

**TOWN OF BUCKLAND
MASSACHUSETTS**



March 18, 2020

His Excellency Charlie Baker
Governor of the Commonwealth
State House, Rm. 360
Boston, MA 02133

Dear Governor Baker:

Please accept this letter as a request, pursuant to Article II, Section 8, Paragraph 1, Clause (2) of the Amendments to the Massachusetts Constitution, as amended by Article LXXXIX, that you file legislation with the General Court on behalf of the Town of Buckland. The purpose of the legislation is to authorize the postponement of the Town's annual election to a date later in the fiscal year, or, if necessary to protect the public health and safety, to a date in the first two months of the next fiscal year. Enclosed herewith please find a copy of the Select Board's vote to request the filing of special legislation as well as a proposed special act.

As you are well aware, the Commonwealth is in a State of Emergency. Cities and towns throughout the state have closed schools and public buildings, cancelled meetings and gatherings, and taken proactive steps to limit the opportunity for the transmission of the novel coronavirus COVID-19. We are experiencing an unprecedented interruption in our day-to-day lives, individuals all across the state have been told to work from home, public and private entities, including professional sports leagues, universities, school districts, cultural institutions and events, and more, have been cancelled, closed, or temporarily suspended, and the World Health Organization has identified the current crisis as a pandemic. For all the same reasons, and including that elections require participation by Town officials and staff, persons who work the polls for election day, many of whom fall into the category deemed most vulnerable to COVID-19, Department of Public Works assistance to set up and break down polling places, a Police Officer at each polling place, use of schools and other public buildings, as well as a substantial numbers of voters, there exists significant concern as to the safety of all those involved.

While there are various mechanisms for delaying the date of a town meeting, no similar authority exists with respect to elections scheduled pursuant to a charter or bylaw, or that have otherwise been called. In most cases, the need for such rescheduling or postponing an election is created by an actual or anticipated snowstorm or other natural disaster. There is a general consensus, however, that it is important to provide regularity with respect to elections, and typically, the only option available to reschedule or postpone an election is pursuant to a court order addressing various issues. In this case, we are also facing an emergency, one that is not predictable or typical, and we are concerned that proceeding with our Annual Town Election at this time will force our staff, employees, and public safety personnel, as well as voters, to choose between doing their jobs or voting, respectively, and making the appropriate decision most protective of their health and well-being.

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The calling and holding of elections is subject to an interlocking web of statutes, some found in G.L. c.39, some in G.L. c.51, and others in G.L. c.53 and c.54. Suffice it to say, however, that delaying the date of an election requires attention to many aspects of the conduct of election. For example, what date will appear on the ballots? What voting list will be used? When will voter registration close? How will absentee ballots be treated? Will voters that were ineligible to participate in an earlier election now be able to participate? While we are in unpredictable times, we have attempted to anticipate the various issues that require special permission from the General Court.

In our view, voters will not be harmed by this requested postponement authority. Instead, the special legislation will allow the Select Board, in consultation with the Town Clerk, Board of Health and public safety officials to ensure that persons who want to participate in the election can do so. The protections against fraud found in the election laws remain in place. The proposed legislation provides a reasonable timeframe for notice to be provided to the public of the date of the postponed election and encourages voter participation by making a like change to the voter registration deadline.

In summary, swift approval of this act will ensure that the Town is able to respond appropriately to the current COVID-19 crisis, avoid the diversion of important municipal resources at this unsettled time, and protect the rights of the voters of the Town of Buckland to participate fully in the selection of their elected representatives at the Annual Town Election. Please note that the Board of Selectmen/Select Board is also supportive of the adoption of generally applicable legislation allowing towns to delay their annual town elections this year, or of any other relief that could be provided by executive order. To that end, we have also included a draft bill that could be used for more general authorization or for the basis of an executive order for such purposes.

For all these reasons, the Select Board of the Town of Buckland, as well as the undersigned, respectfully request that you submit the enclosed special legislation on behalf of the Town.

Thank you for your willingness to consider the Town's important request and for your consideration in this important matter. If you need further information, please contact Town Administrator, Heather Butler, at townadmin@town.buckland.ma.us or (413) 625-6330 ext 5.

Respectfully,

Zachary Turner
Select Board, Chairman

Janice Purington
Town Clerk

Adam Hinds
Hon. State Senator

Natalie Blais
Hon. State Representative

TOWN OF BUCKLAND
MASSACHUSETTS



An Act Relative to the Postponement of the 2020 Annual Election in the Town of Buckland

Section 1. Notwithstanding the provisions of section 9 of chapter 39, sections 26 and 28 of chapter 51, and chapters 53 and 54 of the general laws, or of any other general or special law, charter, or by-law provision to the contrary, in order to protect the rights of eligible voters and avoid disruption of local governmental processes and waste of municipal resources, the board of selectmen/select board of the Town of Buckland shall hereby be authorized to postpone its annual town election, scheduled for May 4, 2020, to a date certain during the last quarter of fiscal year 2020, and, further, to conduct such election in accord with the provisions of this act. To the extent this act is silent, such postponed election shall be held in accord with all applicable election laws.

