



Township Meetings and Facilities Under the Open Meetings Act and MDHHS Emergency Order June 1, 2021--“Gatherings and Face Mask Order”

[June 1, 2021 Gatherings and Face Mask Order](#) (link to order on Michigan.gov)

- [FAQs for the June 1, 2021 Gatherings and Face Mask Order](#)
- [Gatherings and Face Mask Order Infographic](#)

This fact sheet is not intended as specific legal guidance. It is provided to assist township boards understand what the Open Meetings Act and the Michigan Department of Health and Human Services Order say at this time. A township board should work with its attorney to determine answers and recommendations for your specific questions.

Under the [June 1 MDHHS Order](#), effective June 1, and in effect through June 30, 2021, **public meetings and other indoor gatherings at township offices and facilities (including hall rentals)** are subject to the indoor gathering limit of whichever is **greater, still subject to 6-foot distancing**:

- **50% of the Fire Marshal Capacity of the space OR**
- **30 persons per 1,000 square feet if no applicable fire marshal limit exists OR**
- **25 persons**

MDHHS Order	March 5 to March 31: No more than 25 persons at indoor meeting (<i>Assuming you can meet indoor spacing/distancing requirements in Order. Mask-wearing is required by all members of the public body, and those attending the meeting. Note you cannot turn a person away from open meeting of public body per OMA, so if more than 25 persons attend, meeting must be ended.</i>)		June 1 through June 30: MDHHS Order of June 1 limits public meetings and other indoor gatherings (including hall rentals) at township offices and facilities to the general limit of the greater of 50% of fire marshal capacity; OR 30 persons/1,000 sq. ft. if unknown; OR 25 persons. Six-foot distancing still applies.	July 1: All broad epidemic orders will be lifted.
OMA MCL 15.263a	March 18, 2020, through March 30, 2021: Allows electronic meetings for any reason (public body and public)	March 31, 2021, through Dec. 31, 2021: Individual members of public body may participate electronically in an in-person meeting if they are absent due to: <ul style="list-style-type: none"> • Military duty • Medical condition • Declaration of state or local state of emergency <ul style="list-style-type: none"> ○ A declaration of state of emergency could allow all members to participate electronically. 		Beginning Jan. 1, 2022, the ONLY option for a member to participate electronically in a meeting of a public body is a member of the public body absent due to military duty.
OMA MCL 15.263	Before April 1, 2021, in-person meetings must comply with COVID-19 safeguards stated in OMA. (<i>MDHHS safeguards still apply during and after OMA provision expires.</i>)	After April 1, 2021, in-person meetings must comply with MDHHS Order(s). No specific end date, subject to COVID-19 pandemic emergency.		

Conducting electronic meetings (and meetings with members participating electronically):

