

Continuing Town Meeting in the Event of Inclement Weather

Prepared for the 2015 Massachusetts Municipal Association Annual Meeting

On January 7, 2015, Governor Patrick signed into law Chapter 487 of the Acts of 2014, “An Act Further Regulating Town Meeting Notices”. The Act inserts a new section, G.L. c.39, §10A, establishing a procedure to continue town meeting in the event of inclement weather. The new law will take effect on **April 7, 2015**.

Current Law

Under current law, once a town meeting is posted the meeting has an independent legal existence and cannot be continued without approval from a majority of those present and voting at the meeting. If no one attends the meeting, therefore, the business of that meeting dies. In order for a town to undertake the business of a failed meeting, a new meeting must be posted. This often presents challenges due to time constraints for calling a special town meeting imposed by state and, as applicable, local law. To avoid this outcome, towns seeking to protect the public safety when inclement weather is imminent have tried to “plan” in advance to continue a posted town meeting to a different time, date, and place certain. Following an administrative determination of a public safety risk and identification of a time, date, and place for the continued meeting, towns will arrange for the moderator, clerk, and one or two other voters to attend the meeting, and will attempt to provide notice to the public of its plan to continue a meeting.

The challenges of this process are multi-fold – public safety risks for town officials and employees attending the meeting, including undertaking work to provide passable roads and access to the building; difficulty providing effective notice to voters; possibility that other voters will risk traveling to the meeting; possibility that voters in attendance may not want to continue the meeting; and possible Open Meeting Law issues related to the rescheduling of the meeting. Although there are increasingly effective ways to disseminate a town’s plans to continue a town meeting, it remains difficult to transmit the message effectively and voters often chose to brave inclement weather only to find to their frustration that consensus has been reached to continue the meeting. Thus, the existing process can suffer from uncertainty.

Chapter 39, §10A

The new law is intended to provide for a standardized process for continuation of town meeting protective of the safety of town officials and the public and is designed to provide enhanced predictability. Although the law imposes several new administrative requirements, there are two basic components – (1) the moderator may, after consultation with appropriate town officials, issue a declaration of recess and continuance (and an amended declaration and notice if needed due to difficulty securing a meeting location on a specified date and time), and (2) the moderator must prepare and provide for the posting of notice of the continued meeting.

Importantly, any meeting continued under this law will need to be convened no later than 30 days following the date and time of the moderator's announcement of the declaration of recess and continuation. Further, no more than 10 days following the declaration of recess and continuance, a local public safety official designated by the board of selectmen must file a report with the attorney general of the reasons for the declaration. Of particular interest, the law explicitly provides that discussion of the recess and continuance of the meeting shall not constitute "deliberation" for purposes of the Open Meeting Law as long as discussions are limited to that issue, thus eliminating the need for notice and posting of a separate meeting of the board of selectmen.

Please be aware that despite the availability of the procedures set forth in G.L. c.39, §10A following its effective date in April of 2015, the moderator and board of selectmen may choose in the best interests of the town to utilize the existing process to continue a town meeting in the event of inclement weather or a public safety emergency. Moreover, the traditional rules relative to continuance of town meeting would apply in circumstances other than inclement weather or a public safety emergency.

Attached is a preliminary outline of the process. We will provide further information prior to the effective date of the law. In the meantime, should you have further questions about the process for continuing a posted town meeting, please contact Attorneys Lauren Goldberg or Mark Reich at lgoldberg@kplaw.com or mreich@kplaw.com, respectively, or at 617.556.0007.

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G.L. c.39, §10A Process for Continuing Town Meeting in the Case of Inclement Weather

****January 2015 Preliminary Outline ****

Declaration of Recess and Continuance

(A) The moderator is required to issue the declaration of recess and continuance as far in advance of the town meeting being continued as is practicable, in accordance with the following procedure:

- consult with public safety officials and members of the board of selectmen
- declare that voters will be unable to attend due to a weather-related or public safety emergency
- continue the meeting to a time, date and place certain (“Declaration”) no later than 30 days following the date of the moderator’s announcement of the Declaration.

(B) Amended Declaration and Notice

If due to the emergency it is not possible at the time the Declaration is made to identify a location for the continued town meeting, the board of selectmen may within three days select a meeting place. If no “suitable” town facility is available, the board of selectmen may move the meeting to a location in a contiguous municipality. This is an exception to the general rule found in G.L. c.39, §9 that town meeting must be held within the geographic boundaries of the town unless otherwise authorized by bylaw, special act or charter.

Upon the identification of the meeting place, the moderator must declare the location and issue an amended Notice subject to all of the posting requirements applicable to the original Notice.

Notice of Declaration

The moderator is required to prepare a Notice of the Declaration (“Notice”) in a legible, easy to understand format listing:

- time, date, and place of the continued meeting
- reason for the declaration
- date and time the moderator announced the recess and continuance
- if the notice does not include the place of the continued meeting as outlined in paragraph (B) above, within three days of announcement of the recess the moderator shall issue an amended notice including the location

As soon as practicable, notice shall be filed with the town clerk and:

- be posted:
 - in or on the building where the clerk’s office is located;
 - by a constable or other person so directed in the same manner as is required by the General Laws, charter or bylaws for the posting of town meetings;
 - on the building entrance door to the original meeting location; and
 - on the town website, if it has one;
- may be circulated by such other available electronic, broadcast or print media as may be desirable; and
- shall be provided to members of a representative town meeting as directed by an applicable bylaw.