

Declaring a Local State of Emergency or Disaster

Introduction

The amendment to the Open Meetings Act (OMA) that allowed no-reason virtual meetings sunsets on March 30, 2021. The amendment gave strict reasons for virtual meetings, and after the March 30 sunset, public bodies are not permitted to hold electronic meetings* in the absence 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 body if the meeting were held in person (among other reasons).

Declared State of Emergency or Disaster

The following language, in pertinent part, was added to the OMA: “to accommodate the absence of any member of the public body due to...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 body if the meeting were held in person...*” MCL 15.263(2) (emphasis added).

Sources of Authority

There are three sources of authority for declaring a local state of emergency or state of disaster. These statutes grant the authority; the exercise of that authority is through a resolution, an ordinance, or pre-existing charter language.

- 1) These are the laws that authorize a municipality to declare a local state of emergency or disaster:
 - pursuant to municipal police/public health powers
 - Home Rule City Act, MCL 117.3(j) (sample resolution attached)
 - Home Rule Village Act, MCL 78.23(f)
 - General Law Village Act, MCL 67.1(c), MCL 64.2 (president’s powers)
 - Fourth Class City Act MCL 91.1(2)
 - pursuant to the Emergency Management Act, PA 390 of 1976 (sample resolution attached):
 - Defines “disaster” to include “epidemic”
 - Section 2 - Definition of “local state of emergency” implies requirement that the municipality or county has adopted an emergency operations plan in accordance with the Act
 - Section 9 – Appointment of Emergency Management Coordinator
 - Section 10 – Declaration of Local State of Emergency
 - ❖ Declared by chief executive official of county or municipality
 - ❖ Effective for 7 days
 - ❖ May be extended by the governing body
 - pursuant to Section 3(2) of the Open Meetings Act:

Permits a public body to meet by electronic or telephonic means upon declaration of a local state of emergency or state of disaster if meeting in person would place at risk the personal health or safety of members of the public or members of the public body.

Taking Action

Check your city or village charter for authority to declare a state of emergency or state of disaster under the police/public health powers (sample Resolution by charter authority attached). The charter gives you the authority, but the city or home rule village council must act on it by passing a resolution or ordinance, as applicable.

Adopt an emergency management ordinance under the Emergency Management Act including its requirements for an emergency operations plan and the appointment of an emergency management coordinator (sample ordinance attached).

Potential Risks

Authority for each of these declarations are not without some risk of a challenge. Challenges under the OMA must be brought within:

- 60 days of approved meeting minutes being made available to the public
- 30 days if the decision involved awarding a contract or bid, assessments or bonds

After a local emergency/disaster is declared, be certain that rules established for remote meetings are consistent with requirements of the OMA:

- Post meeting notice on homepage of website 18 hours before a meeting
 - Notice must explain why the public body is meeting electronically
 - How members of the public may participate electronically
 - How members of the public may contact members of the public body before the meeting
 - How persons with disabilities may participate in the meeting
- Post the meeting agenda on website two hours before a meeting
- Ensure two-way communication for members of the public body
- Announcement at the beginning of the meeting by each public body member attending remotely including the member's physical location by stating county, city, township or village and State, except for members of the military absent because of military duty
- Participation by the public at some point in the meeting; may be limited to typed public comments.

Remember—current Michigan Department of Health and Human Services/MIOSHA orders require employees to work remotely if possible, through April 15, 2021.

*In addition to holding an electronic meeting pursuant to a declared statewide or local state of emergency or state of disaster, the OMA requires each public body to adopt procedures to accommodate the absence of any member of the public body due to military duty or a medical condition between March 31, 2021 and December 31, 2021. After December 31, 2021, a public body is required to adopt procedures to accommodate the absence of a member only due to military duty. Importantly, in these instances, the *public body* does not meet electronically; individual members may *participate* electronically.

This Fact Sheet was provided by Steven D. Mann and Ronald C. Liscombe of Miller Canfield, Detroit

CITY OF KALAMAZOO, MICHIGAN

RESOLUTION NO. _____

**A RESOLUTION DECLARING A LOCAL STATE OF EMERGENCY FOR
THE PURPOSE OF PERMITTING THE CITY COMMISSION AND
OTHER PUBLIC BODIES OF THE CITY TO MEET BY ELECTRONIC
AND TELEPHONIC MEANS**

Minutes of a regular meeting of the City Commission of the City held on March 15, 2021, at 7:00 o'clock p.m., local time, by electronic means.

