ORDER

Pursuant to W. Va. Code § 3-1A-6, the Secretary of State of West Virginia, Mac Warner, hereby issues this Order regarding the statewide 2020 Municipal Election Day delay ordered by Governor Jim Justice via Executive Order 18-20 (eff. April 1, 2020), and Executive Order 23-20 (eff. April 9, 2020).

STATUTORY SUMMARY

1. W. Va. Code § 3-1A-6(a) provides:

   > The Secretary of State shall be the chief election official of the state. Except for those rules required by the provisions of section five of this article to be promulgated by the commission, the Secretary of State shall have the authority, after consultation with the state Election Commission, of which he or she is a member, to make, amend and rescind such orders . . . as may be necessary to standardize and make effective the provisions of this chapter.

   > All election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks shall abide by any orders that may be issued and any legislative rules that may be promulgated by the Secretary of State and the commission.

2. W. Va. Code § 15-5-6 provides:

   > (c) So long as a state of emergency or state of preparedness exists, the Governor has and may exercise the following additional emergency powers:
   > . . .
   > (7) To suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules of any state agency, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency[.]

3. Under the Governor's emergency authority to suspend regulatory statutes under certain conditions set forth in Paragraph 2 above, the Governor issued Executive Order 18-20 delaying the 2020 Primary Election day from May 12, 2020 to June 9, 2020, to protect the public health amid the current COVID-19 pandemic.

4. Executive Order 18-20 also delays the 2020 Municipal Election days scheduled to be held between June 1, 2020 and June 9, 2020, which "elections shall be moved forward an equal

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number of days, and all local governing bodies shall take such actions as may be necessary or advisable to effect such postponement, in consultation with the West Virginia Secretary of State.

5. Executive Order 18-20 further suspends the provisions of W. Va. Code §§ 8-4-7 and 8-4-8 relating to the timing requirements for municipalities to amend a Municipal Charter, to the extent that a municipality has an election date established by Municipal Charter, which must be amended prior to delaying the municipal election. The Executive Order provides, "all local governing bodies charged with administering or conducting such election shall take such action necessary or advisable to effect such postponement, in consultation with the West Virginia Secretary of State. To the extent that any municipal charter or other law allows for emergency meetings or other procedures to otherwise postpone the election dates for such municipalities, such emergency meetings or other procedures may be used."

6. Executive Order 23-20 clarifies that all municipalities, regardless of their original election day, may come to an agreement with their county election officials to hold the municipal election simultaneously with the county election on June 9, 2020 pursuant to W. Va. Code § 8-5-5(b). Such agreement must follow the law and include provisions that ensure municipal voting precinct boundaries align with county boundaries, or otherwise that municipal precinct poll books are available in the appropriate polling locations to ensure municipal voters are provided the correct (1) county, and (2) municipal ballot. However, this option is merely a possibility that can be exercised upon a county's determination there is sufficient time, resources and ability to add a municipal election to the county ballot for the June 9 Primary Election.

7. Executive Order 23-20 also permits municipalities with elections originally scheduled for any time prior to June 1, 2020, to delay their election date to July 7, 2020, "or as soon thereafter as practicable after consultation with the Secretary of State."

FACTUAL BACKGROUND

8. Between April 1 and April 10, 2020, the WV Secretary of State's Office (WVSOS) held several conference calls and coordinated with an agent of the West Virginia Municipal League (WVML) and several municipalities with elections scheduled for June 1 - June 9, 2020 to discuss the potential dates for delaying all municipal elections "an equal number of days" as required by Executive Order 18-20.

9. During discussions, WVML and participating municipal agents discussed potential delay dates in both June and July of 2020.

10. Regarding potential June election dates, which must be scheduled after the June 9, 2020 Primary Election, WVSOS determined that there would be insufficient time for municipalities and counties to follow statutory requirements.

Specific concerns include but are not limited to: (1) all municipal elections must be "moved forward an equal number of days" pursuant to Executive Order 18-20; (2) several municipalities borrow/rent their county's electronic voting machines for the municipal election; and (3) counties must assist municipalities with several parts of the election administration (*e.g.* update voter registration records prior to voting, print municipal poll

books, prepare and provide precinct kits, etc.), which would strain county staff and resources required to satisfy the county's statutory duties to finalize the June 9 Primary Election.

It was further determined that some municipalities are able to hold a June election without county voting machines. However, the county's post-election duties take weeks to finalize. In that time, it is imperative for counties to have sufficient time and staff available to process the county's absentee ballots, for which volume is expected to increase substantially from previous elections due to COVID-19 in-person voting concerns and WVSOS emergency procedures recorded at Code of State Rules § 153-53 clarifying that concerns over COVID-19 renders all registered voters eligible to vote an absentee-by-mail ballot for the 2020 Primary Election.

