

COVID-19 FREQUENTLY ASKED QUESTIONS
PREPARED BY THE NYS TUG HILL COMMISSION
(last updated September 18, 2020)

Over five months have passed since New York State went on “PAUSE” with Governor Cuomo’s Executive Order [202.8](#). Overall, life has settled into a new normal, although the situation is still fluid. The Tug Hill Commission has worked hard to provide good information about items pertinent to local government during this time. That has included regularly updated documents related to local government operations, public meetings and hearings, elections, courts, and municipal employees.

This new FAQ document hopes to address commonly asked questions the commission is receiving from local officials across the Tug Hill region. It will be updated periodically as the situation changes and new questions arise. Municipalities are also encouraged to check with their municipal attorney if uncertain about certain items.

How long will I be able to hold my public meetings without all board members being physically present?

Governor Cuomo enacted Executive Order 202.60 on September 4, 2020 which continues various suspensions and modifications of law made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.14 and including EO 202.38 (among others), through October 4, 2020. This includes, among other things,

“Suspension of law allowing the attendance of meetings telephonically or by other similar service: Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed;”

This allows the use of a virtual method to allow meeting attendance of some or all of the board members and members of the public, but **does not require** the use of a virtual component if your municipality can safely conduct an in person meeting for board members and the public to attend, following the state prescribed guidelines regarding social distancing and mask use.

Is my town/village required to have an online, remote component for our public meetings?

No, as long as social distancing (6-foot separation) and meeting size caps (50) can be met. Municipalities are currently allowed to conduct public meetings remotely through October 4,

2020. It is expected that ability will be extended on a monthly basis through at least the end of 2020.

On August 10, 2020, the Committee on Open Government issued an Advisory Opinion on this topic, full text at www.dos.ny.gov/press/2020/Essential%20Meeting%20OML%20AO.pdf. Below is an excerpt:

"If a public body is convening an essential meeting, the body must ensure that it adheres to social distancing, masking, and any other administration requirements, and if there is any question about whether it is able to maintain a safe space in which to hold an essential open meeting, it must provide a contemporaneous video or audio broadcast such that members of the public who cannot safely attend in person "ha[ve] the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed." The public body may not artificially limit attendance at its meetings – to do so would not be consistent with the requirements of the Open Meetings Law. In my opinion, if a public body can possibly anticipate that any persons who may wish to attend a meeting governed by the provisions of the Open Meetings Law cannot be safely physically accommodated in the proposed meeting location pursuant to legal and regulatory restrictions, that public body is required to simulcast to the public, by either video or audio means, the proceedings of the meeting as they are occurring so that all members of the public who wish to "attend" may do so."

That being said, these months have proven that municipalities are capable of holding meetings with an online component. So, the commission encourages the municipalities to reach out to discuss opportunities to diversify their outreach methods within their communities.

We need to hold a public hearing, to pass our budget, approve a land use application, or adopt a local law. Do we have to have an online, remote component for our public hearing?

On April 9, 2020, Governor Cuomo enacted Executive Order [202.15](#), which states "Any local official, state official or local government or school, which, by virtue of any law has a public hearing scheduled or otherwise required to take place in April or May of 2020 shall be postponed, until June 1, 2020, without prejudice, however such hearing may continue if the convening public body or official is able to hold the public hearing remotely, through use of telephone conference, video conference, and/or other similar service."

According to a COVID-19 summary released by the NYCOM on September 4, 2020, available at www.nycom.org/images/documents/COVID19/COVID-19_NYCOM_Guidance_-_Meetings_and_Public_Hearings_-_September_4_2020.pdf,

“On July 6, 2020, the Governor’s Office informed NYCOM that it was their position that the language in Executive Order 202.15 which prohibited in-person public hearings HAS NEVER BEEN EXTENDED and thus expired on June 1, 2020, despite executive orders containing language that has been widely interpreted as extending Executive Order 202.15 beyond June 1, 2020 (see Executive Orders 202.29 and 202.39 [and 202.55]). Consequently, public bodies may conduct public hearings in person or, pursuant to Executive Order 202.1, remotely so long as the method used affords the public a reasonable opportunity to comment at the hearing.”

So, whereas the Executive Orders might seem to require public hearings, guidance from the Governor’s office says otherwise. Municipalities may want to err on the side of caution and offer a virtual component for any public hearing, to allow citizens that are either not able or are not comfortable attending the hearing in person to participate.

What exactly is an Executive Order?

In general, the authority for governors to issue executive orders is found in state constitutions and statutes as well as case law, or is implied by the powers assigned to state chief executives. Governors use executive orders—certain of which are subject to legislative review in some states—for a variety of purposes, among them to:

- trigger emergency powers during natural disasters, energy crises, and other situations requiring immediate attention;
- create advisory, coordinating, study, or investigative committees or commissions; and
- address management and administrative issues such as regulatory reform, environmental impact, hiring freezes, discrimination, and intergovernmental coordination.

