

# GUIDANCE DOCUMENT #9 – November 19, 2020

## Extension of COVID-19 Executive Orders Pertaining to Municipal Meetings

On November 9<sup>th</sup> Governor Lamont released Executive Order 9L (“EO 9L”), paragraph 1 of which extends nearly all of the previously issued COVID-19 Executive Orders to February 9, 2021. EO 9L.1 applies to all executives order pertaining to the public health and civil preparedness emergencies declared on March 10, 2020 and renewed on September 1, 2020 which are “unexpired and currently in effect...unless earlier modified or terminated by (the Governor).” EO 9L.1 also goes on to state that “Any individual section of any such order that is scheduled to expire on any other specific date shall remain in effect until such specific date, and any specific effective date or date for action contained in any such individual section shall remain valid.”

### PART A. ACTIVE EXECUTIVE ORDERS

In this Guidance we will try to walk you through the orders pertaining to open meetings so that you will have an idea what rules apply and what rules do not. Thus Guidance organizes the Executive Orders in a manner that attempts to categorize each rule and to demonstrate the current range of options from remote to hybrid to in-person meeting formats.

#### 1. Meeting alternatives:

**a. Remote Participation Protocols for Municipal Meetings: Suspension of In-Person Open Meeting Requirements – EO 7B.1.** Notwithstanding any provision of the Connecticut General Statutes, Regulations of Connecticut State Agencies, or any ordinance, charter, bylaws or other rule Sections 1-206, 1-225, and 1- 226 of the Connecticut General Statutes, and any open meeting provision of any municipal (as defined<sup>1</sup>) charter, ordinance, or regulation that conflicts with this order, *are suspended to the extent necessary to permit any public agency to meet and take such actions authorized by the law without permitting or requiring in-person, public access to such meetings (including annual town meeting or special town meeting), and to hold such meetings or proceedings (including public hearings) remotely by conference call, video conference or other technology.*

**b. Hybrid Meetings: EO 9H.1a.** Any municipal (as defined in subsection 1c, below)<sup>2</sup> agency, board, commission, council or local legislative body, and, in a municipality where the legislative body is a town meeting, the board of selectmen, may hold a public meeting or hearing that provides for remote participation in its entirety, or for remote participation in conjunction with an in-person meeting, which shall be referred to herein as a “hybrid meeting.”

**c. In-person meetings – The Reduction of Risk Proviso: EO 7S.7 and EO 9H.1a.** Nothing in this order shall be construed to prohibit a municipality from conducting any in-person or hybrid meeting, approval process, or referendum, provided such municipality first consults with local or state public health officials and conducts such meeting, approval process, or referendum in a way that significantly reduces the risk of transmission of COVID-19 (See, Rights of Members of Public Bodies, par. 2g, below).

**2. Conduct of Remote and Hybrid Meetings.** In order to engage in remote and hybrid meetings the following rules apply, as originally set forth in EO 7B.1 and further amplified in EO 9H.1:

<sup>1</sup> See, comments on definitions in paragraph 4, below.

<sup>2</sup> See FN #1, above. The reference in EO 9H.1a refers to EO 7I.12.

**a. Virtual Access: EO 7B.1.1.** The public must have the ability to view or listen to each meeting or proceeding in real time, by telephone, video, or other technology;

**b. Posting of Meeting Recording of Transcript: EO 7B.1.2.** Any such meeting or proceeding is recorded or transcribed, and such recording or transcript shall be posted on the agency's website within seven (7) days of the meeting or proceeding, and made available within a reasonable time in the agency's office;

**c. Posting of Notice on Website: EO 7B.1.3.** The required notice and agenda for each meeting or proceeding is posted on the agency's website and shall include information about how the meeting will be conducted and how the public can access it;

