

2020 Webinar Series



What Voting Looks Like in a Pandemic

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Henniker Town Moderator

Peter Imse, Bow Town Moderator

October 14, 2020

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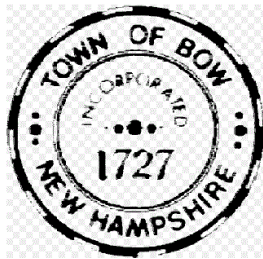
Today's Speakers



Cordell Johnston
Government Affairs Counsel



Stephen Buckley
Legal Services Counsel



Peter Imse
Bow Town Moderator

How to Participate Today



- Open and close your panel
- Submit text questions
- Q&A addressed during the webinar session
- Pop Quiz!

A screenshot of the GoToWebinar interface. The top panel is titled "Audio" and includes options for "Audio Mode" (Use Telephone or Use Mic & Speakers), a "MUTED" status indicator, and a volume level bar. Below it is a "Questions" panel, which is highlighted with a red border. This panel contains a text input field with the placeholder "[Enter a question for staff]" and a "Send" button. A red arrow points to the "Audio" panel's icon in the sidebar, and another red arrow points to the "Questions" panel. At the bottom of the interface, there is a banner that reads "Start Holding your Own Web Events with GoToWebinar" and "Webinar ID: 977-124-241". The GoToWebinar logo is also present. In the background, a faint NHMA logo and the text "NEW HAMPSHIRE MUNICIPAL ASSOCIATION EST. 1941" are visible.

Agenda

- ▶ The primary election and the experience in the Town of Bow
- ▶ Registration – absentee and in-person
- ▶ Absentee voting
- ▶ Processing absentee ballots
- ▶ Arrangement of polling place
- ▶ Masks at polling place
- ▶ Electioneering
- ▶ Challengers/Observers
- ▶ Other issues



The Primary Election in the Town of Bow



- ▶ **Absentee balloting:**
 - Extra workers necessary to assist processing requests.
 - Town Clerk kept running tally.
 - Pre-processing took 4 hours for 750 ballots.
 - Tally kept by Clerk permitted contact with voters to correct errors.
 - 100 same day absentee ballots received.
 - Will bring in team or two of assistants to process additional absentee ballots.
 - If volume of late-arriving absentee ballots too high, processing will be postponed until the polls have closed.
 - Outside absentee balloting worked well.

The Primary Election in the Town of Bow



► Facility & Process:

- Starting in June weekly conference calls with BOS, Checklist Supervisors, Town Clerk, Police and Fire Chiefs, School Moderator, Town Facilities Personnel, and DPW.
- Result: alterations made to polling station to make an additional entrance handicapped-accessible, and to provide space to permit queuing of voters out of the elements in case of bad weather.
- Police Chief role critical; development of traffic management plan to address traffic at voting site and to address traffic delays/conflicts at nearby intersection.
- Inventory made of PPE needed in the event not provide by state government.
- Continuous communication about elections process to community thru social media and local newspaper.

The Primary Election in the Town of Bow



► Facility & Process:

- When decision made to require masks in polling place sought and received BOS support.
- Pre-planned with Police Chief how to handle those refusing to wear masks.
- Extra signage at polling station to educate voters.
- Two access points, one for registered voters and one for those needing to register with greeters to direct voters.
- Dry-run through with election officials using a set up of booths and tables to make sure the flow of voters through the facility will proceed smoothly.

Registration



- ▶ Encourage registration before election day!
 - ▶ At clerk's office, at supervisors' session, or by absentee registration.
 - ▶ One session of supervisors required before election; consider additional sessions, especially in college towns.
- ▶ Absentee registration: Any person who "by reason of concern for Covid-19 is unable to attend a meeting of the supervisors of the checklist" may register by absentee registration.