Section 2. The Select Board of the Town of Buckland shall, following consultation with the town clerk and town administrator as to logistics and feasibility, vote to reschedule the annual town election, and post on the official town website a copy of this act, the vote of the board, and a sample ballot, no later than 20 days prior to the date of the postponed election. Notice of such action shall be provided to the public in other ways reasonably calculated to enable eligible voters to learn of the postponed election date and to cast ballots therein, which notice may include but is not limited to a so-called "reverse-911" call, municipal list-serve notifications, advertisement on local cable television, and issuance of a press release sent to local news media.

Section 3. The last day to register to vote for such postponed election shall be ten days prior to the date of the election; and the board of registrars shall hold a registration session on that date, at a minimum, from two to four o'clock in the afternoon and seven to eight o'clock in the evening. The voting list to be used at such postponed election shall include all eligible voters registered as of that date.

Section 4. As the Town of Buckland's ballots have not yet been printed for the election originally scheduled for May 4, 2020 all ballots, including absentee ballots, shall be printed using the postponed election date. Acceptance of absentee ballots will be in accordance of existing election protocol.

Section 6. If after consultation with the board of health, police and fire chiefs, and the town administrator/town manager, the board of selectmen/select board determines that such election cannot, consistent with public health and safety, be held during fiscal year 2020, said board shall make a separate and specific finding with respect thereto. Said board may schedule such postponed election to be held during the first two months of fiscal year 2021, provided that the calling and holding of such postponed election shall comply with all other provisions of this act.

Section 7. Consistent with the provisions of section 107 of chapter 41 of the general laws, any incumbent elected official whose term would otherwise expire at the May 4, 2020 annual town election shall continue to serve in such position until a successor is elected and qualified.

Section 8. Notwithstanding the provisions of section 25B of chapter 54 of the general laws, or of any other general or special law to the contrary, any eligible voter may vote early by mail. Any eligible voter seeking to early vote by mail may file with the town clerk an application for an early voting ballot. Such application may be made on an official form or through any form of written communication requesting an early voting ballot by mail. No application shall be deemed to be seasonably filed unless it is received in the office of the town clerk or registrars of voters before noon on the last business day prior to the date of the postponed election. All early voting ballots voted by mail shall be received by the town clerk before the hour fixed for closing the polls at such postponed election. Delivery, return, and processing of early voting ballots shall comply with the provisions of 950 CMR 47.10, to the extent applicable; provided, however, that all early voting ballots shall be marked as such.

Section 9. In the event this act does not take effect until after the May 6, 2020 Town Meeting, the actions of the board of selectmen and town clerk to postpone the annual town election shall be ratified, validated and confirmed as if this act had been in place prior thereto.

Section 10. This act shall take effect upon its passage.

Postponing Annual Town Elections

March 13, 2020

Postponing Town Elections – Lack of Statutory Authority

As the fallout from the coronavirus continues, many municipalities have temporarily closed schools and other public buildings. As we indicated in our previous memorandum on this topic, found here, there are statutory and parliamentary mechanisms to delay or continue town meetings, regardless of whether the date for such meeting is set forth in a charter, special act or bylaw, and regardless of whether the warrant has been posted for such a meeting. Notably, however, no similar statutory mechanism is available to reschedule or postpone annual town elections. A significant number of communities have elections scheduled over the next month or so, and the warrants for some of these elections have already been posted, nominations made, and absentee ballots mailed.

For those of you with elections scheduled in the next several weeks, who are concerned about holding such elections, consideration may be given to seeking relief immediately in the form of a so-called Governor's Bill and/or to take a vote of support for generally applicable legislation or the issuance of an executive order that would allow such elections to be postponed to a later date. Note that the attached models were developed in connection with a request made by the Town of Lincoln to delay its March 30, 2020 election; to the extent that each situation differs, based upon such factors as the date of the election, applicable charter, special act, or bylaw provisions, and the like, any similar request for relief will need to be analyzed on a case by case basis and appropriate changes made to such models to be reflective of the Town's process for requesting such action and any Town facts, such as demographics, that influenced the decision to postpone.

In the event your annual election is ultimately postpone with or without approval, G.L. c.41, §107 provides that all elected officials hold office until their successor is elected and sworn.