**d. Submission Requirements: EO 7B.1.4.** Any materials relevant to matters on the agenda<sup>3</sup>, including but not limited to materials related to specific applications, if applicable, shall be submitted to the agency a minimum of twenty four (24) hours prior and posted to the agency's website for public inspection prior to, during, and after the meeting, and any exhibits to be submitted by members of the public shall, to the extent feasible, also be submitted to the agency a minimum of twenty-four (24) hours prior to the meeting and posted to the agency's website for public inspection prior to, during, and after the meeting; and

**e. Requirements Pertaining to Speakers at Public Meetings: EO 7B.1.5.** All speakers, including participants in any public comment required or permitted at such meetings, taking part in any such meeting or proceeding shall clearly state their name and title, if applicable, before speaking on each occasion that they speak.

**f. Public Comment and Voting Capability: EO 9H.1a.** Remote participation shall include the opportunity to offer public comment, if otherwise generally permitted at such meetings, and the ability of electors or qualified voters to vote, if eligible pursuant to state statute, municipal charter, or other applicable legal authority, at any meeting.

**g. Rights of Members of Public Bodies: EO 9H.1b.** No member of any municipal agency, board, commission, council or local legislative body shall be denied the opportunity to participate and vote in any meeting or proceeding using remote technology if such member requests to do so, and a member of any such body may request to participate remotely in all meetings for the duration of the public health and civil preparedness emergency, and shall not be required to file an individual request for each meeting<sup>4</sup>.

**h. Public and Press Presence at In-Person Component of Hybrid Meetings: EO 9H.1a.** Officials conducting hybrid meetings shall make provisions to allow at least some members of the public and press to attend in the same location as

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<sup>3</sup> Note: This would any preparatory materials provided to members of a public body; unless exempt from disclosure under FOIA.

<sup>4</sup> Note: While the EO may be confined to "remote" meetings there is an FOIC Advisory Opinion that permits remote participation by members of public bodies.

the officials conducting the meeting in a manner consistent with public health guidance for limiting the transmission of COVID-19. The published notice and agenda of such meetings should include notice of limited in-person capacity and directions to the location of an electronic sign-up sheet, to be used on a first come first serve basis. Notice when the number of in-person attendees allowed is exhausted should be posted on the website of the municipality as soon as practicable. If, in spite of such notice, members of the public arrive at the meeting location, the meeting commencement may be delayed, in the discretion of the Chair, to permit those members of the public the opportunity to access the meeting remotely or to locate another room where members of the public can participate remotely.

**i. Local Meeting Protocols to the Extent Practicable: EO 9H.1a.**

Remote and hybrid meetings shall proceed in a manner as closely consistent with the applicable statutes, special acts, town charters, municipal ordinances, resolutions or procedures as possible, and in compliance with the open meeting provisions set forth in the Freedom of Information Act, as modified by the executive orders.

**3. Other Municipal Actions Subject to Discretionary Suspension of In-Person Voting Requirements:**

(a) Discretionary Suspension of Critical and Time Sensitive Municipal Budgetary and Fiscal Deadlines: EO 7S.7; (b) Additional Critical and Time-Sensitive Municipal Fiscal Actions: EO 7CC.1; and (c) Suspension of In-Person Voting Requirements by Members of the Public for Critical and Time-Sensitive Municipal Decisions: EO 7JJ.4. The following charts were included in CCM/COST/CT COG Guidance Document #6. They remain applicable under EO 9L.1 Thus, notwithstanding any contrary provision of the Connecticut General Statutes, including but not limited to Title 7, Regulations of Connecticut State Agencies, or any special act, municipal charter or ordinance or bylaw or other rule that conflicts with this order, the following municipal actions may be taken in the manner specified below without complying with any requirements for in-person approval by electors or taxpayers, including but not limited to, annual or special town meetings requiring votes or referenda:

