



**SELECT BOARD
AGENDA
Tuesday, June 2, 2020
7:00pm**

The Select Board Regular Meeting is being held virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, G.L.c.30A. S.20. Interested individuals can listen in and participate by phone and/or online by following the link and phone # below.

Topic: Select Board

Time: Jun 2, 2020 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting:

<https://us02web.zoom.us/j/87976598480?pwd=V3l1RHUwNOJ3d2xEV2ZzEhGZuZ3VNUT09>

Meeting ID: 879 7659 8480

Password: 234697

Dial by your location

+1 253 215 8782 US

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One tap mobile

+13126266799,,123906012# US (Chicago)

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Find your local number: <https://us02web.zoom.us/j/87976598480?pwd=V3l1RHUwNOJ3d2xEV2ZzEhGZuZ3VNUT09>

Agenda Items

- 1) Discuss request from the Harvard General Store to allow outdoor dining (7:00)
- 2) Public Communication (7:10)
- 3) Announcement of special meeting being held on June 9th at 7pm with Apple Guy Flowers LLC, an adult use marijuana cultivation establishment, which is seeking approval to operate in Harvard. They will introduce their team and describe their plans. (7:15)
- 4) Report from the Budget Working Group Subcommittee: updates to include benefits & unemployment (7:20)
- 5) Covid – 19 various updates to include but no limited too (7:30)
 - a) Budget impacts
 - b) Town Beach operations
 - c) Annual Town Meeting discussion with the Board of Health and Moderator

***Special Select Board Meeting
Tuesday, June 9, 2020 7:00pm
Apple Guy Flowers – Marijuana Cultivation – Shaker Road***

***Next Regular Select Board Meeting
Tuesday, June 16, 2020 7:00pm***

From: Rich Maiore <rdmaiore@gmail.com>

Subject: Outdoor dining/alcohol next to HGS

Date: May 26, 2020 at 3:54:42 PM EDT

To: <avonloesecke@gmail.com>

Hi.

I'd like to put on our 6/2 BOS agenda a discussion of giving permission to enable HGS to do more outside dining. This would help increase business especially as weather gets nicer and I believe we need to do as much as we can to help our local business now.

There are two needs:

- Take-out food is already allowed. Table wait service for food wouldn't need any permission.
However, I'd recommend some form of permission with conditions like hours, and noise restrictions for outside dining.
- Alcohol: The outside dining area is already included in HGS DINING LLC On-Premise Alcohol License. The ABCC included the park as part of HGS premises when they approved the license. HGS needs simple permission from the Select Board or "the Manager" of the land. As with food, we should put conditions the permission. Additionally, we would need to prohibit BYOB in the park by the public. Again, my understanding is this could be a very simple process with a letter of permission from the Select Board.

If you agree, I'd like to share the idea with Tim and Mark Lanza ahead of next Tuesday's meeting to ensure we're good. We'd should also give Park & Rec a heads-up as they "oversee" the park, if I correctly recall past conversations.

Thanks Alice.

OFFICE OF THE

BOARD OF HEALTH

13 AYER ROAD, HARVARD, MA 01451

978-456-4100, ext. 328

boh@harvard.ma.us



May 26, 2020

Via E-mail Only

Select Board Members

Town of Harvard

13 Ayer Road

Harvard, MA 01450

Re: Request for meeting regarding Annual Town Meeting Planning

Dear Select-Board members,

During our recent (5/19/2020) meeting we discussed the guidance provided by MAHB legal counsel (see attached “semi-final” draft) regarding the planning and holding of Town Meeting during the Covid-19 pandemic under the Governor’s orders. Counsel advised, in both briefing and messaging, that the proper procedure for the establishment of a safe meeting required all stakeholders to discuss the appropriate measures that would best create an environment where the voters could safely voice their opinions and conduct the business of the Town. We understand that you have had such preliminary discussions with the Town administration and express our need to participate to ensure that the requirements of the Governor’s orders and MAHB counsel are met. This discussion needs to also include the Town Moderator. We look forward to establishing the details of the meeting with you.