PRESENT, Commissioners:

ABSENT, Commissioners:

WHEREAS, as recently as March 2, 2021 the Director of the Michigan Department of Health and Human Services (MDHHS) made the following findings:

“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. COVID-19 spreads through close human contact, even from individuals who may be asymptomatic.

On March 10, 2020, MDHHS identified the first two presumptive-positive cases of COVID-19 in Michigan. As of March 1, 2021, Michigan had seen 589,150 confirmed cases and 15,534 confirmed deaths attributable to COVID-19. Michigan was one of the states most heavily impacted by COVID-19 early in the pandemic, with new cases peaking at nearly 2,000 per day in late March. Strict preventative measures and the cooperation of Michiganders drove daily case numbers dramatically down to fewer than 200 confirmed cases per day in mid-June, greatly reducing the loss of life. Beginning in October, Michigan again experienced an exponential growth in cases. New cases peaked at nearly 10,000 cases per day in mid-November, followed by increases in COVID-19 hospitalizations and deaths.

On November 15, 2020, MDHHS issued an order enacting protections to slow the high and rapidly increasing rate of spread of COVID-19. Cases, hospitalizations, and deaths remained high through early December, threatening hospital and public health capacity. On December 7, 2020, December 18, 2020, and January 13, 2021, MDHHS issued orders sustaining those protections. These orders played a crucial role in slowing the spread in Michigan and have brought new cases down to about 1,500 per day. These lower rates prevented Michigan’s healthcare system from being overwhelmed with a holiday surge.

As of February 27, the State of Michigan had a seven-day average of 91.2 cases per million people, nearly 88% lower than the case rate in mid-November. While that case rate is similar to the rate in early October, it has plateaued over the past week and remains three times the rate of the summer low point.

Test positivity was 3.7% as of February 27, and has started to plateau as well. While metrics have decreased from all-time highs, further progress has tapered off and there is growing concern of another spike with the presence of more infectious variants in Michigan and the United States as a whole.

Even where COVID-19 does not result in death, and where Michigan's emergency and hospital systems are not heavily burdened, the disease can cause great harm. Recent estimates suggest that one in ten persons who suffer from COVID-19 will experience long-term symptoms, referred to as "long COVID." These symptoms, including fatigue, shortness of breath, joint pain, depression, and headache, can be disabling. They can last for months, and in some cases, arise unexpectedly in patients with few or no symptoms of COVID-19 at the time of diagnosis. COVID-19 has also been shown to damage the heart and kidneys. Furthermore, minority groups in Michigan have experienced a higher proportion of "long COVID."

The best way to prevent these complications is to prevent transmission of COVID-19. Since December 11, 2020, the Food and Drug Administration has granted emergency use authorization to three vaccines to prevent COVID-19, providing a path to end the pandemic. Michigan is now partaking in the largest mass vaccination effort in modern history and is presently working toward vaccinating at least 70% of Michigan residents 16 years of age and older as quickly as possible.

New and unexpected challenges continue to arise: in early December 2020, a variant of COVID-19 known as B.1.1.7 was detected in the United Kingdom. This variant is roughly 50 to 70 percent more infectious than the more common strain. On January 16, 2021, this variant was detected in Michigan. It is anticipated that the variant, if it becomes widespread in the state, will significantly increase the rate of new cases. Currently, Michigan is second in the nation with respect to the number of B.1.1.7 variants detected. To date, there are over 400 cases, and this is one fifth of all cases identified in the United States. CDC modeling predicts B.1.1.7 could become the predominant variant by the end of March. At present, however, it appears that cases have plateaued."

WHEREAS, the Director of the MDHHS has concluded that the COVID-19 pandemic continues to constitute an epidemic in Michigan and that control of the epidemic requires restrictions on public gatherings, and;

WHEREAS, the City Commission desires to conduct the public business of the City in a manner so as not to place at risk members of the public, City staff, or members serving on public bodies of the City;

NOW, THEREFORE, IT IS RESOLVED, THAT pursuant to the authority contained at § 3 of the Home Rule Cities Act, MCL 117.3 (j) authorizing cities to provide for the public health and safety of persons; §3 of the Open Meetings Act, MCL 15.263 (2) permitting a public body to meet by electronic or telephonic means upon declaration of a local state of emergency or state of disaster if meeting in person would place at risk the personal health or safety of members of the public or members of the public body; and §10 (b) of the Emergency Management Act permitting the Mayor to declare a local state of emergency;

I, David F. Anderson, Mayor of the City of Kalamazoo based on the findings made by the Michigan Department of Health and Human Services regarding the public health threat posed by the COVID-19 novel coronavirus and its variant strains declare a local state of emergency to permit the City Commission and all other public bodies of the City to continue to meet by electronic and telephonic means after March 30, 2021 and respectfully request the City Commission affirm this action through August 31, 2021

The above resolution was offered by _____

and supported by _____.