<p>(1) any supplemental, additional or special appropriations under Section 7-348 of the Connecticut General Statutes or comparable provisions of any special act, municipal charter or ordinance [EO 7S.7 (i)].</p> <p>(2) any tax anticipation notes to be issued under Section 7-405a of the Connecticut General Statutes or comparable provisions of any special act, municipal charter or ordinance [EO 7S.7 (ii)].</p> <p>(3) municipal general obligation bonds or notes to be issued in anticipation of such bonds to be issued pursuant to Chapter 109 of the Connecticut General Statutes for capital improvement purposes [EO 7S.7(iii)].</p>	
<p><b>Action by (a) Legislative Body or Board of Selectmen and (b) Budget Making Authority</b></p>	<p>May, by majority vote of each such body, authorize such actions in (1), (2) and (3), above, without complying with any requirements for in-person approval by electors or taxpayers, including but not limited to, annual or special town meetings requiring votes or referenda.</p>
<p><b>Legislative Finding Requirement</b></p>	<ul style="list-style-type: none"> <li>Items (2) and (3), above.</li> </ul>

	<ul style="list-style-type: none"> <li>Item (1), above, where an appropriation is in an amount in excess of 1% of the current year's total municipal budget without complying</li> </ul>
<b>Content of Legislative Finding</b>	<ul style="list-style-type: none"> <li>such actions are necessary to permit the orderly operation of the municipality and</li> <li>that there is a need to act immediately and during the duration of the public health and civil preparedness emergency in order to avoid endangering public health and welfare, prevent significant financial loss, or that action is otherwise necessary for the protection of persons and property within the municipality.</li> </ul>
<b>Reduction of Risk Proviso</b>	Applicable
<b>Condition Precedents Clause</b>	<ul style="list-style-type: none"> <li>Yes. Compliance with EO 7S.7 - the legislative body and, if different from the legislative body, the budget-making authority of the municipality, shall comply with open meeting requirements set forth in Executive Order No. 7B.</li> </ul>

<p>(1) the application for or acceptance of any grants, funding, or gifts [EO 7CC.1 (i)].</p> <p>(2) approval of collective bargaining agreements and legal settlements [EO 7CC.1 (ii)].</p> <p>(3) the transfer of funds to or from capital or reserve accounts [EO 7CC.1 (iii)].</p> <p>(4) the investment of funds pertaining to pensions, trusts, retirement programs or other post-employment benefit funds [EO 7CC.1(iv)]; or</p> <p>(5) any financial actions required by (a) a contract or agreement or (b) a court order or consent decree that require approval [EO 7CC.1 (v)].</p>	
<b>Action by (a) Legislative Body or Board of Selectmen and (b) Budget Making Authority</b>	Same as EO 7S.7. Permits a municipality's legislative body (including RTMs) or board of selectmen (where the legislative body is a town meeting) and budget-making authority (if different from the legislative body or board of selectman) to authorize the above referenced actions (1) - (5) by a majority vote of each such body, in lieu of requirements for in-person approval by electors or taxpayers, including but not limited to, annual or special town meetings requiring votes or referenda.
<b>Legislative Finding Requirement</b>	<ul style="list-style-type: none"> <li>Yes, for all actions.</li> </ul>
<b>Content of Legislative Finding</b>	<ul style="list-style-type: none"> <li>such actions are necessary to permit the orderly operation of the municipality and</li> <li>that there is a need to act immediately during the public health and civil preparedness emergency in order to avoid endangering public health and welfare, prevent significant</li> </ul>

	financial loss, or that action is otherwise necessary for the protection of persons and property within the municipality.
<b>Reduction of Risk Proviso</b>	Applicable
<b>Condition Precedent Clause</b>	Yes, as is true of EO 7S.7.