The Process for Requesting the Filing of a Governor's Bill

In accord with Section 8 of the Home Rule Amendment to the Massachusetts Constitution, the General Court reserved to itself the ability to pass laws relative to more than one municipality. A municipality may also request the passage of special legislation by vote of its legislative body, with the approval of the mayor if applicable. Additionally, the Home Rule Amendment allows a board of selectmen, by majority vote, to request that the Governor file legislation on behalf of that town. A so-called "Governor's bill" does not require a Town Meeting

vote. While a bill submitted by the Governor must be approved by two-thirds of both houses of the General Court, since such bills are generally of an emergency nature, they are typically acted upon swiftly.

To take advantage of this option, the Board must meet and vote to request special legislation. Note that the recent Order issued by the Governor suspending the application of the Open Meeting Law (“OML”) in certain respects, available [here](#), may make this easier, particularly with respect to convening a remote, rather than physical, meeting. Typically, however, except to the extent altered by the Order, all other aspects of the OML should be complied with, including posting a meeting no less than 48 hours prior to the time of the meeting, excluding Saturdays, Sundays and legal holidays, and listing on the meeting notice, with specificity, those matters which the Chair reasonably anticipates will be discussed. As discussed in our previous memorandum, there are exceptions to the OML for matters that constitute an “emergency”. Whether an emergency meeting would be appropriate under any particular set of circumstances must be analyzed on a case-by-case basis, balancing the possible risks and benefits.

Sample Meeting Notice Items, Special Acts, Votes, and Letter to Governor

In our experience, a request to the Governor to file legislation should include, in addition to the text of the proposed legislation, a letter from the Town’s legislative delegation supporting the proposed legislation and explaining the urgency, which necessitates the Governor’s involvement. A sample of such a letter can be found [here](#). If the Board chooses to pursue this option, we recommend that you contact your legislative delegation as soon as possible to provide notice that it is anticipated that the Board will be taking such action, and to seek whatever assistance might be available.

Please find [here](#) a sample special act seeking authority for the Board to postpone the annual town election.

The Open Meeting Law notice item for such purposes can take a form similar to the following:

Annual Town Election Postponement - Novel Coronavirus Covid-19 –

- 1) Discussion and potential vote of the Board of Selectmen/Select Board to request that the Governor file special legislation on behalf of the Town (i.e., a so-called Governor’s Bill) requesting expedited approval to postpone the Annual Town Election;
- 2) Discussion and potential vote of the Board of Selectmen/Select Board, in consultation with the Town Clerk, to postpone the Annual Town Election in the interests of public health and safety; and
- 3) Discussion and potential vote to support general legislation or executive order authorizing postponement of annual town elections this fiscal year in a form similar to that proposed by the Town.

The Board's vote to request that the Governor file the special legislation may be similar to the following:

Moved: That, whereas the rapidly-evolving public health issues associated with coronavirus Covid-19, including the swift spread of the disease, present lack of containment, and the risk to the most vulnerable populations inherent in public gatherings; whereas various public and private entities, including professional sports leagues, universities, school districts, cultural institutions and events, and more, have been cancelled, closed, or temporarily suspended; whereas the World Health Organization has identified the current crisis as a pandemic; and whereas the Governor has declared a State of Emergency in the Commonwealth, the Town is taking action consistent with recommendations from federal and state agencies and officials to limit the spread of this disease amongst the residents and voters of the Town, its officials and employees, and visitors, including, closing or limiting the use of schools and public buildings, suspending in-person meetings and other gatherings in Town office buildings, and encouraging residents to communicate with Town staff by e-mail and telephone to the extent possible. For all of these reasons, the Board of Selectmen votes to immediately request the Governor to file emergency legislation on behalf of the Town, a so-called "Governor's bill", seeking authorization to delay and reschedule the Annual Town Election to a date to be determined by the Selectmen in consultation with the Town Clerk, Board of Health, and other public safety personnel, and authorizing early voting by mail in connection with such postponed election, provided, further, that all nominations, ballot preparation, absentee voting and the like be ratified, validated and confirmed as though it was undertaken consistent with the date of the postponed election; and, further, if such legislation is not passed prior to the date of scheduled Annual Town Election, to ratify, validate and confirm the Board's vote to postpone the 2020 Annual Town Election; finally, the Board calls upon its legislative delegation to support the filing of this special legislation, and also wishes to provide direction to such delegation that it supports the filing of generally applicable legislation allowing for the postponement of municipal elections this fiscal year.

Finally, we have prepared a draft of possible generally applicable legislation for your Board to also consider supporting [here](#).

As noted, if there is interest in pursuing this route because the Town's election is scheduled to be held within the next several weeks, consideration should be given to taking swift action to start this process.

We will continue to keep you updated on additional developments in the face of this rapidly-evolving pandemic. A reminder that we have established a **Coronavirus "hotline"**, at coronavirusinfo@k-plaw.com. A dedicated team of our attorneys is available through this "hotline" e-mail address to answer the most frequently-asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries. In some instances, you may be referred to your primary, land use, or labor contact, and you should of course feel free to contact these attorney(s) directly with COVID-19 related questions.

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