Some of the concerns and suggestions that we also discussed include:

- The risk reduction benefit of holding the proceedings out-of-doors, with a rain date,
- The procedures for maintaining the required ‘personal distancing’ separation,
- Microphone sanitation in-between speakers,
- Maintaining separation for those in line for the microphone,
- Restroom facilities and sanitation
- The provision of masks and other supplies needed

- Screening the attendees for high temperature and other viral cold symptoms
- Increasing the number of check-in and out staff to reduce the lines / waiting to gain entrance,
- Encouraging the residents to write their name / address on 3x5 cards so there would be a reduced need to speak at the check-in tables,
- Some means of remote or electronic access for those who have tested positive for Covid-19 but still wish to participate,
- Ensure there is adequate space available to eliminate the possibility of people being turned away,
- Careful consideration that holding the proceedings does not create subtle discrimination because any particular group would feel the need to avoid the meeting and therefore not be heard, due to the personal risk of illness by attending. One group that comes to mind is the elderly who have an increased risk of fatality from Covid-10.

We also discussed that while we have a requirement to hold Town meeting and that many preparations have already begun, the Town should consider conducting a poll (SurveyMonkey or similar) in order to ascertain whether sufficient numbers of people would be in attendance and whether any constituent groups would not be represented and able to voice their opinions.

We look forward to discussing these and other considerations. As a preliminary matter, we also are leaning towards the opinion that the chosen meeting date is 'too soon'.

Respectfully,

Tom Philippou,

Chair, Board of Health

TP/awf

Enclosures

cc: Bill Barton (via e-mail; w/encls.)

Emergency Management Team (via e-mail, w/encls.)



Assisting Massachusetts Boards of Health through
training, technical assistance and legal education

MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS COVID-19

The Role of the Board of Health in the Postponement/Continuance of Town Meeting May 12, 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: What role does a local Board of Health have in postponing or continuing a town meeting during the COVID-19 state of emergency?

Background: Massachusetts General Laws c. 39, § 10A was amended by Chapter 53 of the Acts of 2020, "An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19," on April 3, 2020. The recent amendment of the statute was accomplished in order to add "public health officials" to the process for continuing town meeting dates to a later date. Previously, the statute applied only to public safety emergency situations and weather related emergencies in order to postpone a town meeting.

Under the current statute, the procedures are divided into 2 categories. First, is the procedure to be followed if the *warrant for the town meeting has already been posted* at the time of the emergency necessitating the continuance. The second is the procedure to be followed if the *warrant has not yet been posted* as of the time of the declaration of an emergency.

Town Meeting Warrant Posted:

The procedure established for when the town meeting has been posted already calls for the town moderator to consult with local public health officials or public safety officials and the board of selectman to determine whether it is appropriate to recess and continue a town meeting previously called. If the decision to postpone is made the moderator may extend the date for a period of up to 30 days from the original date. That extension may be renewed should the condition still exist at the time of the rescheduled session. All subsequent continuances may be done for periods of up to 30 days at a time, until the time that the emergency has been rescinded. In any event, the session must be held within 30 days of the rescission of the state of emergency. If the moderator wants to extend beyond the date of the rescission of the emergency declaration, that must be announced by the moderator within 5 days following the end of the emergency. This additional post-rescission 30 day period was added to allow the moderator ample time to prepare all documentation and notifications necessary to administer a town meeting.

The discussions between the moderator and the health officials and select board are not considered “deliberations” for open meeting purposes, if the only subject of that discussion is the recess and continuance.

Because of social distancing requirements currently in place, it is possible a given town may not have a facility large enough to hold a town meeting within its borders. The statute allows a town meeting to occur at a suitable location in a neighboring municipality.

Another provision in the amended statute places the responsibility upon a public health or public safety official who must be designated by the board of selectman to submit a report to the Attorney General providing the public health based justification for the declaration that the time meeting is to be postponed.