AFT v. Gardner Decision

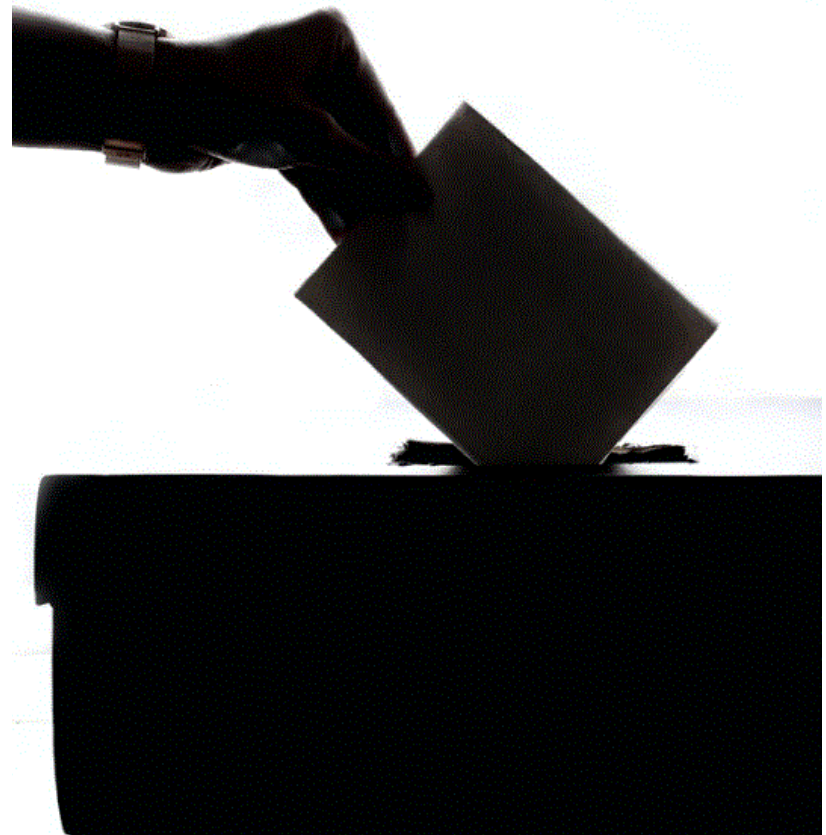
SOS must directly provide the absentee registration form to aspiring voters who contact his office.

Absentee Voting

- ▶ Any person “who is unable to vote in person . . . because of concerns relating to . . . Covid-19” may vote by absentee ballot.
- ▶ Omission on absentee ballot affidavit: does not include Covid-19 as reason for absence.
 - ▶ SOS has added sticker saying physical disability includes concern for coronavirus.
- ▶ Absentee ballots must be received by 5:00 p.m. on election day (except “curbside voting” under RSA 659:20-a).

Processing Absentee Ballots

- ▶ HB 1266 – allows for “partial processing” on Thursday, Friday, Saturday, or Monday before election day.
 - ▶ Only one session permitted – choose a day.
- ▶ Consider Thursday or Friday – allows time to notify voter if ballot is rejected.
- ▶ Post notice in two places at least 48 hours before.
Provide copy of notice to SOS!



Processing Absentee Ballots (*continued*)



- ▶ Requires moderator and at least 3 other election officials.
- ▶ Public must be allowed to observe process.
- ▶ Open outer envelope, examine affidavit on inner envelope. Do not open inner envelope.
- ▶ Announce voter's name, allow opportunity for challenge. No challenges are allowed after partial processing.

Processing Absentee Ballots *(continued)*



- ▶ Make “notation” on checklist next to voter’s name.
- ▶ SOS: Do not write “A.V.” until final processing on election day.
- ▶ SOS recommended process:
 - ▶ Highlight voter’s name on checklist during partial processing.
 - ▶ On election day, at designated time for processing, ballot clerks go through checklist and write “A.V.” next to highlighted names.

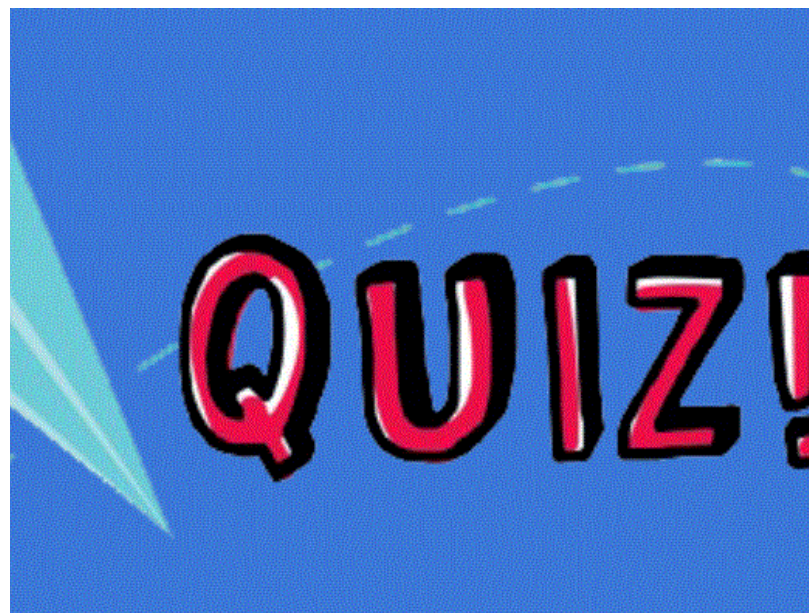
Processing Absentee Ballots (*continued*)



- ▶ One section at a time: A-C, D-G, etc.
- ▶ As each group is completed, open inner envelopes, remove ballots and deposit in ballot box or machine.
- ▶ No need to announce names again.
- ▶ Absentee ballots received after partial processing session require full processing.

