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Michael E. Malamut
mmalamut@k-plaw.com

Procedural Changes in the Third Edition of Town Meeting Time

In 2001, the Massachusetts Moderators Association issued the third edition of *Town Meeting Time* (TMT), a parliamentary authority geared towards use in New England town meetings, particularly in Massachusetts. The prior edition, the second (TMT2d), had not been revised since 1984. The third edition substantially re-wrote the text in more modern language, particularly in regard to gender-inclusiveness, and somewhat reorganized the work. Nevertheless, the third edition included very few changes in the rules governing procedures at meetings. The list below describes the rules changes:

Statutorily mandated procedural changes:

- *Two-thirds vote required to order a secret ballot in representative town meetings on any motion.*

Because of a statutory change, in representative town meetings a secret ballot may be ordered on any motion, including procedural motions, but only on a 2/3 vote. TMT pp. 7, 150 n.8. See Mass. G.L. c. 39, § 15; 1966 Mass. Stat. c. 73. The second edition relied on the earlier version of the statute, which required a 2/3 vote at a representative town meeting for a secret ballot “in the exercise of the corporate powers of said town,” in other words, only on substantive motions. Mass. G.L. c. 39, §15; 1963 Mass. Stat. c. 320; TMT2d p. 142 n.8.

- *Location of meeting outside of town permitted.*

Based on a statutory amendment, town meetings may be held outside the boundaries of the town if provided by special statute, charter, or bylaw. TMT p. 16 & n.30. See Mass. G.L. c. 39, § 9; 1996 Mass. Stat. c. 448. Previously, town meetings had to take place within the relevant town.

- *Counting not required for 2/3 votes unless demanded.*

The current edition also discusses the new statutory procedure for supermajority voting. TMT pp. 153. The applicable statute mandates counting of statutorily required 4/5 and 9/10 votes, but allows voice votes on statutorily required 2/3 votes, provided that the town permits this by bylaw or adopted procedure. Mass. G.L. c. 39, §15; 1996 Mass. Stat. c. 448; 1970 Mass. Stat. c. 78. Previously, statute required a counted vote on all votes requiring a 2/3 vote by statute, unless the vote was unanimous. TMT2d pp. 144-45; Mass. G.L. c. 39, §15.

New alternative procedures:

- *Lottery system of consideration of warrant articles permitted.*

The third edition adds a description of the lottery system used in some towns to avoid “stacking the meeting” for a vote on a specific article. Under the lottery system described, the clerk determines the next article to be considered by drawing slips randomly from a jar or barrel. The motion to lay on the table and to postpone to a time certain are not allowed and no other article may be advanced until the randomly selected article under consideration is disposed of. The moderator retains the right to handle articles in a special order if required by statute. TMT pp. 53-54, 100.

- *Alternative method for budget consideration, with Finance Committee reading the budget, permitted.*

The text adds another alternative method of considering budget items. TMT p. 54. TMT2d included several alternative methods of considering the budget. The third edition adds that the chair of the finance committee may read the entire budget with the finance committee’s recommendations, after which each budget item is separately debated and voted on. This method is a variation on the most thorough budget processing method of having the moderator (or clerk) first read the entire budget and then calling for the finance committee’s recommendation, debate, and vote on each item.

- *Alternative voting and check-in procedures endorsed.*

The text now adds a suggested precaution against non-members voting: issuing town meeting members colored tickets and voting by counting raised tickets. TMT p. 147. A description of a useful procedure for balloting by exchanging colored slips of paper, with a different color for each ballot item, is added. TMT p. 151. The new edition suggests dividing the list of eligible members by letters of the alphabet when there are too many for all members to check in at one desk; the prior edition suggested division by gender. TMT p. 151; TMT2d p. 144.

New procedural rules introduced by the authors, general meeting conduct:

- *Moderator not bound by procedural advice of town counsel.*

The third edition clearly states that the moderator is not bound by the advice of town counsel in regard to a procedural matter. TMT pp. 27-28. The second edition acknowledged a difference of opinion in this regard, with some support for the proposition that the moderator was bound by town counsel's advice. TMT2d p. 30.

- *Motions of doubtful legality to be put.*

The third edition advises that the moderator should not rule a motion out of order simply because the motion may call for something unlawful or beyond the town meeting's authority. The motion should ordinarily be put and treated as advisory. The moderator may, however, rule a motion out of order if it would violate a procedural statutory prerequisite to action. TMT pp. 64–65. *Note that other provisions in the third edition have not been revised accordingly and still indicate that the moderator should rule illegal action out of order and should not submit an appeal that would result in an illegal action.* TMT pp. 109, 111.

- *No retroactive invalidation of action taken before lack of a quorum is raised.*

The text of the third edition indicates that it departs from prior editions by holding that the better view prevents the retroactive invalidation of quorumless action before a point of no quorum is raised. TMT pp. ix, 127-128. *DelPrete v. Board of Selectmen of Rockland*, 351 Mass. 344, 345, 220 N.E.2d 912, 913 (1966), is cited in third edition for this purpose. TMT p. 128 n.10. In fact, this is not a rule change, but a change in emphasis, as prior editions held that this was the preferred view. TMT2d pp. 122-23.

- *No town-wide balloting within the context of the meeting.*

The text clarifies that a meeting cannot adjourn to conduct a town-wide ballot. Such a town-wide ballot is considered an independent ballot election, not a continuation of the town meeting. TMT p. 153.

New procedural rules introduced by the authors, specific motions:

- *Impermissible to end comments in debate with a motion to close debate.*

The third edition adds a new rule that a speaker may not speak in debate and end by calling for the previous question, also called moving to close debate. TMT p. 104.

- *Moderator not to recognize calls of “question” from the floor.*

The second edition allowed the moderator to construe a cry of “question” from the floor as a proper motion for the previous question. TMT2d p. 99. The third edition, however, admonishes against the moderator accepting the cry of “question” by an unrecognized meeting member as a proper motion. TMT p. 103.

- *No right of appeal in most towns.*

The third edition takes a firm position that there is no right to appeal from the moderator’s rulings when the relevant enabling statute states that the moderator is to “decide all points of order,” but does not mention how to handle appeals. TMT p. 111. This is the language used in the General Laws provision on the moderator’s powers. Mass. G.L. c. 39, § 15. It is possible that some special statutes or charters do mention a right to appeal from a moderator’s rulings. The earlier edition took a neutral stance on whether such statutory language permits appeals or not. TMT2d p. 106.

- *Moderator may divide the question without a motion.*

The third edition states that the better rule is to allow the moderator to divide a question without waiting for a motion “if the division will serve some constructive or valuable purpose.” TMT p. 113. The second edition states that a vote should always be taken on dividing the question. TMT2d p. 108.

- *“Friendly amendments” allowed.*

The third edition provides rules for allowing “friendly amendments,” although it does not use the term. If the mover accepts a suggested modification to a pending motion, even during debate, and no one objects, it is treated as an amendment by general consent. TMT pp. 119-20.

Michael E. Malamut
Attorney-at-Law
Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110-1162
617-556-0007 (main)
617-654-1712 (direct)
617-838-8657 (mobile)
617-654-1735 (fax)
mmalamut@k-plaw.com
www.k-plaw.com

362245/80000/0150