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IMPORTANT CLIENT UPDATE

GOVERNOR EXECUTIVE ORDER 2020-15 **ON OPEN MEETINGS ACT**

As some of you may now know, many Michigan local governmental associations, including MAC and MML, have been working with Governor Whitmer's office to provide some relief from the strict requirements of the Open Meetings Act in light of the highly contagious COVID-19. The attached Executive Order was issued by the Governor late this yesterday, Wednesday March 18, 2020.

The timing isn't perfect for those of you who needed to hold meetings the last few days, but public bodies and other governmental entities in Michigan will now be able to implement an "electronic" public meeting should they chose to do so.

Furthermore, please note that the Michigan local governmental associations, including MAC and MML, are also working with the Governor's office to obtain some relief from the time requirements of the Freedom of Information Act due to the limited municipal staff now available to process FOIA requests.

Please carefully read the requirements of the attached Emergency Order and do not rely solely on this summary. The Order is welcome news, but has some detailed requirements.

Executive Order No. 2020-15 Overview:

Starting today and through April 15, 2020, (this date may be extended further) the rules of the Open Meetings Act (OMA) are suspended to the extent they require a meeting of a public body to be in a physical building open to the public and to the extent the OMA requires the physical presence of one or more members of the public body.

Instead, a meeting of a public body can be held electronically provided the following conditions are met:

- (1) The meeting can be held electronically (including tele-conferencing and video conferencing) if a means are available for both the public and the members of the public body to participate.
- (2) There must be 2-way communication so that (1) the members of the public body can hear each other, (2) the members of the public can hear the members of the public body, and each other, and the public body can hear all of the public during the public comment portion of the meeting.
- (3) It appears to be optional for the public body to use technology for typed public comments to be submitted and read or shared with the public body and participants.
- (4) Members of the public body and members of the public participating electronically will be considered present at the meeting and may participate as if physically present at the meeting.
- (5) All persons wanting to participate must be permitted to participate. The time limits for public comment can still be enforced.
- (6) In addition to the meeting notice requirements of the OMA, the public body must post advance notice of an electronic meeting on the home page of its website. The Notice must include:
 - (a) an explanation of why the meeting is being held electronically,
 - (b) detailed procedures on how the public may participate electronically, including a telephone number, internet address or both, and
 - (c) an explanation of procedures by which persons with disabilities may participate.

The Order does not mandate remote meetings, and likely some public entities could hold “hybrid” meetings where some or all of the members might participate electronically, but the meeting chambers would be open for any public who wish to be present to listen and perhaps speak (via a speakerphone for all members to hear them). These may be needed, at least initially, because the technological options for fully electronic participation may not now be available. However, if such hybrid meetings are needed, care should be taken to assure compliance with federal, state, and local health guidance and requirements relating to maximum numbers of persons within a specific confined area and social distancing between individuals.

These are temporary measures to help us get through this difficult time while also attempting to keep us all safe and healthy.

Should you have questions concerning this new option, please do not hesitate to contact our Office.

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March 20, 2020

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STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-15

Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.

The Emergency Management Act vests the governor with broad powers and duties to “cop[e] with dangers to this state or the people of this state presented by a disaster or emergency,” which the governor may implement through “executive orders, proclamations, and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945, provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders take steps to limit in-person contact. These critical mitigation measures include social distancing and limiting the number of people interacting at public gatherings.

To that end, it is reasonable and necessary to temporarily suspend rules and procedures relating to physical presence at meetings and hearings of public bodies and other governmental entities in Michigan. These public bodies and entities must continue to

