The Date of the Postponed Village Elections

On the evening of Friday, May 1, 2020, Governor Cuomo issued Executive Order 202.26, which postpones all village elections scheduled to be conducted in March, April, May, and June to **Tuesday, September 15, 2020**.

The Order states that for any village election in which the ballot was fully determined when the election was postponed, the election will proceed with the same ballot. Additionally, if ballots were already printed, those ballots may be used at the September 15, 2020 election, despite displaying the original date of the election.

In village elections for which ballot access was incomplete when petitioning was suspended, the Executive Order states that the petitioning process will continue to be on hold until the NY on Pause Order ceases, subject to a process to be determined by a future Executive Order.

Lastly, while current elected village officials will remain in office until the rescheduled election is held on September 15, 2020, the newly elected officials will assume office when the results of the election are certified pursuant to Election Law § 15-126. While the Executive Order does not expressly reference referenda, NYCOM is of the opinion that EO 202.26 applies to any referenda that was or is scheduled to be conducted in March, April, May, or June 2020.

Absentee Ballots for the September 15, 2020 Election

Executive Order 202.26 does not address absentee ballot voting for the September village elections. While new absentee ballots for the September election must be issued, no specific guidance has been made available. In the absence of a future Executive Order to the contrary, the timeframes established by Article 15 of the Election Law for applying for and receiving absentee ballots will apply to the rescheduled village elections. Additionally, despite not specifically addressing absentee ballots for the village election, the Order states:

> Any provision of the election law or village law otherwise applicable to the manner of conducting such an election in March, April, May or June, shall apply to the date of the September 15, 2020 election.

Consequently, absent an Executive Order to the contrary, the absentee ballot procedures set forth by the Election Law will apply to the village elections conducted on September 15, 2020:

- The last day to request that an absentee ballot be mailed to a voter is: **Tuesday, September 8, 2020.** *Election Law § 15-120(5).* At least seven days prior to election.

- The last day for the village clerk to mail absentee ballots to voters: **Wednesday, September 9, 2020.** *Election Law § 15-120(6).* Not later than six days before the village election.

- The last day for the village clerk to receive personal applications for an absentee ballot from an applicant or an applicant’s agent: **Monday, September 14, 2020.** *Election Law § 15-120(5).* Not later than one day prior to the election.

- The last day to receive mailed absentee ballots: **Tuesday, September 15, 2020.** *Election Law § 15-120(8).* On the day of the general village election.
FAQs – Village Elections

While NYCOM is providing these dates for the convenience of its members, please be advised that additional Executive Orders and changes to the election process are expected. It is possible that an Executive Order will be issued expanding absentee ballot access for the September 15th village elections.

Village clerks should continue to secure and preserve all village election materials from any postponed village election, including all returned absentee ballots and absentee ballot applications. Additionally, village clerks may continue to accept absentee ballot applications.

May voters apply for absentee ballots electronically (e.g., email or online portal)?
No. Electronic absentee ballot applications were authorized by Executive Order 202.15, but only for elections held on or before June 23, 2020. Consequently, the Order no longer applies to the village elections. However, additional guidance regarding absentee ballots for village elections is expected.

Will absentee ballots that were returned to the village prior to the originally scheduled date of the village election be canvassed at the postponed election?
Absent a Governor’s Executive Order or a new State law providing otherwise, all absentee ballots must be delivered to the election inspectors on Election Day, which is now scheduled for September 15, 2020. The election inspectors will determine whether the voter is a qualified voter for the village election and will canvass the ballot accordingly. Currently, no guidance has been issued by the Governor modifying or adjusting the canvass procedures.

If an individual requested an absentee ballot for a postponed village election and has already cast that ballot by delivering it to the village, do they need to apply for a new absentee ballot?
No. If an individual already cast an absentee ballot, that ballot should be preserved and provided to the election inspectors on Election Day.

Must the village mail absentee ballot applications to all registered voters in the village?
Not at this time. New absentee ballots for the September election must be issued, but Executive Order 202.26 does not specifically address absentee ballot voting for the September village elections.

Preparing the Ballot
For many villages, ballot access was complete and the ballots were already printed when their 2020 election was postponed. However, for many other villages ballot access was suspended before the slate of candidates was finalized. Executive Order 202.26 states that for any village election in which the ballot was fully determined when the election was postponed, the election will proceed with the same ballot. Consequently, all printed ballots, records, and materials related to the village election should be maintained in a secure manner.