How many total absentee ballots were cast in the September 8, 2020 Primary Election in New Hampshire?

- ▶ 102,439
- ▶ 90,357
- ▶ 54,900
- ▶ 42,783
- ▶ 22,765



Arrangement of Polling Place

- ▶ RSA 658:9 requires one voting booth for every 100 registered voters.
- ▶ HB 1266: “The requirements of this section may be satisfied by alternative requirements issued by the secretary of state in consultation with the attorney general and the commissioner of [DHHS.]”
- ▶ SOS advice: if significant numbers are voting by absentee ballot, you may reduce number of booths. Notify SOS before doing so.



Requiring Masks at Polling Place



- ▶ Can poll workers be required to wear masks? Voters?
- ▶ If town has a mask ordinance?
- ▶ If town has mask policy for town-owned buildings?
- ▶ If election is in school building and school has a mask policy?

Requiring Masks: Emergency Order #63

- ▶ “Face coverings shall be required for... scheduled gatherings of 100 or more.”
- ▶ Does not apply to “day-to-day operations of...local government.”
- ▶ “Day-to-day” operations would mean the ordinary operations of government, not “events” or “occurrences” that happen only a few times a year.
- ▶ EO #63 does NOT apply to elections (even though they are only a few times a year).
 - ▶ Separate guidance for elections from SOS/ AG.

Requiring Masks (*continued*)

- ▶ Elections “shall be . . . governed by a moderator,” who has a duty to secure the observance of the voting laws. N.H. Const. Part 2, Art. 32; RSA 659:9.
- ▶ AG/SOS: Moderator may require poll workers to wear masks.
- ▶ Probably may not prohibit voter from voting for not wearing mask. May make alternative arrangements.

Non-Masked Voters: Alternative Arrangements



- ▶ Separate check-in and voting area, inside or outside.
- ▶ “Curbside voting” under RSA 659:20-a (used for disabled voter who cannot access polling place). HB 1266 authorizes use for COVID-19.

Selectmen at Polling Place

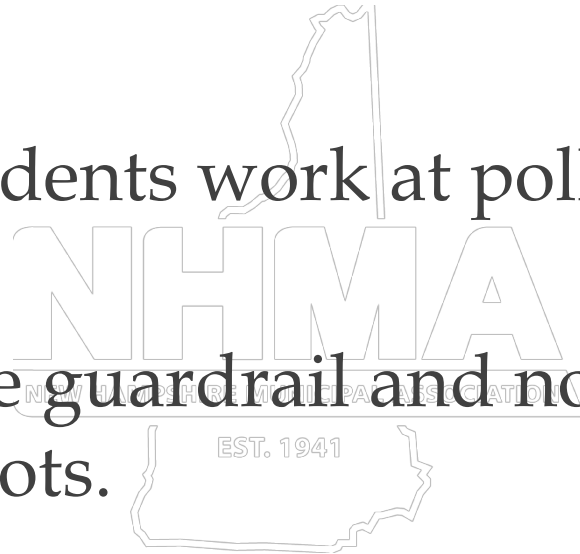
- ▶ “The meetings for the choice of governor, council and senators, shall be warned by warrant from the selectmen, and governed by a moderator, who shall, in the presence of the selectmen (*whose duty it shall be to attend*) in open meeting, receive the votes of all the inhabitants of such towns and wards present.” N.H. Const. Part 2, Art. 32
- ▶ How many must attend?
- ▶ RSA 658:21-a: selectmen pro tem.





Non-Resident Poll Workers

- ▶ May non-residents work at polling place?
- ▶ Yes, if outside guardrail and not handling ballots.



Challengers / Observers



- ▶ State political party committee may appoint “a person to act as **challenger** of voters at any polling place.” RSA 666:4. Challenger should have a letter signed by committee chairman.
 - ▶ Challengers are sometimes referred to (incorrectly) as “poll watchers.”
 - ▶ Challenger is not required to be a registered voter.
- ▶ Challenger must be allowed close enough to ballot clerks to hear voters as they check in. RSA 666:4. No other person is permitted within 6 feet without permission of moderator. RSA 659:13-a.