conduct public business during this emergency, including actions to respond to COVID-19, and the general public must be able to continue to participate in government decision-making without unduly compromising public health, safety, and welfare.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Effective immediately and continuing until April 15, 2020 at 11:59 pm, to the extent that the Open Meetings Act, 1976 PA 267, as amended, MCL 15.261 to 15.272 (“OMA”) requires that a meeting of a public body be held in a physical place available to the general public or requires the physical presence of one or more members of a public body, strict compliance with section 3 of the OMA, MCL 15.263, is temporarily suspended in order to alleviate any such physical-place or physical-presence requirements, as follows:
 - (a) A meeting of a public body may be held electronically, including by telephonic conferencing or video conferencing, in a manner in which both the general public and the members of the public body may participate by electronic means.
 - (b) A meeting of a public body held electronically must be conducted in a manner that permits two-way communication so that members of the public body can hear and be heard by other members of the public body and so that general public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. The public body also may use technology to facilitate typed public comments that may be read to or shared with members of the public body and other participants.
 - (c) Members of a public body and of the general public participating electronically will be considered present and in attendance at the meeting and may participate in the meeting as if physically present at the meeting.
 - (d) All persons must be permitted to participate in any meeting of a public body held electronically, except as otherwise provided in the OMA.
 - (e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body’s website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website’s homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:
 - (i) An explanation of the reason why the public body is meeting electronically.

- (ii) Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both.
 - (iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
 - (iv) Procedures by which persons with disabilities may participate in the meeting.
- (f) The right of a person to participate in a meeting of a public body held electronically includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of the public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations to minimize the possibility of disrupting the meeting.
- (g) A public body may not require a person as a condition of participating in a meeting of the public body held electronically to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms necessary to permit the person to participate in a public comment period of the meeting.
- (h) A person must be permitted to address a meeting of a public body held electronically under rules established and recorded by the public body. A person must not be excluded from a meeting held electronically otherwise open to the public except for a breach of the peace actually committed during the meeting.
- (i) During a meeting of a public body held electronically, members of the public body are urged to take all votes by roll call to avoid any questions about how each member of the public body votes.
- (j) If a public body holding a meeting electronically directly or indirectly maintains an official internet presence, the public body is encouraged to make available to the general public through the public body's website homepage an agenda and other materials relating to the meeting.
- (k) Members of the general public otherwise participating in a meeting of a public body held electronically may be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of the OMA applicable to a closed session.
2. A public body holding a meeting electronically as provided under this order is encouraged to do so in a manner that effectuates as fully as possible the purposes of the OMA, which include promoting government accountability and fostering openness in government to enhance responsible decision-making. Discussions or deliberations at an open meeting that cannot at a minimum be heard by the general

public participating in the meeting are contrary to these purposes. Accordingly, members of a public body must avoid using email, texting, instant messaging, and other such electronic forms of communication to make a decision or deliberate toward a decision, and must avoid “round-the-horn” decision-making in a manner not accessible to the public at an open meeting.

3. If a decision or other action of a public body is in compliance with the requirements of this order and the other requirements of the OMA, it is in compliance with the OMA.
4. Effective immediately and continuing until April 15, 2020 at 11:59 pm, if a statute or rule other than the OMA requires that public comments be permitted or a public hearing be held, including in conjunction with the issuance of a permit or a hearing required under the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, MCL 141.421 to 141.440a, a public body or department or agency may provide a means for remote public comment or participation through the use of any technology that would facilitate a member of the general public’s ability to participate remotely to the same extent as if the member of the general public appeared in person. If not expressly authorized by statute or rule, written comment, including by electronic means, also is permitted.
5. Effective immediately and continuing until April 15, 2020 at 11:59 pm, strict compliance with subsection 6 of section 11a, subsection 7 of section 384, and subsection 1 of section 418a of the Revised School Code, 1976 PA 451, as amended, MCL 380.11a(6), MCL 380.384(7), and MCL 380.418a(1), is temporarily suspended so as not to require school district boards to hold meetings at least once each month.
6. Nothing in this order permits a public body to limit or restrict the rights of the press or other news media. Members of public bodies are encouraged to facilitate access by members of the press and other news media both to meetings held electronically and to members of public bodies.
7. As used in this order, the terms “decision,” “meeting,” and “public body” mean those terms as defined under section 2 of the OMA, MCL 15.262, except this order does not apply to state legislative bodies.
8. A provision of this order will prevail over any conflicting provision of a local charter, ordinance, or rule.
9. This order supersedes sections 2 and 3 of Executive Directive 2020-2.

Given under my hand and the Great Seal of the State of Michigan.

Date: March 18, 2020

Time: 4:46 pm



GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE