheduled gatherings of 10 or more attendees), school districts and school boards are permitted to administer oaths of office by electronic means. This is provided the following protocol is followed:

- a) The person giving the oath must know the person taking the oath or he/she must establish his/her identity.
- b) If both the person taking the oath and the person receiving the oath has the capability, best practice is to use Skype/FaceTime or a similar audio/video service that will allow parties to see and hear the other. If a video interface is in use, the person showing a photo ID through the video can establish identity.



- c) If only telephone communication is practical, there must be a witness present with the person taking the oath. The person receiving the oath must obtain the name and address of the witness and receive a statement from the witness that: (i) the witness verifies the identity of the person taking the oath; and (ii) that the witnesses observed the oath taking. The person receiving the oath should document on the oath form the name and address of the witness. The witness can be a family member, co-worker, caregiver, or any other person.
- d) The person taking the oath should document on the oath form, or on paper attached to the oath form, that the oath was taken virtually or by phone. If an authorized official other than the clerk takes the oath, the person taking the oath must deliver the completed oath form to the clerk for town/district records.
- e) Instruct the person taking the oath that he/she must come to the clerk's office and affirm the oath taking by signing the oath form, at the point in the future when doing so is appropriate.
- f) The clerk should notify the chair of the board or commission that the person taking the oath was elected to, that the oath has been taken and the person has assumed office.

Given under my hand and seal at the Executive Chambers in Concord, this 28th day of April, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.



**GOVERNOR OF NEW HAMPSHIRE**



CHRISTOPHER T. SUNUNU  
Governor

**STATE OF NEW HAMPSHIRE  
OFFICE OF THE GOVERNOR**

**STATE OF NEW HAMPSHIRE  
BY HIS EXCELLENCY  
CHRISTOPHER T. SUNUNU, GOVERNOR**

**Emergency Order #56 Pursuant to Executive Order 2020-04 as Extended by Executive Orders  
2020-05, 2020-08, 2020-09, and 2020-10**

**Temporary Modification of Procedure Relative to Appropriations and Tax Payments**

**WHEREAS**, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

**WHEREAS**, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, An order declaring a state of emergency due to the Novel Coronavirus (COVID-19). The state of emergency has been extended four times through Executive Orders 2020-05, and 2020-08, 2020-09, and 2020-10; and

**WHEREAS**, the CDC reports that COVID-19 may be spread before an infected person shows symptoms of the virus; and

**WHEREAS**, in the days since the Governor declared a State of Emergency, the COVID-19 outbreak in New Hampshire has expanded significantly; and

**WHEREAS**, the Department of Health and Human Services, Division of Public Health has found that community-based transmission of COVID-19 continues to increase in the State and has been identified in all of the counties; and

**WHEREAS**, following the adoption of Emergency Order 23, which temporarily modifies municipal and local government statutory requirements, communities continue to face challenges related to their budgets; and

**WHEREAS**, towns, school districts, and village districts require a mechanism to reduce the tax burden on citizens who are facing unprecedented challenges as a result of the public health crisis; and

**WHEREAS**, even if the current State of Emergency is lifted prior to June 30, 2020, towns, school districts, and village districts whose fiscal years begin on July 1 and who have postponed their annual meetings due to the public health crisis, will not have sufficient time to appropriately notice and successfully pass an operating budget prior to July 1, 2020. This may present potential legal challenges to their ability to make ordinary and necessary expenditures in the fiscal year beginning July 1, 2020.

**Now therefore pursuant to Section 18 of Executive Order 2020-04, as extended by Executive Orders 2020-05, 2020-08, 2020-09, and 2020-10, it is hereby ordered, effective immediately, that:**



1. Currently, under RSA 32:13, II, a local governing body is authorized to make expenditures between January 1 and the date a budget is adopted, which are reasonable in light of the prior year's appropriations and expenditures for the same purposes during the same time period. This authority shall also apply to those local governing bodies with fiscal years ending on June 30. As such, towns, school districts, and village districts whose annual meetings or parts thereof were postponed due to the COVID-19 emergency, are permitted to make such expenditures until the earlier of: (a) approval of an operating budget; or (b) September 1, 2020, unless such date is extended by further Emergency Order.

2. The governing body of a town, school district, village district, or county shall have the authority to reduce appropriations for any items as may be necessary to keep total expenditures of the town, school district, village district, or county within its total anticipated revenues. Consistent with RSA 32:13, I, this order "shall not be construed to imply that a local legislative body, through its actions on appropriations, has the authority to nullify a prior contractual obligation of the municipality, when such obligation is not contingent upon such appropriations and is otherwise valid under the New Hampshire law of municipal contracts, or to nullify any other binding state or federal legal obligation which supersedes the authority of the local legislative body." In towns that have adopted RSA Chapter 37 or RSA Chapter 49-D, the chief administrative officer shall make the recommendation to the governing body for approval. This action shall be taken at a public meeting, subject to the following requirements:

- Notice of the date of the public meeting shall be made public no less than seven days before the meeting; and
- At or before the public meeting, the governing body shall provide a report to the public that shows the relationship between the estimated and actual income and expenses to date, together with outstanding indebtedness and estimated future expenses.

This provision shall not affect or supplant any similar provision in a town charter. Any action taken pursuant hereto must be completed on or before the date on which the municipality submits its MS-1 to the Department of Revenue Administration.

