UPDATED GUIDANCE:
OPTIONS FOR TOWN MEETINGS & ELECTIONS

Applicable Executive Orders

On May 29, 2020 Governor Mills issued Executive Order No. 55 (FY 19/20) increasing the gathering limit from 10 to 50 people, which facilitated town meetings in some municipalities. Since then, the Governor has issued additional Orders increasing the gathering limit:

- Effective August 1, 2020, Executive Order No. 6 (FY 20/21) increased the outdoor gathering limit to 5 people per 1,000 sq. ft. of occupiable outdoor space or not more than 100 people (whichever is less).
- Effective October 13, 2020, Executive Order No. 14 (FY 20/21) increased the indoor gathering limit for certain establishments that provide or require seating to 50% of the facility’s permitted occupancy limit or 100 persons, whichever is less, provided the size of the room will allow for people to comply with the 6 foot social distancing requirement.

On June 3, 2020, Governor Mills issued Executive Order No. 56 (FY 19/20), which provided guidance for the state primary election held on July 14, 2020 and for municipal town meetings and elections held on other dates in calendar year 2020.

In summary, the Order:

- Confirms municipal authority to conduct open town meetings consistent with the current limit on gatherings during calendar year 2020.
- Confirms municipal authority to conduct secret ballot elections and referendums on July 14th or other dates in calendar year 2020 as determined by municipal officers.
- Temporarily suspends 30-A MRS § 2528(1), thereby allowing non-secret ballot municipalities to call referendums.
- Shortens the time frame under 30-A MRS § 2528(5) for municipal officers to order the wording of a referendum question from 60-days to 30-days prior to the referendum.
- Provides that voter approval of a school budget may be by referendum vote.
- Allows more flexible procedures for public hearings required in advance of a referendum, town meeting or school budget meeting.
- Confirms use of a secure drop box for return of absentee ballots.
- Suspends the need for a written ballot to increase or exceed the “LD 1” property tax levy limit in favor of a show of hands or voice vote.
- Authorizes the Secretary of State to issue appropriate guidance.

On August 26, 2020, Governor Mills issued Executive Order No. 8 (FY 20/21), providing guidance for the November 2020 General Election. This Order does not clearly apply to municipal
elections, except for the provisions pertaining to school budget elections. However, it is likely that certain provisions in this Order will apply to municipal elections held concurrently with the November General Election.

A checklist issued by the State Department of Economic & Community Development (DECD) on June 15, 2020, and updated on October 6, 2020, provides detailed guidance for conducting town meetings, including options for conducting indoor and outdoor town meetings.

Guidance for Municipalities:

What are the current gathering limits for town meetings?

- **Outdoor open town meetings**: up to 100 persons or 5 people per 1,000 sq. ft. of occupiable outdoor space (whichever is less), provided the 6 foot physical distancing requirement can be maintained;
- **Indoor open town meetings where attendees are seated**: up to 100 persons or 50% of the meeting room’s standard occupancy (whichever is less), provided the 6 foot physical distancing requirement can be maintained;
- **Indoor open town meetings where attendees are not seated**: 50 persons provided the 6 foot social distancing requirement can be maintained;
- **Secret ballot referendums**: 50 persons per each separate room or physically divided space of the voting building (i.e., a waiting line physically separated from the polling place or a separate area where absentee ballots are being processed), provided the 6 foot social distancing requirement can be maintained.

May a traditional open meeting exceed the applicable gathering limit?

Generally no. However, guidance issued by the DECD provides two alternatives that would allow an open town meeting with a total attendance exceeding the applicable gathering limit:

1. A “drive in” town meeting may be conducted in compliance with DECD guidelines. Under the guidance, persons inside enclosed vehicles are not counted toward the gathering limit, provided that individuals leave their vehicles only as necessary to speak or use the restroom facilities and return promptly to their vehicles without gathering.

