



Township Meetings and Facilities Under the Open Meetings Act and MDHHS Emergency Order February 4, 2021-- “Gatherings and Face Mask Order”

Under the current [MDHHS Order](#) expiring March 29, 2021, **ALL indoor meetings of a public body must be still be held completely virtually, or outdoors, if at all, March 29, 2021.** See Page 6 for more on the Order.

The Open Meetings Act, as amended by [PA 254 of 2020/SB 1246](#), allows virtual meetings to be held for any reason through March 30, 2021.

Open Meetings Act Options for Electronic Meetings

The Legislature amended the Open Meetings Act to provide:

From March 18, 2020, through March. 30, 2021:

- **Physical quorum and location NOT required.** Meetings held “**electronically**” (*by telephonic or video conferencing*) in whole or in part **since March 18, 2020, and through March 30, 2021**, if held in compliance with new section 3a. and the OMA provisions regarding nonelectronic (*in-person*) meetings, are valid under any circumstances, **including but not limited to**, absence of any member of the public body due to:
 - Military duty
 - Medical condition, defined as “an illness, injury, disability, or other health-related condition”
 - Statewide or local state of emergency or state of disaster declared pursuant to law or charter or local ordinance by the governor or a local official, governing body, or chief administrative officer that would risk the personal health/safety of the public or members of the public body

From March 31, 2021, through Dec. 31, 2021:

Electronic meetings will be allowed **only in limited circumstances:**

- **Military duty and medical condition.** These circumstances apply to individual members, and only those members may participate remotely. The other members must be physically present to participate. A member of a public body may **participate** electronically due to the following:
 - Military duty (***Only the member absent due to military participation may participate remotely.***)
 - Medical condition defined as an illness, injury, disability or other health-related condition (***Only the member absent due to this reason may participate remotely.***)
 - Any other member who is not on military duty or does not have a medical condition must be physically present at the meeting to participate.
- **Statewide or local state of emergency or state of disaster.** This circumstance could apply to individual members or the entire public body, allowing a meeting to be held completely electronically, without a quorum physically present.
 - Statewide or local state of emergency or state of disaster declared pursuant to law or charter or local ordinance by the governor or a local official, governing body, or chief administrative officer that would risk the personal health/safety of the public or members of the public body.
 - Only to permit the electronic meeting of a public body that usually holds its meetings in the affected area, and only to permit the electronic attendance of a member of the public body who resides in the affected area.

IF a meeting is allowed (by future order or statute) to be held in person before April 1, 2021 (NOT an option under current MDHHS Order through March 29, 2021):

The OMA requires that in a meeting of a public body held in person before April 1, 2021, the public body must do both of the following:

- To the extent feasible under the circumstances, ensure adherence to social distancing and mitigation measures recommended by the Centers for Disease Control and Prevention for the purposes of preventing the spread of COVID -19, including the measure that an individual remain at least 6 feet from anyone from outside the individual's household.
- Adopt heightened standards of facility cleaning and disinfection to limit participant exposure to COVID-19, as well as protocols to clean and disinfect in the event of a positive COVID-19 case in the public body's meeting place.

Starting Jan. 1, 2022:

Military duty. All meetings must be conducted in-person, including a quorum of all other attendees physically present in the meeting place, with the **sole exception** of a member participating electronically due to:

- Military duty (*Only the member absent due to military participation may participate remotely.*)
- Any other member who is not on military duty or does not have a medical condition must be physically present at the meeting to participate.

Conducting electronic meetings (and meetings with members participating 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 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.

Employee Safety Rules:

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](#), 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.

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

[MDHHS emergency order face mask and gathering limits](#)

On February 4, 2021, the **Michigan Department of Health and Human Services** (MDHHS) issued MDHHS Emergency Order, "[February 4 - Gatherings and Face Mask Order](#)," effective at 12:01 a.m. on **February 8, 2021**, in effect through **March 29, 2021**, at 11:59 p.m.

Along with the Order, MDHHS issued:

- [COVID-19 and Sports Infographic](#)
- [Gathering Guidelines Infographic](#)
- [Epidemic Order FAQs](#)

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 up to \$1,000. The order can be enforced by state and/or local law enforcement.