3. Municipalities are authorized, during the State of Emergency declared in Executive Order 2020-04, as extended by Executive Orders 2020-05, 2020-08, 2020-09, and 2020-10, and as may be extended by further Executive Order, to enter into agreements with property taxpayers for the payment of property taxes on an agreed schedule, which may include a reduction or waiver of any interest on such taxes. This authority may be exercised with respect to any property taxes assessed for the tax year beginning April 1, 2020, any taxes due for prior years, or both.

Given under my hand and seal at the Executive Chambers in Concord, this 25th day of June, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.



**GOVERNOR OF NEW HAMPSHIRE**



**STATE OF NEW HAMPSHIRE  
OFFICE OF THE GOVERNOR**

**CHRISTOPHER T. SUNUNU**  
Governor

**STATE OF NEW HAMPSHIRE  
BY HIS EXCELLENCY  
CHRISTOPHER T. SUNUNU, GOVERNOR**

**Emergency Order #74 Pursuant to Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20 and 2020-21**

**An order requiring persons to wear masks or cloth face coverings when in public spaces without physical distancing**

**WHEREAS**, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. This declaration remains in effect as of the date of this Executive Order; and

**WHEREAS**, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, an order declaring a state of emergency due to the Novel Coronavirus (COVID-19); and

**WHEREAS**, on June 15, 2020, the Governor issued Emergency Order 52, that transitioned from a Stay at Home Order to a Safer at Home Advisory, and that modified many of the restrictions on businesses, places of worship, and other places of commerce or gathering to allow them to continue to transition to full re-opening while limiting the risk of multiplying the spread of COVID-19 in New Hampshire; and

**WHEREAS**, on May 29, 2020, the U.S. Supreme Court observed that “[t]he precise question of when restrictions on particular social activities should be lifted during the [COVID-19] pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement,” and stated that “[o]ur Constitution principally entrusts the safety and health of the people to the politically accountable officials of the States to guard and protect,” *South Bay United Pentecostal Church, et al., Applicants v. Gavin Newsom, Governor of California, et al.*, No. 19A1044, 590 U.S. \_\_ (2020), at 3 (Roberts, C.J., concurring); and

**WHEREAS**, New Hampshire’s courts have recognized that the COVID-19 pandemic justifies the Governor’s declaration of a State of Emergency and the restrictions placed on New Hampshire’s citizens, businesses, and other organizations through the Emergency Orders. *See Binford, et. al. v. Sununu*, Merrimack Cty. Super. Ct., 217-2020-CV-00152 (March 25, 2020) (Kissinger, J.), at 7-9; *Devine v. Sununu*, Rockingham Cty. Super. Ct., 218-2020-CV-00602 (June 18, 2020) (Schulman, J.); *Cooper v. Sununu*, Hillsborough Cty. Super. Ct., Southern Dist., 2020-CV-00266 (July 13, 2020) (Colburn, J.), at 15; *Athens v. Sununu*, Cheshire Cty. Super. Ct., 213-2020-CV-00104 (July 14, 2020) (Ruoff, J.), at 6-7; and

**WHEREAS**, New Hampshire courts have recognized that the outbreak and death toll in New Hampshire would likely be higher without the Governor’s initial order declaring a State of Emergency, and that, given the alarming number of cases in neighboring states and the national and international coordination



required to sufficiently control the spread of the disease, COVID-19 is a “disaster of major proportions” that lies “beyond local control.” *BAMP Track Operations, LLC v. Sununu*, Merrimack Cty. Super. Ct., 214-2020-CV-00046, at 13; and

**WHEREAS**, the CDC anticipates that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or have underlying chronic health conditions; and

**WHEREAS**, the CDC reports that COVID-19 is most commonly spread from an infected person to others through respiratory droplets, including:

- Between people who are in close contact with one another (within about 6 feet);
- Through respiratory droplets produced when an infected person coughs, sneezes, or talks;
- When the droplets land in the mouths or noses of people who are nearby or are possibly inhaled into the lungs; or
- By people who are not showing symptoms but who are infected with COVID-19.

**WHEREAS**, the CDC reports that COVID-19 is spread mainly from person to person, that COVID-19 is currently spreading very easily and sustainably, that COVID-19 is spreading more efficiently than influenza, and that the best way to prevent illness is to avoid being exposed to COVID-19 by taking the following steps:

- Maintain good physical distance (about 6 feet);
- Wash your hands often with soap and water, and if soap and water are not available, use a hand sanitizer that contains at least 60% alcohol;
- Routinely clean and disinfect frequently touched surfaces; and
- Cover your mouth and nose with a cloth face covering when around others.

**WHEREAS**, in recent weeks, New Hampshire has experienced a significant increase in COVID-19 infections, many caused by community transmission, and a significant increase in individuals hospitalized due to COVID-19; and

**WHEREAS**, with the approaching holiday season, it is expected that many Granite Staters will travel within and outside of New Hampshire and attend indoor gatherings, all of which is likely to continue the recent increase in COVID-19 infections and hospitalizations; and

**WHEREAS**, the New Hampshire Division of Public Health has advised that wearing a cloth face covering is an effective tool for slowing the spread of COVID-19.

