

GUIDANCE DOCUMENT #2 - March 31, 2020

Suspension of In Person Open “Meeting” and “Adoption” Requirements”.

1. **Executive Order 7B (Section 1) – Suspension of In-Person Meeting Requirements:** In our first guidance document we reviewed the details of Section 1 Governor Lamont’s Executive Order 7B (“EO 7B.1”) which addressed the protocols to be utilized by municipal public agencies during the period in which “In-Person Open Meeting Requirements” are suspended. These provisions allow for electronic or remote meetings (via conference call, videoconference or other technology) in lieu of in-person meetings as long as the requirements of the EO are followed. In other words, EO 7B does not thwart “open meeting” requirements but, rather establishes a temporary “open meeting” protocol to assure transparency and efforts to provide the public with information and opportunity participate remotely. The objective of EO 7B is to proceed in a manner as consistently as possible with the provisions of the local charter and applicable special acts, ordinances, resolution and procedures.

2. **Executive Order 7I (Section 13 - Suspension of “In-Person” Budget Adoption Requirements for Municipalities**¹: Section 13 of Executive Order 7I (“EO 7I.13”) builds upon EO 7B.1 by suspending the “in-person” requirements for purposes of adopting the FY 2020-2021 municipal budget and mill rate. Thus, “in-person” voting requirements such as annual town meetings, referenda and special town meetings will be replaced in the current budget cycle by the “budget-making authority.” The “budget-making authority” shall be so authorized by the legislative body; unless the legislative body is a town meeting. In that case, the board of selectmen “shall authorize the budget-making authority” to adopt the budget and set the mill rate.

a. **What body or agency is the “budget-making authority”?** In concert with issuance of his Executive Orders, Governor Lamont has issued, subject to frequent updates, FAQs pertaining to the actions of the State related to COVID-19. On page 31 of the FAQ, we are advised to “... refer to (1) your local charter; (2) Title 7; or (3) local ordinances in communities without charters².” We recommend that you discuss this matter with your town attorney.

b. **Open Meeting and Process Compliance.** EO 7I.13 reiterates the “open meeting” and process compliance requirements of EO 7B. In other words, the “budget-making authority” is required to “...take all reasonable steps to publicize the draft municipal budget and to receive public comment.” EO 7I.13 requires:

- Publication of draft budgets on the website
- Providing an email address or other means where the public can submit timely comments on the proposed budget.

¹ Note: The State is reviewing the role of RTMs in the budget and legislative process as well.

² The FAQs link: <https://portal.ct.gov/-/media/Coronavirus/COVID-19-FAQs.pdf?la=en>

The FAQs³ suggests compliance with all of the requirements of EO 7B.1, emphasizing the following:

- Remote public budget meetings and hearings (by conference call, videoconference or other technology)
- Meetings and hearings shall proceed consistent with town charters or other applicable municipal ordinances, resolutions and procedures

c. The Interplay of EOs 7C.1 and 7I.13. The “in-person” voting requirements clearly fall within the scope of any decision to extend budget deadline. The intent of EO 7C.1 “...was to give towns flexibility and allow them to meet, extend, or adjust all the preliminary deadlines that lead to a budget adoption vote or meeting⁴”. The FAQs make it clear that municipalities “...have some flexibility in deciding whether to act or whether to wait at least some time on their budget adoption process until the situation improves”; however, with the logistical challenges faced by legislative bodies in the remote meeting environment, a municipality might consider making the budget process clear to its residents from the outset. If things change with enough time for an “in person” component, the legislative body could always fall back at a later point.

d. Freedom of Information Standards and EO 7.B open Meeting” Requirements Apply to the Budget-Making Authority. The FAQs are equally clear that while the “in-person vote of residents or taxpayers is replaced by the provisions of Executive Order 7I” it is equally clear that the relevant municipal legislative body is not “relieved...from the obligations to vote, record its vote, and follow Freedom of Information laws as amended by Executive Order 7B. Towns should still use those provisions to hold any budget presentation meetings or other proceedings required by law⁵.”

e. Line Item Authority of Boards of Education in a Single Municipality⁶. According to the FAQs, EOs 7C.1 and 7I.13 “...do not alter or modify the control of line-items that fall squarely within the authority of Boards of Education within a single municipality.” On the other hand, Boards of Education are required to “... comply with all requirements pertaining to budget deadlines adopted by the municipality in compliance with the open meeting provisions in Section 1 of Executive Order 7B.”

³ FAQs, p. 31.

⁴ FAQs, p. 31 (second bullet)

⁵ FAQs, pp. 31-32 (second bullet).

