

## Authority to Hold Electronic Meetings Under Michigan Open Meetings Act Now Limited

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April 2, 2021

On March 30, 2021, the authority for Michigan public bodies to hold electronic "virtual" meetings *for any reason* under the Michigan Open Meetings Act ("OMA") expired. Thus, starting on March 31, 2021, and continuing until December 31, 2021, a public body may only permit a *member* of the public body to participate electronically due to military duty or a medical condition. Furthermore, a *public body* may only conduct electronic meetings "during the occurrence of a statewide or local state of emergency or state of disaster declared pursuant to law or charter or local ordinance by the governor or a local official, governing body, or chief administrative officer that would risk the personal health or safety of members of the public or the public if the meeting were held in person." MCL 15.263(2).

Consequently, absent a statewide declaration of state of emergency or disaster permitting electronic public meetings, a public body that desires to conduct its meetings electronically must properly declare a local state of emergency or state of disaster or be operating within the jurisdiction of a governmental unit that has properly declared a local state of emergency or state of disaster. However, any public body that may seek to rely on emergency or disaster declarations that predate the December 22, 2020, amendments to the OMA should ensure such declarations are sufficiently broad and specific to permit public meetings to be held electronically.

### **Declaring a Local State of Emergency to Continue Electronic Meetings**

Only certain governmental units possess the authority to declare a local state of emergency or state of disaster. Generally, cities, villages, townships, and counties may declare local states of emergency or states of disaster. The authority for such declarations varies from home rule powers, charter provisions, police/public health powers, the Emergency Management Act, PA 90 of 1976, and perhaps the OMA. The process for declaring an emergency or disaster can differ, as may the duration. Public bodies should consult with their legal counsel regarding the ability for and procedures related to declaring an emergency or disaster.

### **In-Person Meetings of Public Bodies**

Public bodies that hold in-person meetings after March 30, 2021, must comply with social distancing and mitigation measures recommended by the Centers for Disease Control and various health orders issued by the Michigan Department of Health and Human Services ("MDHHS") and the Michigan Occupational Safety and Health Administration ("MIOSHA").

Notably, on March 31, 2021, the MDHHS amended its "Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order" to exempt meetings held by public bodies from the gathering restrictions of Section 2(a) and Section 2(b). Specifically, the amendment provides that "general capacity limitations at gatherings" — including the 25-person indoor gathering limitation — do not apply to "gatherings of public bodies and attendees of meetings held in compliance with the Open Meetings Act, MCL 15.261 *et seq.*" However, public bodies are still subject to the other requirements of the Order, including the 50% capacity limitation of the venue where the meeting is being held.

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It is also important to note that current MDHHS/MIOSHA orders require employees to work remotely, if possible, through April 15, 2021.

Public bodies and chief administrative officers are encouraged to consult with local counsel regarding authority to declare a local state of emergency or disaster and conducting public meetings under OMA and the various public health orders.

If you have any questions about the Michigan Open Meetings Act, please contact your Miller Canfield attorney or any of the authors listed on this e-alert.

*This information is based on facts and guidance available at the time of publication and may be subject to change.*