# The Open Meeting Law, Untested Local Emergency Powers, and the Response to COVID-19

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Responding to the COVID-19 outbreak demands navigating uncharted territory, not least of which for Massachusetts local governments. Cities and towns are making crucial public health decisions with complex effects like closing schools and prohibiting large gatherings of people. Meanwhile, the basic functions of local government must, to some extent, go on—municipalities must continue to provide basic services and respond to (everyday) emergencies like fires and EMS calls.

The crisis is also driving changes in the procedures of local government. Public participation and transparent government are foundational principles of local decision-making, but with large gatherings of people—public meetings—themselves posing a threat to public health, the rules are changing. On March 12, 2020, Governor Baker issued an order suspending certain provisions of the Open Meeting Law. The order authorizes municipal boards and commissions, such as Planning Boards, Licensing Commissions, and Conservation Commissions, to conduct hearings and make decisions on permits while operating remotely. Remote participation by individual board members and the public is already routine for some state and local bodies, but the order authorizes remote participation on a much more expansive basis. The order only applies to the requirements of the Open Meeting Law, which by statute do not apply to Town Meeting. Town Meeting procedures are controlled by both general laws and Town Charters and differ considerably from town to town. Towns should consult with their counsel as to whether their governing laws already permit remote participation.

The order exercises the governor's emergency authority under Chapter 639 of the Acts of 1950, the Massachusetts Civil Defense Act. Enacted in the wake of World War II and with the Cold War approaching on the horizon, the Civil Defense Act confers extremely broad authority—potentially to the limit of the Legislature's authority under the state Constitution—on the governor to address contingencies arising in an emergency. Although the governor's emergency actions so far have been limited, if the worst-case scenarios play out it is conceivable that the governor would exercise other powers under the act, for example, by seizing property to create new sick wards if the outbreak overwhelms the health system's capacity. *See* MCDA § 5(b).

The MCDA also grants local governments emergency authorities that are largely untested. Specifically, Section 13 authorizes municipalities to enter contracts, employ temporary workers, purchase supplies, and levy taxes and appropriate public funds, all "in light of the exigencies of the extreme emergency situation [and] without regard to time-consuming procedures and formalities prescribed by law, excepting mandatory constitutional requirements." At first, the application of this language is likely to be narrow (for example, purchasing needed supplies for first responders without complying with the public procurement statute), but it could also justify changes as broad as modifying the procedures of town meeting to allow for remote participation.