For a municipality that uses county voting equipment for their municipal election, the equipment cannot be made available for reprogramming until the 2020 Primary Election is complete. Moreover, the machines must be publically tested, assessed for security purposes, and distributed to the municipality, all of which takes approximately one month to complete.

Additionally, immediately following the June 9 Primary Election, county staff must enter voter history into the statewide database, prepare for canvass (which begins 5 days after June 9 but may be delayed as necessary to accommodate increases in absentee ballots), investigate improprieties or deficiencies in provisional ballots, and administer any recounts or election contests following certification, all of which generally take weeks to complete.

Therefore, rescheduling municipal elections for any time in June will likely render counties without the ability to satisfy statutory duties to finalize the 2020 Primary Election and provide the statutorily mandated services to municipalities simultaneously.

11. Regarding early July election dates, WVML and participating municipal agents expressed strong concerns and objections to requiring voters to forego personal plans associated with the July 4 holiday to instead vote in person. Some concerns include but are not limited to poll worker shortages on both July 4 and Election Day of July 7, high probability of a lower voter turnout for a holiday week election, and less availability of county assistance during the end of the early voting period through the following holiday week.

DISCUSSION

12. Pursuant to W. Va. Code § 3-1A-6(a), "[t]he Secretary of State shall have the authority, after consultation with the state Election Commission, of which he or she is a member, to make, amend and rescind such orders . . . as may be necessary to standardize and make effective the provisions of this chapter. . . ."

13. WVSOS consulted with WVML and municipalities selected by WVML as representatives of all municipalities holding elections in 2020 regarding the proposed delayed election dates, which "shall be moved forward an equal number of days" pursuant to Executive Order 18-20.

14. On April 14, 2020, WVSOS consulted with the State Election Commission at a public meeting held telephonically regarding this Order as required by W. Va. Code § 3-1A-6(a).

ORDER

WHEREFORE, pursuant to foregoing statutory summary, factual background and discussion, the Secretary of State hereby orders the following:

1. Municipalities with originally scheduled Election Day dates shall take the necessary action to delay their municipal election to the following respective dates:

Original Municipal Election Day	New Municipal Election Day
Prior to June 1, 2020 ------------------	**July 7, 2020 (or as soon thereafter as practicable after consultation with WVSOS)**
June 2, 2020 ---------------------------	**July 21, 2020**
June 9, 2020 ---------------------------	**July 28, 2020**

2. For municipalities that have or will enter into an agreement with a county to hold the county and municipal elections concurrently on June 9, 2020 under W. Va. Code § 8-5-5(b), the above new municipal election dates shall not apply.

3. Any Municipal Charter which establishes an Election Day for any date other than June 9, 2020, must follow the provisions of Executive Order 18-20 to amend its Municipal Charter unless there exists other local authority to establish the new election date.

4. To avoid the concerns discussed above regarding with the July 4, 2020 Independence Day holiday, any municipality with an original Election Day scheduled for prior to June 1, 2020 may select a new Election Day beyond July 7, 2020 after consultation with the Secretary of State. Provided, that all applicable Executive Orders and laws regarding amending a Municipal Charter shall apply.

5. The election calendars for each new municipal election date may be found attached to this Order, which calendars shall be followed by each municipality.

Entered this 10th day of April, 2019.

Mac Warner, Secretary of State

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2020 Municipal Election Calendar
<u>July 7, 2020 General Election</u>

*Deadlines to be followed unless otherwise provided by Charter or Ordinance

First day to receive application for absentee ballot from all voters	**January 1, 2020**
Candidate filing period	**Jan. 13- Jan. 25, 2020**
Deadline to submit Notice of Intent for Class IV	**Jan. 31, 2020**
Notice of precinct change published	**March 9, 2020**
Deadline to order precinct change	**April 8, 2020**
Deadline for candidates to withdraw from General	**April 14, 2020**
Uniform drawing for ballot position **[unless other dates set by ordinance]** *(If drawing has already been completed, do not re-draw)*	**April 28, 2020**
Deadline for emergency precinct change *(If precinct becomes unavailable after this date, follow the procedures of W. Va. Code § 3-1-7(f) to establish a new precinct)*	**May 8, 2020**
Election officials & alternates appointed	**May 19, 2020**
Deadline for write-in candidate to file	**May 19, 2020**
Delivery of absentee ballots to recorder (deadline)	**May 22, 2020**
Mail absentee ballots	**May 22 – July 2, 2020**
Mandatory training of election officials (within 30 days of election)	**June 7, 2020**
Publish Sample Ballot (1st publication)	**June 11 – June 17, 2020**
Last day to register to vote in a municipal election	**June 16, 2020**
Early voting occurs during this time period	**June 24 – July 4, 2020**

