Local Government Response to COVID-19

As of March 12, 2020, besides the recommendations regarding individual behavior, there are no nationwide or statewide standards or guidelines for local government responses to the COVID-19 outbreak.

Consequently, local government officials should be working with their county boards of health to coordinate their response to the COVID-19 virus. While in some instances communities may be able to contain outbreaks of COVID-19, the current goal of addressing COVID-19, as articulated by the CDC and the NYS Department of Health, is to mitigate against the spread of the virus and reduce its rate of transmission.

Personal Conduct
The current advice from the CDC and the NYS Department of Health is as follows:

1. Individuals should frequently wash their hands with soap and water for at least 20 seconds. If soap and water are not available, individuals should use an alcohol-based hand sanitizer.
2. Individuals should avoid touching their eyes, nose and mouth with unwashed hands.
3. Individuals should avoid close contact with people who are sick.
4. Individuals should stay home when they are sick.
5. Individuals should cover their cough or sneeze with a tissue, then throw the tissue in the trash.
6. Touched objects and surfaces should be frequently cleaned and disinfected.

Meetings of Public Bodies
Pursuant to the NYS Open Meetings Law, a meeting is a physical gathering of a quorum of a public body for the purpose of conducting business. Note, however, that in 2000, the Open Meetings Law was amended to allow members of public bodies to attend and participate in meetings via videoconferencing.

The Open Meetings Law does not allow public bodies to take action via email voting or telephone conference calls. Moreover, Open Meetings Law § 104(4) provides that if videoconferencing is used to conduct the meeting, the notice of the meeting must indicate that members of the public body will be participating via videoconferencing technology. Additionally, the notice must identify the locations from which the members will be participating and state that the public has the right to attend the meeting at any of the meeting locations. Consequently, the Open Meetings Law mandates that meetings of public bodies allow for “in-person” attendance by the public.

On March 9, 2020, the New York State Committee on Open Government issued guidance regarding the “Open Meetings Law ‘In-Person’ Requirement and the Novel Coronavirus.” The guidance acknowledges that there is no process for waiving the Open Meetings Law’s “in-person” requirement for conducting meetings.

Furthermore, the Committee conceded that there is no jurisprudence regarding the ability of local governments to forego or waive the “in-person” meeting requirement. Nonetheless, the Committee opined that judicial review of alleged violations of the Open Meetings Law will likely take into consideration the public body’s desire to protect the public health while continuing to perform necessary government functions. However, the Committee urges that if a public body determines that
limiting public in-person access to an open meeting is necessary in response to the COVID-19 virus, that
the public body limit discussions and actions taken to those matters for which harm would be caused by
delay in order to mitigate potential impact of constituents.

Stated differently, while State law does not expressly allow public bodies to conduct a meeting without
allowing the public to be actually present, if local officials deem that conducting in-person meetings
would threaten public health, they should limit non-in-person meetings to discussions and actions of
business which must be conducted to keep the local government operating and to protect the public’s
health, safety, and welfare. Moreover, public bodies should consider implementing technology that
allows the public to observe such meetings via web-based video technology. Alternatively, public bodies
may wish to consider minimizing the number of attendees at meetings or holding meetings in larger
venues so that the recommended minimum social distancing of 6 feet may be maintained by members
of the public who do attend the meeting.

Events and Places of Assembly
Neither State nor federal officials have established a standard or threshold for when activities or events
such as schools, concerts, sporting events, restaurants, bars or other gatherings or locations should be
cancelled or closed.

Consequently, local government officials have been left with little guidance regarding what actions they
should take, how they should conduct municipal business, and what advice they should give to the
public regarding public activities. Local officials should coordinate with their county board of health
regarding recommendations for events and business operations.

Should the Local Chief Executive Officer Declare a Local State of
Emergency?
The local chief executive officer (the mayor or the manager) should declare a local state of emergency
only if it is necessary to accomplish a specific goal, such as exercising one of the powers that are
enumerated in Executive Law § 24. Unnecessarily declaring a local state of emergency will generally
only serve to sow confusion and fear among the public.