- **Note on declaring a “local state of emergency”:** MTA Legal Counsel do believe this could be done by a township board, however the township should talk to its own attorney for specific legal advice on this issue. If a county commission declares a local state of emergency for the county, it would allow each unit within the county to conduct meetings electronically, but it would not mandate that individual townships conduct meetings electronically.
- An electronic meeting must be conducted in a manner that permits two-way communication between members and participants (*at a minimum—everyone can hear everyone else*).
- Technology may be used to facilitate typed public comments during the meeting submitted by members of the public participating in the meeting that may be read to or shared with members of the public body and other participants to satisfy the requirement that members of the public be permitted to address the electronic meeting (*public comment period and public hearings*) and be heard by others during the electronic meeting.
- Members of a public body and the public participating electronically in a meeting are considered present and in attendance at the meeting for all purposes. (*Including voting for members of the public body participating electronically*)
- Each member of the public body attending a meeting remotely must announce at beginning of meeting they are participating remotely and, except for military absence, must identify the county, city, township, or village and state from which they are attending remotely.
- If a public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, the public body must, in addition to other notices that may be required under the OMA, post advance notice of a meeting held electronically on a portion of the website that is fully accessible to the public—on either the homepage or a separate webpage dedicated to public notices for special meetings or electronic public meetings with a “prominent and conspicuous” link on the website’s homepage that clearly describes its purpose for public notification of special meetings or electronic public meetings.
 - Any scheduled meeting of a public body to be held as an electronic meeting must have notice posted at least 18 hours before the meeting begins.
 - Notice must clearly explain all of the following:
 - Why the public body is meeting electronically
 - How members of the public may participate in the meeting electronically. If a telephone number, internet address, or both are needed to participate, that information must be provided specifically
 - How members of the public may contact members of the public body to provide input or ask questions on any business that will come before the public body at a meeting
 - How persons with disabilities may participate in the meeting
- If an agenda exists for an electronic meeting and the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, the public body must make the agenda available at least two hours before the electronic meeting begins on a portion of the website that is fully accessible to the public. This “publication” of the agenda does not prohibit subsequent amendment of the agenda at the meeting.
- A public body cannot require a person to register or provide his or her name or other information, or require a person to otherwise fulfill a “condition precedent,” as a condition of participating in an electronic meeting, other than mechanisms established and required by the public body necessary to permit the ***[continued]***

person to participate in a public comment period of the meeting. *(Log-in information may be required by the virtual meeting platform/software/service.)*

- Members of the public are excluded from participating in a closed session of a public body held electronically if that closed session complies with the act.

Electronic Meeting Options After March 30, 2021

Member Access to Meetings

After March 30, 2021, and through December 31, 2021 a **member of a public body** can participate electronically in a meeting **ONLY** if that member is (a) absent due to military duty, (b) absent due to a medical condition or (c) a state or local state of emergency is declared.

This is because the **participation of a member of a public body** (township board, planning commission, zoning board of appeals, board of review, election commission, etc.) is governed by the Open Meetings Act, which requires all members of a public body to be physically present at a meeting to be able to count toward a quorum, participate in discussion, or vote, unless they meet one of the exceptions.

Starting January 1, 2022, **ONLY a member of a public body absent due to military duty** will be able to participate electronically, including counting toward a quorum, participating in discussion and voting.

Public Access to Meetings

The Open Meetings Act also provides that every meeting of public body must include one opportunity for public comment. And if a public body is holding a public hearing, that must be conducted as an agenda item within a properly scheduled and noticed regular or special meeting of that public body.

The OMA prohibits turning any person away from an in-person meeting, including turning them away to require them to use electronic access, so if a physical meeting room capacity (i.e., fire marshal room capacity or any applicable Covid-19 MDHHS Order limit) is reached, the options are to move the meeting to a larger meeting space (if any applicable MDHHS Order allows it), move outdoors or end the meeting.

But there is no limit in the OMA on providing **electronic public access**. The OMA does **not** limit the ability of **the public to participate electronically**, during a public comment period or on the record during a public hearing **IF** the public body chooses to provide electronic meeting access to the public—even now that the OMA has returned to limiting the ability of members of a public body to participate electronically.

MTA believes that **providing electronic meeting access to the public**, including participating in public comment or on the record in a public hearing, is one way to provide public access, input and transparency. Note that no law, including the OMA, currently *requires* a township public body to provide electronic meeting access to the public.

So, if a public body does choose to provide electronic meeting access for the public, that may encourage the public to attend electronically, reducing the chances that people might put a meeting over the gathering limit. Note that all participants must be able to hear and be heard by a member of the public participating electronically, in both the in-person and the electronic meeting spaces, so some form of microphone and speaker system must be provided in the in-person meeting space.

Michigan Department of Health and Human Services Order Requirements for Gatherings, including Meetings

MDHHS emergency order face mask and gathering limits

Under [MCL 333.2253](#), if the MDHHS director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws.

