

March 16, 2020 COVID-19 Update

Following a tumultuous week, Governor Baker held a press conference on the evening of March 15, 2020 to announce additional emergency actions in response to the COVID-19 public health emergency. We summarize the most salient of the issues, below, and, for those that are seeking to do the same, attach a sample form of local state of emergency declaration. As you are no doubt aware, while we are trying to keep up, information concerning the COVID-19 virus and the response thereto changes minute to minute.

Summary of March 15, 2020 Emergency Actions

1. An emergency order issued limiting gatherings to 25 individuals and prohibiting on-premises consumption of food or drink at bars and restaurants from March 17, 2020 and effective through April 5, 2020, unless further extended. The Order, by its specific terms, does not apply to municipal legislative bodies, the General Court, the courts, or grocery stores, pharmacies and other facilities providing essentials services and goods. A copy of the full Order issued today is available online at: <https://www.mass.gov/doc/march-15-2020-large-gatherings-25-and-restaurants-order/download>.
2. Ending a district-by-district closure policy, the Governor announced that all public and private elementary and secondary schools in the state will suspend educational operations from March 17, 2020 until April 6, 2020. School closures will not impact other essential services provided to families, including meal services, but pertains to “in-person” educational operations. Additional information regarding the closure of schools is available online at: <https://www.mass.gov/doc/march-15-2020-school-closure-order>.
3. Legislation is being filed to assist with municipal governance matters resulting from the ongoing COVID-19 outbreak, including potential delays in holding Town Meetings and adopting Fiscal Year 2021 municipal budgets. While we have not yet seen the legislation, the Governor’s Office has stated that it will include the following provisions:
 - Amending the existing statute authorizing Moderators to postpone Town Meetings by thirty (30) days. State statute currently permits postponement for “public safety emergency,” and the legislation would add “public health emergency” as a second reason for postponement.
 - Permitting Boards of Selectmen/Select Boards to postpone Town Meetings beyond the statutory June 30 deadline when the Governor has declared a state of emergency and conditions prevent the completion of a Town Meeting.
 - Permitting Boards of Selectmen/ Select Boards to temporarily adopt lower quorum rules for Town Meetings. This is an opt-in provision to allow a town-by-town determination, and it would enable Boards of Selectmen/Select Boards to designate the quorum level. As you know, many towns have existing low quorum provisions in their by-laws. We are awaiting further clarification on this matter once the legislation is filed.

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- Authorizing continued month-to-month spending into FY21 by towns based on the prior fiscal year budget with approval of the Division of Local Services during states of emergency. The month-to-month authorization would continue so long as a state of emergency prevents the adoption of a budget. Cities have similar authority under existing state law.
 - Allowing towns to access their free cash balance for FY21 spending with approval of the Division of Local Services. This is based on the July 2019 certified free cash balance and could continue until an FY21 budget is ultimately adopted.
 - Permitting municipal spending from revolving funds at the level established for FY20 until new spending limits are established for FY21.
 - Authorizing a three-year amortization period for deficit spending incurred as a result of COVID-19 crisis. The default rule would require a community's FY21 tax rate to provide for one-year amortization and this change would follow the 2015 precedent for snow removal costs.
4. With respect to health insurance matters impacting municipal employees, the Governor ordered all commercial insurers, self-insured plans, and the Group Insurance Commission to cover medically necessary telehealth services related to COVID-19 testing and treatment, without employee co-pays or other similar charges. A copy of the Order issued regarding such health insurance matters is available online at: <https://www.mass.gov/doc/march-15-2020-telehealth-order>.
5. State agencies are also filing emergency regulations that will allow people impacted by COVID-19 to collect unemployment compensation benefits if their workplace is shut down and expects to reopen in four or fewer weeks. The Governor's Office has said that the following conditions will apply:
- Workers must remain in contact with their employer during the shutdown.
 - Workers must be available for any work their employer may have for them that they are able to do.
 - An employer may request to extend the period of the covered shut-down to eight weeks, and workers will remain eligible for the longer period under the same conditions described above.
 - If necessary, the Department of Unemployment Assistance (DUA) may extend these time periods for workers and employers.
 - Employers who are impacted by COVID-19 may request up to a 60-day grace period to file quarterly reports and pay contributions.
 - Proposed federal legislation, if enacted, would provide further relief including additional money for unemployment benefits, and relief to employers for charges related to unemployment benefits paid due to COVID-19.

While we have not seen the Governor's legislative package as of this writing, we will provide an update on its provisions as soon as we are able. Ongoing guidance from the state is updated online at:

<https://www.mass.gov/resource/information-on-the-outbreak-of-coronavirus-disease-2019-covid-19>

Local Declaration of State of Emergency

With this new information in hand, and in anticipation of further action at the state level, many municipalities have requested advice concerning the process for declaring a local emergency. As we have stated previously, while there is no specific law that provides the process for a city or town to do the same, in our view, the chief executive may, if they so choose, make such a declaration. Be reminded that it is not likely that such a declaration

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provides any significant power or authority in excess of what already exists, however, there may still be interest in making such a declaration to provide guidance to residents as to the seriousness of the situation and it may have some relevance to state or federal relief grants that may become available.

We have attached hereto a sample declaration, which also references the board of health, which can also be found at our website, www.k-plaw.com. This sample may be revised to address any local issues or concerns, as well.

As I am sure that you are aware, this is a rapidly evolving area of law, and we will continue to provide updates as often as possible.

A reminder that we have established a **Coronavirus “hotline”**, at coronavirusinfo@k-plaw.com. A dedicated team of our attorneys is available through this “hotline” e-mail address to answer the most frequently-asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries. In some instances, you may be referred to your primary, land use, or labor contact, and you should of course feel free to contact these attorney(s) directly with COVID-19 related questions.

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