



Maryland Municipal Attorneys Association

Newsletter Special Edition -- April 2020

Lynn Board, President; Todd Pounds, Vice President; Frank Johnson, Secretary; Jason DeLoach, Treasurer

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Special Edition on the Coronavirus Crisis (COVID-19)

Everyone has been impacted by Coronavirus (COVID-19) and quarantines in some way. These efforts will (among other impacts) make public attendance at meetings impossible and meeting certain Public Information Act deadlines practically so. We are providing this Special Edition to provide MMAA members with some quick updates as to the impacts of the Governor's orders on the state of emergency and the federal Families First Act. These provide for changes in certain deadlines, elections and personnel, to name a few topics. If there are more specific questions, let Frank Johnson know, at frank.johnson@gaitthersburgmd.gov.

Open Meetings without Attendance

The Governor's March 23 order prohibited meetings of more than 10 persons, and on March 30 all residents were ordered to stay at home. Yet towns and cities are still operating, and must hold some public meetings, at least to approve fiscal budgets and set the tax rate for next year. How can they hold public meetings without public attendance?

Technology, including the telephone, may provide some options. The Open Meetings Compliance Board has approved conference calls. Electronic or virtual online meetings (via "zoom" or others) may be options, as long as Open Meetings Act requirements are met. Thus, any conference call or virtual meeting must be fully accessible to the public it serves. Reasonable advance notice of the meeting must be provided, an agenda must be posted at least 24 hours before, and minutes must be taken and made available after approval at the next meeting. Notice indicating how the meeting will be conducted and how the public can access the meeting to observe may be most critical. Options must be reasonably calculated to inform the public, and may include a telephone call-in number, website or email address, logon credentials and instructions.

And the same rules allowing closing of a meeting (and allowable reasons to do so) also still apply.

Public Information Act deadlines

The Governor's March 30 "stay at home" order does allow travel "to and from a federal, State, or local government building for a necessary purpose" and "movement of any staff or volunteers" to such government buildings. But given the health threat, most local governments have honored the "stay at home" order to allow staff to telework or only attend worksites for necessary purpose. That means Public Information Act (PIA) requests deadlines will in most cases be more difficult if not impossible to satisfy, as staff are not present to review the documents. Such deadlines include the overall 30 day timeline to respond as well as 10 working days to notify applicants if the response is denied or, if granted, will take more than 10 days to satisfy.

The Governor's March 12 order extended certain licenses and permits, but also grants the heads of state agencies and local governments the ability to extend deadlines for programs they administer, if they find such suspension does not endanger the public health, welfare or safety and after they notify the Governor in advance. The Governor's Legal Counsel has advised that they consider local governments as the administrator of their own PIA requests; thus Mayors or Town/City Managers have the ability to extend these PIA deadlines for up to 30 days after the state of emergency is lifted.

Stay at Home Enforcement

The March 30 Stay at Home Order allows persons to leave their home for necessities, such as food or medical care. It is enforced by state and local police, but generally police will only question a driver's destination upon traffic stops. Letters for staff are not required but can be helpful which identify: the staff person and address, employer and address, purpose of the allowed trip and the name and contact information for the person signing the letter.



Postponing Elections

Many municipal charters specify elections are in the spring, such as the first Tuesday in May. But such timing this year may not be possible if the state of emergency continues, as the Governor's orders requires persons to remain at home if they are not traveling for necessary purposes. And while voting is essential, the Order doesn't specify voting as a reason for a person to leave their residence.

While municipal home rule powers allow a change to the election date, Charter public notice, hearing and referendum requirements would not allow such a Charter change for any election coming up in the next few months. Lynn Board, MMAA President, worked with the Governor's office to highlight this concern and suggest solutions. The Governor's second March 30 order accordingly offers an option for municipalities with upcoming election dates.

Thus a municipality's legislative body may by resolution act to amend the municipal election date and method, conduct or voting system, and suspend the hearing and delayed effective date requirements that apply under Title 4, Subtitle 3 of the Local Government Article of the Maryland Code. But the municipality must first notify the Governor and find such actions are necessary, will not endanger public health, welfare or safety, and must, for any change to the conduct of the election ensure "an accurate vote count and certification of the election results." The postponement (and waiver of Charter change requirements) would be temporary and only effective until the end of the state of emergency.

The Federal Impact: The Families First Coronavirus Response Act

The Families First Coronavirus Response Act was signed into law on March 18. It applies broadly to governments and employers with fewer than 500 employees. Generally it provides for employer-paid leave for workers who need to take time off of work due to events caused by the outbreak of the coronavirus (COVID-19) in the United States. Below is a brief thumbnail sketch of the major provisions.

The Emergency Paid Sick Leave portion of the Act (effective April 1, expiring December 31) provides up to 2 weeks (80 hours) of additional paid sick leave at the employee's full rate of pay where the employee can't work (or telework) because that employee is under quarantine (per a government order or on advice of a medical provider) or experiencing COVID-19 symptoms and has sought medical help. Alternatively, the law provides for 2 weeks (up to 80 hours) of additional paid sick leave at two-thirds of the employee's rate of pay to allow time off to care for a person subject to quarantine (per government order or medical advice); care for a child whose school is closed or when child care provider is unavailable due to COVID-19; and/or the employee has symptoms substantially similar to COVID-19 symptoms per Health and Human Services specifications.

The Emergency Family and Medical Leave Expansion portion of the Act has the same effective dates and extends the Family and Medical Leave Act (FMLA) to allow up to 10 weeks of paid leave at two-thirds the employee's regular rate of pay (capped at \$200 per day or \$10,000 overall) where the employee cannot work or telework due to the need to care for a child whose school is closed or the child care provider is unavailable due to COVID-19. This FMLA provision does not extend the 12-week-maximum annual FMLA leave and is limited only to care for a child as specified.

We Will Meet Again – on May 7 or thereafter

Queen Elizabeth in her April 5 speech used words from a World War II song to say "we will meet again." With that same spirit (and hope) our May 7 date at Fisherman's Inn remains in place at this point. MMAA Officers will decide in mid-April whether this can proceed. We may have to conduct our MMAA elections for officers and MML Board representatives by email. If a meeting cannot be rescheduled before the MML Summer Conference, we will plan on that meeting, at noon on June 22 in Room 200 of the Convention Center.