AYES, Commissioners:

NAYS, Commissioners:

ABSTAIN, Commissioners:

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

The foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Kalamazoo at a regular meeting held on March 15, 2021. Public notice was given and the meeting was conducted in compliance with the Michigan Open Meetings Act (PA 267 of 1976) as amended by PA 254 of 2020. Minutes of the meeting will be available as required by the Act.

Scott Borling, City Clerk

CITY OF MONROE, MICHIGAN
DECLARATION OF STATE OF EMERGENCY - COVID-19

WHEREAS, the Michigan Emergency Act, Public Act 390 of 1976 (MCL 30.401, *et. seq.*) authorizes the Declaration of a State of Emergency by the City of Monroe, Michigan (the “City”); and

WHEREAS, Chapter 52 – Emergency Preparedness of the Code of the City of Monroe authorizes the Mayor of the City to declare a State of Emergency in the event of occurrence or imminent threat of epidemic; and

WHEREAS, the spread of COVID-19 through our world, our country, and our state continues; and

WHEREAS, the President of the United States of America has declared a State of Emergency relating to the spread of COVID-19; and

WHEREAS, the Governor of the State of Michigan has declared a State of Emergency relating to the spread of COVID-19; and

WHEREAS, the first case of COVID-19 in Monroe County was announced by the State of Michigan on March 14, 2020; and

WHEREAS, COVID-19 is highly contagious and easily spread; and

WHEREAS, it appears likely that COVID-19 is capable of being spread by individuals without any observable symptoms; and

WHEREAS, there is presently no cure for COVID-19 at this time and treatment and/or cures are expected to take time to develop; and

WHEREAS, the mortality rate of individuals infected with COVID-19 is significantly higher than that of the seasonal flu; and

WHEREAS, social distancing and personal measures such as handwashing and disinfecting are the known means to mitigate the spread of COVID-19; and

WHEREAS, the City of Monroe, Michigan must continue to provide for the health, safety, and welfare of its citizens and businesses through its essential functions;

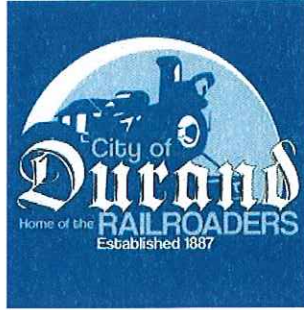
NOW, THEREFORE, BE IT DECLARED, that a State of Emergency relating to COVID-19 exists within the City of Monroe, Michigan effective March 15, 2020 at 6:00 p.m.

Robert E. Clark, Mayor

I, Michelle J. LaVoy, Clerk-Treasurer of the City of Monroe, State of Michigan, do hereby certify that the foregoing Declaration of State of Emergency – COVID 19 is a true and accurate copy as declared by Mayor Robert E. Clark for the City of Monroe, Michigan effective March 15, 2020 at 6:00 p.m.

Michelle J. LaVoy, Clerk-Treasurer

Date Certified:



ACTING UNDER THE AUTHORITY OF THE DURAND CITY CHARTER AS MAYOR OF THE CITY OF DURAND, THE FOLLOWING IS DECLARED THIS 13TH DAY OF MARCH 2020:

The City of Durand's mission is to provide essential public services to residents of the City of Durand. To accomplish this mission, the City must ensure its operations are performed efficiently and with minimal disruption, especially during an emergency.

In light of the Governor's declaration of a statewide emergency and in response to the present or eminent threat of disruption to regular operating standards of the City of Durand, I hereby authorize the City Manager to act as an emergency response administrator. The emergency response administrator shall institute such policies as are necessary to conduct the essential mission and functions of the City under all threats and conditions with the intent of promoting the safety and welfare of both residents and staff of the City of Durand.

This declaration shall remain in effect until April 6, 2020.

A handwritten signature in black ink, reading "Deborah L. Doyle". The signature is written in a cursive style and is positioned above a horizontal line.

Deborah L. Doyle, Mayor

ARTICLE II. - EMERGENCY MANAGEMENT

Sec. 10-31. - Authorization.