**NOW, THEREFORE**, pursuant to Section 18 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, and 2020-21 it is hereby ordered, effective immediately, that:

1. Beginning on November 20, 2020, all persons over the age of 5 within the State of New Hampshire shall wear a mask or cloth face covering over their noses and mouths any time they are in public spaces, indoors or outdoors, where they are unable to or do not consistently maintain a physical distance of at least six feet from persons outside their own households.
2. For purposes of this Order, the term “public spaces” includes any part of private or public property that is generally open or accessible to members of the general public. Public spaces include, but are

not limited to, lobbies, waiting areas, outside plazas or patios, restaurants, retail businesses, streets, sidewalks, parks, beaches, elevators, restrooms, stairways, parking garages, etc.

3. This Order is not intended to override any provisions related to the wearing of masks and cloth face coverings that are contained within industry specific guidance that is part of Exhibit B to Emergency Order 52. In any situation where the provisions of such industry specific guidance conflicts with this Order, the provisions of such industry specific guidance shall control.
4. Nothing in this Order shall be construed to prevent municipalities within the State of New Hampshire from enacting their own ordinances related to the wearing of masks or cloth face coverings that contain stricter provisions than those contained within this Order.
5. This Order shall not apply to the following:
  - a) Educators, students, and staff within K-12 schools;
  - b) Any person with a medical condition or disability that prevents wearing a mask or other face covering;
  - c) Any person consuming food or drink or sitting at a restaurant or table to eat or drink;
  - d) Any person engaged in physical strenuous physical activity;
  - e) Any person giving a religious, political, media, educational, cultural, musical, or theatrical presentation or performance for an audience;
  - f) Any person who is deaf or hard of hearing, and any person while communicating with an individual who is deaf or hard of hearing or who has a disability, medical condition, or mental health condition that makes communication with that individual while wearing a mask or face covering difficult;
  - g) Any person obtaining or providing a service that requires the temporary removal of a mask or face covering;
  - h) Any person asked to remove a mask or face covering to verify an identity for lawful purposes; or
  - i) Any public safety worker actively engaged in a public safety role and when a mask or face covering would seriously interfere in the performance of their public safety responsibilities.
6. A person who declines to wear a mask or cloth face covering because of a medical or developmental issue, or difficulty breathing, shall not be required to produce documentation, or other evidence, verifying the condition.
7. The provisions of this Order shall remain in effect through January 15, 2021.

Given under my hand and seal at the Executive Chambers in Concord, this 19th day of November, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.

  
GOVERNOR OF NEW HAMPSHIRE





**STATE OF NEW HAMPSHIRE  
OFFICE OF THE GOVERNOR**

**CHRISTOPHER T. SUNUNU**  
Governor

**STATE OF NEW HAMPSHIRE  
BY HIS EXCELLENCY  
CHRISTOPHER T. SUNUNU, GOVERNOR**

**Emergency Order #81 Pursuant to Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24 and 2020-25**

**Extension of Emergency Order #74**

**WHEREAS**, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. This declaration remains in effect as of the date of this Executive Order; and

**WHEREAS**, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, an order declaring a state of emergency due to the Novel Coronavirus (COVID-19); and

**WHEREAS**, on June 15, 2020, the Governor issued Emergency Order 52, that transitioned from a Stay at Home Order to a Safer at Home Advisory, and that modified many of the restrictions on businesses, places of worship, and other places of commerce or gathering to allow them to continue to transition to full re-opening while limiting the risk of multiplying the spread of COVID-19 in New Hampshire; and

**WHEREAS**, on November 19, 2020, the Governor issued Emergency Order 74, that requires persons over the age of five to wear masks or cloth face coverings when in public spaces, indoors or outdoors, where maintaining a physical distance of six feet is not possible; and

**WHEREAS**, on May 29, 2020, the U.S. Supreme Court observed that “[t]he precise question of when restrictions on particular social activities should be lifted during the [COVID-19] pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement,” and stated that “[o]ur Constitution principally entrusts the safety and health of the people to the politically accountable officials of the States to guard and protect,” *South Bay United Pentecostal Church, et al., Applicants v. Gavin Newsom, Governor of California, et al.*, No. 19A1044, 590 U.S. \_\_ (2020), at 3 (Roberts, C.J., concurring); and

**WHEREAS**, New Hampshire’s courts have recognized that the COVID-19 pandemic justifies the Governor’s declaration of a State of Emergency and the restrictions placed on New Hampshire’s citizens, businesses, and other organizations through the Emergency Orders. *See Binford, et. al. v. Sununu*, Merrimack Cty. Super. Ct., 217-2020-CV-00152 (March 25, 2020) (Kissinger, J.), at 7-9; *Devine v. Sununu*, Rockingham Cty. Super. Ct., 218-2020-CV-00602

(June 18, 2020) (Schulman, J.); *Cooper v. Sununu*, Hillsborough Cty. Super. Ct., Southern Dist., 2020-CV-00266 (July 13, 2020) (Colburn, J.), at 15; *Athens v. Sununu*, Cheshire Cty. Super. Ct., 213-2020-CV-00104 (July 14, 2020) (Ruoff, J.), at 6–7; and

**WHEREAS**, New Hampshire courts have recognized that the outbreak and death toll in New Hampshire would likely be higher without the Governor’s initial order declaring a State of Emergency, and that, given the alarming number of cases in neighboring states and the national and international coordination required to sufficiently control the spread of the disease, COVID-19 is a “disaster of major proportions” that lies “beyond local control.” *BAMP Track Operations, LLC v. Sununu*, Merrimack Cty. Super. Ct., 214-2020-CV-00046, at 13; and

**WHEREAS**, the CDC anticipates that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or have underlying chronic health conditions; and

**WHEREAS**, the CDC reports that COVID-19 is most commonly spread from an infected person to others through respiratory droplets, including:

- Between people who are in close contact with one another (within about 6 feet);
- Through respiratory droplets produced when an infected person coughs, sneezes, or talks;
- When the droplets land in the mouths or noses of people who are nearby or are possibly inhaled into the lungs; or
- By people who are not showing symptoms but who are infected with COVID-19.