In village elections for which ballot access was incomplete when petitioning was suspended, Executive Order 202.26 states that the petitioning process will continue to be on hold until the NY on Pause Order is lifted, subject to a process determined by a future Executive Order.
FAQs – Village Elections

May a village use a ballot with the wrong date at the September 15, 2020 village election?
Yes. Provided that the ballots were already printed when the election was postponed by Executive Order 202.26, villages may use previously printed ballots at the September 15, 2020 election, despite the ballot displaying the original date of the election.

Has the petition process been restarted and is the petition process going to be modified so that individuals do not have to collect signatures in person?
Executive Order 202.26 states that the petitioning process will continue to be on hold until the NY on Pause Order is lifted, subject to a process determined by a future Executive Order. While the petition process has not yet been modified to reduce the number of signatures individuals must collect in person, it is expected that the forthcoming Executive Order determining the petitioning process will address these concerns.

Has the party nominating process been modified?
Yes. Executive Order 202.26 eliminates the opportunity for a political party to conduct a primary in a village and states that all party nominations must be made by party caucus. These caucuses are used to nominate candidates for village office. Under the order, if a candidate declines the party nomination, substitutions are not permitted.

- Party caucuses may be conducted remotely as set forth by the chair of the party, and must be held not later than August 20, 2020.
- Certificates of party nomination, as well as certificates of declination and acceptance must be filed not later than August 22, 2020.

Keep in mind that pursuant to Executive Order 202.16, party caucuses scheduled to take place during April or May of 2020 are postponed until June 1, 2020. The caucuses may only continue if the caucus is able to be held remotely, through use of telephone conference, video conference, or other similar service. Additionally, party caucus notice must include specific information relating to the remote participation and the notice must be: (1) filed with both the village clerk and the county board of elections at least five days prior to caucus, and (2) either published in newspaper circulated in the village, or displayed on the party’s website, or emailed to previous caucus participants for which the party has an email address.

Notice of the Election
Now that the postponed village elections have been rescheduled for September 15, 2020, village clerks will need to publish and post the new Election Day information in accordance with Election Law § 15-104, which requires the village clerk to publish a notice setting forth the (1) polling place in each district, (2) hours during which the polls are open (at least 12:00 noon to 9:00 p.m.), (3) names and addresses of candidates, offices, and term nominated for, and (4) abstract of any proposition, at least 10 days prior to the election. Additionally, the notice must also be posted in six conspicuous places in the village and at each polling place at least one day before the election.

- The last day to publish notice of the village election is: Saturday, September 5, 2020.
- The last day to post notice of the village election is: September 14, 2020.
Voter Registration

Despite not specifically addressing voter registration for the September village elections, Executive Order 202.26 states:

Any provision of the election law or village law otherwise applicable to the manner of conducting such an election in March, April, May or June, shall apply to the date of the September 15, 2020 election.

Consequently, in the absence of a future Executive Order issued to the contrary, the timeframes provided by the Election Law to register and be eligible to vote in the village election will apply to the rescheduled election on September 15, 2020. Pursuant to Election Law § 15-118(2), the last day individuals may register with the county board of elections to be eligible to vote in the village election will be Friday, September 4, 2020.

May a village conduct in-person registration days?

Yes. Executive Order 202.26 does not postpone or suspend in-person village registration days. Consequently, if a village has not abolished its registration days, the village may conduct in-person voter registration in accordance with Election Law § 15-118.

- First registration day in villages with two registration days: Thursday, September 3, 2020. Election Law § 15-118(5). Twelve days before the election.

- Registration day in village with one registration day (for villages with two registration days, this is the second registration day): Saturday, September 5, 2020. Election Law § 15-118(5). Ten days before the election.

The Rescheduled Election Day

As stated previously, all village elections scheduled for March, April, May, and June were postponed to Tuesday, September 15, 2020.

Will the September 15th village elections be conducted by the villages or by the County Boards of Election?

No legislative action nor Executive Order has changed who will conduct the village elections. Consequently, barring legislation or an Executive Order to the contrary, villages that were scheduled to conduct their own elections will conduct the rescheduled village election. If a village had previously turned the running of its elections over to the county, the rescheduled village election will also be run by the county, unless legislation or a future Executive Order provides otherwise.

Will the rescheduled village elections be conducted in-person or by mail-ballot only?

