

New Pandemic Order: What it Means for Your Community Webinar Q&A 12/19/20

We have a senior center that has decided they will not follow the new order. The building itself is owned by the city. Do you have any suggestions what we as a city might do?

- A. The purpose of the presentation is to give general guidance on what the order requires. We cannot give advice on a specific issue without first conducting a conflict check. As a general matter, however, if a city owns a building but not a center operating in the building (for example, on a leasing basis), the city may wish to review the leasing agreement with the senior center to determine if there is a clause that requires the lessee to comply with laws, regulations, or government orders while operating business on the premises. The agreement should be enforced accordingly. The city will expose itself to liability if it knowingly allows unlawful activity to take place on its premises. Because COVID-19 is a deadly illness, the negative consequences of such unlawful activity could include death, making potential liability extremely severe. Additionally, local law enforcement has the authority to enforce the order.

How forcing an otherwise legal business to close not an illegal taking? Our remaining businesses will not make it through this next shut off. And in case no one noticed, there is snow on the ground up here so dining outside isn't realistic.

- A. This is an issue that is currently highly contested. There has been a lawsuit brought by a group of Michigan restaurants against the Director of MDHHS to enjoin the November 15 Emergency Order, one of the grounds for the challenge is that the order violates the Taking Clause of the United States and the Michigan Constitutions. On December 2, 2020, the District Court for the Western District of Michigan rejected the plaintiffs' request for a preliminary injunction. However, the court did indicate that it is considering certifying questions to the Michigan Supreme Court to determine the state law issues that must be considered before the merits of the federal claims (including the constitutional violation allegations) can be fully adjudicated.

How does this new restriction impact attendance at public meetings for Open Meetings Act? Does the prohibition on indoor gatherings include city commission meetings?

- A. In-person meetings are prohibited unless the meeting is of fewer than 25 people and is held outdoors for the 3 weeks of this order. PA 228 allows virtual meetings until the end of the year.

How was a three-week Pandemic Order determined? What Scientific or Medical Evidence was proved to determine a three-week duration?

- A. The first part of the order sets out the basis of the order as being to reduce the spread of COVID-19. We do not know how the MDHHS determined the 3-week duration.

Under the work from home order, does MIOSHA expect municipalities to expend large sums to buy the technology that would be needed for employees to be able to work from home?

- A. No, it's not saying that. Ultimately, it's a business decision for the municipality whether purchasing equipment is feasible. However, the MDHHS issued guidance on November 6, 2020, which clarified that under the remote work requirement in-person work should not be allowed to limit inefficiency, unproductivity, or costs associated with remote work.

Since there is an extension to the Pandemic Order. Will the CARES ACT be extended as well? Meaning new funding will be distributed?

A. The CARES Act is a federal law, and it can be extended only by federal legislation. The November 15 order, issued by Michigan's Department of Health and Human Services, does not extend the CARES ACT

1 Employee tests positive, other employees around them. other employees get rapid test and comes back negative they don't have to quarantine or get PCR test?

A. No. It is advised that the other employees who came in close contact with the confirmed case of COVID-19 self-quarantine for 14 days after the last contact with the person who has COVID-19 (the CDC has recently come out with options to reduce the quarantine period, but continues to endorse quarantining for 14 days). There is one exception for employees who have tested positive for COVID-19 within the past 3 months and do not develop symptoms. The fact that an employee gets a negative rapid test does not shorten the duration of quarantine. Not only is a rapid test not as reliable, the fact that an employee tested negative does not mean that the employee is not infected, because of the prolonged incubation period of the virus.

What about City parks?

A. City parks can be open for outdoor gatherings that are compliant with the order.

Prohibited gatherings slide doesn't include fitness classes. Was this a mistake or has the epidemic order changed?

A. This was not a mistake. The prohibited gatherings slide focused on venues and facilities that must close. As discussed further in the presentation, exercise facilities are permitted to stay open, but group fitness activities or classes are prohibited at exercise facilities.

Does the 14-day quarantine for close contact with a COVID positive individual include Dispatchers and DPW personnel?

A. To the extent possible, all individuals who come in close contact with a COVID-19 positive individual should self-quarantine in accordance with the CDC guidance. The November 15 MDHHS order doesn't specify that information. Certain essential workers, such as healthcare workers, might not be subject to the self-quarantine guideline due to the nature of their jobs. We advise following the CDC guidelines and seeking guidance from local public health authorities.

Regarding enforcement, what is the MCL number?

A. Under MCL 333.2235(1), local health departments are authorized to carry out enforcement of the order; law enforcement defined under MCL 28.602(f) are deemed to be department representatives.

Can a bar that serves food stay open?

A. If it's a "nightclub" then it has to close. Otherwise, bars that serves food are subject to the restrictions applicable to food service establishments, which means that take out service and some outdoor seating are permitted.

"Can be enforced by police" implies they can't be compelled to? Local police? County sheriff?

