

Michigan Municipal League

COVID-19 Virtual Meetings Executive Order Webinar

March 20, 2020

Questions & Answers

Q. We have passed a resolution that says that we will hold a meeting of the electors on March 28. Can we cancel or postpone this, and if so, how? What happens to salary resolutions in this case?

A. You need to check with your municipal attorney for certain, but you probably can postpone that meeting. Whatever salaries are in place will remain in place until they are changed at a future date.

Q. Is it realistic to hold a meeting of potentially hundreds of people online?

A. Yes, the capabilities are there—we have over 900 people on this webinar, there have been a few hiccups, but for the most part it has gone fairly smoothly. Make sure the technology and solutions you go with can provide for the number of attendees you anticipate. Make sure you're getting the correct tier—the price will go up the more people you have connecting virtually or on a call.

Q. Our thought is to have our council meet in chambers, exclude physical public audience but live stream the meeting on Facebook/YouTube...would something like that be acceptable under the order?

A. Social media commenting is NOT OK. You are required to have a method of two-way commenting. People have to be able to participate verbally during the public comment section.

Q. If there are councilmembers teleconferencing to the meeting and there is physical access to the public for the meeting, are we required to provide teleconferencing to the public?

A. If you are offering tele- or video- conferencing solutions, you need to offer it to everybody. If some council members are participating electronically, then you should offer that option to the public and press as well.

Q. Is legislative extension of the Executive Order expected?

A. By law, the Executive Order expires after 28 days and can only be extended by the Governor's request to both chambers of Legislature and their concurrence. I (Steve) have no idea. The League's Legislative team will follow this—they are working closely with Legislators and have already started those discussions.

Q. Define "verbal," please.

A. You are required to have a method for the public to speak and verbally address the public body during public comment period.

Q. Can an Executive Order suspend a statute, such as the OMA, which is enacted by the Legislature?

A. Yes, the Emergency Management Act grants the Governor the ability to suspend statutes during times of emergencies.

Q. How do special notice requirements work with a Planning Commission? Direct communication by an applicant with Planning Commissioners is not permitted.

A. Special notice requirements apply to all types of public bodies. If the Planning Commission is holding an electronic meeting you are required to comply with special notice requirements with phone number and website address to join and so forth.

Q. Does MML provide any resources or have suggestions on resources for municipalities to use to hold telephone-based meetings? We do not have any type of technology that would allow us to utilize virtual meetings at this time.

A. Yes, we are having demos on Monday's technology webinar (go to blogs.mml.org/wp/coronavirus/ to view the webinar)

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Q. We are planning for council to meet in person on Monday, as staff needs more time to implement and pilot test the technology for smooth meeting administration. We will be 6 feet apart. How do you suggest we take public comments electronically?

A. It would have to be a conference or video call—you must meet the two-way communication requirement.

Q. Are comments only allowed during the comment period as usual, or throughout the entire meeting?

A. Under OMA, public comments are only required to be allowed for one portion of a public meeting. This is up to your council and the rules you have adopted (via council rules of procedure). You can allow for more public comment time if you want.

Q. Does "speak" mean talk or are email and chat sufficient?

A. Yes—speak means talk. Email and chat are not sufficient for the public comment period.

Q. What do you suggest for enabling participation by handicapped persons?

A. Voice relay service or some platform that has accessibility options or closed captioning.

Q. Does the "breach of peace" rule mean we have to let people physically enter the auditorium? What if nobody else is there?

A. The Executive Order does not require that you open up your building for physical attendance. All it means is that you can't remove someone from a meeting unless they breached the peace—interrupted a public body's ability to approve business at that meeting. Same thing with electronic (or virtual) meetings – if someone is out of order and is warned and doesn't compose themselves, then they can be removed from the meeting.

Q. So, press must be allowed access even if we close the doors to the public, correct?

A. If you are having an electronic meeting, you can close the doors to the public and press, but you have to allow electronic access to the press as well as the public.

Q. We have issues in this virtual meeting. What ramifications are there when public or press claims they were not able to hear, see, participate, etc.? Seems like no meeting is better than virtual meeting.