<p>(1) adopt or amend ordinances or resolutions only as necessary to complete transactions deemed essential [EO 7JJ.4(i)];</p> <p>(2) approve, enter into or amend existing contracts or agreements deemed essential [EO 7JJ.4(ii)]; or</p> <p>(3) option, acquire, transfer, lease, dispose of or sell any real or personal property, or interest therein, as shall be deemed essential, with the exception of non-judicial tax sales or other property transfers that would result in the eviction of a residential tenant [EO 7JJ.4(iii)].</p>	
<b>Action by Legislative Body or Board of Selectmen</b>	Same as EO 7S.7. Permits a municipality's legislative body (including RTMs) or board of selectmen (where the legislative body is a town meeting) to take the actions set forth in (1) - (3), above, without complying with any requirements for in-person approval by electors or taxpayers, including but not limited to, annual or special town meetings requiring votes or referenda. In so acting, the legislative body shall comply with open meeting requirements set forth in Executive Order No.7B.
<b>Legislative Finding Requirement</b>	Yes, for all actions.
<b>Content of Legislative Finding</b>	<ul style="list-style-type: none"> <li>such actions are necessary to permit the orderly operation of the municipality and</li> <li>that there is a need to act immediately and during the period of the declared public health and civil preparedness emergency, in order to avoid endangering public health and welfare <b>or</b><sup>5</sup> prevent significant financial loss, or that such action is otherwise necessary for the protection of persons and property within the municipality.</li> </ul>
<b>Reduction of Risk Proviso</b>	Applicable
<b>Condition Precedent Clause</b>	Yes. Moreover, The foregoing authority is not intended to apply to budgetary or similar essential non- budgetary financial actions which require the concurrent approval of the municipal budget-making authority and are subject to the provisions of Executive Order Nos. 7I, Section 13, 7S, Section 7, and 7CC, Section 1.

<sup>5</sup> The word "or" does not appear in EO 7S.7. We believe that the addition of the word should be viewed as a distinction without a difference.

## **PART B. ISSUES THAT REQUIRE FURTHER REVIEW**

1. **Do these definitions still apply?** You will note that both EO 7B.1 and EO 9H.1a includes the term “municipal” and the latter order references to EO 7I.12 as the source of the following definition:

**“Municipal” or “Municipality” Defined.** For purposes of the provisions of this executive order the term "municipal" or "municipality" shall include all municipalities and quasi-municipal corporations, whether created by statute, ordinance, charter, legislative or special act, including but not limited to any town, city or borough, whether consolidated or unconsolidated, any village, school, sewer, fire, lighting, special services or special taxing districts, beach or improvement association, any regional water or resource recovery authority or any other political subdivision of the state or of any municipality having the power to make appropriations or to levy assessments or taxes.

A potential problem arises from the fact that the source for the definition is an order the addressed the “Extension of Budget Adoption Deadlines - Additional Municipal Bodies.” Presumably, EO 7I.12 does not fall within the ambit of EO 9L.1 since the time frames for extension applied to the FY 2020-2021 budget which dates have passed and thus, it is unlikely that the order remains in effect. Although not explicitly stated, reference to the definition in EO 9H.1a may suggest a clear intent to validate the definition.

On the other hand, the following definition appears to be orphaned since it falls within EO 700.1 which addressed procedures for local appointments and elections requiring in-person votes which was a one-time stand-alone election process and has not been extended or resurrected:

**“Municipal or Regional Governmental Entity or Quasi Municipal Corporation” Defined.** The term “municipal or regional governmental entity or quasi-municipal corporation” shall include, but not be limited to regional boards of education, municipal boards and commissions (including town, city or borough, whether consolidated or unconsolidated), any village, school, special services or special taxing districts as defined under Section 7- 324 of the Connecticut General Statutes, any regional water or resource recovery authority or any other political subdivision of the state or of any municipality.

### **Further Action Required:**

While there may be a clear intent with regard to these definitions, in order to clarify these EOs, we would urge the Governor to issue an EO that would clearly recodify both of these definitions.

