

MEMORANDUM

TO: Michigan Independent Citizens Redistricting Commission (MICRC)

CC: MICRC & MDOS Staff

FROM: Julianne V. Pastula, Esq. *JVP*
General Counsel, MICRC

DATE: March 29, 2021

RE: **Extension of Authorization for MICRC to Conduct Electronic "Virtual" Meetings through April 30, 2021**

The authority for public bodies to conduct electronic "virtual" meetings under the Open Meetings Act¹ ("OMA") and permit remote attendance of members for any reason expires March 31, 2021.² Remote participation in meetings may continue under certain circumstances through December 31, 2021 and, in even more limited circumstances, beyond 2021.³

From April through December 2021 remote attendance is allowed on an individual basis to accommodate members absent due to military duty, a medical condition,⁴ or a statewide or local state of emergency or state of disaster. During this timeframe, any member who is not on military duty or does not have a medical condition or does not live in an area affected by a state of emergency/disaster must be physically present at an in-person meeting to participate.⁵

Similarly, public bodies as a whole may only meet remotely under specific circumstances through December 31, 2021. During this timeframe, electronic "virtual" meetings may occur pursuant to a 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" where in person meetings would risk the "personal health or safety" of the public body or the public.⁶

On March 4, 2021, Senate Bill 207 was introduced to extend the deadline to conduct virtual meetings for any reason through June 30, 2021. It was referred to the Committee on Government Operations on the same date. While there has been no activity on the proposed legislation, MICRC staff continues to monitor the bill to gauge support and progress. However, based on an extension of the Declaration of the State of Emergency by the Ingham County Board of Commissioners, the MICRC has the ability to conduct its meetings remotely through April 30, 2021.

¹ Public Act 257 of 1976; MCL 15.261, *et seq.*

² MCL 15.263a(1)(a).

³ After December 31, 2021, the only permissible circumstance for electronic attendance will be members absent due to military duty.

⁴ Defined in the OMA as "an illness, injury, disability, or other health-related condition." MCL 15.263(12)(b).

⁵ MCL 15.263a(8).

⁶ MCL 15.263(2).

Notice and Participation Requirements

The OMA also sets forth notice and participation requirements for electronic “virtual” meetings. These requirements include each of the following:

1. Post on a portion⁷ of the public body's website⁸ that is fully accessible to the public:
 - a. A notice complying with the OMA at least 18 hours in advance of the meeting.⁹
 - b. An agenda at least 2 hours prior to the start of the meeting.¹⁰
2. Notice of a virtual meeting must “clearly explain all of the following”:¹¹
 - a. The reason(s) the meeting is being conducted virtually.
 - b. Specific information of how the public, including those with disabilities, may participate in the meeting (e.g., telephone number, internet address, or both).
 - c. How the public may contact members of the public body in advance to provide input or ask questions on the business scheduled to be addressed at that meeting.
3. Utilize an electronic platform for the virtual meeting that allows for 2-way communication between members of the public body and the public.¹²
4. At the onset of the meeting, every member participating remotely must announce their virtual attendance. Other than for absence due to military duty, each member participating virtually must also identify their physical location for the record by stating the county, city, township or village and the state from which they are attending.¹³

Adoption of Procedures for Remote Meetings

The OMA requires public bodies to adopt procedures to accommodate the absence of any member due to military duty, a medical condition, or a statewide or local state of emergency or state of disaster from April 1, 2021 through December 31, 2021.¹⁴ General Counsel will present these draft procedures for MICRC consideration. At minimum, these procedures must include:

1. How an absent member may participate in the meeting and vote on the business before the body.
2. Public notice that a member will be attending remotely and information how to contact that member in advance of that meeting.

Extension of State of Emergency

On March 23, 2021, the Ingham County Board of Commissioners adopted Resolution #21-138 to authorize the continuation of the Declaration of the State of Emergency in its jurisdiction through April 30, 2021.¹⁵ (copy attached). The MICRC has held and, absent the ongoing pandemic, would

⁷ On the website's homepage or on a separate webpage dedicated to public notices with a prominent and conspicuous link on the homepage.

⁸ If the public body directly or indirectly maintains an official internet presence that include monthly or more frequent updates of agendas or minutes. MCL 15.263a(2), (4), and (5).

⁹ MCL 15.263a(4).

¹⁰ Publication of the agenda does not prohibit subsequent amendment of the agenda at the meeting. MCL 15.263a(5).

¹¹ MCL 15.263a(4).

¹² MCL 15.263(2)(a)(i) and 15.263a(2).

¹³ MCL 15.263(2)(a)(ii).

¹⁴ MCL 15.263(2). After December 31, 2021, these procedures may only accommodate a member's absence due to military duty.

¹⁵ Pursuant to Section 10 of the Emergency Management Act, 1976 PA 390; MCL 30.410.

have continued to hold its in-person meetings in the County of Ingham in the State of Michigan. The MICRC has also established other indices of its presence and operations in Ingham County. Therefore, due to the ongoing risk to the personal health or safety of the members of the MICRC and the public as well as the continuation of Ingham County's emergency operations plan, the MICRC may continue to conduct electronic "virtual" meetings under the OMA until the Declaration of the State of Emergency adopted by the Ingham County Board of Commissioners expires.¹⁶ A resolution to effectuate the continuation of virtual MICRC meetings has been submitted for your consideration.

Conclusion

Based on the extension of the Declaration of the State of Emergency by the Ingham County Board of Commissioners, the MICRC has the ability to conduct its meetings remotely through April 30, 2021. A proposed resolution has been submitted to the MICRC for action.

Consistent with the OMA, procedures to accommodate the absence of members due to military duty, a medical condition, or a statewide or local state of emergency or state of disaster will be submitted under separate cover for consideration by the MICRC.

¹⁶ It is also worth noting that the Lansing City Council has adopted Resolution #2021-056 approving the mayoral extension of the Emergency Declaration for the City of Lansing through April 28, 2021.

Introduced by the County Services Committee of the:

INGHAM COUNTY BOARD OF COMMISSIONERS

**RESOLUTION TO AUTHORIZE THE CONTINUATION OF THE
DECLARATION OF THE STATE OF EMERGENCY FOR THE
COUNTY OF INGHAM**

RESOLUTION #21 – 138

WHEREAS, on March 12, 2020, the County of Ingham sustained one of the first confirmed cases of COVID-19 within the State of Michigan; and

WHEREAS, any widespread outbreak within the County of Ingham could hinder and/or cease most daily operations within the entire County and overwhelm, Emergency Medical Services, Hospitals, and Urgent Cares; and

WHEREAS, as of March 13, 2020 a State of Emergency was declared for Ingham County which was subsequently extended through March 31, 2021; and

WHEREAS, it is necessary to extend the Declaration of the State of Emergency through April 30, 2021.

THEREFORE BE IT RESOLVED, that the Ingham County Board of Commissioners, in accordance with Section 10 of 1976 PA 390, as amended, hereby declares that a “state of emergency” exists within our jurisdiction as of March 13, 2020, and that local resources and funding are being utilized to the fullest possible extent. The response and recovery elements of our emergency operations plan have been activated.

BE IT FURTHER RESOLVED, that this Declaration replaces the initial Declaration submitted on March 16, 2020 and all subsequent declarations submitted thereafter and will expire on April 30, 2021.

COUNTY SERVICES: Yeas: Stivers, Celentino, Grebner, Sebolt, Slaughter, Peña
Nays: None **Absent:** Naeyaert **Approved 03/16/2021**