A. If it's a tech prob on the end of the member of the public, the municipality is not responsible. If it's the public body's problem, then it is problematic. You may want to offer a technology helpline to the public for troubleshooting during meetings.

Q: If our charter requires a monthly meeting, are we permitted to cancel and hold no meeting for the month under the order?

A. I think that would be permissible, but you need to check with your municipal attorney.

Q. What about Google Hangouts?

A. As long as it satisfies the requirements of the order, then yes. Might be complicated—so really test it.

Q. What do you suggest we should do if the platform being used crashes during the remote meeting?

A. Boot it back up. And continue meeting. You must have a quorum to continue the meeting. If you lose your quorum, the meeting has to stop until you regain a quorum. We're focusing on EO 2020-15. If you are looking at the directive (2020-02), it could be argued that targets state agencies and depts, but could say others should postpone those things that can be postponed. No meetings unless urgent need to have them.

Q. I use Ring Central which uses Zoom. On the desktop version, attendees can UNMUTE themselves, even if the host mutes you. Not good. Do others' options not allow this?

A. Some of them allow you to mute everyone. Different kinds of video meetings and the solutions allow you to have webinar or regular meetings. The problem is, it also applies to the phone piece. The problem is, you don't know who they are. You have to allow them to unmute themselves. Just need to be clear when they are allowed to unmute themselves.

Q. Do you have to have a meeting to adopt rules to allow you to have tele-meetings, or can that be done in a single meeting?

A. Your rules governing meetings should be developed by staff, then acted on as the first order of business at the virtual meeting. I don't think you have to have one meeting to allow you to do virtual meetings at future meetings.

Q. There are several tiers for Zoom. Do all tiers meet the requirements or just some?

A. Tiers are just the amount of people that can join. You will need to allow for the amount you expect to have. All tiers meet the requirements.

Q. How about Microsoft Skype for Business or Microsoft Teams?

A. Dene tried Skype and no hearing impaired/closed captioning, so you would have to figure out an alternative. It may be a little more challenging to control the meeting. Look at the requirements, make sure it satisfies those.

Q. I have a question about Zoom's pricing model. Does the number of participants include members of the public? What do we do if we get more public members than what we pay for?

A. Total number – council, staff, public, media. I Don't know what would happen if you went over—I will have to get back to you. Zoom pricing: <https://zoom.us/pricing>

Q. Will locals be required to provide GREATER accessibility for electronic meetings than they would regular, live meetings? For example, closed captioning was not generally available for most local's pre-COVID-19 meetings.

A. Yes—that is what Executive Order requires.

Q. What is a voice relay?

- A. An operator service that allows people who are deaf, hard of hearing, deafblind, or have a speech disorder to place calls to standard telephone users via a keyboard or assistive device. The hearing impaired person calls a service then the service calls the conferencing line and responds back (relays) with teletype.

Q. Steve, when you mentioned that the EO supersedes local rules, does that include a body's standing rules?

A. Yes, the EO would supersede local rules to the extent they conflict with the EO.

Q. We pay per diems for physical presence only at meetings. can we waive this requirement for digital meetings?

- A. I would have to look at the language that authorizes that—my guess would be that it may not apply since you are not holding physical meeting.

Q. Which Program can Ghost your Backdrop? I know Microsoft Meetings can.

- A. Zoom also does, but it looks a little weird. Might not be the best.

Q. Will a conference call alone meet meeting requirements?

- A. Yes.

Q. So, our attorney stated that we have to have a quorum in a meeting room to have this council meeting. Am I correct to assume that this EO supersedes that decision?

A. Talk with your attorney, but yes, that is our interpretation. It is not mandatory to hold virtual meetings. A virtual meeting is an option under the order.

Q. What is different from regular notice vs special notice and can it be combined, i.e., notice in window, paper, Facebook, website, etc... all with detailed info. Or are you saying we have to post twice?

- A. Depends on the timing. If you have a meeting that was already scheduled, you would need to repost. If you are going to call a special meeting, then your notice, if it's going to be electronic, then you post the requirements for that all in one posting.

