UPDATE March 23, 2020 - All of NYS is on a PAUSE (per Gov. Cuomo), meaning 100 percent of non-essential workforces have been directed to work from home.

Meanwhile, here are some links to additional resources we think our members may find useful.


GFOA Coronavirus Resources: https://www.gfoa.org/gfoa-resource-center-coronavirus-respon

FEMA funding information: https://www.fema.gov/

NATaT has Coronavirus Guidance on their website http://www.natat.org/?page_id=886


Executive Order No 202.7 information on Notary Services

Through April 18, 2020, Executive Order 202.7 allows Notary Publics to use audio-video technology to perform notarial acts provided that the following conditions are met:

- The person seeking the Notary’s services, if not personally known to the Notary, must present valid photo ID to the Notary during the video conference, not merely transmit it prior to or after;
- The video conference must allow for direct interaction between the person and the Notary (e.g. no pre-recorded videos of the person signing);
- The person must affirmatively represent that he or she is physically situated in the State of New York;
- The person must transmit by fax or electronic means a legible copy of the signed document directly to the Notary on the same date it was signed;
- The Notary may notarize the transmitted copy of the document and transmit the same back to the person; and
- The Notary may repeat the notarization of the original signed document as of the date of execution provided the Notary receives such original signed document together with the electronically notarized copy within 30 days after the date of execution.
The Notary may repeat the notarization of the original signed document as of the date of execution provided the Notary receives such original signed document together with the electronically notarized copy within thirty days after the date of execution.

UPDATE March 20, 2020 - Clarification re: EC Order Nos. 202.6 and 202.7. Gov. Cuomo’s directive cutting workplace density in half again, necessitating that 75 percent of the workforce work from home (WFH), applies ONLY to private sector employees. Local governments may still operate under the earlier imposed limitation of 50 percent reduction in workplace density, allowing more freedom in deeming your essential employees. As promised, here are the direct links to EC Order Nos. 202.6 and 202.7:

**EC 202.7**

**EC 202.6**

UPDATE March 19, 2020 - Gov. Cuomo announced this morning that workplace density numbers have been cut in half again. 75 percent of workforce must work from home, says he expects to issue an executive order tonight. We’ll pass on a direct link once it’s availble

Both New York State and the federal government have adopted legislation on paid sick leave.

**New York Paid Sick Leave Requirements**

*Who qualifies for paid sick leave?*
Officers and employees who are subject to mandatory or precautionary orders of quarantine issued by New York State, the Department of Health, local board of health or any other government entity authorized to issue such order. This does not apply to employees and officers who are quarantined as a result of traveling to a country for which the CDC has a Level 2 or 3 health notice and who had notice of these limitations prior to travelling.

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**The Town as an Employer during a Public Health Emergency**

The town has broad authority as an employer to adopt policies and procedures that address, among others, sick leave and leaves of absence for its employees (see General Municipal Law section 92). In the event of a public health emergency, the town should consider the following factors:

- **Determining Essential / Non-Essential Employees.** The town should determine what people and resources are required for the town to function effectively. Each town is different, and each town board will have to make a determination as to what employees and officials are considered essential vs. non-essential.

- **Telecommuting / Working Remotely.** As the employer, the town board may adopt a policy that authorizes telecommuting or working remotely for its employees. It may be prudent to proactively authorize employees and officials to work from home.

- **Evaluate Collective Bargaining Agreements.** Generally speaking, a collective bargaining agreement will supersede any town board determination. However, the town board should review the collective bargaining agreement and consult with the local bargaining unit to determine how to proceed in the event of an outbreak.

- **Review Town Policies / Provide for Sick / Extended Leave.** The town should review its policies currently in place and consider amending them to accommodate employees in the event they fall ill.

- **Educate Employees on Prevention and Treatment.** The town should actively encourage and require behaviors that will help prevent the spread of disease in the workplace, including following the guidelines established by the Centers for Disease Control. Additionally, the town should consider providing hand sanitizer and disinfectant wipe stations in the workplace and public spaces.

- **Communication.** Residents will be looking to the town for guidance on how to proceed during an outbreak. It is essential to keep the public informed in a manner that is not overwhelming and does not lead to widespread panic and misinformation. The town should determine how it will relay information about the outbreak to employees and the public.
**How much leave are they entitled to?**
At least 14 days during the period of quarantine or isolation. This cannot be counted against any sick days or leave that has already been accrued.