2. A “multi-room” town meeting may be conducted provided that the number of people in each separate room does not exceed the applicable gathering limit. The meeting must occur in one facility, strict separation between rooms must be maintained, and the municipality must ensure technology will permit all present to meaningfully hear and participate in the discussion and voting.
In order to exercise either of the two alternative town meeting options above, the municipality must comply with health and operational guidelines issued by the CDC and DECD, available on the DECD website.

**May municipalities allow remote voter participation at an open town meeting?**

No. Maine law does not authorize voters to participate or vote via remote means at a traditional open town meeting. Although the emergency legislation, enacted March 17, 2020, temporarily allows remote participation at board meetings, it specifically states that it does not apply to town meetings. (PL 2019, c. 617, Part G).

**May a municipality hold a traditional open town meeting to vote on its municipal budget?**

Yes. Executive Order No. 56 specifically allows traditional open town meetings indoors or outdoors within the gathering limits established by the Governor. In addition, a municipality must adhere to additional, detailed guidance issued by the state for conducting open town meetings during the pandemic. The guidance is available in a DECD checklist entitled “Town Meetings” on the Maine DECD website.

**May municipalities hold secret ballot elections and referendums?**

Yes. Municipalities that regularly hold secret ballot elections and referendums, or have postponed a secret ballot election or referendum scheduled for earlier in 2020, may proceed to hold an election or referendum on any date during calendar year 2020 that the municipal officers deem appropriate. A local referendum/election must be conducted in compliance with detailed guidance governing polling places issued by the Secretary of State (SOS). Detailed guidance for the state election is available on the SOS website. Most of the SOS guidance is specific only to the state election on November 3rd. However, the general guidance concerning polling place procedures would be applicable to municipal secret ballot referendums held on dates other than November 3rd.

**What is a referendum?**

A referendum is a type of town meeting at which questions are presented to voters at the polls on pre-printed ballots. Voters arrive and vote individually at the polling place during a set of polling hours. Absentee balloting is also available in advance of a referendum. In contrast, at an open town meeting voters must gather in person at one location and time to collectively vote on questions, usually by voice or show of hands.

**If our municipality traditionally approves the budget at an open meeting, may we instead present the budget as a referendum?**

Yes. Any municipality that has accepted secret ballot voting (30-A MRS § 2528) has already provided its municipal officers the authority to choose to vote any question as a referendum at
the polls. Generally, if the municipality elects its municipal officers at the polls using a nomination paper process, that municipality has previously accepted secret ballot voting. This fact could be verified by checking previous town meeting records to locate the legislative body vote (town meeting or council) accepting secret ballot voting. See 30-A MRS § 2528(1).

Municipalities governed by charters should seek legal review of the municipal charter to determine whether the referendum process is available.

Executive Order No. 56 authorizes municipalities that have NOT accepted secret ballot voting to also use the referendum process. (Generally, a municipality that elects its municipal officers from the floor of an open town meeting has not accepted secret ballot voting.) The Order temporarily waives 30-A MRS § 2528’s requirement that the municipal legislative body vote to accept secret ballot voting and the Order waives the waiting period for that vote to take effect. Order No. 56 allows these municipalities to use the referendum process now to vote on the budget and other questions during the pandemic. However, Order No. 56 does not allow these municipalities to use the secret ballot election process to elect municipal officials during the pandemic. Because these municipalities have no pre-existing nomination paper process in place, elected officials in these municipalities will remain in office until such time as an open town meeting can be held to elect new officials.

If our municipality elects its officials from the floor of an open town meeting may we elect officials by secret ballot at the polls instead?

No. A municipality that elects from the floor of an open meeting does not have any nomination paper process in place, and Order No. 56 does not create any process to allow for these communities to elect at the polls. Instead, Order No. 56 confirms that elected officials in those municipalities will hold over in office until there is an opportunity to call an open town meeting to elect officials. This is consistent with the common law rule that elected officials “hold over” in office until their successors are elected and sworn. For more information, see an April 2020 Maine Town & City Legal Note, “Elected Officials Hold Over If Annual Election Delayed.”

What time frames apply to calling a referendum?