Source: www.nga.org/governors/powers-and-authority/

The Governor of the State of New York, is given the authority to enact executive orders by Section 29-a of Article 2-B of the Executive Law, to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster.

What is my town/village required to do to make public meetings meet COVID-19 requirements?

Limiting occupancy of meeting rooms to 50, maintaining 6-foot separation distances at meetings, and requiring masks when distance cannot be maintained are critical. Other items,

such as providing hand sanitizer and screening meeting attendees for COVID-19 exposure, etc. might also be considered. Please refer to [NYS DOH](#) and [CDC](#) guidance on cleaning and room preparation.

What kind of equipment is recommended to improve my ability to provide an online or teleconference component to my meetings?

- Large screen monitors for projecting remote meeting attendees
- Microphones for use by in-meeting speakers to improve audibility
- Laptops with cameras to project in-person attendees to remote attendees
- Audio speakers
- An internet connection via ethernet cable, modem, or WiFi router

Am I required to allow employees to work from home?

Early in the pandemic, all non-essential local government employees were either required to work from home or take leave without charging accruals. As regions have moved through phases of reopening, more non-essential employees are being brought back to the office. There is no requirement to allow local government employees to work from home now, but as a best practice it is important to talk to employees and reach mutually agreed upon terms to make both employee and employer satisfied with ability to work and maintain safety protocols.

Essential local government employees were never required to work from home. Detailed information about what are considered essential employees can be found here:

esd.ny.gov/guidance-executive-order-2026. The most relevant portions of this to local government are:

1. Employees related to ***infrastructure*** are considered essential includes **utilities (power generation, fuel supply, transmission); public water and wastewater; telecommunications and data centers.**
2. Employees related to ***services*** are considered essential including **trash and recycling collection, processing and disposal; building cleaning and maintenance.**
3. Employees related to ***financial institutions*** are considered essential including **payroll and accounting.**
4. Employees related to ***basic necessities*** to economically disadvantaged populations are considered essential including **food banks.**
5. Employees providing essential services to maintain the ***safety, sanitation and essential operations*** of residences or other essential businesses including **law enforcement, fire prevention and response, building code enforcement, security, emergency management and response, building cleaners or janitors.**

6. Employees related to **essential construction including roads, bridges, and utilities**. At every site, if essential or emergency non-essential construction, this includes maintaining social distance, including for purposes of elevators/meals/entry and exit. Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with the city/local governments. This will include fines of up to \$10,000 per violation.
7. Any business that only has a single occupant/employee has been deemed exempt and need not submit a request to be designated as an essential business.

Municipal officials might also want to consider whether requests to telework are appropriate in consideration of the Americans with Disabilities Act or the Federal Families First Coronavirus Response Act (FFCRA) [paid leave](#) provisions. Questions on the application of FFCRA to employees, including telework options, can be directed to the Syracuse regional office of the US Department of Labor Wage and Hour Division (315-448-0630 or 1-866-487-9243). The U.S. Equal Employment Opportunity Commission (EEOC) has information on the Americans with Disabilities Act and teleworking (www.eeoc.gov/laws/guidance/work-hometelework-reasonable-accommodation), and are reachable at the Buffalo regional office (1-800-669-4000).

Communities are also advised to work with their municipal attorneys and unions to discuss what effect actions may have on collective bargaining agreements.

Should I be opening up my town/village facilities for use by the public?

Municipal governments, as essential businesses, are subject to new operating requirements to ensure a standard of safety, and should only proceed with opening facilities when they can implement appropriate social distancing and cleaning/disinfecting protocols. However, it is up to the individual municipality to determine which functions and facilities are essential. In other words, every municipality is unique in terms of reopening their facilities for use by the public.

When deciding whether to open a facility to the public, review the criteria that the state uses to determine if a region can reopen:

- The infection rate is sufficiently low;
- The health care system has the capacity to absorb a potential resurgence in new cases;
- Diagnostic testing capacity is sufficiently high to detect and isolate new cases; and
- Robust contact-tracing capacity is in place to help prevent the spread of the virus.

If your municipality is unsure about these core factors for reopening, you should contact your local health department for guidance prior to opening town and village facilities. If the municipality decides to open a facility, it is recommended that:

- commonly used items and areas (doorknobs, restrooms, tables, chairs) are cleaned and disinfected frequently;
- a cleaning log be kept and maintained in the facility that is opening to the public;
- hygiene stations be made available throughout the facility;
- signage on proper hygiene, social distancing rules, appropriate use of masks, and cleaning and disinfecting protocols be readily visible throughout the facility; and
- the municipality setup an appropriate screening process for people who enter and leave their facilities (e.g., a sign-in sheet or a tablet with screening questions).

How do NYS travel quarantine requirements affect my municipal employees?

If any individual—including municipal employees—travels to a state on NY’s restricted states list (i.e., states with significant rates of COVID-19 transmission; found here: coronavirus.health.ny.gov/covid-19-travel-advisory), then that individual is required to self-quarantine for a 14 day period upon entering New York. Note that this quarantine requirement does not apply if an individual is passing through a restricted state or spends less than 24 hours in a restricted state, or is an essential worker traveling for business purposes.