Pursuant to Executive Law § 24, local chief executive officers may issue the following orders after
declaring of local state of emergency:

- Establish a curfew;
- Prohibit/control traffic, except essential emergency vehicles and personnel;
- Designate specific zones within which the occupancy/use of buildings and the ingress/egress of
  vehicles and persons may be prohibited or regulated;
- Regulate and close places of amusement and assembly;
- Suspend or limit the sale, dispensing, use or transportation of alcoholic beverages, firearms,
  explosives, and flammable materials and liquids;
- Prohibit and control the presence of persons on public streets and places;
- Establish or designate emergency shelters and/or emergency medical shelters; and
- Suspend any of its local laws, ordinances or regulations which may prevent, hinder, or delay
  necessary action in coping with a disaster or recovery only when (1) a request for the governor’s
  assistance has been made, or (2) whenever the governor has declared a State Disaster
Emergency. Suspension of any local law, ordinance or regulation in this manner is subject to standards and limits listed in the statute.

A local emergency order is effective from the time and in the manner prescribed in the order and must be published as soon as practicable in a newspaper of general circulation in the area affected by the order and provided to the media (radio and television) for publication and broadcast. These orders may be amended, modified and rescinded by the local chief executive during the State of Emergency. The orders terminate five days after issuance or by declaration of the local chief executive that the State of Emergency no longer exists, whichever occurs sooner. The local chief executive may extend these orders for additional periods up to five days each during the local State of Emergency. The local chief executive’s powers are limited to their municipal boundaries.

The local emergency orders must be executed in quadruplicate and must be filed within 72 hours or as soon as practicable in the office of the municipal clerk, the office of the county clerk, the Office of the Secretary of State, and the State Office of Emergency Management.

Pursuant to Executive Law § 24(4), a local government board may grant its chief executive any additional duties or responsibilities deemed appropriate. Furthermore, pursuant to Executive Law § 24(5), any person who knowingly violates any local emergency order of a chief executive issued pursuant to this section will be guilty of a class B misdemeanor.¹

More information regarding declaring a local state of emergency, including forms for declaring a local state of emergency and orders closing places of amusement and assembly and controlling presence of persons on public streets and places are available in NYCOM’s Guide to Local Government Emergency Management which is available on www.nycom.org.

Alternatives to Declaring of Local State of Emergency
Instead of declaring a local state of emergency and issuing emergency orders, local officials may wish to issue advisories, suggesting specific actions that the public, businesses, and organizations voluntarily take to minimize the risk of spreading COVID-19. For example, recommending that places of worship or event spaces temporarily suspend services or limit the maximum allowed attendance or occupancy during the crisis may be adequate.

Local officials are encouraged to be clear when issuing an order or an advisory. Moreover, officials should provide a timeline for how long the order or advisory is in place. Clear, consistent messaging is extremely important to allay fear, reduce confusion, and allow people to manage their expectations and plan accordingly.

Local Government Labor and Employment Considerations
The question of employees working from home is another issue facing employers across the country. Many private sector employers have already directed their employees to work from home in an effort to contain the spread of COVID-19. Implementing a work from home policy may be more difficult for some public sector employers given the nature of the work. For example, police officers, firefighters and public works personnel would generally not be able to do their jobs from home. However, working from home or working different shifts may be a viable option for certain office personnel. Management

¹ Executive Law § 24(5).
should anticipate this inquiry from employees and begin analyzing what positions, if any, can be done from home in the event such action is necessary.

**COVID-19 and Unionized Workforces**

While local governments have broad authority to implement employee policies (including work from home requirements), for non-unionized workforces, NYCOM members with unionized workforces are required under the Taylor Law to negotiate terms and conditions of employment for union employees. This is particularly relevant if the need arises to adjust working conditions for employees as a result of COVID-19 concerns. Local officials should engage with their unions now to plan for what new policies may be needed so that such policies can be implemented quickly if and when the time comes.

**Online Resources for Employers and First Responders**

The Center for Disease Control and Prevention (CDC) has issued several interim guidance documents for employers and other potentially impacted personnel:

