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MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS COVID-19

Guidance on the Role of Local Boards of Health in the Postponement of Municipal Elections, Pursuant to Chapter 45 of the Acts of 2020.

May 16, 2020

Public health professionals, especially local health departments and boards of health, are facing many questions from local public officials, residents, parents, health care providers, and others about COVID-19. MAHB's series of documents are meant to provide answers and guidance to health departments and boards of health. **This document is provided *for educational purposes only* and is not to be construed as legal advice. For legal advice, please contact your city or town attorney.**

Question: On March 23, 2020, the Governor signed Chapter 45 of the Acts of 2020 ("c. 45"), which authorized postponement of elections and caucuses, shifted registration deadlines, and implemented cost-saving measures in the election process.¹ **Does a Local Board of Health (LBOH) have any role in these changing election laws and procedures?**

Answer: Yes.

Just like its effect on schools, business, sporting events, entertainment and the arts, COVID-19 has affected the political process, elections and municipal budgets from Gosnold and its 45 residents, to the City of Boston and its approximately 700,000 residents.

¹ An Act Granting Authority to Postpone 2020 Municipal Elections in the Commonwealth and Increase Voting Options in Response to the Declaration of Emergency to Respond to COVID-19, 2020 Mass. Acts, ch. 45 (Approved March 23, 2020), available at <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter45>.

COVID-19 has caused many cities and towns to delay their annual town meetings because those cities and towns hold their annual municipal elections and meetings during the months of March, April and May.

Many municipalities set their annual meetings, elections and caucuses by operation of special act, bylaw or charter. Because looming deadlines and scheduled election, caucus and meeting dates, many municipalities sought legislative relief by way of special acts or other means of rescheduling. As the number of cities and towns seeking relief increased, both the House and the Senate worked to pass the needed special acts, while simultaneously seeking a vehicle to diminish the flow of individual municipal requests. The legislature had to enact a uniform method to resolve the clash between impending deadlines and the public health and safety measures in place to diminish COVID-19's impact.

In addition to these measures, the Supreme Judicial Court recognized the public health issues presented by door-to-door canvassing for signatures (by up to 23 ungloved, unmasked, yet potentially infected citizens) and rendered a decision radically changing the ballot signature process for candidates, in the absence of a legislative solution.²

Section 1 of c. 45 applies to municipalities with elections scheduled between March 23, 2020 (the date of the signing of c. 45) and May 30, 2020. It authorizes the select board, town council, board of registrars or city council to postpone municipal caucuses and elections until up to June 30, 2020.³ Since most elected municipal officers take office as soon as they are sworn in (typically immediately after their election), and since elections themselves may be rescheduled, c. 45 spells out that all incumbents shall remain in office until successors are elected and qualified.⁴ The mechanics of postponement are outlined in c. 45.⁵ Complex variables such as proper notice, website posting and the like are beyond the purview of MAHB, and therefore LBOH should defer to their town counsel or city solicitor.

A LBOH may have concerns, however, in instances where polling places are established in a location that houses, or is frequented by senior citizens and/or other especially vulnerable residents. LBOH may decide to order a senior center closed to all senior activities for election day if that facility is used as a polling place. Additionally, a LBOH may consider relocating a polling place on an emergency basis to protect vulnerable residents. MAHB recommends early coordination between the LBOH and the chief executive of the city or town, so as to afford the LBOH the opportunity to contribute valuable input into the process of site selection for safe

² See Goldstein v. Secretary of the Commonwealth, No. SJC-12931, 2020 WL 1903931, *10 (Mass. Apr. 17, 2020) (ordering a loosening of signature requirements in municipal elections during COVID-19 pandemic) .

³ 2020 Mass. Acts, ch. 45, § 1(a).

⁴ Id. § 1(c).

⁵ Id. § 1(b)

polling places, and to assure a seat at the table as potentially health-affecting measures are considered.

Section 2 of c. 45 addresses voter registration. While the statute halves the period between the close of voter registration and the date of the election (from 20 to 10 days), the window for keeping registration locations open is increasingly narrowed and may present increased health-risk issues. The municipality is required to keep registration locations open—at a minimum—from 2:00 to 4:00 pm and from 7:00 to 8:00 pm.⁶ Shortened windows on fewer days may create lines at the registration locations. In that instance, a LBOH may decide to take preventive action to diminish the potential for close proximity by enforcing social distancing measures. Additional measures to protect those serving as registrars may be needed. It is incumbent on the LBOH to protect its most vulnerable citizens, even though the state may allow for shortening social-distance barriers.

Section 3 of c. 45 addresses the use of election materials that have the original election date printed on them. This is an economic provision, inserted to save reprinting costs for the city or town.⁷ It is unlikely that a LBOH would look to this section as the basis of any health regulation.

Sections 4 and 5 of c. 45 create an interesting alternative for those who wish to continue their quarantine or isolation, or for those who do not wish to go into a public building between now and the election.⁸

Section 4 sets forth that “[f]or an election held on or before June 30, 2020[,] any person taking precaution[s] related to COVID-19 in response to a declared state of emergency or from guidance from a medical professional, local or state health official, or any civil authority shall be deemed to be unable by reason of physical disability to cast their vote in person at a polling location.”⁹

Section 5 establishes a system for attaining an early voting ballot, voting, and returning it by mail.¹⁰ This method allows voters to maximize the potential for a safe election process by avoiding places where there may be an increased risk of disease transmission. LBOH should see to it that this method is well publicized so that voters in the municipality are properly advised to utilize this minimal-risk voting method.

⁶ Id. § 2.

⁷ 2020 Mass. Acts, ch. 45, § 3.

⁸ Id. §§ 4-5.

⁹ Id. § 4. Traditionally, in addition to voters who are out of town on election day, any person who is “unable by reason of physical disability” to go to the polls to vote is entitled to vote via absentee ballot. See Mass. Const. art. XLV.

¹⁰ 2020 Mass. Acts, ch. 45, § 5.

Conclusion: Certain sections of c. 45 specifically invite action by governing boards, mayors and managers. In fact, ch. 45 is absent of any reference to “boards of health.” However, while there are many financial, legal and political aspects to the COVID-19 pandemic, the central issue is public health, and an astute public health official must look at each emergency order, special act and regulation with a carefully trained eye for any potential effect on the public health of his or her constituency.