More information is also available from county Public Health offices:

Jefferson: co.jefferson.ny.us/departments/PublicHealth

Lewis: www.lewiscounty.org/departments/public-health/public-health

Oneida: ocgov.net/oneida/health

Oswego: health.oswegocounty.com/

What if a municipal employee is quarantined for another issue (i.e. exposure, positive test, travel to a restricted state, etc.) – what are the requirements?

Essentially, local health department must utilize the following definitions in determining whether or not to institute a mandatory or precautionary quarantine:

Mandatory Quarantine

- Person has been in close contact (6 ft.) with someone who is positive but is not displaying symptoms for COVID-19.
- Person has traveled to China, Iran, Japan, South Korea or Italy and is displaying symptoms of COVID-19.

Mandatory Isolation

- Person has tested positive for COVID-19, whether or not displaying symptoms for COVID-19.
- Local health departments must immediately issue an order for mandatory quarantine or isolation once notified, which shall be served on the person impacted.

Precautionary Quarantine, Person meets one or more of the following criteria:

- Has traveled to China, Iran, Japan, South Korea or Italy while COVID-19 was prevalent, but is not displaying symptoms.
- Proximate exposure to a positive person but has not had direct contact with a positive person and is not displaying symptoms.
- Any person the local health department believes should be quarantined that is not addressed through the interim guidelines, should contact the Department of Health.

Individuals under mandatory isolation or mandatory quarantine can walk outside their house on their own property, but they must not come within six feet of neighbors or other members of the public. Individuals living in a multiple dwelling unit may not utilize common stairways or elevators to access the outside. Likewise, these individuals must refrain from walking in their neighborhood.

Individuals under any level of quarantine or isolation may have concerns about their employment status with the municipality. No person subject to an order shall have an adverse employment impact. In such situations, a signed letter from the local health department Commissioner or the Public Health Director—both at the beginning and end of the quarantine period—can address these concerns.

If you know that a municipal employee is under quarantine or isolation orders, and is not abiding by the guidance, you can file a complaint. There are two complaint procedures available:

- File a complaint about a business, location or incident in your community (mylicense.custhelp.com/app/ask).
- File a complaint against your employer or place of work (labor.ny.gov/workerprotection/laborstandards/coronavirus-complaints.shtm).

For more in-depth information, visit: coronavirus.health.ny.gov/travel-large-gatherings-and-quarantines#quarantines.

Can a municipality add additional COVID-19 testing or screening requirements?

Yes, if they follow commonly accepted standards. Currently, NYS employers are required to screen employees daily with the following questions:

1. Is your temperature equal to or above 100 degrees (F)?
2. Do you have any of the following symptoms associated with COVID-19: cough (new or worsening), shortness of breath (new or worsening), troubled breathing (new or worsening), fever, chills, muscle pain (new or worsening), headache (new or worsening), sore throat (new or worsening), new loss of taste, new loss of smell?
Please note a few of the above symptoms may occur with preexisting medical conditions, such as allergies or migraines. You should only answer “YES,” if your symptoms are new or worsening.
3. Have you had any known close contact with a person confirmed or suspected to have COVID-19 in the past 14 days?
4. Have you tested positive for COVID-19 through a diagnostic test in the past 14 days?
5. Have you traveled within a state with significant community spread of COVID-19 for longer than 24 hours within the past 14 days? (For a list of states currently under New York’s travel advisory requiring a 14-day quarantine upon return, please visit coronavirus.health.ny.gov/covid-19-travel-advisory.)

The EEOC has a useful resource page on COVID-19 and employer considerations, at www.eeoc.gov/coronavirus.

From their website, www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws:

“The ADA requires that any mandatory medical test of employees be “job related and consistent with business necessity.” Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take screening steps to determine if [employees entering the workplace have COVID-19](#) because [an individual with the virus will pose a direct threat](#) to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before initially permitting them to enter the workplace and/or periodically to determine if their presence in the workplace poses a direct threat to others. The ADA does not interfere with employers following [recommendations by the CDC](#) or other public health authorities regarding whether, when, and for whom testing or other screening is appropriate. Testing administered by employers consistent with current CDC guidance will meet the ADA’s “business necessity” standard.”

What kind of temporary zoning changes should I consider to accommodate needs related to COVID-19?

Some municipalities in NYS have waived zoning requirements or prohibitions for certain uses by emergency order of the chief elected official. An example of this would be to temporarily waive site plan review for new outdoor dining at restaurants. Municipalities should take extreme caution if they go this route, as it is delving into legally uncharted waters. Please consult with the Tug Hill Commission or your county planning department, and especially your municipal attorney if you are considering this action.

When in doubt, where should I get more information?

Call the Novel Coronavirus Hotline at 1-888-364-3065, visit coronavirus.health.ny.gov/, and/or call your local health department.

You are welcome to reach out to the commission if you are unable to find answers to your questions elsewhere, and we will look into your inquiry with our networks.