2. **What about the budget process?** With the resurrection of EO 7S.7 and EO 7CC.1 there remain in effect alternate procedures to render local decision without the need to resort to any in-person action for “critical and time sensitive” budgetary and fiscal deadlines and fiscal actions. The extension also covers the suspension of “in-person voting requirements” by the public on “critical and time-sensitive municipal decisions under EO 7JJ.4. Yet, the budget process itself, while subject to remote and hybrid meeting protocols does not



have an alternative for decision-making requiring in-person public participation<sup>6</sup>. Arguably, the current deadline is February 9<sup>th</sup> and many local governments will be in the late stages of chief executive preparations of a proposed budget or early legislative/fiscal body review of such a proposal. This is an issue that requires further action by the Governor or, legislative action, in the event the emergency continues past February 9, 2021.

### Further Action Required:

An executive order would be in order for purposes of extension that would include the budget process in the same protocols as other budgetary and fiscal actions, without resort to a legislative finding. This order should include deliberation and approval of the annual general and capital fund budget for the July 1, 2021 - June 30, 2022 fiscal year and to set a mill rate sufficient, in addition to the other estimated yearly income of such town and in addition to such revenue surplus, if any, as may be appropriated, not only to pay the expenses of the municipality for said fiscal year, but also to absorb the revenue deficit of such town, if any, at the beginning of said fiscal year<sup>7</sup>.

**3. Missing Pieces.** There are some gaps in the current executive orders that need to be addressed. Some of them may be available to you under your Charters; although, it would be beneficial to have a state-wide standard to address the omissions.

a. **Budget Authority.** The issue of alternatives to in-person budget processes is discussed above.

b. **Authentication<sup>8</sup>.** In the event there is the need for a remote or hybrid effort to conduct a public meeting, such as a town meeting, it would be useful to consider an executive order or local policy, along the following lines:

Local officials, including, but not limited to the Town Clerk and Registrars of Voters are authorized to implement and administer a vote in-person or by mail ballot to be utilized in any remote or hybrid town meeting proceedings conducted for any lawful purpose, including but not limited to local appointments and elections where the town meeting, annual town meeting, district meeting or other meeting of electors or voters (“applicable municipal authority”) is the authority for appointing or electing members or officials to any municipal or regional governmental office, board, agency, commission or quasi-municipal corporations (“municipal or regional governmental entity or quasi-municipal corporation”)<sup>9</sup>. In

<sup>6</sup> Note: Many of those we consulted in drafting this guidance observed that the recent Presidential election proved that we can proceed with referenda and town meetings without resort to suspending in-person voting requirements. Undoubtedly, it is highly unlikely that we will see any Board of Finance or legislative body usurping the authority of a Town Meeting, unless things get worse. We are all learning how to live with the virus. Yet, there is a difference between standing (socially distanced) in a line at a polling place for 30 minutes or so and sitting around at a Town Meeting. Hybrid or remote meetings with an authenticated voting protocol should be able to address these issues. In order to utilize “mail-in” and absentee ballots may require a statute of executive order to relax some of the time provisions so that they may be utilized in referenda or town meetings.

<sup>7</sup> This was drafted to reimagine EO 71.13.

<sup>8</sup> This was drafted as a more fulsome version of the issue addressed in the narrowly constructed EO 700.1: “Procedures for Local Appointments and Elections Requiring In-Person Votes”.

<sup>9</sup> Including any actions required by Title 7 of the Connecticut General Statutes, §10-46 of the Connecticut General Statutes, or any special act, municipal charter, ordinance, bylaw or resolution, or any plan of reapportionment approved pursuant to Section 10-63/ *et seq.* of the Connecticut General Statutes. Note: It is recognized that unlike elections names as usually presented on the floor of the Town Meeting and thus, protocols need to be established to allow for the lag in order to provide mail-in” ballots to residents or electors

order to further safeguard the integrity of the process any vote by mail ballot procedures adopted by the local officials shall comply with the rules governing the issuance of absentee ballots to the extent practicable, taking into account laws of the State of Connecticut, including but not limited to, (a) requests for applications and permissible assistance of third parties in said requests; (b) distribution of applications and filing of lists of voters by third parties; (c) follow-up procedures for third parties; (d) mailing of ballots; (e) prohibition of assistance, possession or delivery of completed ballots; (f) authentication of eligible voters; and, (g) protection of the secret ballot. This Order shall not apply to elections conducted under Title 9 of the General Statutes, other than as specified under §10-46(c).