**WHEREAS**, the CDC reports that COVID-19 is spread mainly from person to person, that COVID-19 is currently spreading very easily and sustainably, that COVID-19 is spreading more efficiently than influenza, and that the best way to prevent illness is to avoid being exposed to COVID-19 by taking the following steps:

- Maintain good physical distance (about 6 feet);
- Wash your hands often with soap and water, and if soap and water are not available, use a hand sanitizer that contains at least 60% alcohol;
- Routinely clean and disinfect frequently touched surfaces; and
- Cover your mouth and nose with a cloth face covering when around others.

**WHEREAS**, in recent weeks, New Hampshire and the Country at large have experienced a significant increase in COVID-19 infections, many caused by community transmission, and a significant increase in individuals hospitalized due to COVID-19; and

**WHEREAS**, with the recent holiday season, many Granite Staters may have travelled within and outside of New Hampshire and attended indoor gatherings, all of which is likely to continue the recent increase in COVID-19 infections and hospitalizations; and

**WHEREAS**, the New Hampshire Division of Public Health has advised that wearing a cloth face covering is an effective tool for slowing the spread of COVID-19.

**NOW, THEREFORE, pursuant to Section 18 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24 and 2020-25 it is hereby ordered, effective immediately, that:**

1. The provisions of Emergency Order #74 are hereby extended and shall remain in effect through March 26, 2021.

Given under my hand and seal at the Executive Chambers in Concord, this 15th day of January, in the year of Our Lord, two thousand and twenty-one, and the independence of the United States of America, two hundred and forty-four.



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**GOVERNOR OF NEW HAMPSHIRE**



STATE OF NEW HAMPSHIRE

**MEMORANDUM**

TO: New Hampshire Election Officials

FROM: William M. Gardner, Secretary of State  
Gordon J. MacDonald, Attorney General

RE: Election Operations during the Public Health Crisis

DATE: **August 19, 2020**

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**\*Note: This guidance is based on health guidelines and Emergency Orders issued as of the date of this memorandum and is subject to updates as necessary.**

Thank you for your service to the voters of our state. New Hampshire has a rich tradition of well-run elections and the robust exercise of the right to vote. Much of that is due to the strength and effort of our election officials. The novel coronavirus public health emergency continues to present unprecedented challenges. Many of these challenges will present themselves during the upcoming September Primary and November General Elections.

In the continuing the tradition of New Hampshire's well-run elections, we will rely on the skill of our election officials in solving the problems the coronavirus poses in the election context, and imbuing voters with confidence and assurance that they can efficiently, effectively and safely cast their ballots during this pandemic. We are confident that the upcoming elections will be as successful as ever, again, due to your efforts and skill.

**Q1: Can towns and cities adopt the “drive-up” voting procedures that were used during the 2020 municipal and school meetings for the 2020 September Primary and November General Elections?**

**A: No.**

During the 2020 municipal and school meetings, New Hampshire Laws of 2020, Chapter 8 allowed towns, village districts, and school districts to conduct their municipal meetings using a “drive-up” voting process. However, an entirely different set of statutes and procedures governs Primary and General Elections. Those statutes and procedures preclude using this process in the upcoming Primary and General Elections. Thus, local



election officials cannot use “drive-up” voting procedures for the Primary and General Elections.

**Q2: Can election officials designate locations at the town or city clerk’s office and/or at the polling place where completed absentee ballots can be delivered?**

**A: Yes, subject to the guidelines below.**

a. Prior to Election Day

Some election officials have asked whether they can designate, at the town or city clerk’s office, a location to which absentee ballots can be delivered. The law provides that a completed absentee ballot may be returned to the town or city clerk by: (a) the absentee voter or his/her delivery agent (defined below) personally delivering the completed absentee ballot package; or (b) the absentee voter or his/her delivery agent mailing the completed absentee ballot package to the town or city clerk. RSA 657:17, I.

These statutes allow for election officials to provide a “dropbox” at the town or city clerk’s office before Election Day. If officials choose to use a “dropbox” at the town or city clerk’s office, it must be staffed by a properly trained election official throughout the course of its use.

For absentee ballots delivered by a delivery agent, the delivery agent shall show identification and sign a “Return of Ballot” form.

b. On Election Day

For the 2020 Primary and General Elections only, voters can appear at the polling place and deliver their own completed absentee ballots in the same manner they would deliver an absentee ballot to the clerk prior to Election Day.

Election officials can utilize a “dropbox” at the polling place on Election Day. The following procedures must be followed:

1. The “dropbox” must be staffed by a properly trained election official throughout the course of its use on Election Day.
2. The delivery agent must show identification to the election official at the “dropbox” and complete a “Return of Ballot” form. RSA 657:17, III; RSA 657:17-a.
3. The 5:00 PM cutoff on Election Day must be observed and procedures for marking and retention of ballots after that time must be followed.