**What level of pay are they entitled to?**
Officers and employees should be compensated at their regular rate of pay while taking this sick leave.

**Federal Paid Sick Leave Requirements**

**Does this apply to local government employees?**
Yes

**What Are They Eligible For?**
- **Full-time** - Eligible full-time employees are entitled to two weeks (80 hours) of fully paid time off (up to $511 per day) to self-quarantine, seek a diagnosis or preventive care, or receive treatment for COVID-19.
  
  Eligible full-time employees are also entitled to two weeks (80 hours) paid time off at two-thirds of their regular pay (up to $200 per day) to care for a family member or to care for a child whose school has closed, or if their child care provider is unavailable due to COVID-19.

- **Part-time** – Eligible part-time employees are entitled to fully paid time off (up to $511 per day) for the typical number of hours that they work in a typical two-week period to self-quarantine to seek a diagnosis or preventive care, or receive treatment for COVID-19.
  
  Eligible part-time employees are also entitled to the typical number of hours that they work in a typical two-week period at two-thirds of their typical pay (up to $200 per day) to care for a child whose school has closed, or if their child care provider is unavailable, due to COVID-19.

**What about this payroll tax credit I’m hearing about?**
You may have heard or read about paid sick leave being paid for by the federal government through a payroll tax credit. This does not appear to apply to local governments and thus there does not appear to be any funding at this time.

**Emergency Paid Family Leave**
The federal government further adopted legislation on emergency paid family leave.

**Does this apply to local governments?**
Yes

**What are they eligible for?**
Eligible full-time employees and part-time employees are entitled to 12 weeks of job-protected leave to take care for their children in the event of a school closure or their child care provider is unavailable due to COVID-19. The 12 weeks of job-protected leave include two weeks of unpaid leave, followed by 10 weeks of paid leave. Eligible employees may elect or be required to overlap the initial two weeks of unpaid leave with two weeks of other paid leave they have available. Eligible employees will receive a benefit from their employers that will be no less than two-thirds of the employee’s usual pay.


When considering a local state of emergency it is important to review what you would like to
address against the Governor’s various executive orders and directives. Many of his executive orders might already address what you are considering and he has also preempted local states of emergency that conflict with his executive orders (EO No 202.3). EO No 202.3 provides in relevant part - “No local government or political subdivision shall issue any local emergency order or declaration of emergency or disaster inconsistent with, conflicting with or superseding the foregoing directives, or any other executive order issued under Section 24 of the Executive Law and any local emergency order or any local administrative codes, charters, laws, rules or regulations, are hereby suspended with respect to any such order, issued under such authority different or in conflict with executive directives”.

In addition, Executive Order No 202.5 issued on March 18, 2020 now requires local emergency orders regarding COVID-19 that are issued in accordance with a locally declared state of emergency to be approved by the New York State Department of health. Please note, at this time, you do not need approval from the NYS Department of Health to declare a local state of emergency. The Executive Order only applies to local orders issued under a state of emergency that are in response to COVID. EO No 202.5 provides in relevant part - “Notwithstanding section 24 of the Executive Law, no locality or political subdivision shall issue any local emergency order or executive order with respect to response of COVID-19 without the approval of the State Department of Health”.

You can find the all of the governor’s executive orders on his website www.governor.ny.gov We recommend working with the town attorney and the county and state health department if you are considering issuing a local state of emergency or have already done so and are trying to decide if portions have been preempted or need to be extended.

Additional Resource: Here is a link courtesy of ELGL.org that is a clearinghouse of COVID-19 information for local governments. If you have any resources to add, you may do so, just be careful not to remove any sources that already exist. This link includes a helpful chart of various types of remote meeting software options available to local governments.

https://docs.google.com/document/d/1N5i7n2GxojbY85BngGB7DdkKR_EuA9eHx-0TnmNMS2s/mobilebasic

Below are some links with examples of how other municipal boards are meeting by conference call
and online to keep local government operating during the crisis to serve the community and reduce economic impacts.


Please refer to our social media post on March 19 for a helpful chart outlining various remote meeting software options.