Challengers / Observers (continued)



- ▶ Challenger is authorized to challenge voters – usually at check-in, but can be done anytime before the voter’s ballot is deposited.
- ▶ Any registered voter may also challenge a voter.
- ▶ Challenge must use “Asserting a Challenge” form. See RSA 659:27-a and EPM page 283.
- ▶ Moderator determines whether challenge is “well grounded.” If yes, voter may vote only after completed challenged voter affidavit.
- ▶ No challenge may be made at voter registration table.
- ▶ See generally RSA 659:27 to :32 and EPM pp. 245-47.

Challengers/Observer s (*continued*)

- ▶ “Observer” – no legal status or definition. Election is a public process – anyone can be an observer.
- ▶ Photos/videotaping must be permitted – but not of private materials (marked ballot or information at registration table).
- ▶ Unless designated as a “challenger,” no one may be within 6 feet of ballot clerks. RSA 659:13-a.
- ▶ Anyone may observe registration, but no one (including a challenger) may be stationed within 5 feet of registration table. RSA 654:7-c.



Electioneering-RSA 659:43

- ▶ Electioneering prohibited within the polling place building
- ▶ The moderator must establish no-electioneering corridors, no less than 10 feet wide, that extend from all entrances of the polling place a reasonable distance along the sidewalks or to the parking. Those corridors must permit a voter arriving or leaving the polling place to enter or exit without interruption or interference from individuals outside the corridor and permit a voter to step to the edge of the corridor and speak with those electioneering if he or she chooses.
- ▶ The moderator shall designate a preferred area for electioneering, which to the extent practical shall be within sight and conversation-level sound of the primary entrance to the polling place.
- ▶ Electioneering may occur outside the no-electioneering corridor and outside the designated preferred electioneering area.
- ▶ Electioneering signs shall not be affixed to the polling place building or grounds and shall not be left unattended. Political signs that are posted on vehicles, should be treated like other political signs at the polling place and shall be within arms-reach of owner. Moderators should work with the owner of the vehicle with posted political signs to park the vehicle elsewhere to ensure the accessibility of the polls to voters
- ▶ The distribution or posting of electioneering communications, including but not limited to posters, cards, handbills, placards, pictures, pins, stickers, circulars, or articles of clothing, is prohibited within any no-electioneering corridor established outside the polling place by the moderator.
- ▶ Violation is subject to a civil penalty not to exceed \$1,000.



Minnesota Voters Alliance v. Mansky



- ▶ Under the U.S. Supreme Court's decision in *Mansky*, a moderator can prohibit the wearing of any article of clothing or other item that supports or opposes a candidate or measure on the ballot at that election, and at that polling station. However, other forms of political speech, such as the "I Support Immigration Reform" or "Repeal Obama Care" would not violate RSA 659:43 and must be allowed.
- ▶ A person wearing a "Vote for Governor Sununu" hat is clearly in violation of RSA 659:43 and she should be told her name and address will be reported to the NH Attorney General's office for possible prosecution (as a violation) and imposition of a civil penalty of up to \$1,000.00. No steps should be taken to impede this voter's ability to cast a vote.

Personal Protective Equipment



- ▶ Discourage use of hand sanitizer before voting. Wet ballots jam the machines. Put sanitizer at exit
- ▶ Privacy mats – caused some problems at primary.

Questions?



NEW HAMPSHIRE

2020 VIRTUAL Land Use Law Conference

8:45 am - 3:00 pm, Saturday, October 31, 2020

Full day VIRTUAL Conference for municipal land use officials, including planning & zoning boards, planners, select boards, building inspectors, code enforcement officers and public works officials.

REGISTRATION OPEN!

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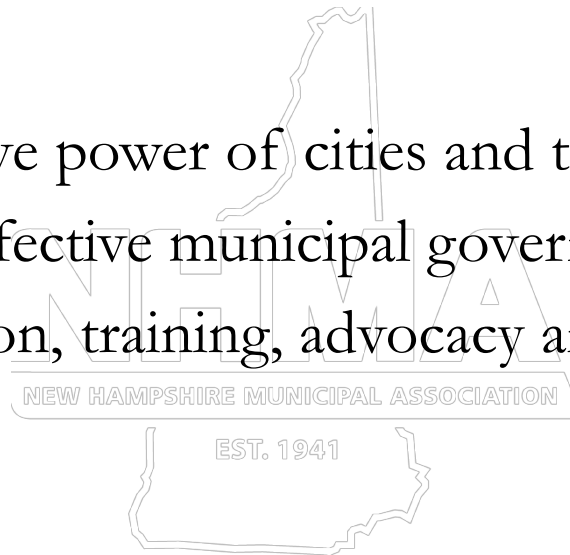
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This year's theme is *Resilience*. Join us for 3 days in November for interactive program sessions, live-streaming inspirational speakers, and a live virtual exhibit hall.

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