



## **Q & A on Township Operations per Gov. Whitmer's [Executive Order 2020-77](#)**

*Effective May 7 through May 28, 2020*

Visit the [MTA Coronavirus Information webpage](#) for additional information and resources.

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### **Township Board Meetings:**

The public still has limited ability to perform activities that are not necessary to sustain or protect life unless subject to an exception in [EO 2020-77](#) ("stay at home order"), and there is still no exception for the public to attend meetings of a public body.

Township boards are strongly advised to conduct necessary board business electronically, in compliance with [EO 2020-75 \(effective through June 30, 2020\)](#). The public must be provided with an option to participate in an electronic meeting of a public body, including via phone conference.

If a township board cannot meet entirely electronically, MTA Legal Counsel have advised that township board members may still meet in person in a township board meeting if necessary to sustain or protect life, to support those businesses and operations necessary to sustain or protect life, or to support resumed activities. The township board meeting that includes conducting the budget public hearing and approving the budget is a necessary function of a township preparing to enter its new fiscal year. It must be noted that the various laws concerning public hearings have not been suspended so even if the Board meets in person, then an electronic method of participation must be provided to the public for any public hearing.

MTA Legal Counsel have also advised that an argument can be made that a township board can meet in-person to conduct legislative functions (i.e. discuss or adopt ordinances and resolutions prescribing course of public conduct; public health, safety, and welfare considerations). [EO 2020-77](#) provides that "Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority." However, the public must still have the option to participate.

### **Other Township Public Bodies:**

Other meetings of various township public bodies may or may not be necessary:

- **Board of Review:** Necessary because required by statute.

- **Election Commission:** Necessary depending on Election Law deadlines to appoint election workers or other determinations
- **Planning Commission or Zoning Board of Appeals:** As [EO 2020-77](#) has opened up construction, meetings may be called to facilitate construction. May be held remotely and must provide for public participation.
- **Other township public bodies:** Determine case by case, but likely may not be necessary

**Expenditure approval:**

The township board is required at each regular meeting to audit all claims against the township presented for payment and authorize the payment of all allowed claims. Every payment of any kind (including payroll) leaving the township—with the sole exception of the current-year tax collection disbursement account—must be voted on by the board **before** being disbursed, unless the township has a written board-adopted “post-audit” policy to allow certain limited, specific, routine payments to be made prior to the board voting on them to avoid the township having late penalties—like the hall utilities and payroll. The township board must still vote to approve all those payments at the next meeting.

**Sample post-audit policy language**

All claims shall be approved by the township board prior to payment, except the following:

- 1) Payroll (election workers, sexton wages, etc.)
- 2) Utility bills (phone, electric, fuel, etc.)
- 3) Invoices with penalties or discounts that would be incurred if payment is not received prior to the board meeting where claims will be approved (identify specifically)

These claims shall be post-audited at the next board meeting following their issuance. (For example, your payment schedule would indicate Vouchers 101 to 104 were preauthorized by policy and approval by the board that evening.)

The (supervisor/other official) may authorize emergency expenditures when deemed essential due to the imminent threat to the health, safety and welfare of the township. (Set limits as desired.)

**Township Business Operations:**

MTA Legal Counsel suggest that the township board, or officials or staff designated by the township board with authority to direct some or all township employees, may issue notices similar to the sample below:

\_\_\_\_\_ Township Residents,

Until further notice, \_\_\_\_\_ Township Hall will not be open to the public due to Governor Whitmer’s “Stay Home Order,” [EO 2020-77](#) in reference to COVID-19 . Our elected officials will continue working in order to perform necessary government activities. Other Township employees will only work in-person if critically necessary, to help with these necessary government activities. If you have inquiries or require any Township services, please contact us at phone number \_\_\_\_\_ or by email at \_\_\_\_\_.

## What Township Positions May Work?

Section 8 of [EO 2020-77](#) provides that “workers who are necessary to sustain or protect life,” defined as “**critical infrastructure workers,**” include:

- Persons performing other community-based government operations and essential functions. ***MTA Legal Counsel have advised that township board members and their deputies performing statutory duties of their board offices fall into this category and are “critical infrastructure workers.”***
- Workers involved in public works.
- Workers involved in water and wastewater.
- Workers involved in public communications.

***All in-person government activities at whatever level (state, county or local) are suspended unless they are:***

- Activities performed by “**critical infrastructure workers,**” including workers in law enforcement, public safety, and first responders. As noted above this also includes essential functions, public works, water and wastewater and public communication. (Section 8)
- Activities performed by **workers who are permitted to resume work** under section 10 of [EO 2020-77](#) which in relevant part allows for workers for lawn care and landscaping operations.
- Activities regarding public transit, trash pickup and disposal (including recycling and composting), activities necessary to manage and oversee elections, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity under [EO 2020-77](#). (Section 6)
- Activities necessary to support the activities of workers described in sections 8, 9, and 10 of [EO 2020-77](#), or to enable transactions that support businesses or operations that employ such workers. (Section 6) ***This would now apply to your zoning and building departments in support of resumed construction.***
- Activities necessary to conduct minimum basic operations (of the township), defined as allowing the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely. Government workers performing such duties need not be designated. (Sections 4 and 6)
  - ***MTA Legal Counsel have advised that conducting the budget public hearing at a board meeting and adopting the budget for the new fiscal year at a board meeting are necessary government activities because a budget must be approved before entering into a new fiscal year or the government will have no authority to operate or incur or pay bills or payroll.***
  - ***FOIA requests must be responded to due to statutory deadlines, subject to temporary additional days per [Executive Order 2020-38](#).***

**Q. May township employees maintain township parks?**

A township board may employ critical infrastructure workers to carry out the approved government activities of taking care of township-owned cemeteries, parks, and other public works. The township must have protocols as set forth in section 11 of [EO 2020-77](#).

