

MMLA COVID-19 Conference Call
March 11, 2020

NOTE: the conference call service asks you to identify yourself when you join the call. Going forward skip this step – with so many people joining at once there is no way to keep track of names and once the discussion starts it becomes an interruption. It was helpful, however, when folks identified themselves when making a comment or asking a question.

- What are limits of emergency authority at the local level?
 - Belief is that municipalities have inherent authority to declare emergency.
 - J. Lampke has a paper he will share with the group (*shared 3/11 at 7:57 p.m.*).
 - Disaster law in Massachusetts based on 1950s civil defense law.

- Is there any legal protocol required for the City to shut down the public schools for an extended period – or is it up to the Superintendent after consulting with the Mayor and other City officials, like a school closing for snow emergencies?
 - General consensus was that authority lies with the Superintendent (like with snowstorm or cancellations for other weather or building related reasons), however the MASS is having their own call tomorrow and will likely take a position on this.
 - On MASS call, representatives of DESE are expected to participate or address closings and 180-day requirements.
 - DESE has provided guidance on the 180-day requirement here:
<http://www.doe.mass.edu/sfs/emergencyplan/covid19.html>
 - Question was asked about private schools in school districts that might close. With private schools you may have students from other communities or students who board. Suggestion was made to ask that these schools come up with a contingency plan for students from other places. Colleges have a similar problem and several in the area seem to be allowing students from other countries or with unsafe home environments to petition to stay on campus. Difference to be aware of between high school and college students is that most college students are adults, high school students will be minors (issue of “in loco parentis”).

- Does the City have the authority to order a private school to shut down for an extended period of time for a situation such as the Coronavirus, if City officials deem it unsafe as a result of Community Spread?
 - Board of Health regulations may speak to this.

- Are there suggested guidance for personnel updates?
 - D. Shapiro has rough draft of updated protocols to address sick, vacation and personnel time use; protocol addressing union and non-union issues. He will share with the group (*sent 3.11.2020 at 3:29 pm*).
 - Workers Compensation. Discussion was that the standard will be the same as with any health-related claim. In order to be eligible, need to prove that the illness arose out of and in the course of employment. Causal relationship hard to prove.

- Should WC apply, suggestion was made to consider starting sick leave back that can be used to supplement the WC 60%.
 - First Responders. Communities should consider protocols specific to first responders, especially small communities. Limit unnecessary exposure where possible. Example given was in a small department where if all 3-4 employees were to respond to someone who is infected then they are at risk for all having to be quarantined. Split up teams; address practical issues
 - RELATED: The sharing of PHI with first responders. J. Lampke received clarification on this in terms of an exemption under HIPAA (assuming Boards of Health are covered by HIPAA) to provide PHI to law enforcement to prevent threat or serious injury. Although exemption exists, DPH is cautioning that the information should not be proactively given/shared. If person under quarantine needs help, they should inform first responders when requesting assistance.
 - 105 CMR 300.00; does section 120 (confidentiality) apply?
 - Can you order an employee to go home? Yes. The CDC states that employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. Advising such workers to go home is not a disability-related action if the illness is akin to seasonal influenza or the 2009 spring/summer H1N1 virus. Additionally, the action would be permitted under the ADA if the illness were serious enough to pose a direct threat. See https://www.eoc.gov/facts/pandemic_flu.html
- General open meeting law implications.
 - Issues with remote participation still requiring a quorum
 - AGO has said that the governor's state of emergency does not change the OML requirements; AG's office has placed legislation before governor and legislature but until something is done OML applies.
 - Marjorie Weinberger said MAPC has put language in front of the speaker as well; want ability to have a remote quorum so groups can use technology to meet remotely in an emergency. Marjorie will share the text of the bill proposed.
 - Technology available for free trials or at inexpensive costs
 - Another option was to have 1 person in the public place for the meeting and then others participating remotely (*email from P. DeRensis with proposal sent 3/11 at 3:34 pm*)
 - Elections. Elections cannot be changed without a court order (*see email from J. Lampke sent 3.11.2020 at 9:21 am*); legislation is pending already, unrelated to COVID-19, which would help give flexibility. Will share with group.
- What happens with potential zoning constructive grants if meetings cancelled?
 - Concerned about constructive grant issue
 - Can you just extend until a date certain? What about quorum issues?
 - LEGISLATION: No constructive grants due to inability of the board to meet; when in state of emergency toll deadlines
 - Apply to zoning and other areas – i.e., wetlands protection
 - The permit extension act of 2012 is a good starting point