For purposes of this article and the Emergency Management Act, Public Act No. 390 of 1976, the city manager shall be deemed the chief executive officer of the city. The city manager is hereby authorized and directed to prepare and execute a support emergency operations plan to incorporate the city into the county emergency management program consistent with Public Act No. 390 of 1976 (MCL 30.401 et seq.), and the emergency rules adopted pursuant to the act.

(Code 1994, ch. 5, § 1.151)

Sec. 10-32. - Implementation.

The city manager shall appoint an emergency management coordinator for the city to act for and at the direction of the city manager in the coordination of all matters pertaining to emergency management, disaster preparedness, and recovery assistance within the city. The city manager shall appoint such other persons as are necessary to the implementation and management of the support emergency operations plan and shall designate the duties and responsibilities of each individual appointed to administer the plan.

(Code 1994, ch. 5, § 1.152)

Sec. 10-33. - Local state of emergency.

The mayor or the city manager acting on behalf of the mayor shall have the authority to declare a local state of emergency under the circumstances and in the manner provided by section 10 of Public Act No. 390 of 1976 (MCL 30.410).

(Code 1994, ch. 5, § 1.153)

Sec. 10-34. - Limitation of authority.

Nothing herein nor in the support emergency operations plan adopted hereunder shall be construed to abridge or curtail the powers of the mayor, the city council, the city manager, or other city official or employee who is provided independent authority to deal with any emergency situation either by Charter, statute, ordinance, or common law including, but not limited to, the following sections 10-34a through 10-34h.

(Code 1994, ch. 5, § 1.154; Ord. No. 1488, 6-30-2020)

Sec. 10-34a. - Authority of mayor to proclaim.

During times of great public crises, epidemic, pandemic, disaster, rioting, catastrophe, or similar public emergency within this city, when public safety is imperiled, the mayor may, and is hereby authorized to, after consultation with the chief of police and the fire chief, or their designated representatives, or those other said officials who are then reasonably available, and any other department head deemed necessary to the consultation by the mayor, proclaim a city state of emergency and designate the city or area or areas of the city involved as being in a city state of emergency. This is in addition to the authority of the mayor to declare a local state of emergency pursuant to MCL 30.410.

(Ord. No. 1488, 6-30-2020)

Sec. 10-34b. - Determination to be in writing.

The determination that a city state of emergency exists shall be made in writing by the mayor and shall be supported by written reports from the heads of those city departments directly responsible for bringing the emergency under control. The reports shall set out in detail the exact nature of the crisis, disaster, rioting, catastrophe or other public emergency and shall indicate a need for emergency measures. Such written determination and supporting reports shall be filed with the city clerk within a reasonable time after the city state of emergency has been declared and shall be public records.

(Ord. No. 1488, 6-30-2020)

Sec. 10-34c. - Promulgation of orders, rules and regulations.

Following such proclamation or declaration, the mayor may, and is hereby authorized to promulgate such reasonable orders, rules and regulations in relation to the use of public property within the city as the mayor deems necessary to protect life and property or to bring the emergency situation within the city or the affected area or areas of the city under control. This authority includes, but is not limited to, the ability to:

- (1) Limit the size and location of gatherings on public property.
- (2) The closure of streets, alleys, parks or other public places.
- (3) Regulate and/or prohibit pedestrian traffic, including the formation of lines on public streets.
- (4) Regulate the entry of persons into city buildings and structures.

(Ord. No. 1488, 6-30-2020)

Sec. 10-34d. - Applicability.

Such orders, rules and regulations shall indicate the area or areas of the city which are subject to the orders, rules and regulations by clearly delineating the boundaries thereof. The time period during which the orders, rules and regulations are in effect shall be explicitly stated. The location to be affected by the orders, rules and regulations shall also be clearly designated.

(Ord. No. 1488, 6-30-2020)

Sec. 10-34e. - Duration and modification and extension by council.

Orders of the mayor promulgated pursuant to section 10-34c shall not be continued or renewed for a period in excess of seven days except with the consent of the city council. The city council, at a general or special meeting as provided by city Charter, may by resolution amend, modify or rescind such orders, rules or regulations promulgated by the mayor hereunder; provided, however, that such action by the city council shall be by a majority of the council members elected.

(Ord. No. 1488, 6-30-2020)

Sec. 10-34f. - Modification by mayor.

