



NEW April 19, 2021
Township Meetings and Facilities Under
the Open Meetings Act and
MDHHS Emergency Order April 19, 2021--
“Gatherings and Face Mask Order”

This fact sheet is not intended as specific legal guidance and is provided to assist township boards in understanding what the Open Meetings Act and the MDHHS Order say at this time. Because those timelines are not coordinated, and could still change, it is important to understand that some questions of what can be done may be open to different legal interpretation. A township board should work with its attorney to determine the answers and recommendations for your specific questions.

Under the current [MDHHS Order](#), as amended April 19, and in effect through May 24, 2021, **public meetings held in compliance with the OMA may be held in-person, and are exempt from the indoor and outdoor gathering limits on the number of persons—but still subject to limits, see Page 4.**

MDHHS Order	March 5 to March 31: No more than 25 persons at indoor meeting (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.)	March 31 to May 24: MDHHS Order of April 19 continues exemption for “Gatherings of public bodies and attendees of meetings held by public bodies in compliance with the OMA” from the indoor and outdoor gatherings limits on persons. Item (2)(c)(15)	May 25: Unknown
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. (MDHHS safeguards still apply during and after OMA provision expires.)	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 April 19, 2021, the Michigan Department of Health and Human Services (MDHHS) issued MDHHS Emergency Order, "[April 19 - Gatherings and Face Mask Order](#)," effective at 12:01 a.m. on **April 19, 2021**, in effect through **May 24, 2021**, at 11:59 p.m.

Since March 31, MDHHS has exempted meetings of a public body from the indoor and outdoor gathering limits of persons (other safeguards, like wearing masks, and the 6-foot minimum social distancing still apply):

- 2(c) "The limitations to gatherings in sections 2(a) and 2(b) **do not apply to:** ... **"(15) Gatherings of public bodies and attendees of meetings held by public bodies in compliance with the Open Meetings Act, MCL 15.261 et seq."**
- 2(d): "As a condition of hosting a gathering under this order, organizers and facilities must design the gathering to encourage and maintain physical distancing, and must ensure that persons not part of the same group maintain 6 feet of distance from one another to the extent possible."

NOTE: Although the March 31 and April 19 MDHHS Orders do not state a specific room capacity limit for a meeting room for a meeting of a public body (resulting in an interpretation that the capacity limit is the fire marshal occupancy limit, then reduced by 6-foot physical distancing), the MDHHS has made the following statement in one of its [March 19 FAQs](#) that the room capacity for a meeting of a public body is **50% of the fire marshal occupancy limit, then reduced by 6-foot physical distancing. A township board may want to consider taking a prudent approach, in consultation with its attorney, in deciding whether to comply with the MDHHS FAQ's more restrictive capacity calculation below:**

Q: What are the gathering and capacity restrictions that apply to in-person meetings of public bodies under the Open Meetings Act?

A: [Beginning on March 31, 2021](#), public bodies can continue to hold virtual meetings under the circumstances outlined in [Public Act 254 of 2020](#). For example, in counties or other local units of government operating under a local state of emergency or disaster, public bodies may continue to host virtual meetings.

Additionally, public bodies may meet in person. Public meetings under the Open Meetings Act are not subject to the gathering restrictions under section 2(a) and 2(b) under this Order, but they must comply with all other requirements of this Order.

Members of the public may both attend meetings and participate in public comment in person to the extent permitted under the Open Meetings Act. Overall attendance at any public meeting must not exceed 50% of the total occupancy limits established by the fire marshal. Attendees should avoid intermingling with people outside of their group and each group must remain 6 feet apart. All applicable masking and distancing requirements must be followed by everyone at all times.

All meetings covered by the Open Meetings Act - whether conducted virtually or in person - must also comply with [Public Act 254 of 2020](#).

These other excerpted FAQs from the [March 19 Epidemic Order FAQs](#) link above may be helpful.

Q: What does "indoors" mean for the purposes of this 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 [Outdoor Seating Enclosures](#) guidance.

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: What workers are still allowed or required to work in person?

A: Work should be completed remotely unless it is strictly necessary for an employee to be in person to complete their job duties. See [MDHHS's Guidance for Employers \(Nov. 6, 2020\)](#) and [MIOSHA's Emergency Rules \(adopted Oct. 14, 2020, and extended April 10 through October 14, 2021\)](#). [Employer Guidance \(Michigan.gov\)](#)

MTA Note: See the following on employee safety:

The MDHHS issued its guidance for employers in [Keeping a Safe Workplace](#) on Nov. 6, 2020.

The Michigan Occupational Safety and Health Administration (MIOSHA) and the Workers' Disability Compensation Agency, both within the Michigan Department of Labor and Economic Opportunity have also promulgated emergency rules to clarify the safety requirements employers—including townships—must follow to protect their employees from COVID-19. Again, these are similar requirements to those previously required in EOs. Under the [MIOSHA rules \(extended through October 14, 2021\)](#), employers that resume in-person work must, among other things, have a written COVID-19 preparedness and response plan and provide thorough training to employees that covers, at a minimum, workplace infection-control practices, proper use of personal protection equipment, steps workers must take to notify the township of any COVID-19 symptoms or a suspected or confirmed diagnosis of COVID-19, and how to report unsafe working conditions. **A MIOSHA infographic (*sign/brief fact sheet*) on the rules is available [here](#).**

Under the [workers' compensation rules](#), first responders—including emergency medical services workers, law enforcement and fire safety personnel, among others—are presumed eligible for compensable personal injuries under the Workers' Disability Compensation Act if they are diagnosed with COVID-19, by a physician or a presumed positive test result. The rules are in effect for six months [***Starting March 20, 2021***].