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March 17, 2020

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I. Governor Issues Executive Order on Various Closings

Yesterday Governor Murphy issued [Executive Order 104](#) instituting various closings and limiting social interaction in attempt to combat COVID-19. The Order:

- Limits all gatherings to 50 or fewer people. Excluded from this is normal operations at airports, bus and train stations, medical facilities, office environments, factories, industrial or manufacture work, construction sites, mass transit or the grocery store.
- Closes all public, private, and parochial preschool programs, elementary and secondary schools, including charter and renaissance schools beginning March 18, 2020 until the Order is rescinded.
- Ceases in-person instruction at all institutes of higher education beginning March 18, 2020. The order does provide for the ability of the Secretary of Office of Higher Education to grant waivers.
- Authorizes the Commissioner of Education, in consultation with the Health Commissioner, to permit schools to remain open on a limited basis for the provisions of food or other essential, non-educational services, or for education or child care services if needed in emergency situations.
- Authorizes the Commissioner of Education, after consulting with the Health Commissioner, to close any other career or training facilities over which the Department of Education oversees.
- Authorizes local school districts, charter schools, and renaissance schools, in consultation with Commissioner of Education, at their discretion, to determine home instruction arrangements on a case-by-case basis to ensure all students are provided with appropriate home instruction.

- Requires the Secretary of Agriculture, in conjunction with the Department of Education, take all necessary actions to ensure that all students eligible for free or reduced meals shall continue to receive the services or supports necessary to meet nutritional needs during the closures.
- Effective 8:00 p.m. Monday, March 16, 2020 the following facilities are ordered close to members of the public:

- Casino gaming floors, including retail sports wagering lounges, and casino concert and entertainment venues. Online and mobile sports and casino gaming services may continue to be offered.

- Racetracks, including stable facilities and retail sports wagering lounges. However, mobile sports wagering services may continue to be offered.

- Gyms and fitness centers and classes.

- Entertainment centers, including but not limited to, movie theaters, performing arts centers, other concert venues and nightclubs.

- Requires other non-essential retail, recreational and entertainment businesses to cease daily operations from 8:00 p.m. until 5:00 a.m. From 5:00 a.m. to 8:00 p.m. these businesses may remain open but they must limit their occupancy to no more than 50 persons and adhere to social distancing. Essential businesses, such as grocery stores, pharmacies, medical supply stores, gas stations, healthcare facilities and ancillary stores within healthcare facilities, are exempted from this provision.
- Allows all restaurants, dining establishments, and food courts, with or without liquor licenses, all bars and other holders of retail consumption liquor license to operate under their normal business hours, but are limits them to offering only food delivery and/or take-out services. If alcoholic beverages are to be sold from the restaurant, dining establishment or bar with a liquor license, such sales are limited to original containers sold from the principal public barroom.
- Permits the State Director of Emergency Management, who is the Superintendent of State Police, to determine and control the direction of the flow of traffic on any state road, including municipal and county roads, if it deemed necessary for the protection of the health, safety and welfare of the public.
- Prohibits municipalities and counties to enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with this Executive Order. A [letter issued](#) by the Attorney General to law enforcement chief executives regarding EO 104 advises that law enforcement officers must exercise discretion to not enforce local ordinances such as restrictions on delivery times and noise ordinances in ways that would inhibit transportation companies from timely and effectively delivering needed supplies to essential businesses.

The Executive Order took effect immediately on March 16, 2020 and remains in effect until revoked or modified by Governor Murphy. Violations of the executive order can be enforced as disorderly persons offenses by county and local law enforcement.

II. Division Issues Guidance on Emergency Procurement and Use of Storm Recovery Reserves

The Division of Local Government Services has issued [Local Finance Notice 2020-06](#) on emergency procurement and use of storm recovery reserves in response to the COVID-19

public health emergency. In circumstances where an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services, a contract may be awarded without public bidding regardless of the bid threshold. N.J.S.A. 40A:11-6 and N.J.A.C. 5:34-6.1. Pursuant to N.J.S.A. 19:44A-20.12, contracts awarded under such circumstances are excepted from Pay-to-Play due to public exigency. In addition, contracting units may enter into emergency contracts without first obtaining the Business Registration Certificate (BRC), however, payment on the contract cannot be made until a copy of the BRC is provided to the contracting unit. If a public works contract is awarded under emergency procedures the contractor must be notified of the applicable Public Works Contractor Registration and prevailing wage requirements at the time of award.

The Division is strongly recommending the cancellation of bid openings for non-essential goods and services. As a reminder, N.J.A.C. 5:34-9.3 outlines the procedures to cancel or postpone the receipt of bids or proposals. In the cases of bid openings for essential time sensitive projects, the Division recommends establishing protocols for hand delivery of bids that limits exposure to pathogens and communicating that protocol to prospective bidders.

The Division also notes that municipalities and counties with storm recovery reserves may use those funds for the COVID-19 response. Any reimbursement of these expenditures must be deposited back into the reserve. To establish a storm recovery reserve or convert a preexisting snow removal reserve to storm recovery, the governing body shall adopt a resolution establishing the reserve and submit the resolution to the Division. Municipalities and counties need not have had a snow removal reserve to establish a storm recovery reserve.

We suggest you review this material with your procurement official, chief financial officer, administrator and attorney.

Contact: Lori Buckelew, Senior Legislative Analyst, lbuckelew@njlm.org, 609-695-3481 x112.

III. COVID-19 Bill Package Released from Assembly

On Monday under emergency voting rules, the Assembly considered a bill package related to COVID-19. At this time the bill text is unavailable but we will provide a more detailed update once the bill text becomes available. The Senate voting session is scheduled for March 23. For more on the Assembly action please see our recent [blog post](#).

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IV. Federal Update

From our colleagues at the National League of Cities we are providing the following brief update on Federal legislative action in response to COVID-19.

The White House [released](#) new guidelines aimed at reducing the spread of the COVID-19 virus. The changing guidelines show how quickly the response to the virus is evolving.

Looking ahead, as early as 3/17/20, Senate Minority Leader Charles Schumer will introduce a series of proposals to reinforce the economy and help battle the spread of coronavirus.

Speaking on the Senate floor, Schumer said:

The proposal will get money directly into hands of American people and, among other priorities, include federal funding to:

- Address hospital and treatment capacity issues;
- Expand Unemployment Insurance and Increase Medicaid funding;
- Ensure that everyone can afford treatment for coronavirus
- Provide Immediate Loan Payment Forbearance for ALL Federal Loans, student loans, mortgages, small business loans and others, & Moratoriums on Evictions/Foreclosures;
- Deliver Immediate help to small businesses;
- Fund emergency child care, especially for health care workers and first responders;
- Help schools with remote learning;
- Provide assistance to keep public transportation running;
- Address public health and economic needs in Indian Country; and
- Utilize the Defense Department to provide personnel, equipment, supplies, and critical response capabilities to support on the nationwide response.

Senate Majority Leader Mitch McConnell said that Senators are eager to pass the House's bill. He added: "Senate Republicans are absolutely convinced that the House's bill can only be the beginning of Congress' efforts to secure our economy and support American families."

Meantime, the House-passed coronavirus bill (H.R. 6201) appeared to hit a snag but could be moving shortly—maybe.



New Jersey State League of Municipalities

222 West State Street, Trenton, NJ 08608
Phone: 609-695-3481 Web: www.njlm.org

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