There is neither legislative nor constitutional authority to eliminate the opportunity for voters to cast ballots in person for elections conducted under the Election Law. Consequently, while voter access to absentee ballots may be expanded for the village elections by a future Executive Order, villages must provide in-person access to casting ballots on Election Day.
FAQs – Village Elections

May a village change its polling place for the rescheduled election?
Villages may use polling places for the September 15th elections that are different than the polling places they had originally planned to use for their 2020 village election. Additionally, pursuant to Election Law § 15-104, the village board of trustees should have adopted a resolution identifying the polling places in the village at least 60 days prior to the election. While failing to meet the deadline to change the location of the polling place will not impact the election, village boards of trustees should only change the location of the polling place by resolution.

Election Inspectors
Is it necessary to adopt a new resolution appointing the election inspectors who were already appointed to serve during the March 18th elections?
Pursuant to Village Law § 3-302, the appointment of public officers whose terms are not specifically established by statute defaults to a one-year appointment. Consequently, duly appointed election inspectors do not need to be reappointed for the September 15, 2020 election. However, all appointed officers must file their oaths of office within 30 days of their appointment. If the election inspectors failed to file their oaths, reappointment will be necessary.

What if the election inspectors are not available on September 15, 2020?
Village boards of trustees should determine if the previously appointed election inspectors are able and willing to serve on September 15, 2020. Villages may need to appoint new election inspectors to serve on September 15, 2020.

In addition, in order to deal with potential last-minute cancellations by the appointed election inspectors, the village board of trustees may consider appointing “additional election inspectors.” See Election Law § 3-406. Note that the provisions of Election Law § 3-406 do not perfectly align with the structure of village conducted elections. Nonetheless, villages may rely on the authority of Section 3-406 to use “additional election inspectors.”

If necessary, villages may consider appointing village employees as “additional election inspectors” to serve if election inspectors fail to appear on election day. Such individuals would have to take a day off from their village position to serve as an inspector on Election Day. Additionally, all inspectors, including additional election inspectors, are public officers and must file an oath of office prior to executing their official duties.

May the clerk appoint additional election inspectors?
If an election inspector is absent the day of the election, the clerk may direct an “additional election inspector” to act in place of the absent election inspector. Such individuals must file the oath of office before executing their duties.
FAQs – Village Elections

Official Year & Organizational Meeting

Does the village’s official year change because of the postponement of the village election?
No. Pursuant to Village Law § 3-302, the official year begins at noon on the first Monday in the month following the date that the village election would have been held. Consequently, for villages whose elections were scheduled for March 18, 2020, the official year will begin at noon on April 6, 2020. Similarly, for villages whose elections were scheduled for June 16, 2020, the official year will begin at noon on July 6, 2020.

Is the organizational meeting changed?
NYCOM recommends that the organizational meeting and the appointment of appointed officials (e.g., the clerk, treasurer, deputy-clerk, deputy-treasurer, etc.) should be delayed until after a postponed village election is conducted, as the spirit of the law is to afford the newly elected mayors and boards of trustees the ability to conduct the organizational meeting and to make such appointments.

Are current village officials in hold over?
Per Public Officers Law § 5, individuals whose terms of office are set to expire at noon on the Monday of the month following the month that the election would have been held (e.g. April 6th or July 6th) will continue as holdovers in office until their successors are duly chosen and qualified. This applies to both elected and appointed officers. While Public Officers Law § 5 does not ordinarily apply to judicial officers, Executive Order 202.4 stated that village justices will also continue in office. Individuals who are elected at the September 15th village elections may take office as soon as the election results are certified. While there is no specific deadline for certifying the results of the village election, once the time has passed to request a re-canvass (two days after the election), villages may consider their election results certified.

May current members of the village board resign before the rescheduled election takes place?
Under Public Officers Law § 31, village mayors and trustees may resign by tendering their resignation in the form of an original signed writing to the village clerk. If a trustee resigns, the mayor may fill the vacancy created by an effective resignation pursuant to Village Law § 3-312(3). Similarly, if the mayor resigns, the deputy mayor will serve in the absence of the mayor, and the board may fill the vacancy pursuant to Village Law § 3-312(3). In either instance, if the vacated office is currently on the ballot, the election must still take place on September 15, 2020 to fill the office, irrespective of any appointments that may be made.

When will the board members elected on September 15, 2020 take office?
Pursuant to Executive Order 202.26, the newly elected village officials will assume office when (a) the results of the election are certified pursuant to Election Law § 15-126 and (b) they file their written oath of office with the village clerk (or sign the village’s oath book).