

GUIDANCE DOCUMENT #5 - May 4, 2020

Validation of Executive Order 71.13¹ – Suspension of In-Person Voting Requirements by the Public in the Municipal Budget Process

On May 1st Governor Lamont released Executive Order 7HH (“EO 7HH”), thereby validating “Mandatory Suspension of In-Person Voting Requirements by Members of the Public on Municipal Budgets.” Section 1 of EO 7HH (“EO 7HH.1”) eliminates the ambiguity created by EO 7S.7. In other words, the suspension of “in-Person” voting by the public, mandated by EO 71.13, applies to the “budget making authority of every municipality” when:

- Adopting a budget for the July 1, 2020 - June 30, 2021 fiscal year;
- Setting a mill rate sufficient, in addition to the other estimated yearly income of such municipality 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 using the procedures set forth therein,

The effect of EO 71.13 and 7HH.1 is the suspension of “...any requirement for a vote on such budgets or mill rates by residents, electors, or property owners, including, but not limited to, any vote by annual town meeting or referendum.”

EO 7HH reaffirms the open meeting requirements of EO 7B.1 applicable to “remote” meetings. Moreover, the Order also includes the following provision:

All conditions precedent to any such adoption, including without limitation, public notices, hearings, or presentations, 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 Executive Order No. 7B.

Saving Clause for Town Meetings or Referendum Conduct Prior to Issuance of EO 7HH.1. The order does not “...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”.

¹ EO 71.13 was not covered by this Executive Order.

Applicability of EO 7S.7 to EO 7S.7 and 7CC only. While the budget process is currently in process, in real-time, simultaneously with the public health and civil preparedness emergency declared by the Governor on March 12th there are other necessary actions that require public approval. As such it makes sense that EO 7HH.1 would make “suspension of in-person requirements” in the budget process mandatory. However, the mandatory nature of the order does not negate the discretionary nature of such suspensions under either EO 7S.7 or EO 7CC. In the case of those Orders the legislative body has the discretion to authorize “suspension of in-person” public approval in the event of (1) supplemental additional or special appropriations; (2) tax anticipation notes; or (3) municipal general obligation bonds or notes. If the proposed actions are in excess of 1% of the current year municipal budget (with respect to items 2 and 3, the legislative body must issue:

...specific findings that such actions are necessary to permit the orderly operation of the municipality and that there is a need to act immediately and during the duration of the....emergency in order to avoid endangering public health and welfare, prevent significant financial loss, or....is otherwise necessary for the protection of persons and property within the municipality.

Such finding is also required for the suspension of “in-person” public approvals pertinent to (1) application and acceptance of grants; (2) approval of Collective Bargaining Agreements and legal settlements; (3) transfer of funds from capital or reserve accounts; (4) investment of funds; or (5) financial actions required by contract or court order.

Actions to suspend “in-person” requirements under EO 7S.7 and 7CC.1 are discretionary and require the above-referenced finding. It is fair to say that the premise of the “remote meeting” and “suspension of in-person voting” requirements is promotion of public health and safety. However, the Governor has also taken a step to assure that it is not the intent of the Executive Orders to undermine local charter provisions that require public participation. It is for that reason that EO 7S.7 adopted a standard to would permit “in person” meetings or referenda following (1) consultation with a local or state public health officials; and, (2) that such proceedings be conducted “...**in a way that significantly reduces the risk of transmission of COVID-19** (emphasis added).” It does not negate the authority to suspend in-person voting; it does establish a very substantial standard to meet if the municipality wants to proceed with an in-person proceeding, with the exception of the budget adoption process.