Definitions (excerpted from Order; not complete listing):

- **“Contact Sports”** means sports involving more than occasional and fleeting contact, including: football; basketball; rugby; field hockey; soccer; lacrosse; wrestling; hockey; boxing; futsal; martial arts with opponents; and other sports meeting those criteria.
- **“Competition”** means a game of skill played between opposing teams.
- **“Employee”** means that term as defined in section 2(c) of the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended, MCL 408.932(c), and also includes independent contractors.
- **“Entertainment and recreational facility”** includes: auditoriums; arenas; cinemas; concert halls; performance venues; sporting venues; stadiums; theaters; night clubs; strip clubs; water parks; archery ranges; amusement parks; arcades; bingo halls; bowling centers; casinos; gun ranges; laser tag arenas; trampoline parks; and the like.
- **“Exercise facility”** means a location in which individuals participate in individual or group physical activity, including gymnasiums, fitness centers, and exercise studios.
- **“Face mask”** means a tightly woven cloth or other multi-layer absorbent material that closely covers an individual’s mouth and nose.
- **“Gathering”** means any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.
- **“Household”** means a group of persons living together in a shared dwelling with common kitchen or bathroom facilities. In dwellings with shared kitchen or bathroom facilities occupied by 20 or more unrelated persons, households are defined by individuals who share a bedroom.
- **“Indoors”** means within a space that is fully or partially enclosed on the top, and fully or partially enclosed on two or more contiguous sides. Additionally, in a space that is fully or partially enclosed on

the top, and 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.

- **“Non-contact sports”** means sports that are not contact sports.
- **“Outdoors”** means a space that is not indoors.
- **“Organized sports”** means competitive athletic activity requiring skill or physical prowess and organized by a sports organizer.
- **“Practice”** means a training session for a game of skill, involving only members of a single team.
- **“Sports organizer”** means an association or other organization that sets and enforces rules to ensure the physical health and safety of all participants for an organized sport. Sports organizers at the sub-association level must follow all health and safety rules and procedures set by the association of which they are a member.

The following are **EXCERPTED** from the Order. Refer to the Order for the full text:

2. **General capacity limitations at gatherings.**

a. **Indoor gatherings:**

1. Are prohibited at **residential** venues, except where no more than 10 persons from no more than 2 households are gathered. Such gatherings should be held consistent with guidance issued by the Department of Health and Human Services for such gatherings;
2. Are prohibited at **non-residential venues**, except where no more than 10 persons from no more than 2 households are gathered.

Commentary: ALL indoor meetings of a public body must be still be held completely virtually, or outdoors, if at all, through March 29, 2021. The Open Meetings Act, as amended by Public Act 228 of 2020 and [SB 1246](#), allows virtual meetings to be held for or any reason through March 30, 2021. Note that a person cannot be turned away from a meeting of a public body. Even though a township can refuse entry to its hall or other facility if a person seeks to enter without wearing a mask or following other required safeguards, the township does not have that ability when a person seeks to enter a meeting of a public body. Also note that “virtual” does not mean everyone must have a computer or Internet—most virtual platforms allow people to phone in, including using a landline phone.

Outdoor gatherings are permitted only as follows:

- a. At **residential** venues, 25 or fewer persons are gathered, comprised of no more than 3 households;
- b. At **non-residential** venues:
 1. 25 or fewer persons are gathered at a venue **without fixed** seating, and attendance is limited to 20 persons per 1,000 square feet, including within any distinct area within the event space;
 2. 25 or fewer persons are gathered at a venue with **fixed** seating, and attendance is limited to 20% of seating capacity of the venue.

c. The limitations to gatherings in sections 2(a) and 2(b) do not apply to:

1. Incidental, temporary gatherings of persons in a shared space, such as frequently occur in an airport, bus station, exercise facility, food service establishment, shopping mall, or public pool, except as prohibited in section 3;
 2. Gatherings between an employee and a customer for the purpose of receiving services;
 3. **Workplace gatherings that occur consistent with the Emergency Rules issued by MIOSHA on October 14, 2020; (Commentary: There are no additional restrictions on local government offices being open to the public, but must be per preparedness plan.)**
 4. Voting or official election-related activities;
 5. Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;
 6. Education and support services at public, nonpublic, and boarding schools serving students in prekindergarten through grade 8;
 7. Children in a child-care organization, after school program, or camp setting;
 8. Persons traveling on a school bus or other public transit;
 9. Gatherings for the purpose of medical treatment, including mental health and substance use disorder support services;
 10. Gatherings of up to 25 persons for the purpose of a funeral;
 11. Residential care facilities, which are subject to the December 8, 2020 epidemic order entitled "Requirements for Residential Facilities," or any replacement of that order;
 12. Cardiopulmonary resuscitation courses and swimming instruction courses;
 13. Proctored, nationally-administered admissions and certification examinations that are not available remotely, provided that examinees are spaced no less than 12 feet apart.
 14. Gatherings at entertainment and recreational facilities that comply with the restrictions set forth in section 3(a) of the order;
 15. Gatherings for the purposes of indoor group fitness, exercise, or sports that comply with the restrictions set forth in sections 4(b), 4(d), 4(e), and 6 of this order;
 16. Gatherings for public health and other emergency purposes.
- d. As a condition of hosting a gathering under this order, organizers and venues must design the gathering to encourage and maintain physical distancing, and must ensure that persons not part of the same household maintain 6 feet of distance from one another to the extent possible.
3. **Gathering restrictions for entertainment facilities, recreational facilities, and food service establishments.**
- a. Gatherings are prohibited at entertainment facilities and recreational facilities unless:
 1. Venues and activities held at those venues comply with masking and distancing requirements in this subsection. Venues that cannot consistently adhere to these requirements (e.g., water parks, dance floors at a nightclub, or children's indoor playgrounds inasmuch as staff are not present to prevent physical contact) may not be open.
 - A. Patrons remain masked at all times, except when eating or drinking in designated areas;
 - B. Groups of patrons participating in activities together (such as those seated together at a concert or movie, or bowling in the same lane) do not exceed 10 persons from up to two households;