Under the MDHHS Order, and consistent with [MCL 333.2261](#), violations are punishable by a misdemeanor punishable by imprisonment for not more than six months or a fine of not more than \$200, or both, and under [MCL 333.2262](#), violations of the order are also punishable by a civil fine of fine of up to \$1,000. The order can be enforced by state and/or local law enforcement. ***(Note that the Michigan State Police and MIOSHA do enforce these orders.)***

On May 2, 2021, the Michigan Department of Health and Human Services (MDHHS) issued MDHHS Emergency Order, "[June 1, 2021 Gatherings and Face Mask Order](#)," effective at 12:01 a.m. on **June 1, 2021**, in effect through **June 30, 2021**, at 11:59 p.m. **On July 1, all broad epidemic orders will be lifted.**

Starting June 1, 2021, the mask requirements are:

4. Indoor face mask requirement.

- a. Except as specified in section 5, all persons participating in indoor gatherings are required to wear a face mask.
- b. **A person responsible for an establishment [including government offices], or an agent of such person, must prohibit gatherings of any kind at their establishment unless the person makes a good faith effort to ensure that all persons at their establishment (including employees) comply with section 4(a).**

For purposes of this section, a "good faith effort" may include any of the following:

- 1) posting a sign notifying people that wearing a mask is required unless a person falls into a specified exception;
- 2) asking patrons not wearing masks whether they fall into a specified exception;
- 3) requiring face masks of all patrons and employees;
- 4) or any other policy designed to ensure compliance with section 4(a).

5. **Exceptions to face mask requirement.** The requirement to wear a face mask at indoor gatherings does not apply to individuals who:
 - a. Are fully vaccinated persons;
 - b. Are younger than 2 years old;
 - c. Cannot medically tolerate a face mask;
 - d. Are eating or drinking while seated in a designated area or at a private residence;
 - e. Are swimming;
 - f. Are receiving a medical or personal care service for which removal of the face mask is necessary;
 - g. Are asked to temporarily remove a face mask for identification purposes; ***[continued]***

- h. Are communicating with someone who is deaf, deafblind, or hard of hearing and whose ability to see the mouth is essential to communication;
- i. Are actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, and where wearing a face mask would seriously interfere in the performance of their public safety responsibilities;
- j. Are engaging in a religious service;
- k. Are giving a speech for broadcast or to an audience, provided that the audience is at least 12 feet away from the speaker;
- l. Are engaging in an activity that requires removal of a mask not listed in another part of this section, and are in a facility that provides ventilation that meets or exceeds 60 ft³/min of outdoor airflow per person; or
- m. Are engaged in practice or competition where the wearing of a mask would be unsafe and are participating in a testing program specified in MDHHS's document entitled Guidance for Athletics issued May 24, 2021.

Q: What does "indoors" mean for the purposes of the Order?

A: "Indoors" means a location that is fully or partially enclosed on the top and:

- fully or partially enclosed on two or more contiguous sides; or
- if fully or partially enclosed on two non-contiguous sides, any part of that space that is more than 8 feet from an open side is indoors.

Indoor spaces, therefore, include most buildings (such as barns and garages), vehicles (such as buses and trains), and temporary structures (including tents or canopies with side walls or coverings).

Tents with one side are not indoors. Tents with two opposite sides are indoors, except for the spaces within them that are within 8 feet of an open side. Tents with two adjacent sides, three sides, or four sides, are all indoors. The placement of a tent next to a wall, building, or other structure is equivalent to a side. Opening a doorway in the middle of a side does not make that side open. For more information about indoor spaces that are permitted for dining, see [MDHHS's Dining Guide](#).

Q: Are local government offices still permitted to be open to the public?

A: Yes. *(MTA Note: The township board must have adopted a [COVID-19 Preparedness Plan](#) to open township facilities.)*

Q: May all township employees (workers) work in person now?

A: Yes. Under an amended set of emergency rules, on May 25, 2021, MIOSHA **removed the requirement** that employers create a "Policy prohibiting in-person work for employees to the extent that their work activities can feasibly be completed remotely."