⁶ FAQs, p. 32 (third bullet).

f. **Future Executive Orders May Be Forthcoming Pertaining to Actions by Town Meetings**⁷. EO 71.13 applies only to the budget process. There are certainly other essential actions required of town meeting. The FAQs point out that "...the Governor is examining whether there is a need for further action regarding other elections that are held at town meetings and considering other feedback from municipalities on items or proceedings that may not be covered by EO 7B, 7C, and 7I". Among these issues are the following:

- Bonding, special appropriation and budget transfers
- Election of members of regional boards of education
- Retention or transfer of unexpended funds at the end of a fiscal year

3. **Executive Order 71 (Section 14): Suspension of "In-Person Budget Adoption Requirements for Regional Boards of Education" – Consultation and Input.**

Section 14 of Executive Order 71 ("EO 71.14") is a parallel standard to EO 71.13 by suspending the "in-person" requirements for regional school districts during the budget adoption process. In concert with EO 71.14, the Governor has issued, subject to frequent updates, FAQs pertaining to the actions of the State related to COVID-19. On page 32 of the FAQ, the state makes it clear that "Regional boards of education shall consult with the budget making authority in each of its member towns and ensure it has received and given due consideration to their input⁸."

Extension of Municipal Budget Adoption Deadlines

1. **Executive Order 7C (Section 5) – The Original Order:** In the first Guidance Document we also discussed Section 5 of Executive Order 7C ("EO 7C.5") that extended the budget deadlines during this period of emergency.

2. **Executive Order 71 (Section 12): Additional Municipal Bodies.** Section 12 of Executive Order 71 ("EO 71.12") sets forth a definition of entities that are included within the rubric of the term "municipal" or "municipality" for purposes of EO 7C.5, "municipalities and quasi-municipal corporations, whether created by statute , ordinance, charter, legislative or special act", including but not limited to any of the following:

- Any town, city or borough, whether consolidated or unconsolidated
- Beach or improvement associations
- any other political subdivision of the state or of any municipality having the power to make appropriations or to levy assessments or taxes
- Any village, school, sewer, fire, lighting, special services or special taxing districts
- Regional water or resource recovery authority

⁷ FAQs, p. 32 (fourth bullet).

⁸ FAQs, p. 32 (fourth bullet).

3. Executive Order 7C (Section 6): Extension of Regional Board of Education Budget Adoption Deadlines. This EO establishes a parallel practice derived from EO 7C.5 by affording an extension of time for budget preparation or submission deadlines for regional school district. Unlike town budgets, which are governed by local procedural rules the regional school districts are governed by statutes which require public meetings in late April and early May. Any district seeking to extend their deadlines by up to thirty (30) days should do so, keeping in mind the “open meeting requirements set for in EO 7B.1

Executive Order 7H (section 2): Coordinated Response Effort.

Section 2 of Executive Order 7H (“EO 7H.2”) does two things. First, the EO makes it clear the predominance of the actions by the State for the duration of the public health and civil preparedness emergency. In other words, municipal chief officers or their designees may not enact or enforce any orders issued by an executive agency pursuant to the existing public health and civil preparedness emergency. Moreover, municipal officials may not issue any shelter-in-place order or order prohibiting travel. The prohibition does allow for local action only in the case where they have first sought and received “...written permission from the Department of Emergency Services and Public Protection.”

Second, the EO is founded upon the idea of a coordinated, clear and expeditious execution of civil preparedness functions for the protection of the public health, and “...to ensure the coordinated, clear and expeditious execution of civil preparedness functions for the protection of the public health⁹”

The order is not intended to act in derogation of the home rule authority that mayors, first selectmen/women and town managers and their legislative bodies and budget authorities have exercise under their charters or Title 7 of the General Statutes¹⁰. This point is underscored by the line of the EO where it is explicitly stated that the order does not (a) “...invalidate any order previously issued by a municipal chief executive or designee” or (b) “preclude a municipality from enforcing any existing local rule or ordinance” that does not conflict with any executive order issued pursuant to the Governor’s March 10, 2020 declaration of public health and civil preparedness emergency.

Thus, EC 7H.2 does not seek to usurp local enforcement, police powers or zoning, building and health authority; unless there is a specific and clear statement to the contrary or a direct assertion of authority in the executive orders. The goal is to allow local officials the flexibility to do their jobs in this uncertain environment and to focus on operating their governments in these perilous times....to function, to serve their constituents and to conduct the business of local government.

⁹ C.G.S. 28-9(b).

¹⁰It could also be said that it circumscribes or otherwise clarifies the authority granted to municipal chief executives under C.G.S. 28-8a.