A. Under the November 15 MDHHS order, law enforcement as defined under MCL 28.602(f) are authorized to carry out and enforce the terms of this order. Law enforcement would include local police and county sheriffs. Whether a law enforcement officer or agency might choose to refuse to enforce the law, and the potential consequences of such refusal, are outside the scope of this presentation.

If a public meeting is taking place, who should be called about the violation?

A. If a gathering is taking place in violation of the MDHHS order, one can contact local law enforcement.

How does this order impact normal operations in an office (city hall) environment?

A. Local government officers are still permitted to be open to the public.

MDHHS Q&A posted today permits local government offices to be open to the public. If the building is open, does that determination automatically cancel out the remote work mandate for local government office employees?

A. No, not at all. If an employee can perform his or her job remotely, then the employee must do so under MIOSHA Emergency Rule (issued October 14, 2020). But if an employee is unable to physically complete required job tasks from a remote setting (e.g., front desk services), then the employee can come to work in person. The fact that certain employees have to work from home does not mean that the office needs to close.

Do you have a policy that aligns with MIOSHA's interpretation of remote work?

A. We will be happy to provide a sample. Please contact us directly.

But if the public meeting is held in person, how is the OMA prohibition against requiring citizens to, as a condition of attendance at a meeting of a public body, register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance reconciled?

A. There is no requirement in the November 15, 2020 order requiring the attendee to provide his or her name to participate in a public meeting.

Has the Legislature approved the bill to continue remote meetings as legal into the new year?

A. Yes, but only under certain circumstances. The MML's team is working to get that extended.

Virtual meetings after January 1 are limited to only those with a medical condition, serving in the military, or if a state of emergency/disaster has been declared, correct?

A. Correct. Public meetings may be held virtually after January 1, 2021 through December 31, 2021 only in limited circumstance requiring accommodation of members absent due to military duty, a medical condition, or a statewide or local state of emergency or state of disaster. MCL 15.263a(1)(b).

If the Infections numbers keep going up, will there be an extension to this New Order?

A. We don't know, but maybe. The Governor has indicated that the state health officials have not made any decision on whether to lift the restriction.

When you say required to work remote, so the employer or employee doesn't have a choice?

A. Correct, to the extent that the employee's work activity can feasibly be completed remotely. Under MIOSHA's Emergency Rules dated October 14, 2020, an employer shall create a policy prohibiting in-person work for employees to the extent that their work activities can feasibly be completed remotely. MDHHS clarifies that this requirement means that employers should only permit in-person work if a worker is unable to physically complete required job tasks from a remote setting, or a job involving protected data that cannot be accessed remotely.

Are police & fire required to wear masks?

- A. Under the November 15, 2020 order, there is an exception for the mask-wearing requirement for individuals who “are actively engaged in a public safety role, including but not limited to law enforcement, firefighters,, and where wearing a face mask would seriously interfere in the performance of their public safety responsibilities.”

Is confirmed COVID positive wages paid MERS eligible? If so, can this MERS benefit be added to the credit on Form 941?

- A. This question is outside of our expertise.

Do these orders affect the city commission meetings to continue to conduct city business? If the need is to have meetings remotely, who covers the cost of upgrading equipment to small municipalities with small budgets?

- A. Please see the answer above for public meetings. The order does not mention who would cover the cost of upgrading equipment to small municipalities with small budgets.

They made a comment that employers are required to have employees work remotely - is there no choice? I came in late to the webinar from another meeting, so I might have missed something relevant to this.

- A. Please see the answer above.

Social Districts:

How do municipalities balance Social Districts, which encourage gathering, with the limit on outdoor gatherings?

- A. By following the November 18 Face Masks and Gathering Order and seeking guidance from your municipal attorney as needed.

Are Social District Commons Areas limited to 25 people?

- A. Depends on the size of your social district, and if it has fixed seating or not.

The November 18 Face Masks and Gatherings Order states gatherings at non-residential venues are permitted only to:

25 or fewer persons are gathered at a venue without fixed seating, and attendance is limited to 20 person per 1,000 square feet, including withing any distinct area within the event space;

25 or fewer persons are gathered at a venue with fixed seating, and attendance in limited to 20% of seating capacity of the venue.

Has anyone asked for clarification yet about the outdoor igloos? Example, if a food establishment is open for carry-out, can customers use the igloos if they comply with the indoor gathering requirements (10 or less, 2 families)?

- A. Yes, please review the FAQs for the November 18 Face Masks and Gatherings Order [HERE](#) (specific Q&A listed below)

What forms of dining at food service establishments are permitted under the order?

- A. Outdoor dining at a food service establishment is permitted provided persons are seated no more than 6 to a table and tables are spaced at least 6 feet apart. A permitted outdoor food service establishment setting also includes a single household dining inside an igloo, hut, or other small, enclosed space, provided that employees enter fleetingly or not at all. Representatives of food service establishments wishing to explore options like these should ensure compliance with any applicable local regulations.

OMA legislation:

Didn't MML recommend that the MHHSD did not have jurisdiction over the Open Meetings Act back in October when SB 1108 was signed into law?

- A. No, the MML did not recommend that.