**Warnings of Potential Scams and Other Concerns:** You may want to communicate to your residents that the NYS Attorney General is hearing reports of scammers knocking on doors pretending to do Covid-19 testing on behalf of the CDC. If residents experience any such encounters, they are encouraged to contact the NYS AG’s Office. Additionally, residents are being reminded that wipes, paper towels, tissues and other such items are not to be flushed down the toilet (even if the packaging says flushable). There are instances of municipal systems becoming clogged.

**UPDATE March 17, 2020** - Gov. Cuomo issued two executive orders last night after press briefings throughout the day regarding mass gatherings and local states of emergency.

- EC Order 202.3 – prohibits local states of emergencies that are inconsistent with the Governor’s states of emergency. EO 202.3 also addresses mass gatherings and the operation of certain businesses.
- EC Order 202.4 directs local governments to allow nonessential employees to work remotely or take leave without charging accruals, except for those personnel essential to the locality’s response to the COVID-19 emergency. Such non-essential personnel shall total no less than fifty-percent (50%) of the total number of employees across the entire workforce of such local government or political subdivision. *(Per NYS Association of Cemeteries Legislative Counselor and Nassau Town Supervisor Dave Fleming, cemetery personnel should be considered essential in times of public health crisis.)*

**Links to both:**
EC 202.3

EC 202.4

In addition, the Governor also issued some directives during a press briefing yesterday -

- Local Government officials are asked to identify facilities in their borders that may be used for temporary hospitals.
- Local Governments are required to provide surficial face masks for police and EMTs.

**UPDATE March 16, 2020** - Gov. Cuomo issues Executive Order requiring local governments to excuse all non-essential employees from reporting to work to reduce workforce by at least 50 percent until March 31, 2020


**Local States of Emergency**
(Executive Law Article 2B)

This is the time to reference your emergency management plans for direction on how to proceed and/or review for potential updates.

**When can a local state of emergency be declared?**
When there is finding that public safety is imperiled by a disaster, rioting, catastrophe or similar public emergency (Executive Law § 24 [1]). A disaster is defined as the occurrence or imminent threat of wide spread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause including, but not limited to, fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, [epidemic, disease outbreak](https://www.scribd.com/document/451910640/EXEC-COVID19-LocalGovtNonEssentialEmployeeMemo-031620), air contamination, terrorism, cyber event, blight, drought, infestation, explosion, radiological accident, nuclear, chemical, biological, or bacteriological release, water contamination, bridge failure or bridge collapse (Executive Law § 20 [2][a]) (emphasis ours).

**Who has the authority to declare a local state of emergency?**
The statute refers to the “chief executive” of the town (Executive Law § 24 [1]). This has been interpreted to mean the town supervisor (see 2005 Ops Atty Gen No 5 [Feb. 11, 2005]).

**How long can the state of emergency remain in effect?**
Until it is rescinded by the supervisor or after 30 days, whichever comes first. The supervisor may extend the state of emergency proclamation for another 30 days (see Executive Law § 24 [1]). However, any local emergency order (see “What authority does the town have under a state of emergency?”) may only be in effect for five days, and may be extended for another five (see Executive Law § 24[2]).

**What emergency orders can be issued during a state of emergency?**
The supervisor “may promulgate local emergency orders to protect life and property or to bring the emergency situation under control” such as:
- establishing a curfew and prohibiting and controlling pedestrian and vehicular traffic, except essential emergency vehicles and personnel;
- designating specific zones within which the occupancy and use of buildings and the ingress and egress of vehicles and persons may be prohibited or regulated;
- regulating and closing of places of amusement and assembly;
- suspending or limiting the sale, dispensing, use or transportation of alcoholic beverages, firearms, explosives, and flammable materials and liquids;
- prohibiting and controlling the presence of persons on public streets and places;
- establishing or designating emergency shelters, emergency medical shelters, and in
consultation with the state commissioner of health, community based care centers;

- suspending town local laws, ordinances or regulations, or parts thereof subject to federal and state constitutional, statutory and regulatory limitations, which may prevent, hinder, or delay necessary action in coping with a disaster or recovery so long as:
  - the county chief executive determines that the disaster is beyond the capacity of local government to meet adequately and state assistance is necessary and requests state assistance from the governor; or whenever the governor has declared a state disaster emergency pursuant to Executive Law § 28.