Q. It's my understanding that essential business only, not all everyday items, Correct?

A. That's up to the public body. The Governor is urging officials/employees at the state level to only have meetings that meet state approval. If you have a regular scheduled meeting or special meeting, you can have a full agenda.

Q. If we have not had any requests for special accommodations, do we automatically need to provide closed captioning?

A. If you are holding an electronic meeting, then yes, you need to provide those accommodations because the notice requirements for electronic meetings requires you to include a procedure for which people with disabilities may participate in the meeting. Whether they are taken advantage of or not.

Q. Does the EO say you need to make sure you have a local/toll free number? Many services you don't pick the number, or it is \$\$ to offer toll free.

A. You won't find that in the order, but it is incumbent upon public bodies that if they are going to hold an electronic meeting then they will provide for ways for public and press to participate without it costing the public or press money to participate.

Q. Could you expand on the closed caption service with Zoom?

A. You are allowed to either type the transcript or you can assign a co-presenter to do the typing. If you are the meeting operator, you don't have to do it yourself. I'll be going over this on Monday webinar.

Q. Will you be placing the presentation on the MTA website for access later by those unable to be involved in the live conference?

A. Yes. We will be providing it to MTA.

Q. For 300 feet public notices that were mailed out, how do we accomplish the new requirement of the 2nd notice? Can we just post online?

A. That's a good question. I would think that if you are going to hold that meeting (public hearing) electronically, I would think you would want to send out notices of it to the people who received the first notice.

Q. Do you know if Microsoft Teams can accomplish everything Zoom does or have everything that is required? Our IT Company said Microsoft is providing 6 months free.

A. Not for sure. Skype for business is turning into Microsoft team. Make sure you check the requirements. If your platform fulfills the requirements, then you are good to go. Skype for business for sure doesn't have closed captioning.

Q. Do we have to offer the verbal option for public comment, and confirm that text or email by itself is not allowed?

A. Yes, it is clear from the Executive Order—you have to offer verbal comment. Anything else is allowed in addition.

Q. Is an email like "PUBLICMEETING@xxxcity.com" sufficient to allow the public to ask questions?

A. No, it doesn't allow for verbal communication by public. You have to provide telephone number or internet address at where you can join the meeting.

Q. With public comment allowable via typing, the slide indicated these comments "may" be shared (or something along those lines). The question is does that mean such comments can be shared with discernment or is it required to share such comments? Unfortunately, can foresee the potential for some ridiculous comments from individuals with "keyboard courage"?

A. The EO says that in addition to verbal comment, the public body may ALSO use tech to facilitate typed comment that MAY be read to and shared with public body and another participant. If allowing them, then you will have to preserve them as public record.

Q. Can anyone who has joined the meeting i.e. a staff member from home have the capabilities of typing closed captioning, how does that work exactly?

A. The operator of the meeting has ability to designate a co-host to type closed captioning.

Q. How do we bounce a member of the public off a conference call if they are being disruptive over business items OUTSIDE public comment?

A. Each solution has the ability to remove participants (technologically). Be hesitant to remove citizens from an electronic meeting just like you would a physical meeting—only for breaching the peace in a way that prevents the public body from carrying on the meeting.

Q. "Should" or "required" to provide telecommunications to all?

A. The public body has the option of electronic meetings. You have the option of telephone or online. Whichever method you choose, it does have to have the capability of the public to verbally address the public body during the public comment portion of meeting.

Q. What are the larger cities with a strong mayor form of government doing, if anything, for the city council to authorize the regular payment of bills from city vendors if the city council does not meet?

A. At some point the council has to meet to pay bills, to keep government going. Nothing in the order suspends or offers relief from FOIA, either. Someone still has to check mail for FOIA requests.

Q. In our council rules, public speakers have to sign up to speak prior to the start of the meeting. May we have a cutoff time for them to sign up still consistent with our rules?

A. As long as your rules are reasonable, then yes. In the case of electronic meetings, this might need to take place in the first 5-10 minutes of the meeting. Rules must be reasonable and approved by the public body.