Voters who deliver absentee ballots after 5:00 PM on Election Day shall be told that their absentee ballots cannot be accepted, in accordance with RSA 657:22, but they can still vote by entering the polling place.

Election officials should make clear to voters who is authorized to deliver a completed absentee ballot package. The relevant statutory provisions identifying these select parties appear below.

RSA 657:17, II –

As used in this section, "delivery agent" means:

- (a) The voter's spouse, parent, sibling, child, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild; or
- (b) If the voter is a resident of a nursing home as defined in RSA 151-A:1, IV, the nursing home administrator, licensed pursuant to RSA 151-A:2, or a nursing home staff member designated in writing by the administrator to deliver ballots; or
- (c) If the voter is a resident of a residential care facility licensed pursuant to RSA 151:2, I(e) and described in RSA 151:9, VII(a)(1) and (2), the residential care facility administrator, or a residential care facility staff member designated in writing by the administrator to deliver ballots; or
- (d) A person assisting a blind voter or a voter with a disability who has signed a statement on the affidavit envelope acknowledging the assistance.

**Q3: If towns and cities have multiple polling places, can they consolidate those into one, larger polling place?**

**A: Consolidation of polling places is governed by statute. Municipalities may only consolidate polling locations consistent with governing statutes. If consolidation is precluded by statute, we will offer assistance in locating resources and exploring options to address challenges posed by the public health crisis.**

The law applicable to the consolidation of polling places in towns and cities is summarized below. We also set forth additional considerations with respect to consolidating polling places. Election officials should consult with their legal counsel with respect to the applicability of these laws.

Applicable Law

1. Towns: Towns may add additional polling places or discontinue established polling places through a vote by the town. The following statutes apply:

RSA 658:10 states that “[i]f any town shall so vote, the selectmen shall provide one or more additional polling places in such town and shall, at least 30 days before the next following general election, determine the boundaries of the voting district to be served by each such additional polling place.” This statute requires a vote by the Legislative Body, which in most circumstances, would require a Town Meeting.

RSA 658:17 states that “[a] voting district and polling place so established shall continue to be such for successive state elections until the town shall vote to discontinue the same, but the selectmen may from time to time increase or diminish the boundaries thereof in order to effectively accommodate the voters.”

2. Cities: Cities are similarly authorized to adopt an additional polling place within a ward, as outlined under RSA 658:10 through 658:17.

An additional polling place in a city would, in effect, split a ward into two voting districts. This means that an additional polling place is limited to being within the boundaries of the ward it will serve.

Under RSA 44:4, each ward “shall be a town for the purpose of the election of governor, councilor, state senator, representative to the general court, all county officers, senator and representative in congress, and electors of president and vice-president of the United States, and in all matters relating to jurors.”

Part I, Article 11 of the New Hampshire Constitution further outlines that “[e]very person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile.”

These provisions taken together require every city ward to have a polling place to allow a qualified voter to exercise the constitutional right to vote in the ward in which he/she is domiciled. Absent a charter amendment to eliminate wards within a given city, there is no authority to consolidate polling places under the law or New Hampshire Constitution.

**Q4: What discretion do moderators have to not require or require voters to wear a face covering/mask inside the polling place?**

**A: Moderators have broad authority to regulate the conduct of polling within their jurisdictions. That includes the authority to choose whether to not require or to require a face covering/mask at their respective polling places. Moderators who choose to implement face covering/mask requirements, therefore, must provide**



**registration and voting alternatives to voters who either cannot or will not wear face coverings/masks inside the polling location.**

Background

Recognizing there are divergent views among moderators on the extent to which masks should be required in the polling place, the Secretary of State, Attorney General and their staff invited two moderators representing different sides of the spectrum for a conversation on the topic. The result was a very thoughtful discussion in an attempt to find common ground on how best to keep voters and poll workers safe in the polling place. Not surprisingly, both moderators wanted to make sure the act of voting was safe and efficient. Both acknowledged that all polling places are different, and decisions made by the moderator are dependent on factors and influences that are unique to their location.

Specifically, they both believed that Center for Disease Control (CDC) and other authoritative professional health guidance should be used in making determinations about whether or not masks should be required in the polling place. If a polling place is large enough to meet CDC social distancing guidelines a moderator may decide not to require masks. However if a polling place is cramped and a moderator believes proper social spacing cannot be sustained a mask requirement would be appropriate. The bottom line is that both moderators believed that the discretion should be left to the moderator to make the call based on the circumstances unique to their polling place.

Both moderators also believed that if a mask requirement is imposed, voters who will not wear a mask for whatever reason must be afforded an opportunity to cast their votes in a reasonable alternative way protecting all voters rights to safely cast a ballot in the September 8<sup>th</sup> Primary Election and November 3<sup>rd</sup> General Election. The guidance being issued by the Attorney General and Secretary of State memorializes major components of this discussion.

Guidance

As discussed below, the Centers for Disease Control (“CDC”) and the New Hampshire Division of Public Health (“DPH”) recommend face coverings/masks as one component of the COVID-19 mitigation strategy. It has been further recommended by federal and state health officials that people wear masks in public settings, especially when other social distancing measures are difficult to maintain.

For many moderators, requiring face coverings/masks inside the polling place may be critical to Election Day operations, both for the comfort and safety of Election Day volunteers and other voters casting in-person ballots. For others, some polling places may allow for social distancing and other protective measure, and moderators may choose not to require a face covering/mask.