The referendum process includes several procedural steps, which are discussed in chapter 4 of MMA’s Town Meetings & Elections Manual, available at no charge to MMA members on MMA’s website (www.memun.org). Sample forms are also available in the manual appendix.

- In a nutshell, if the municipal officers choose to present a particular question at a referendum, they normally must “order” (or approve) the final wording of the referendum question at a public board meeting at least 60 days before the date of the referendum. 
  **Note:** Executive Order 56 temporarily shortens the 60-day time frame to order referendum question wording to 30-days prior to the referendum. (See Order par. H). However, in order to allow sufficient time to print ballots and provide for absentee voting,
we recommend the municipal officers approve wording a few days before the 30-day deadline.

- After the municipal officers have ordered the final wording of referendum questions, their order is filed with the municipal clerk, who must then print ballots and administer absentee balloting beginning with the 30th day before the referendum.
- The municipal officers must hold a public hearing on the referendum question(s) at least 10 days before the referendum, with at least 7 days’ posted notice of the hearing. Specific content and posting requirements apply to the hearing notice.
- At least 7 days before the date of the referendum, the municipal officers must post a town meeting warrant calling the referendum.

**Does Executive Order 56 address the public hearing required in advance of a referendum?**

Yes. Paragraph J of the Order allows the hearing required in advance of a referendum to be conducted using the same procedures for “remote” participation that are applicable to board meetings under emergency legislation enacted in March. See 1 MRS § 403-A (PL 2019, ch. 617). Alternatively, an in-person hearing may be held if attendance will not exceed applicable gathering limits.

**Were changes made to the school budget approval process?**

Changes have been made to the school budget approval process, including that a school budget may be approved by referendum (Executive Orders No. 56 (FY 19/20) and No. 8 (FY 20/21)), and that a hearing in advance of a school budget meeting may proceed in-person, or using remote means of participation per 1 MRS § 403-A, and/or through distribution of information together with opportunity for written comment. For details on the school budget approval process, consult the local school attorney or the Maine School Management Agency.

**Did Order 56 change the “LD 1” process?**

Yes and no. The requirement to annually calculate the municipality’s property tax levy limit under 30-A MRS § 5721-A remains in force. Similarly, the municipal legislative body must still vote to “increase” or “exceed” the levy limit for any spending in excess of the levy limit. However, the requirement that the vote to exceed or increase the levy limit be conducted by written ballot at an open town meeting has been suspended, and a show of hands or voice vote is temporarily sufficient to approve those actions at an open town meeting.

**Did Order 56 change the process for electing a Moderator?**

No. The requirement that the moderator be elected by written ballot remains in effect for both an open town meeting and a secret ballot election/referendum. Because every secret ballot election/referendum is also a town meeting, a moderator must be elected by written ballot even where the only business on the warrant is a secret ballot election—that is, even where no
open town meeting is scheduled on the warrant. For that reason, written ballots must be prepared by the clerk, and election of a moderator must be the first article for consideration on the warrant, for any town meeting or secret ballot election.

**Will the state General Election be limited to absentee ballot only or vote-by-mail only?**

No. Governor Mills has not authorized an absentee-only or vote-by-mail only state election to be held on November 3, 2020. No executive order suspends the laws in Title 21-A requiring municipalities to open the polls for in-person voting during specific hours. See 21-A MRS § 626.

**May municipalities limit voting to absentee ballot only or vote-by-mail on state election day?**

No. Municipalities have no authority to close the polls to in-person voting during a state election. The laws cited in the previous question require polls to be open for certain hours.

**May municipalities limit voting to absentee ballot only or vote-by-mail at local elections?**

No, the polls must be open. State law, at 30-A MRS § 2528, requires local polls to be open for a minimum of four consecutive hours for a purely local election/referendum. The Governor’s executive orders have not suspended that requirement. Municipalities governed by a charter should consult legal counsel.

**Where can we find more information?**

Members are encouraged to contact MMA Legal Services to discuss specific questions and concerns at 800-452-8786 or legal@memun.org