Town Meeting Warrant Not Yet Posted:

Where the town meeting warrant has not yet been posted, the amended G.L. c. 39, § 10A also provides for a procedure to be followed. In such a situation the board of selectman can vote to supersede any charter or by law provisions which require the town meeting to occur during any particular period of time. Such a continued town meeting would be scheduled applying the regular procedures for scheduling any other town meeting not in the face of an emergency situation.

Board of Health Role:

The role of the local board of health in the postponement of a town meeting is somewhat limited. While the moderator must confer with health officials or public safety officials as part of the scheduling process, there is nothing in the statute to require the moderator to accede to the wishes of the LBOH. However, if the LBOH reasonably believes that holding a town meeting could place the attendees in a position of danger, and if the moderator refuses to postpone the town meeting, the LBOH is always free to exert its traditional statutory powers under G.L. c. 111, §§ 95 – 105, which grant the board “broad authority to implement safeguards to prevent the spread of infectious disease.”

The LBOH should look at particular facts and circumstances facing the town at the particular time. If there is probable cause to believe that there is an infectious disease presenting a threat to the public health, and if the facts and circumstances known to a LBOH at the time are sufficient to warrant a person to reasonably believe that the town meeting members are likely to be exposed to an infectious disease, the LBOH may take reasonable steps to protect the uninfected members of town meeting. The power of an LBOH to enforce reasonable protective measures to prevent the spread of communicable diseases has been acknowledged for well over a century.¹

The LBOH should follow the reasoning that if there is any possibility that a town meeting member is COVID-positive, then it is a reasonable step for the board to protect the other members of town meeting from the spread of that infectious disease. In such an instance, the LBOH may issue an order that will halt the town meeting, should there be no logical cooperation by the select board or the moderator. This would be a last resort, but it would be effective.

In addition, under G.L. c. 111, § 104, “if a disease dangerous to the public health exists in a town, the selectman and board of health shall use all possible care to prevent the spread of the infection and may give public notice of infected places by such means as in their judgment maybe most effectual for the common safety.” This statute, in particular, differs from other statutorily imposed powers of boards of health, in that it requires a meeting of the minds between the board of health and the board of selectman or other CEO of a municipality.

Conclusion: In order to assure a reasoned decision it is important that the LBOH or its agent meet with the other officials who have responsibility for such a decision, in order to fully vet all options and assure buy-in from the other municipal agencies.

Under the new statutory scheme, the LBOH is not the sole decision maker without input of the board of selectman. Here, the LBOH should be prepared to discuss all options while maintaining its ultimate position of strength.

In addition to the above, it is worth looking at the nuisance powers of a board of health as another possible last resort, which removes all other agencies including the moderator from the equation. That is the strength of the LBOH, referred to above. Should the LBOH be placed in a position where it must exert its authority pursuant to the nuisance statute, it should make certain to provide ample written documentation that the board believes the COVID pandemic presents a threat to the public health of the town meeting members, and that the actions taken by the board are reasonably related to the protection of public health. This language will give the LBOH the strongest footing, should the actions of the board be challenged in court.

¹ *Brown v. Murdock*, 140 Mass. 314 (1885).

As a final note should a town meeting be convened, the enforcement of masks and social distancing remains in the hands of the LBOH, and all such prerequisites must be met in order to hold any public meetings in person.

Pending legislation:

At the time of this Guidance Document, there is legislation pending in the House of Representatives, which has passed the Senate, which may have tangential effect upon the actual administration of the town meeting process. This legislation does not contain any provisions that affect any health-related decisions or actions.

SB. 2680, “An Act Relative to Municipal Governance During the COVID-19 Emergency, was passed on May 4, 2020, and is now pending before the House Committee on Ways and Means. The provisions of this bill include such measures as re-defining a quorum of an “open town meeting,” along with budget implementation procedures, and notifications of the Attorney General of actions affecting such “open” town meeting. The bill also lays out the procedural considerations of a remote “representative” town meeting, including ADA compliance, choice of remote platforms (i.e.: Zoom, Webex, etc.), and how to deal with a month-to-month budget. There are no LBOH issues raised anywhere in the pending legislation, other than those where the delay may have an impact upon the board of health budget line item.