Early voting in person conducted 9 am to 5 pm	**June 27, 2020**
Publish Sample Ballot (2nd publication)	**June 30- July 6, 2020**
Emergency absentee voting period **(ends at noon on election day)**	**June 30 – July 7, 2020**
Deadline to receive all absentee ballot applications	**July 1, 2020**
Early voting in person conducted 9 am to 5 pm	**July 4, 2020**
Last day to receive a hand delivered absentee ballot	**July 6, 2020**
General Election day	**July 7, 2020**
Canvass begins; results declared at end of canvass	**July 13, 2020**
Certify results 48 hours after results declared **for races without a recount request**	**July 15, 2020**
New terms begin ***(estimated new term; could be delayed following** **a recount and/or election contest)**	***July 15, 2020**

Deadlines to be followed unless otherwise provided by Charter or Ordinance

First day to receive application for absentee ballot from all voters	**January 1, 2020**
Candidate filing period	**Jan. 13- Jan. 25, 2020**
Deadline to submit Notice of Intent for Class IV	**Jan. 31, 2020**
Notice of emergency precinct change published	**March 23, 2020**
Deadline to order precinct change	**April 22, 2020**
Deadline for candidates to withdraw from General	**April 28, 2020**
Uniform drawing for ballot position [unless other dates set by ordinance] *(If drawing has already been completed, do not re-draw)*	**May 12, 2020**
Deadline for emergency precinct change *(If precinct becomes unavailable after this date, follow the procedures of W. Va. Code § 3-1-7(f) to establish a new precinct)*	**May 22, 2020**
Election officials & alternates appointed	**June 2, 2020**
Deadline for write-in candidate to file	**June 2, 2020**
Delivery of absentee ballots to recorder (deadline)	**June 5, 2020**
Mail absentee ballots	**June 5 – July 16, 2020**
Mandatory training of election officials (within 30 days of election)	**June 21, 2020**
Publish Sample Ballot (1st publication)	**June 25 – July 1, 2020**
Last day to register to vote in a municipal election	**June 30, 2020**
Early voting period	**July 8 – July 18, 2020**

Early voting in person conducted 9am to 5pm	**July 11, 2020**
Publish Sample Ballot (2nd publication)	**July 14 – July 20, 2020**
Emergency absentee voting period **(ends at noon on election day)**	**July 14 – July 21, 2020**
Deadline to receive all absentee ballot applications	**July 15, 2020**
Early voting in person conducted 9 am to 5 pm	**July 18, 2020**
Last day to receive a hand delivered absentee ballot	**July 20, 2020**
General Election day	**July 21, 2020**
Canvass begins; results declared at end of canvass	**July 27, 2020**
Certify results 48 hours after results declared **for races without a recount request**	**July 29, 2020**
New terms begin ***(estimated new term; could be delayed following** **a recount and/or election contest)**	***July 29, 2020**

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2020 Municipal Election Calendar
<u>**July 28, 2020 General Election**</u>

*Deadlines to be followed unless otherwise provided by Charter or Ordinance

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First day to receive application for absentee ballot from all voters	**January 1, 2020**
Candidate filing period	**Jan. 13- Jan. 25, 2020**
Deadline to submit Notice of Intent for Class IV	**Jan. 31, 2020**
Notice of emergency precinct change published	**March 30, 2020**
Deadline to order precinct change	**April 29, 2020**
Deadline for candidates to withdraw from General	**May 5, 2020**
Uniform drawing for ballot position [unless other dates set by ordinance] *(If drawing has already been completed, do not re-draw)*	**May 19, 2020**
Deadline for emergency precinct change *(If precinct becomes unavailable after this date, follow the procedures of W. Va. Code § 3-1-7(f) to establish a new precinct)*	**May 29, 2020**
Election officials & alternates appointed	**June 9, 2020**
Deadline for write-in candidate to file	**June 9, 2020**
Delivery of absentee ballots to recorder (deadline)	**June 12, 2020**
Mail absentee ballots	**June 12 – July 23, 2020**
Mandatory training of election officials (within 30 days of election)	**June 28, 2020**
Publish Sample Ballot (1st publication)	**July 2 – July 8, 2020**
Last day to register to vote in a municipal election	**July 7, 2020**
Early voting occurs during this time period	**July 15 – July 25, 2020**

Early voting in person conducted 9 am to 5 pm	**July 18, 2020**
Publish Sample Ballot (2nd publication)	**June 21- July 27, 2020**
Emergency absentee voting period **(ends at noon on election day)**	**June 21 – July 28, 2020**
Deadline to receive all absentee ballot applications	**July 22, 2020**
Early voting in person conducted 9 am to 5 pm	**July 25, 2020**
Last day to receive a hand delivered absentee ballot	**July 27, 2020**
General Election day	**July 28, 2020**
Canvass begins; results declared at end of canvass	**August 3, 2020**
Certify results 48 hours after results declared **for races without a recount request**	**August 5, 2020**
New terms begin ***(estimated new term; could be delayed following** **a recount and/or election contest)**	***August 4, 2020**