

Coronavirus (Covid-19) Update for Local Governments

Local States of Emergency (Executive Law Article 2B)

This is the time to reference your emergency management plans for direction on how to proceed and/or review for potential updates.

When can a local state of emergency be declared?

When there is finding that public safety is imperiled by a disaster, rioting, catastrophe or similar public emergency (Executive Law § 24 [1]). A disaster is defined as the occurrence or imminent threat of wide spread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause including, but not limited to, fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, **epidemic, disease outbreak**, air contamination, terrorism, cyber event, blight, drought, infestation, explosion, radiological accident, nuclear, chemical, biological, or bacteriological release, water contamination, bridge failure or bridge collapse (Executive Law § 20 [2][a]) (emphasis ours).

Who has the authority to declare a local state of emergency?

The statute refers to the “chief executive” of the town (Executive Law § 24 [1]). This has been interpreted to mean the town supervisor (see 2005 Ops Atty Gen No 5 [Feb. 11, 2005]).

How long can the state of emergency remain in effect?

Until it is rescinded by the supervisor or after 30 days, whichever comes first. The supervisor may extend the state of emergency proclamation for another 30 days (see Executive Law § 24 [1]). However, any local emergency order (see “What authority does the town have under a state of emergency?”) may only be in effect for five days, and may be extended for another five (see Executive Law § 24[2]).

What emergency orders can be issued during a state of emergency?

The supervisor “may promulgate local emergency orders to protect life and property or to bring the emergency situation under control” such as:

- establishing a curfew and prohibiting and controlling pedestrian and vehicular traffic, except essential emergency vehicles and personnel;
- designating specific zones within which the occupancy and use of buildings and the ingress and egress of vehicles and persons may be prohibited or regulated;
- regulating and closing of places of amusement and assembly;
- suspending or limiting the sale, dispensing, use or transportation of alcoholic beverages, firearms, explosives, and flammable materials and liquids;
- prohibiting and controlling the presence of persons on public streets and places;
- establishing or designating emergency shelters, emergency medical shelters, and in consultation with the state commissioner of health, community based care centers;
- suspending town local laws, ordinances or regulations, or parts thereof subject to federal and state constitutional, statutory and regulatory limitations, which may prevent, hinder, or delay necessary action in coping with a disaster or recovery so long as:



- the county chief executive determines that the disaster is beyond the capacity of local government to meet adequately and state assistance is necessary and requests state assistance from the governor; or whenever the governor has declared a state disaster emergency pursuant to Executive Law § 28.

Suspending a local law, ordinance or regulation is also subject to the following standards and limits:

- (i) the suspension may only last for five days. However, upon reconsideration of all the relevant facts and circumstances, the suspension can be extended for another five days each during the pendency of the state of emergency;
- (ii) no suspension shall be made that does not safeguard the health and welfare of the public and which is not reasonably necessary to the disaster effort;
- (iii) any such suspension order shall specify the local law, ordinance or regulation, or part that is suspended and the terms and conditions of the suspension;
- (iv) the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such local law, ordinance or regulation suspended, and may include other terms and conditions;
- (v) any such suspension order shall provide for the minimum deviation from the requirements of the local law, ordinance or regulation suspended consistent with the disaster action deemed necessary; and
- (vi) when practicable, specialists shall be assigned to assist with the related emergency actions to avoid adverse effects resulting from such suspension.

What are the notification requirements for emergency orders?

A local emergency order shall be effective from the time and in the manner prescribed in the order and shall be published as soon as practicable in a newspaper of general circulation in the area affected by such order and transmitted to the radio and television media for publication and broadcast.

What other authority does the town have under a local state of emergency?

The supervisor is “authorized and empowered to and shall use any and all facilities, equipment, supplies, personnel and other resources of his [or her] political subdivision in such manner as may

The Town as an Employer during a Public Health Emergency

The town has broad authority as an employer to adopt policies and procedures that address, among others, sick leave and leaves of absence for its employees (see General Municipal Law section 92). In the event of a public health emergency, the town should consider the following factors:

- **Determining Essential / Non-Essential Employees.** The town should determine what people and resources are required for the town to function effectively. Each town is different, and each town board will have to make a determination as to what employees and officials are considered essential vs. non-essential.
- **Telecommuting / Working Remotely.** As the employer, the town board may adopt a policy that authorizes telecommuting or working remotely for its employees. It may be prudent to proactively authorize employees and officials to work from home.
- **Evaluate Collective Bargaining Agreements.** Generally speaking, a collective bargaining agreement will supersede any town board determination. However, the town board should review the collective bargaining agreement and consult with the local bargaining unit to determine how to proceed in the event of an outbreak.
- **Review Town Policies / Provide for Sick / Extended Leave.** The town should review its policies currently in place and consider amending them to accommodate employees in the event they fall ill.
- **Educate Employees on Prevention and Treatment.** The town should actively encourage and require behaviors that will help prevent the spread of disease in the workplace, including following the [guidelines established by the Centers for Disease Control](#). Additionally, the town should consider providing hand sanitizer and disinfectant wipe stations in the workplace and public spaces.
- **Communication.** Residents will be looking to the town for guidance on how to proceed during an outbreak. It is essential to keep the public informed in a manner that is not overwhelming and does not lead to widespread panic and misinformation. The town should determine how it will relay information about the outbreak to employees and the public. □

be necessary or appropriate to cope with the disaster or any emergency resulting from the disaster.” The supervisor may also request and accept assistance from any other political subdivision and may use real property from other political subdivisions upon “terms and conditions as may be mutually agreed to by the chief executives of the requesting and assisting political subdivision” (Executive Law § 25).