See [MDHHS's Guidance for Employers \(Nov. 6, 2020\)](#) and [MIOSHA's Emergency Rules \(adopted Oct. 14, 2020, and extended April 10 through October 14, 2021, amended May 21\)](#). [Employer Guidance \(Michigan.gov\)](#)

Note that the MDHHS Order's gathering limits do not apply to "Workplace gatherings that occur consistent with the Emergency Rules issued by MIOSHA on October 14, 2020, and subsequently extended or replaced."

**MTA Legal Counsel Review of [Updated MIOSHA Emergency Rules](#),
Effective May 24, 2021**

On May 21, 2021, the Michigan Occupational Safety and Health Administration (“MIOSHA”) filed new [Emergency Rules](#) (“Rules”) governing workplace safety in response to the COVID-19 epidemic, effective May 24, 2021. Below is a list of considerations for municipal employers to ensure compliance with the new Rules.

1. “Fully vaccinated persons” are persons for whom at least 2 weeks have passed after receiving the final dose of an FDA-approved or authorized COVID-19 vaccine. **[Rule 2(f)]**.
2. MIOSHA eliminated the requirement that employers create a policy prohibiting in-person work, and allowing for remote work, where practicable.
3. Employers must have and continue to abide by a written COVID-19 preparedness and response plan consistent with the Rules and guidance from the Occupational Safety and Health Association (“OSHA”) and the Center for Disease Control (“CDC”). **[Rule 3]**.
4. The employer shall increase facility cleaning and disinfection to limit exposure to SARS-CoV-2, in accordance with CDC guidance. Additionally, employers must provide employees, customers, and visitors, with a place to wash their hands – a hand sanitizing station is sufficient, in the absence of available soap and running water, if the solution is more than 60 percent alcohol (See <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>). **[Rule 4]**.
5. Employers must continue to conduct a daily entry self-screening protocol for its employees or contractors entering the workplace. At a minimum, this must include a questionnaire covering symptoms and suspected or confirmed possible exposure(s) to people with COVID-19. **[Rule 5]**.
 - a. If an employee is experiencing symptoms, they must be isolated from the rest of the employees using measures including, but not limited to:
 - i. Requiring the known or suspected cases to stay home.
 - ii. Sending known or suspected cases away from the workplace.
 - iii. Allowing known or suspected cases to work remotely, where their health allows.
6. Employees, except fully vaccinated individuals, must wear face coverings and maintain 6 feet of social distancing where feasible. **[Rule 6, subrules (2) & (4)]**.
 - a. Employers must continue to designate one worksite COVID-19 safety coordinator to implement, monitor, and report on COVID-19 control strategies developed by these rules.
 - b. Employers must only provide face coverings to non-vaccinated employees.
 - c. Employers will be considered in compliance with mask and social distance rules provided under Rule 6, if they do any of the following, based on the nature of their business:
 - i. (a) Keeping records of whether employees are fully vaccinated persons, and exempting them from subrules (2) and (4) of this rule accordingly. **[continued]**

- ii. (b) Posting signs in the work area reminding employees that are not fully vaccinated to wear face coverings and maintain appropriate distancing.
- iii. (c) Allowing or requiring remote work.
- iv. (d) Requiring face coverings and social distancing for all employees regardless of vaccination status.

[Note: For municipal employers, the easiest and least intrusive option for your employees would be to simply post signs reminding people that masks and distancing are required for unvaccinated people.]

- 7. Finally, employers must continue to train all employees on COVID-19 and SARS-CoV-2; this includes:
 - a. Workplace infection-control policies (including information on where to get the COVID-19 vaccine).
 - b. Proper use of personal protective equipment.
 - c. Steps to take to notify the employer if the employee believes they are experiencing symptoms of COVID-19, or are confirmed or suspected to have the virus.
 - d. How to report unsafe working conditions. **[Rule 7].**