- C. Patrons are prevented from mingling with or engaging in physical contact with persons outside their group;
 - D. For sports practice and competition, participants comply with the restrictions set forth in section 6.
 - 2. If participating in stationary activities, groups are spaced or seated at least 6 feet apart. If participating in non-stationary activities, groups maintain a consistent 6 feet of distance from other groups at all times;
 - 3. Consumption of food or beverages is permitted only where patrons are seated, groups of patrons are separated by at least 6 feet, no more than 6 patrons are seated at a table, and groups of patrons do not intermingle;
 - 4. Venues that are also food service establishments must, as a condition of offering food or beverages, ensure their designated dining areas comply with all requirements in subsection (b);
 - 5. Venues abide by the following density limitations:
 - A. For venues with fixed seating, occupancy must not exceed 20% of the limits established by the State Fire Marshal or a local fire marshal;
 - B. For venues with non-fixed seating, occupancy is limited to 20 persons per 1,000 square feet, including within any distinct space within the venue;
 - 6. Venues abide by the following maximum capacity limitations:
 - A. At stadiums and arenas hosting sporting events as provided in section 6, up to 250 patrons may be gathered at venues with a seating capacity under 10,000, and up to 500 patrons may be gathered at venues with a seating capacity of over 10,000;
 - B. For all other entertainment and recreation facilities, no more than 100 patrons may be gathered within any distinct space within the venue.
- b. Gatherings are prohibited at food service establishments unless:
- 1. Consumption of food or beverages is permitted only in a designated dining area where patrons are seated, groups of patrons are separated by at least 6 feet, no more than 6 patrons are seated together (at a table, booth, or group of fixed seats), and groups of patrons do not intermingle;
 - 2. Patrons are not permitted to gather in common areas in which people can congregate, dance, or otherwise mingle;
 - 3. In the event that an employee of a food service establishment is confirmed positive for COVID-19 or shows symptoms of COVID-19 while at work, a gathering at that food service establishment is prohibited until the food service establishment has been deep cleaned consistent with Food and Drug Administration and CDC guidance;
 - 4. At establishments offering indoor dining:
 - A. The number of patrons indoors (or in a designated dining area of a multipurpose venue) does not exceed 25% of normal seating capacity, or 100 persons, whichever is less, provided, however, that this limitation does not apply to soup kitchens and shelters;
 - B. Food service establishments, or the designated dining area of a multipurpose venue, close indoor dining between the hours of 10:00 PM and 4:00 AM;
 - C. The venue displays, in a prominent location, the MDHHS "Dining During COVID-19" brochure.