- Christiansen v. City of Cambridge; tolled running of appeals period and linked to emergency declared by governor
- What is Mayor/executive authority assuming others don't act?
 - At prior MMLA program Mayor of Taunton spoke about how he declared an emergency and he said, "I just did it." Assumed he had the inherent authority. Check local rules and regs on emergency authority
 - C. 43, s. 86, s. 100; c. 40, s. 19
 - There is a pending bill already that would allow for the local emergency management agencies
 - Declaring state of emergency; c. 111, s 104:
Section 104. If a disease dangerous to the public health exists in a town, the selectmen and board of health shall use all possible care to prevent the spread of the infection and may give public notice of infected places by such means as in their judgment may be most effectual for the common safety. Whoever obstructs the selectmen, board of health or its agent in using such means, or whoever wilfully and without authority removes, obliterates, defaces or handles such public notices which have been posted, shall forfeit not less than ten nor more than one hundred dollars.
- Is commandeering an option?
 - Example, going into target or local pharmacy and rounding up all the tissues. Under civil defense act the governor can do this.
 - There is a Mass Health Boards publication that includes information on the health board authority and what you can and cannot do.
 - <https://www.mahb.org/wp-content/uploads/2015/12/Duties-of-BOH.pdf>
 - Municipality would have to pay for the materials rounded up.
 - Is there a type of eminent domain here? May require a warrant and advance paperwork
 - In an emergency you can often do what is necessary and straighten it out later.
- Are there any procurements "emergency" here (i.e. hiring an emergency consultant?)
 - c. 30B, s. 8, in health or safety emergency 30B can be waived.
 - See also 801 CMR 21.00.
 - Emergency construction – there is a mechanism for this as well (DCAM petition)
 - On IG website there is an April 2015 bulletin about emergency procurements.
 - <https://www.mass.gov/doc/april-2015-vol-21-1-procurement-bulletin/download> (see page 3)
- Town Meeting impacts – what can be done if Town Meetings are postponed.
 - This is related to the OML discuss above.
 - Town Meeting Issues. Quorum question needs to be addressed. Feasibility of remote participation? What about secure voting? Appropriations that need to be made? Can we have budgets by June 30?

- Possible workaround to funding issue is to have 2 special town meetings and start with just the financial in one meeting. Problem is several communities have posted and started process already.
 - It's a snowball effect because need a budget to set tax rate for next year. DLR may have some authority to provide extensions
 - If budget not adopted can we go to 1/12 budget (like schools); it was clarified that this only applies to cities, towns cannot do this.
- Special Legislation: D. Shapiro says that there is a meeting of some of the Mayors on Friday and that Somerville's mayor was looking for items to discuss with other Mayors.
 - No constructive grants; tolling of deadlines
 - Election concerns (need to be able to adjust dates/have flexibility)
 - Flexibility on finance activity so if town meeting is not dissolved, they become effective.
 - Tax rate
 - Loosen requirements for remote participation
 - Does DOR have the current authority to help with anything?
 - DOR is working on. May have some current authority if cannot meet for emergency reason
 - Towns cannot spend 1/12 of budget; only applies to cities; looking for option for towns
 - The cap on hours that retirees can work should be lifted as we may need assistance from retire police and fire, etc.
- Lisa Adams (MMA) – is there a way to coordinate how legislation is filed for we are not doubling efforts and supporting each other; hoping for efficiency in quick moving situation.
- It was suggested that communities should have default successor plans in place in case folks are incapacitated
- There was discussion on liability for not cancelling events, including private events or events using city/town space.
 - Concern: once you start warning you have a duty to continue warning
 - Language for inclusion on posted meeting agendas, City/Town website (*see email from K. Fallon sent on 3/11 at 3:28 pm*):

As we are all aware, Governor Charles Baker has declared a state of emergency in Massachusetts to support the state's response to Coronavirus. People should use their own judgment if they wish to attend meetings and events where there will be crowds. If you are ill or symptomatic you should not attend. At the present time, City meetings will continue to be held and open to the public as required by law, and the City can make no assurance of safety or assistance in preventing the transmission of illness.