The moderator has broad authority to manage the polling location. This includes choosing to not require or to require a face covering/mask in order to enter the polling place.

Each polling place is different and unique. The ability to appropriately social distance at one polling place may be easier than at another. In deciding whether to impose a face covering/mask requirement, moderators should consider any factors they view as relevant and important to their consideration. Factors might include, but are not limited to:

- Size of polling place;
- Number of other rooms or spaces offered by the polling place;
- Other physical characteristics of the polling place;
- Volume of voters expected to vote in-person;
- Particular risk factors either of the voting population or the election officials.

Again, these factors are not exclusive. Moderators should use their best judgment to determine whether and to what extent to encourage or mandate face coverings/masks.

Moderators who implement a face covering/mask requirement may encounter some voters who will refuse to wear face coverings/masks due to physical or medical conditions or other personal reasons. Every qualified voter, however, must be given an opportunity to cast a ballot. To properly implement a face covering/mask requirement, therefore, moderators must establish alternative means of registration and voting for in-person voters who refuse to wear face coverings/masks. While there are no hard and fast guidelines, alternative means must allow the voter to register and vote efficiently, privately, and in a manner that best allows the realization of the full extent of that voter's right to vote. The alternatives cannot, through inefficiency or difficulty of use, make it harder for a non-face covered/masked voter to register and vote.

We encourage moderators to consult with town or city legal counsel on these issues

**Q5: Can election officials require voters to show their faces during the voter check-in and Challenged Voter Affidavit processes?**

**A: Yes.**

During the check-in process, many election officials have asked how a ballot clerk can check-in a voter and confirm that the person in front of the ballot clerk matches the photo identification if the individual is wearing a face covering/mask.

We conclude it is possible to administer the normal check-in process – or the Challenged Voter Affidavit process as applicable – while following public health guidelines.

In many cases, a voter will be identifiable even when he or she is wearing a face covering/mask. For example, the election official can still determine the voter's eye color, hair color, and head shape. An official at the polling place may also know the voter checking-in. See RSA 659:13, II(b).

Consistent with public health advisories, if an election official requests that a voter show his or her face for verification, hand sanitizer must be used by the voter prior to and after showing the voter's face. No voter's face should be revealed for an extended period of time.

We encourage the use of the sneeze guards, which have been purchased and distributed by the Secretary of State's Office, for the voter check-in tables. During the check-in process, the voter should remain on one side of the sneeze guard with the election official on the other.

Additionally, during the Challenged Voter Affidavit process, the Secretary of State's Elections Division has reported that a photograph can be taken through the sneeze guard with the voter's face showing. Hand sanitizer must be used by the voter prior to and after showing the voter's face. No voter's face should be revealed for an extended period of time. As such, we similarly encourage the use of the sneeze guards during the Challenged Voter Affidavit process.

**Q6: Can election officials use two rooms inside the same polling location as voting areas?**

**A: Yes, provided both voting areas fully comply with all polling place requirements.**

Some officials have asked about using two rooms inside the same polling place as voting areas to facilitate social distancing or employ a system as outlined under FAQ4. There is no prohibition in doing so. However, it is important for officials to be mindful that all rooms used for voting purposes comply with polling place requirements. They should be adjoining rooms if at all possible. Those requirements are as follows:

1. Each voting room must have a moderator (assistant/deputy) present overseeing the voting. One official overseeing multiple rooms will not suffice.
2. Officials are encouraged to have a deputy or assistant clerk who can be in the second room on an ongoing basis if needed.
3. Each room must have an area where the public can observe. It need not be large, but the general public cannot be barred from the room. This likely



means that some form of guardrail inside each room (i.e. rope, tape, etc.) may need to be used as opposed to using the room walls as the complete guardrail.

4. The political parties must be given notice of the additional voting area and the parties should be asked to notify campaigns. If a party wants a “challenger” present to observe both voting rooms, it may consider sending more than one challenger.
5. The aggregation of votes from the two rooms at the end of the day must be transparent and managed in a way that keeps marked ballots secure and the public present at the polling place well informed about what is going on and how the votes cast in the separate rooms will be aggregated. The additional polling place laws only apply to using more than one building as a polling place. However, the procedural alternatives set out in those statutes may be the best guide to how to use two rooms inside the same polling place. Following one of the procedures in those statutes would make the process more easily defensible.

**Q7: Can election officials be required to wear Personal Protective Equipment (PPE)?**

**A: Under New Hampshire’s Constitution, the moderator has the authority and responsibility to govern elections. The use of face coverings/masks by election officials is in accordance with guidance by public health officials, including the Centers for Disease Control. A moderator’s requirement that election officials wear face coverings/masks or other personal protective equipment is, in our opinion, within his or her constitutional authority. Moderators should first consult with their town or city legal counsel.**

Part II, Article 32 of the New Hampshire Constitution states that the moderator has the authority and responsibility to govern elections. We believe that this grant of authority would extend to a requirement that local election officials wear face coverings/masks or other personal protective equipment. Under the same constitutional provision, all of the selectmen (or their designees appointed under RSA 658:21-a) are required to be present at the polling place on Election Day. Because the selectmen must be present, they cannot be required to wear face coverings/masks while in the polling place if they are unwilling to do so. However, it is within the moderator’s authority to require that they remain in a designated area more than 6 feet away from other election officials and voters.