**Q. Can a township maintain its cemetery, including mowing?**

MTA Legal Counsel believes that a township can maintain their public works including public parks and cemeteries, which would include mowing and other maintenance activities. Any township personnel or contractor must maintain the recommended social distancing and take other required safety precautions as outlined in [EO 2020-77](#) paragraph 11. A township may also contract out for this work to be done as a resumed activity.

**Q. May landscaping, lawncare, tree service, irrigation, and related outdoor maintenance companies operate under this order?**

Workers for lawn care, pest control and landscaping operations may perform resumed activities subject to the protocols in section 11 and the enhanced social-distancing rules in section 11(h) all of [EO 2020-77](#)

**Q. Can a township do burials at its cemetery?**

Yes, even though the executive order does not specifically say so, the [Homeland Security CISA memo](#) (March 19, 2020) that is referred to in [EO 2020-77](#) cites the following as included in “critical infrastructure workers” (necessary workers) who could be exceptions to the “stay at home” orders: “Workers performing mortuary services, including funeral homes, crematoriums, and cemetery workers.” So those functions are considered critical infrastructure functions. And [EO 2020-77](#) continues to allow funeral attendance (see below). “Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 11” of [EO 2020-77](#).

**Q. Can people have a funeral service at the cemetery with the burial?**

[EO 2020-77](#) section 7(a)15 addresses funeral attendance and continues the restriction that no more than 10 people can be in attendance at a graveside funeral service.

In addition, “All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people from outside the individual’s household to the extent feasible under the circumstances.” For example, members of the same household (who are living together currently) can still be together so they don’t have to stay six feet apart, religious worship, etc. Others would have to practice social distancing, and the township may want to put rules in place for that or things like sanitizing between shared use of the same shovel, etc. “Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 11” of [EO 2020-77](#).

**Q. With the construction industry reopened as of May 7, what is the status of township construction code inspectors and zoning administrators?**

Effective at 12:01 am on May 7, 2020, workers in the construction industry, including workers in the building trades (plumbers, electricians, HVAC technicians, and similar workers), could resume activities, subject to the protocols in section 11 and the enhanced social-distancing rules described in section 11(i) of [EO 2020-77](#).

MTA Legal Counsel believes that township construction code inspectors and zoning administrators may do in-person permitting activities as long as the sites visited also comply with the protocols in section 11 and the enhanced social-distancing rules described in section 11(i) of [EO 2020-77](#). (see below)

**What Precautions Must be Taken?**

It is MTA's legal opinion that townships can maintain their cemeteries, parks, and other public works during COVID-19 while practicing safe distancing and other safety practices as outlined in Item 11 of [EO 2020-77](#) ("stay at home" order).

**Section 11 of Executive Order 2020-77:**

11. Businesses, operations, and government agencies that remain open for in-person work must, at a minimum:
  - a. Develop a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available [here](#). Such plan must be available at company headquarters or the worksite.
  - b. Restrict the number of workers present on premises to no more than is strictly necessary to perform the in-person work permitted under this order.
  - c. Promote remote work to the fullest extent possible.
  - d. Keep workers and patrons who are on premises at least six feet from one another to the maximum extent possible.
  - e. Increase standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
  - f. Adopt policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
  - g. Adopt any other social distancing practices and mitigation measures recommended by the CDC.
  - h. Businesses or operations whose in-person work is permitted under sections 10(c) through 10(f) of this order must also:**
    1. Prohibit gatherings of any size in which people cannot maintain six feet of distance from one another.
    2. Limit in-person interaction with clients and patrons to the maximum extent possible, and barring any such interaction in which people cannot maintain six feet of distance from one another.

3. Provide personal protective equipment such as gloves, goggles, face shields, and face masks as appropriate for the activity being performed.
4. Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough cleaning of tools, equipment, and frequently touched surfaces.

**i. Businesses or operations in the construction industry must also:**

1. Adhere to all of the provisions in subsection (h) of this section.
2. Designate a site-specific supervisor to monitor and oversee the implementation of COVID-19 control strategies developed under subsection (a) of this section. The supervisor must remain on-site at all times during activities. An on-site worker may be designated to perform the supervisory role.
3. Conduct a daily entry screening protocol for workers and visitors entering the worksite, including a questionnaire covering symptoms and exposure to people with possible COVID-19, together with, if possible, a temperature screening.
4. Create dedicated entry point(s) at every worksite, if possible, for daily screening as provided in subprovision (3) of this subsection, or in the alternative issue stickers or other indicators to workers to show that they received a screening before entering the worksite that day.
5. Require face shields or masks to be worn when workers cannot consistently maintain six feet of separation from other workers.
6. Provide instructions for the distribution of personal protective equipment and designate on-site locations for soiled masks.
7. Encourage or require the use of work gloves, as appropriate, to prevent skin contact with contaminated surfaces.
8. Identify choke points and high-risk areas where workers must stand near one another (such as hallways, hoists and elevators, break areas, water stations, and buses) and control their access and use (including through physical barriers) so that social distancing is maintained.
9. Ensure there are sufficient hand-washing or hand-sanitizing stations at the worksite to enable easy access by workers.
10. Notify contractors (if a subcontractor) or owners (if a contractor) of any confirmed COVID-19 cases among workers at the worksite.
11. Restrict unnecessary movement between project sites.
12. Create protocols for minimizing personal contact upon delivery of materials to the worksite.