4. **Gathering restrictions for other facilities.** In addition to the gathering limitations set forth elsewhere in this order, the following limitations apply to gatherings in the following facilities:
 - a. A gathering at a retail store, library, or museum must not exceed 30% of total occupancy limits established by the State Fire Marshal or a local fire marshal. Nevertheless, a retail store, library, or museum may permit one customer at a time to enter if strict adherence to the 30% total occupancy limit would otherwise result in closure. Spaces for indoor dining, including food courts, must comply with the requirements for food service establishments as set forth in section 3(b).
 1. Retail stores must establish lines to regulate entry and checkout, with markings for patrons to enable them to stand at least six feet apart from one another while waiting.
 - b. At exercise facilities:
 1. Gatherings must not exceed 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal;
 2. There must be at least 6 feet of distance between each occupied workout station and physical layout of the space must be established such that exercisers can move between stations while maintaining 6 feet of distance from others at all times; and
 3. Gatherings for group fitness activities or classes are permitted, provided that all persons maintain at least 6 feet of distance from others at all times and wear a face mask at all times.
 - c. Gatherings in waiting rooms at outpatient health care facilities, veterinary clinics, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same household maintain 6 feet of distance. To the extent possible, this system must include a policy that patients wait in their cars for their appointments to be called.
 - d. Gatherings at an indoor or outdoor pool not otherwise prohibited by this order must not exceed 25% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
 - e. Gatherings at ice and roller rinks are permitted, provided that occupancy is limited to 4 persons per 1,000 square feet, including within the exercise space. Gatherings for the purpose of open skating are permitted.
 - f. In facilities offering non-essential personal care services, including hair, nail, tanning, massage, traditional spa, tattoo, body art, piercing services, and similar personal care services, all services must be provided by appointment, and gatherings in waiting areas are prohibited.
5. **Schools, colleges, technical schools, and universities. [Excerpted]**
6. **Organized sports gathering restrictions.**
 - a. Gatherings for the purpose of contact sports practice and competition are prohibited unless:
 1. Participants remain masked; or
 2. Where it would be unsafe for participants to remain masked, all participants are tested consistent with MDHHS's document entitled Guidance for Athletics issued February 7, 2021.
 - b. Gatherings for the purpose of sports practice and competition are prohibited unless participants maintain 6 feet of distance from each other when not engaged in play.
 - c. Gatherings of non-participants for the purpose of observing sports practice and competition must be held consistent with section 3.
 - d. Sports organizers, venues, and teams must ensure that all gatherings for the purpose of sports competition and practice comply with the requirements of this order.
 - e. Even where it is not required, sports organizers are encouraged to administer a testing program as specified MDHHS's document entitled Guidance for Athletics issued February 7, 2021.

7. **Face mask requirement at gatherings.**

- a. All persons participating in gatherings are required to wear a face mask.
- b. As a condition of gathering for the purpose of transportation, transportation providers must require all staff and patrons to use face masks, and must enforce physical distancing among all patrons to the extent feasible.
- c. Except as provided elsewhere in this order, **a person responsible for a business, store, office, government office**, school, organized event, or other operation, or an agent of such person, must prohibit gatherings of any kind unless the person requires individuals in such gatherings (including employees) to wear a face mask, and denies entry or service to all persons refusing to wear face masks while gathered.
- d. **A person responsible for a business, store, office, government office**, school, organized event, or other operation, or an agent of such person, may not assume that someone who enters the facility without a face mask falls within one of the exceptions specified in section 8 of this order, including the exception for individuals who cannot medically tolerate a face mask. An individual's verbal representation that they are not wearing a face mask because they fall within a specified exception, however, may be accepted.
- e. A person responsible for a child-care organization or camp, or an agent of such person, must not allow gatherings unless face masks are worn by all staff. Children must wear face masks as indicated below:
 1. All children 2 years and older when on a school bus or other transportation provided by the child-care organization or camp;
 2. All children 4 years and older when in indoor hallways and indoor common areas;
 3. All children 5 years and older when in classrooms, homes, cabins, or similar indoor settings.

8. **Exceptions to face mask requirements.** Although a face mask is strongly encouraged even for individuals not required to wear one (except for children under the age of 2), the requirement to wear a face mask in gatherings as required by this order does not apply to individuals who:

- a. Are younger than 5 years old, outside of child-care organization setting (which are subject to requirements set out in section 7(e));
- b. Cannot medically tolerate a face mask;
- c. Are eating or drinking while seated at a food service establishment or at a private residence;
- d. Are exercising outdoors and able to consistently maintain 6 feet of distance from others;
- e. Are swimming;
- f. Are receiving a medical service for which removal of the face mask is necessary;

- g. Are asked to temporarily remove a face mask for identification purposes;
- 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; or
- k. Are giving a speech for broadcast or to an audience, provided that the audience is at least 6 feet away from the speaker.
- l. Are participating in a testing program specified in MDHHS's document entitled Guidance for Athletics issued February 7, 2021, and are engaged in practice or competition where the wearing of a mask would be unsafe.

9. Contact tracing requirements for particular gatherings.

- a. **Gatherings are prohibited at the following facilities unless** the facility maintains accurate records, including date and time of entry, names of patrons, and contact information, to aid with contact tracing, and denies entry for a gathering to any visitor who does not provide, at a minimum, their name and phone number:
 - 1. All businesses or operations that provide hair, nail, tanning, massage, traditional spa, tattoo, body art, piercing services, or similar personal care services;
 - 2. Exercise facilities.
- b. All businesses or operations that provide in-home services, including cleaners, repair persons, painters, and the like must not permit their employees to gather with clients unless the business maintains accurate appointment records, including date and time of service, name of client, and contact information, to aid with contact tracing.
- c. All dine-in food service establishments must maintain accurate records of the names and phone numbers of patrons who purchase food for consumption on the premises, and the date and time of entry.
- d. **Upon request, businesses, schools, and other facilities must provide names and phone numbers of individuals with possible COVID-19 exposure to MDHHS and local health departments to aid in contact tracing and case investigation efforts.**