There are implications for such decisions and we encourage moderators to consult with their legal counsel. In making the decision, local officials should consider that some voters may feel uncomfortable voting in an environment where election officials are not wearing face coverings/masks. In addition, it may be hard to attract sufficient volunteers to staff local election locations unless a face covering/mask requirement is in place.

There is a risk of legal challenge involving a moderator's decision on this important issue.

**Q8: Can a single absentee ballot request form be used to obtain an absentee ballot for both the 2020 September Primary and 2020 November General Elections?**

**A: Yes, pursuant to HB 1266.**

Under *HB1266*, RSA 657:4 has been suspended through December 31, 2020. Instead, the bill has authorized the Secretary of State to create a new application form for absentee ballots that permits voters to use one (1) request form to request absentee ballots for both the 2020 September Primary and 2020 November General Elections.

The new application form for absentee ballots is available on the Secretary of State's website and can be found using the following link:

<https://sos.nh.gov/VotingEmergency.aspx>

If the voter asks for ballots for both the primary and the general election, the clerk must make a copy of the application. Use the copy to attach to the returned envelope with the completed absentee ballot for the Primary and the original application to attach to the returned envelope with the absentee ballot for the General Election.

If a voter has already submitted an absentee ballot request application, and it is the version that existed before *HB1266*, officials may still accept the application and fulfill the absentee ballot request consistent with routine practice.

**Q9: Can the moderator utilize *pro tem* election officers inside the guardrail who are not domiciled in the polling location's town or ward?**

**A: No. A *pro tem* appointed poll worker can be used only for those roles that are outside the guardrail.**

RSA 659:21 states that "[n]o person other than the election officers, the voters admitted or those admitted to aid a voter pursuant to RSA 659:20 shall be permitted within the guardrail except by the authority of the election officers and, then, only for the purpose of keeping order and enforcing the law."

"'Election officer' shall mean any moderator, deputy moderator, assistant moderator, town clerk, deputy town clerk, city clerk, deputy city clerk, ward clerk, selectman, supervisor of the checklist, registrar, or deputy registrar." RSA 652:12.

"Any elected or appointed official for whom one of the qualifications for his or her position is eligibility to be a voter in the area represented or served shall be

considered to have resigned if the official moves his or her domicile so that he or she can no longer qualify to be a voter in the area represented or served.” RSA 654:1, II.

Read together, these statutes require that an election officer who works inside the guardrail be domiciled in the town or city ward where the polling place is located.

As such, we conclude that moderators may utilize *pro tem* appointed poll workers (not election officers) who are not domiciled in the town or city ward of the polling place, provided those *pro tem* poll workers are only permitted to work outside the guardrail. (i.e. Ballot Clerk check-in table, Assistants to the Supervisors of the Checklist table, Greeter, etc.). Just as the position of greeter is not explicitly provided for in statute, a *pro tem* poll worker will be appointed by the moderator, supervisors, or clerk, take an oath, but will not be an election officer.

A *pro tem* poll worker assisting with voter registration can help the voter complete the voter registration form, help organize the applicant’s proof documents or, if needed, help the applicant complete a domicile and/or qualified voter affidavit, but may not make the final decision to approve the applicant. The completed application form and proof of qualifications must be reviewed and approved by an elected supervisor or a supervisor *pro tem* who is domiciled in the town or ward.

This means that those election officials counting the ballots must be voters in the town or ward.

Additionally, election officers are, by definition, locally elected officials who must be voters in the town or ward. Appointed *pro tem* election officials are also required to be voters in the town or ward.

We also understand many officials are having a difficult time filling ballot clerk positions due to the challenges caused by the public health crisis in finding volunteers.

RSA 658:25 states in relevant part, that “[t]wo of the inspectors, one from each of the 2 political parties, shall be designated by the moderator at the opening of the polls to act as ballot clerks.” We do not construe this to prohibit the Moderator from designating officials other than inspectors of elections as ballot clerks.

In present circumstances, however, when necessary a town or city may use individuals, for example non-resident municipal employees, to be appointed and sworn in as *pro tem* poll workers to assist at the election provided the non-residents are assigned only to tasks outside the guardrail.



STATE OF NEW HAMPSHIRE

**MEMORANDUM**

TO: New Hampshire Election Officials

FROM: Gordon J. MacDonald, Attorney General

RE: Election Operations during the COVID-19 Public Health Crisis

DATE: **August 20, 2020**

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**\*Note: This guidance is based on health guidelines and Emergency Orders issued as of the date of this memorandum and is subject to updates as necessary.**

Yesterday, Secretary Gardner and I issued guidance regarding Election Day Operations in light of the ongoing public health emergency. The purpose of this document is to provide further, more detailed guidance on some of the concepts raised in yesterday's Memorandum.

If you have specific questions, please direct them to Assistant Attorney General Nicholas Chong Yen, who leads the Election Law Unit. Attorney Chong Yen may be reached at (603) 271-3650.

Again, thank you for your continued efforts to serve the voters of New Hampshire amidst the unprecedented challenges posed by the novel coronavirus (COVID-19) public health emergency.