**Suspending a local law, ordinance or regulation is also subject to the following standards and limits:**

(i) the suspension may only last for five days. However, upon reconsideration of all the relevant facts and circumstances, the suspension can be extended for another five days each during the pendency of the state of emergency;
(ii) no suspension shall be made that does not safeguard the health and welfare of the public and which is not reasonably necessary to the disaster effort;
(iii) any such suspension order shall specify the local law, ordinance or regulation, or part that is suspended and the terms and conditions of the suspension;
(iv) the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such local law, ordinance or regulation suspended, and may include other terms and conditions;
(v) any such suspension order shall provide for the minimum deviation from the requirements of the local law, ordinance or regulation suspended consistent with the disaster action deemed necessary; and
(vi) when practicable, specialists shall be assigned to assist with the related emergency actions to avoid adverse effects resulting from such suspension.

**What are the notification requirements for emergency orders?**
A local emergency order shall be effective from the time and in the manner prescribed in the order and shall be published as soon as practicable in a newspaper of general circulation in the area affected by such order and transmitted to the radio and television media for publication and broadcast.

**What other authority does the town have under a local state of emergency?**
The supervisor is “authorized and empowered to and shall use any and all facilities, equipment, supplies, personnel and other resources of his [or her] political subdivision in such manner as may be necessary or appropriate to cope with the disaster or any emergency resulting from the disaster.” The supervisor may also request and accept assistance from any other political subdivision and may use real property from other political subdivisions upon “terms and conditions as may be mutually agreed to by the chief executives of the requesting and assisting political subdivision” (Executive Law § 25).

**Town Board Meetings and Coronavirus Scheduling and Cancellation**
The town board may schedule meetings by resolution and may cancel meetings by resolution (Town Law, §§63, 64). The town board should review its rules of procedure and other board resolutions and protocols regarding meeting cancelations. In the event the board does not have an established meeting cancelation procedure, the board could consider adopting such a meeting
cancelation policy. In the event a meeting scheduled by the town board needs to be canceled but the town board is unable to convene to do so, the town board could consider adopting a resolution delegating to the supervisor the authority to cancel a town board scheduled meeting. The delegation must put forth the procedures and criteria for the supervisor to cancel a meeting scheduled by the town board. In addition, the supervisor may schedule and cancel special town board meetings (Town Law, §62). As with all board actions and protocols, we recommend working with the town attorney for guidance and advice.

Videoconferencing and Public Attendance

**March 13 UPDATE**

On March 13, Gov. Cuomo issued Executive Order No. 202.1, continuing Executive Order No. 202 declaring a state of emergency, to temporarily suspend Article 7 of the Public Officers Law (known as the Open Meetings 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 Executive Order is in effect for 30 days until April 11, 2020. To read the full order, please visit: [https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency](https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency).

Please reference our Legal FAQ in the March/April issue of our magazine, *Talk of the Town & Topics* for more information on videoconferencing.

**Additional Guidance**

When the public is gathering at a town meeting or public hearing, the town board should review and implement the recommended protocols from the Centers for Disease Control and the New York State Department of Health regarding prevention.


In addition, the town board may review additional steps to mitigate exposure, such as accepting written comments via email, fax or the U.S. Postal Service to be included in the record of a public hearing and/or staggering the dates and times of public hearings to limit crowds, and where feasible, the town board may consider live streaming or broadcasting town meetings and hearings. According to the governor’s office, local governments seeking to obtain additional stocks of hand sanitizer should work with their county emergency manager and local health department to submit requests directly into NY Responds, the state’s web-based system that enables both local governments and state agencies to submit and share vital emergency-related information and resource requests. It looks like the county can log in here: [http://www.dhsses.ny.gov/ny-responds/](http://www.dhsses.ny.gov/ny-responds/)

As always, our members are encouraged to call our office with any questions at (518)465-7933, Monday through Friday, 8:30 a.m. to 5 p.m.

**Local Government Lobby Day Cancellation**

In light of growing concerns about the spread of COVID-19, the Association of Towns and NYCOM have decided to cancel the joint Local Government Lobby Day originally scheduled for March 23, 2020 in Albany, NY. We remain committed to advocating for local government and providing our membership with the tools and information necessary when speaking with your representatives about the budget and other legislative issues. Please do not hesitate to call AOT’s office with any questions or concerns.