



SOULE, LESLIE, KIDDER, SAYWARD & LOUGHMAN^{P.L.L.C.}

Peter H. Bronstein
David W. Sayward
Barbara F. Loughman
Michael S. Elwell
Gordon B. Graham
Diane M. Gorrow
Peter C. Phillips

Anthony Muir

220 MAIN STREET
SALEM, NEW HAMPSHIRE 03079

TELEPHONE: (603) 898-9776
FAX: (603) 898-3418
FAX: (603) 893-7678

www.soulefirm.com

Lewis Soule (1924-1986)
Robert P. Leslie (1932-2017)
Bradley F. Kidder (1939-2000)

22 South Main Street
P.O. Box 908
Wolfeboro, N.H. 03894
TEL: (603) 569-8044
FAX: (603) 569-2137

MEMORANDUM

To: CLIENTS

From: Soule, Leslie, Kidder, Sayward & Loughman, P.L.L.C.

Date: December 18, 2020

Subject: ANNUAL MEETING PROCEDURES AND OPTIONS DURING THE COVID-19 PANDEMIC

As Districts and Towns prepare for 2021 annual meetings, they must determine how to hold their annual meetings safely during the ongoing COVID-19 pandemic. There are several options available to you.

IN-PERSON ANNUAL MEETINGS

Districts and towns can still hold in-person annual meetings. However, in-person annual meetings should be conducted in a location with social distancing and face coverings required. In order to maintain social distancing, capacity in the location must be limited. Accommodations must also be made for those who cannot wear masks. That requires additional rooms at the meeting location equipped so voters can view the meeting and a method for them to participate, staffed with assistant moderators. This is similar to the procedure that has been used in the past in communities for overflow crowds at the annual meeting.

CHAPTER 8:3 VIRTUAL ANNUAL MEETING

Chapter 8:3 provides, “[t]owns, village districts and school districts that are unable to hold in person annual meetings in 2020 or 2021 due to Novel Coronavirus disease (Covid-19) may conduct virtual meetings in accordance with this section.” By its terms, the temporary optional procedure applies to all districts and towns, whether they are districts or towns that hold a traditional annual meeting, an SB2 meeting, or a home rule charter meeting. The statute functions as an overlay statute, meaning that the requirements of the charter and statutes that are not inconsistent with Chapter 8:3, such as the requirement that you post the warrant, accept petition warrant articles, hold the budget hearing, use absentee ballots in SB2 communities, etc., still apply.

Who Decides Whether to Use the Procedure? The governing body, which is the school board or board of selectmen, decide whether to use the temporary optional procedure. The governing body needs to determine that the district or town is “unable . . . due to Novel Coronavirus disease” to hold an in-person meeting.

What is the Procedure for the Meeting? The deliberative portion of the meeting is split into two sessions which is followed by official ballot drive up voting. The first session is a virtual live information session followed by a second live virtual meeting to consider and address comments received from the public after the informational session. The third session will be official ballot voting.

When do you hold the meeting? Since Chapter 8:3 is an overlay provision, the meeting should be held during the time periods required for holding the annual meeting. For SB2 communities, the two session deliberative and the final drive up voting should be as close as possible to the regular schedule for deliberative session and voting.

What Notice Is Required? At least seven days before the informational session, the district or town must mail notice to all registered voters describing the procedures to be followed for conducting the meeting. The notice must be mailed to all registered voters, meaning that if more than one registered voter lives at a particular address, a separate notice must be sent to each. This does not take the place of posting the warrant. You must do both.

First Deliberative Session. At the live virtual meeting, the governing body will describe the meeting procedures and discuss the warrant articles. After the live virtual meeting is adjourned, the governing body must solicit questions and comments from the public to be received via email, voicemail, text message or other electronic means. Voters must be informed about the method or methods for them to ask questions and provide comments.

Second Deliberative Session. Within seven days of the informational session, the governing body will hold another live virtual meeting to consider and address comments received from the public. At that second meeting the governing body will discuss and debate the final form of the warrant articles. The governing body is permitted to amend the proposed warrant. The voters are not permitted to amend articles or vote on any proposed amendments during the second session. After the second session, the final warrant as amended must be made available electronically for printing by the voters who can bring a copy to the voting session.

Voting and the Ballot. Voting on the final warrant articles is by secret ballot through drive-up procedures to ensure appropriate social distancing. The statute does not describe or require any particular drive-up procedures. The drive-up procedures must include a process to check in voters, to verify the occupants of the vehicle, and to collect the secret ballot.

Districts and towns that use the official ballot for election of officers must print an official ballot for the election of officers “and other items that are required to be placed on the official ballot.” All other warrant articles must be printed on a separate ballot called “the alternative ballot.”

SB2 communities are required to place all warrant articles on the official ballot. Therefore, SB2 communities that decide to use the temporary optional meeting procedures can place all their articles on the official ballot and do not need a separate alternative ballot. After the article for the election of officers and any other article required by law to be placed on an official ballot in a traditional ballot community, the SB2 official ballot should state that the rest of the official ballot is “the alternative portion” of the ballot which is subject to approval of the optional procedures warrant article.

The first article on the alternative ballot must ask voters whether they approve of the optional meeting procedures.

What Happens if Voters Approve the Optional Voting Procedure? If the voters approve the optional procedure warrant article by a simple majority, all other votes on warrant articles are deemed the final action of the meeting. If the operating budget is not adopted, the governing body may convene another meeting before September 1 to adopt an operating budget, or deem the meeting to have adopted the previous year’s operating budget article, not including separate warrant articles.

What Happens If Voters Disapprove the Optional Voting Procedure? If the voters do not approve the optional procedures, “all other warrant articles shall be deemed disapproved. However, the election of officers and action on other items on the initial ballot will be effective.”

What if you have a bond? If you have a bond and decide to use the temporary optional meeting procedure, you should contact bond counsel and local counsel early to review the procedures you will need to follow.

Coordination. All districts, especially cooperative districts, need to coordinate with the towns on how to implement drive up voting.

Absentee ballots. Since Chapter 8:3 is an overlay authorization, it does not change the ability of voters in an SB2 community to vote by absentee ballot. For traditional meeting communities, there is no absentee voting.

OUTDOOR MEETINGS

In the spring and summer, some districts and towns conducted their annual meetings outdoors with voters in their vehicles. That remains an option.