**Q1: Can local officials require voters appearing in-person at a polling location, to wear face coverings/masks to enter the polling place room used by voters wearing face coverings/masks?**

**A: Yes. Moderators have broad authority to manage the polling location. The right to vote, however, cannot be denied to an otherwise eligible voter who is unable or unwilling to wear a face covering/mask. Moderators who implement face covering/mask requirements, therefore, must provide registration and voting alternatives to voters who either are unable or unwilling to wear face coverings/masks inside the polling location.**

As discussed below, the Centers for Disease Control ("CDC") and the New Hampshire Division of Public Health ("DPH") recommend face coverings/masks as one component of the COVID-19 mitigation strategy, and emerging evidence suggests that

face coverings/masks can significantly reduce transmission of the virus in some situations. For many moderators, requiring face coverings/masks inside the polling place may be critical to Election Day operations, both for the comfort and safety of Election Day volunteers and for voters casting in-person ballots.

Some voters, however, will be unable or unwilling to wear face coverings/masks, due to physical or medical conditions or other personal reasons. Moderators may not deny the right to vote based on a voter's inability or unwillingness to wear a face covering/mask. To implement a requirement that everyone inside of a polling location wear a face covering/mask, moderators must establish alternative means of registration and voting for in-person voters who are unable or unwilling to wear face coverings/masks.

While there are no hard and fast guidelines, alternative means must allow the voter to register and vote efficiently, privately, and in a manner that best allows the realization of the full extent of that voter's right to vote. The alternatives cannot, through inefficiency or difficulty of use, make it harder for a non-face covered voter to register and vote. We encourage moderators to consult with town or city legal counsel on these issues, but we believe that, properly implemented, a mandate that everyone inside a polling location wear face coverings/masks can be accomplished without violating voting rights.

The following provides some examples of registration and voting alternatives moderators might employ in the event that they implement a face covering/mask mandate. This list is not intended to include all possible options.

1. Separate Entrance, Exit, Registration Area, and Voting Area

If, at all possible, moderators should establish separate entrances, exits, registration areas, and voting areas for those who are unable or unwilling to wear face coverings/masks. Moderators considering this option should contact their local Emergency Management Director to explore ways to implement it using the resources available at the polling place, while following public health guidelines. Generally, however:

- A separate entrance and exit may be utilized for those voters who are unable or unwilling to wear a face covering.
- A separate area inside the polling place, which can be set up with a guardrail, socially distant voting booths or screens, and supervised by election officials wearing Personal Protective Equipment, can be set up for such voters.

- Ballot clerks in this scenario may need to shuttle back and forth from the voter to the check-in table for purposes of verifying the voter and marking the checklist and to bring a ballot to the voter.
- A ballot box or ballot counting machine can be utilized in this separate voting area to collect completed ballots
- If a separate ballot box or machine is employed, completed ballots can later be transferred over to the primary voting area, provided that the transfer is announced at the polling place before it takes place and the process is made public.

With respect to voter registration in this separate area, officials should provide a supervisor of the checklist table pursuant to the same requirements governing the general registration area.

## 2. Outdoor Space

Moderators may also consider whether they can create an outdoor space for voting by erecting a tent or shelter of sufficient size to allow for the registration and voting of non-face covered voters. Any such arrangement must comply with the polling place requirements, such as having both a voting booth and screen available to the voter and a writing surface, and the requirements included in paragraph 1 above. The tent may contain a ballot box or ballot counting machine. If a ballot box is used, the ballot box must remain in full view of the public. This alternative must include a process through which voter check-in can occur, and the election official staffing the tent/shelter or serving the voter who needs to use the tent/shelter, must have constant control over the ballot box whenever it contains any marked ballots.

## 3. Accessible Voting on Election Day

Moderators must provide accessible voting options. *See* RSA 659:20-a. *See also New Hampshire Election Procedure Manual: 2020-2021*, Pgs. 8-9. For some voters, this may provide an alternative means to vote. All procedures and protocols governing accessible voting must be followed.

**Q2: What should election officials do if a voter chooses not to absentee vote prior to Election Day, is unable or unwilling to wear a face covering/mask at the polling place, and rejects the alternative voting options offered at the polling place?**

**A: In light of the severity of COVID-19, if a voter is unable or unwilling to wear a face covering at the polling place and also rejects the alternatives offered for registration and voting, election officials may inform the voter that he/she cannot enter the polling place to vote.**



We understand that in some instances, it may be difficult for individuals to wear face coverings/masks. As stated above, no otherwise eligible voter should be denied the right to vote if he or she is unwilling or unable to wear a face covering/mask. For that reason, we have indicated that moderators provide appropriate, alternative means to vote.

If a voter declines to avail himself or herself themselves of an appropriate, alternative means to vote, we strongly encourage moderators to do all they can to engage constructively with these voters to encourage them to either wear a face covering/mask while in the polling place or vote by the alternative means. If all reasonable means to persuade the voter are exhausted, we believe that current law would likely support a moderator's decision to inform the voter that he or she cannot enter the polling place.

Moderators have broad discretion with respect to the conduct of elections. A moderator's decision to impose a face covering/mask requirement is clearly a lawful exercise of that discretion, directed at advancing the compelling interest to protect the health of election workers and other voters, provided that an alternative is available tailored to the interests of those who are unable or unwilling to wear a face covering/mask. The alternative must facilitate an individual's right to vote. We know of no legal authority that would require a moderator to waive a face covering/mask requirement if a voter declines to use an alternative.

We encourage moderators to consult with their legal counsel on this issue. As stated above, we are available to respond to questions up to and including on Election Day.