c. **IT Review.** Moreover, most municipalities have grappled with platforms that are suitable for public meetings. The following language was proposed to address this issue under the executive order:

Local officials shall consult with information technology personnel or consultants, as necessary, to implement protocols, platforms and technologies that promote security and privacy in a manner consistent with open meeting requirements while avoiding unauthorized participation that would disrupt public meetings. Members of the public should be able to observe and be given participation privileges, when necessary, to accommodate public comment requirements and authenticated participation.

d. **Suspension of In-Person Budget Adoption Requirements for Regional Boards of Education<sup>10</sup>.** During the early days of the pandemic EO 71.14 addressed the suspension of in-person budget adoption for regional boards of education. Under the EO the regional board made final decision with consultation with local officials. The following language was drafted to include local officials in the event there is a need for an alternative to an in-person meeting to address the FY 2021-2022 budget for regional boards:

#### Further Action Required

Any regional board of education shall adopt a budget for the July 1, 2021 - June 30, 2022 fiscal year which otherwise complies with the requirements of Section 10-51 of the Connecticut General Statutes without complying with any in-person budget adoption requirements, including but not limited, annual district budget meetings requiring votes, referendum, and special district meetings. In so acting, the regional board of education shall:

(1) comply with public meeting requirements consistent with executive orders governing the “conduct of remote and hybrid public meetings<sup>11</sup>”;

(2) consult, in a public meeting, with the chief executive officer and the legislative body of the municipalities in the regional school district, or in

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following the meeting.

<sup>10</sup> Originally addressed in EO 71.14.

<sup>11</sup> EO 7B and EO 9H.1a.



municipalities where the legislative body is a town meeting or representative town meeting, the board of selectmen;

(3) take all reasonable steps to publicize the proposed budget for said fiscal year; and,

(4) to receive public comment thereon, including but not limited to publishing draft budgets on the website and providing an email address or other means for the public to submit timely comments on the proposed budget.

Following adoption of a proposed budget, the regional board of education shall submit said budget or item to the legislative body of the municipalities, or in a municipality where the legislative body is a town meeting or representative town meeting, the board of selectmen ("municipal agency") for final action. Unless disapproved by a two-thirds (2/3rds) vote of the municipal agencies of all of the municipalities in the school district, the adopted budget shall be deemed approved. In the event the budget is so disapproved, the regional board of education shall be required to adopt another budget, in accordance herewith, subject to the right of disapproval by the municipal agencies.

Nothing in this order shall invalidate or repeal the results of any vote on a budget or tax rate held by annual town meeting or referendum before the effective date of this order.

e. **“Procedures for Local Appointments and Elections Requiring In-Person Votes<sup>12</sup>”**. In June EO 700.1 offered an election process for the appointment of local members of regional boards. Many charters have provisions that require Town Meetings to approve appointments to Boards and Commission. At the current time this issue is not addressed by the Executive Orders. Again, it should be clarified that municipalities can proceed under the three alternatives available to other municipal actions: in-person, remote and hybrid. Where a remote meeting can be conducted to accommodate the action of electors or voters, it should; however, the suspension of in-person approval needs to remain an alternative depending on the severity of the health emergency. A number of approaches that have been utilized include the following: (1) Zoom meetings for the purpose of making the nomination and candidate presentations adjourned to drive-through voting or mail-in voting; (2) indoor or outdoor in-person voting in compliance with other health orders addressing masks and social distancing; (3) mail ballots; and, (4) ballot boxes.

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<sup>12</sup> Update of EO 700.1