To:    FASNY Membership

Date:   March 31, 2020

From:  FASNY General Counsel

Re:   Advisory from FASNY General Counsel regarding fire company elections in villages and the impact of COVID-19.

Executive Orders Affecting Statutorily Required Elections In Villages

As of this writing, Governor Cuomo has issued multiple executive orders modifying or temporarily suspending laws applicable to elections in villages and to village-based fire service entities. As relevant here, those Executive Orders are as follows:

- Executive Order 202.4, dated March 16, 2020, postponed all village elections scheduled for March 17 and 18, and directed that any elected village official in office is to remain in office until elections are held.
- Executive Order 202.10, dated March 23, 2020, prohibits non-essential gatherings of any size (i.e. social events).
- Executive Order 202.13, dated March 30, 2020, provided that village (school district and library elections) are postponed until at least June 1, 2020.

1. **Summary Recommendation**

   **First steps:** Consult the fire company or department’s attorney if it has one and review the company and/or department bylaws to determine if there is any provision in place that addresses circumstances when elections cannot be held as scheduled or provided by statute. (NOTE: It would be very unusual if such a provision existed, but it should not be taken for granted that none exists). Always start with the bylaws and competent local counsel for guidance.

   The Village Law sections cited below permit a village board of trustees, a board of fire commissioners (where one exists), and a fire council (where no board of fire commissioners exists) to adopt rules and regulations governing village fire companies and village fire departments. While traditionally these powers did not necessarily involve the conduct of fire company elections, it is reasonable to infer that under the current circumstances, a village board of trustees, board of fire commissioners, or fire council could enact a rule or regulation providing for an alternative date or an alternative means for conducting fire company and fire department elections.


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2. Statutory Authority for Recommendation

The relevant statutory authority contained in the Village Law is as follows:

§10-1010 Election of company officers and delegates
With the exception of the Village of Fishkill, the members of village fire companies shall hold an annual meeting on the first Tuesday in April (April 7, 2020). At such meeting the members of each company shall elect by ballot from their own number a captain, lieutenant, warden, a delegate to the general convention of the fire department and such other officers as may be provided by the bylaws of the company.

§10-1012 Chief and assistant chiefs.
1. …The delegates elected to the general convention of the fire department shall meet at the council room thereof on the Thursday following the first Tuesday in April (April 9, 2020),…and nominate a person for each of such offices; but the fire commissioners of any village may adopt a rule requiring all such nominations to be made on the day of the meeting by a vote of the duly qualified members of the department, in which case the meeting of the delegates in general convention, as provided for in this section, shall be dispensed with.

§10-1000(6) General powers of the board of fire commissioners
The board of fire commissioners of a village subject to the approval of the village board of trustees:
May adopt rules and regulations governing fire companies and fire departments….

§10-1014 In a village in which separate fire commissioners are not appointed, the chief, the assistant, and the fire wardens of the several companies constitute the council of the fire department….The council shall meet on the third Tuesday in April in each year…and choose from its own number a secretary, a treasurer and a collector of the fire department, who shall hold their respective offices for one year unless sooner removed by the council. …
Such council shall have all the powers and be subject to all the liabilities and perform all the duties of a separate board of fire commissioners, as prescribed in section 10-1000 of this article, except subdivisions two, three, four and eight and the fixing of compensation under subdivisions five and seven of such section, and as to the provisions of such subdivisions such council shall only recommend to the board of trustees of the village.

(NOTE: the powers given to commissioners under §10-1000 (6) are conferred upon the fire council in the absence of commissioners.)
3. Recommended Action

**Primary Options:** Have the Board of Commissioners or Fire Council adopt a resolution to:

A. **Postpone the company elections** to a yet-to-be determined date in the future, estimating that elections will be conducted at some point in May at the earliest; OR

B. **Postpone the company elections** to a future date certain but advise that the date is subject to change; OR

C. **Conduct the elections** as scheduled using a procedure that safely and fairly allows for the participation of the membership. For example, paper ballots could be mailed to members eligible to vote and return mail envelopes provided for return of the ballots. The return envelopes could be numbered or coded as a means of security to make certain only legitimate ballots are counted when received. The envelopes could be opened and the ballots kept concealed so as to avoid compromising the secrecy of the vote. All of the ballots could then be mixed together and then the results could then be tabulated (canvassed).

We discourage having any type of voting procedure that might cause members to congregate at the fire station or in a voting location. In those locations where a fire station is “locked down”, we discourage opening the area for conducting of elections.

**Secondary Option:** Let The Membership Decide

A. **Conduct a video meeting of the membership** using Zoom or other platform to allow the membership to conduct a meeting to vote on a preferred procedure for conducting or postponing elections. Admittedly, this option may be too cumbersome to roll out on an expedited basis, and may inadvertently disenfranchise certain members. This option must also be considered in consultation with the Fire Company or Fire Department bylaws.

Questions regarding this FASNY Membership Advisory may be directed to FASNY General Counsel Timothy Hannigan (tim@hannigan.law) at 518-869-9911, or by e-mail.

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