Town Board Meetings and Coronavirus Scheduling and Cancellation

The town board may schedule meetings by resolution and may cancel meetings by resolution (Town Law, §§63, 64). The town board should review its rules of procedure and other board resolutions and protocols regarding meeting cancellations. In the event the board does not have an established meeting cancellation procedure, the board could consider adopting such a meeting cancellation policy. In the event a meeting scheduled by the town board needs to be canceled but the town board is unable to convene to do so, the town board could consider adopting a resolution delegating to the supervisor the authority to cancel a town board scheduled meeting. The delegation must put forth the procedures and criteria for the supervisor to cancel a meeting scheduled by the town board. In addition, the supervisor may schedule and cancel special town board meetings (Town Law, §62). As with all board actions and protocols, we recommend working with the town attorney for guidance and advice.

Videoconferencing and Public Attendance

Town boards are required to meet in person at a public facility (Town Law, §63; *Bliek v. Town of Webster*, 104 Misc 2d 852, 855 [Sup Ct 1980]; 1963 Op. Atty Gen. [Inf.] 207). The Open Meetings Law allows board members to participate via videoconference but not telephone (Public Officers Law §102 (1) General Construction Law, §41; OML–AO–2430; *City of White Plains v. State Bd. of Real Prop. Servs.*, 18 A.D.3d 549, 795 N.Y.S.2d 292, 293 (2d Dept. 2005)). There are several services that facilitate videoconferencing, such as Skype and FaceTime (OML-AO-5169). In addition, General Construction Law §41 provides that public officers are deemed to be “gathered together” for purposes of constituting a quorum when they are either “in the presence of each other or through the use of videoconferencing.” The Open Meetings Law provides that videoconferencing requires that the notice of the meeting must provide the time, date and location from where the board member will be participating (Public Officers Law §104 (4)). The Open Meetings Law further provides that “a public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates,” (Public Officers Law §103 (c)). Generally, the Open Meetings Law provides that locations of meetings should be in a venue that is publically accessible and ADA-compliant (Public Officers Law §103 (d)). Although the plain language of the statute provides that the public must be allowed to participate at any location from which a board member is videoconferencing, there are a few opinions from the



Committee on Open Government in which it has opined that as long as the majority of the board meets at the municipal meeting room, and that room is open to the public, the locations from which the other board members are videoconferencing need not comply with same requirements for meeting facilities or provide an opportunity for the public to participate via these remote locations (OML-AO-5575; OML-AO-5535). We recommend reviewing these opinions with your town attorney. Committee on Open Government opinions are available on the Committee's website: <https://www.dos.ny.gov/coog/index.html>.

Please reference our Legal FAQ in the March/April issue of our magazine, *Talk of the Town & Topics* for more information on videoconferencing.

Additional Guidance

When the public is gathering at a town meeting or public hearing, the town board should review and implement the recommended protocols from the Centers for Disease Control and the New York State Department of Health regarding prevention.

- NYS Dept of Health: <https://www.health.ny.gov/diseases/communicable/coronavirus/>
- Centers for Disease Control: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

In addition, the town board may review additional steps to mitigate exposure, such as accepting written comments via email, fax or the U.S. Postal Service to be included in the record of a public hearing and/or staggering the dates and times of public hearings to limit crowds, and where feasible, the town board may consider live streaming or broadcasting town meetings and hearings. According to the governor's office, local governments seeking to obtain additional stocks of hand sanitizer should work with their county emergency manager and local health department to submit requests directly into NY Responds, the state's web-based system that enables both local governments and state agencies to submit and share vital emergency-related information and resource requests. It looks like the county can log in here: <http://www.dhSES.ny.gov/ny-responds/> As always, our members are encouraged to call our office with any questions at (518)465-7933, Monday through Friday, 8:30 a.m. to 5 p.m.

Local Government Lobby Day Cancellation

In light of growing concerns about the spread of COVID-19, the Association of Towns and NYCOM have decided to cancel the joint Local Government Lobby Day originally scheduled for March 23, 2020 in Albany, NY. We remain committed to advocating for local government and providing our membership with the tools and information necessary when speaking with your representatives about the budget and other legislative issues. Please do not hesitate to call AOT's office with any questions or concerns. ☐

CDC

- Interim Guidance for Community- and Faith-Based Organizations <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/guidance-community-faith-organizations.html>
- Cleaning and Disinfection Recommendations for Community- and Faith-Based Organizations <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>
- Interim Guidance for Business and Employers <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
 - Environmental Cleaning and Disinfection Recommendations for Businesses and Employers <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

NYSDOH

- [Cleaning and Disinfection Guidance Public and Private Facilities \(PDF\)](#)
 - [Schools \(PDF\)](#)
 - [Non-Healthcare Settings \(PDF\)](#)
 - [Public Transportation \(PDF\)](#)
- [DEC List of Products to Disinfect COVID-19 \(PDF\)](#)

Information for Providers

- <https://www.health.ny.gov/diseases/communicable/coronavirus/providers.htm> ☐