In the event that the city council has not acted pursuant to the authority granted in section 10-34e above to modify such orders, rules and regulations, that have been promulgated by the mayor, they may be amended, modified or rescinded by the mayor, from time to time, in like manner as provided in sections 10-34c and 10-34d of this article, but shall cease to be in effect upon declaration by the mayor that the emergency no longer exists.

(Ord. No. 1488, 6-30-2020)

Sec. 10-34g. - Publication of notice.

In the event orders, rules or regulations are promulgated by the mayor and in the event such orders, rules and regulations are thereafter amended, modified or rescinded by the city council or by the mayor, reasonable notice of such orders, rules, regulations, amendments, modifications or rescissions shall be given to the public by press releases, publication in a newspaper of general circulation in the city, publication in a prominent place on the city's website and, to the extent feasible, any other means that will notify the public of the orders, rules and regulations.

(Ord. No. 1488, 6-30-2020)

Sec. 10-34h. - Intent.

It is hereby declared to be the legislative intent to invest the mayor with sufficiently broad power of action in the exercise of the police power of the city with regard to the establishment and enforcement of such orders, rules or regulations to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster. The provisions of this article shall be broadly construed to effectuate that purpose.

(Ord. No. 1488, 6-30-2020)

Sec. 10-34i. - Penalty [for violation].

It shall be a civil infraction punishable by a fine of up to \$25.00 to knowingly violate an order, rule or regulation promulgated by the mayor pursuant to section 10-34c or as amended by the city council or mayor pursuant to section 10-34e and section 10-34f, respectively.

(Ord. No. 1488, 6-30-2020)

Sec. 10-35. - Penalty.

It shall be unlawful for any person to willfully obstruct, resist, hinder or delay any official in the exercise of his or her duties pursuant to the support emergency operations plan adopted pursuant to this article.

(Code 1994, ch. 5, § 1.155)



**RESOLUTION EXTENDING STATE OF EMERGENCY PROCLAMATION AND
ORDER REQUIRING FACE COVERINGS IN CITY DDA**

POLICY RESOLUTION NO. 2021-2

Date: February 23, 2021

WHEREAS, the City adopted Ordinance No. 1488, which authorizes the Mayor to declare or proclaim a City State of Emergency and to subsequently promulgate orders rules and regulations to protect life and property or to bring the emergency situation under control; and

WHEREAS, in response to the ongoing COVID-19 pandemic and increased cases and hospitalizations in Ingham County, the Mayor properly proclaimed and declared a continuing City State of Emergency on November 6, 2020 (“Proclamation”); and

WHEREAS, in an effort to protect life and bring the emergency under control, the Mayor ordered on November 6, 2020, that all persons on the public sidewalks and streets in the City DDA District must wear face coverings over their mouths and noses, subject to certain exceptions (“Order”); and

WHEREAS, pursuant to Section 10-34e of the Ordinance, the City Council concurred within and consented to the Proclamation and Order and resolved on November 10, 2020, that the Proclamation and Order would extend through December 31, 2020; and

WHEREAS, pursuant to Section 10-34e of the Ordinance, the City Council consented to the Proclamation and Order and resolved on December 15, 2020, that the Proclamation and Order would extend through January 31, 2021, at 11:59 p.m.; and

WHEREAS, in Policy Resolution No. 2021-1, the City Council extended the terms of the Proclamation of Continuing State of Emergency dated November 6, 2020, and the Order Requiring Face Coverings in the City DDA District dated November 6, 2020, through February 28, 2021, at 11:59 p.m.; and

WHEREAS, because COVID-19 continues to threaten the health and lives of those in the City, the City Council wishes to further extend the Proclamation and Order.

NOW THEREFORE, IT IS RESOLVED that the City Council of the City of East Lansing hereby extends the terms of the Proclamation of Continuing State of Emergency dated November 6, 2020, and the Order Requiring Face Coverings in the City DDA District dated November 6, 2020, through May 16, 2021, at 11:59 p.m.



BE IT FURTHER RESOLVED that this City Council may terminate the Proclamation and Order sooner or may further extend the Proclamation and Order by resolution as circumstances warrant.

Moved by Council member: _____

Supported by Council member: _____

ADOPTED: Yeas: _____

Nays: _____

Absent: _____

CLERKS CERTIFICATION: I hereby certify that the foregoing is a true and complete copy of a Policy Resolution adopted by the East Lansing City Council at its meeting held on Tuesday, February 23, 2021, the original of which is part of the Council’s minutes.

Jennifer Shuster, City Clerk
City of East Lansing
Ingham County, Michigan