

Nassau County Bar Association Municipal Law Committee

Discussion of the Impacts of Governor Cuomo's Executive Orders on the
Municipal Attorney

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Executive Order 202

Issued by Governor Cuomo on March 7, 2020,
declaring a Disaster Emergency in New York
State.

Since March 7, 2020

Governor Cuomo has issued **32** Executive Orders (202 – 202.31)

Overview of Governor Cuomo's Executive Orders

Executive Order #	Date Issued	Big Takeaways
202.1	March 12, 2020	Permitted any public body to meet and take action without permitting in public in-person access to meetings, and authorized such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.
202.2	March 14, 2020	Modified various sections of the Election Law.
202.3	March 16, 2020	Closed gyms, fitness centers, and movie theaters. Restaurants and bars limited to delivery and/or take-out. Limited gatherings to 50 people.
202.4	March 16, 2020	Allowed non-essential personnel as determined by the local government to work from home or take leave without charging accruals. Closed schools for two (2) weeks and postponed March 17 th Village elections.
202.5	March 18, 2020	Closed places of amusement and indoor common areas of malls (public parks and open recreation areas are exempt).

Overview of Governor Cuomo's Executive Orders

Executive Order #	Date Issued	Big Takeaways
202.6	March 18, 2020	<p>Required that each employer reduce their in-person workforce by 50% no later than March 20th at 8 PM.</p> <p>Empire State Development Corporation to make "essential business" determinations.</p>
202.7	March 19, 2020	<p>Authorized notarial acts utilizing audio-visual technology.</p> <p>Closed all barbershops, hair salons and related personal care services.</p> <p>Required that each employer reduce their in-person workforce by 75% on later than March 21st at 8 PM.</p>
202.8	March 20, 2020	<p>Non-Essential businesses prohibited from having any in-person workforce.</p> <p>Suspended and tolled all time limits to commence, file, or serve any legal action, notice, motion or other legal process through April 19th.</p>
202.9	March 21, 2020	<p>Required any licensed or regulated entities provide to any consumer in the State of New York an opportunity for a forbearance of mortgage payments.</p>
202.10	March 23, 2020	<p>Prohibited non-essential gatherings of any size for any reason.</p>

Overview of Governor Cuomo's Executive Orders

Executive Order #	Date Issued	Big Takeaways
202.11	March 27, 2020	<p>Extended the closure of schools until April 15, 2020.</p> <p>Deemed it a violation for any facility to exceed the number of person who may occupy such space and provides that any state, county, or local code enforcement official or fire marshal authorized to enforce the Uniform Building Code, is authorized to issue an appearance ticket, Notice of Violation, etc.</p>
202.12	March 28, 2020	<p>Rescheduled the presidential primary from April 28th to June 23rd.</p>
202.13	March 29, 2020	<p>Empire State Development to determine what constitutes essential construction.</p> <p>Postponed the circulation, filing, and collection of any designating petitions for any office commencing March 31st.</p>
202.14	April 7, 2020	<p>Extended business, workplace, and gathering restrictions through April 29, 2020.</p> <p>Extended school closures through April 29th.</p>
202.15	April 9, 2020	<p>Postponed all public hearings until June 1, 2020, unless same can be held virtually.</p>

Overview of Governor Cuomo's Executive Orders

Executive Order #	Date Issued	Big Takeaways
202.16	April 12, 2020	Required businesses to provide face coverings and employees must wear them when in direct contact with the public.
202.17	April 15, 2020	Required any individual who is over age two (2) and able to medically tolerate a face-covering shall wear same when in a public place and unable to maintain, or when not maintaining, social distance
202.18	April 16, 2020	Extended in-person business and workplace restrictions until May 15
202.19	April 17, 2020	Mandated that no local government or department of health shall take any actions that could affect public health without consulting the NYS Department of Health
202.20	April 18, 2020	Modified regulations concerning the performance of weddings

Overview of Governor Cuomo's Executive Orders

Executive Order #	Date Issued	Big Takeaways
202.21	April 19, 2020	Modified Executive Order 202.20 concerning the performance of weddings.
202.22	April 20, 2020	Allowed the Nassau County Executive to extend until June 1, 2020, the deadline to pay without interest or penalty the final one-half of school taxes.
202.23	April 24, 2020	Required absentee ballots to be sent to every voter that is in active and inactive status for the June 23, 2020 election.
202.24	April 25, 2020	Allowed pharmacists to order and administer COVID-19 tests.
202.25	April 29, 2020	Authorized general hospitals to perform elective surgeries and procedures pursuant to certain criteria.

Overview of Governor Cuomo's Executive Orders

Executive Order #	Date Issued	Big Takeaways
202.26	May 1, 2020	<p>Addressed various election matters.</p> <p>Village elections previously scheduled to be held in March, April, May, or June were rescheduled to September 15, 2020.</p>
202.27	May 5, 2020	<p>Extended for 30 days, permission for those to practice a profession in New York without a current New York State licensure or registration.</p>
202.28	May 7, 2020	<p>Extended Executive Order 202 and each successor Executive Order for thirty (30) days until June 6, 2020, except for various provisions of the Mental Health Law, Public Health Law, Education Law, and the New York Codes, Rules and Regulations.</p> <p>Allowed use of security deposits for payment of rent.</p> <p>Prohibited the initiation of a proceeding or enforcement of either eviction of any residential or commercial tenant for nonpayment of rent or a foreclosure of any residential or commercial mortgage.</p>
202.29	May 8, 2020	<p>Continued the suspension and modifications of law, and any directives not superseded by a subsequent directive made by Executive Order 202.15, 202.16, 202.17, 202.18, 202.19, 202.20, and 202.21, for thirty (30) days until June 7, 2020.</p>
202.30	May 10, 2020	<p>Imposed regulations related to the testing of nursing home staff, and hospital patients to be discharged scheduled to return to an adult care facility.</p>

Overview of Governor Cuomo's Executive Orders

Executive Order #	Date Issued	Big Takeaways
202.31	May 14, 2020	<p>Extends New York On Pause until 11:59 PM on May 28, 2020.</p> <p>Effective 12:01 AM on May 15, 2020, reductions and restrictions on the in-person workforce at non-essential businesses or other entities shall no longer apply to Phase One industries (construction, agriculture, forestry, fishing and hunting, retail (limited to curbside or in-store pickup or drop off), manufacturing and wholesale trade.</p> <p>Only those businesses or entities in a region that meets the prescribed public health and safety metrics, as determined by the Department of Health, will be eligible for reopening. Nassau County does not currently meet the prescribed public health and safety metrics.</p> <p>Additional regions which meet the criteria for Phase One reopening after May 14, 2020, will be deemed to be incorporated into this Executive Order without further revision and will be permitted to re-open.</p> <p>Additional regions which meet the criteria for Phase One reopening after May 14, 2020, will be deemed to be incorporated into this Executive Order without further revision and will be permitted to re-open.</p>

Challenges for the Municipal Attorney

1. Staying current
2. Ensuring Continuity of Municipal Services
3. Enforcing the Executive Orders

Staying Current

1. Receive, Analyze, and Report
2. No schedule for when Executive Orders will be published (day/evening/weekend)
3. Need to provide prompt and succinct analysis to clients

Share: How have you handled the steady stream of Executive Orders in your practice?

Continuity of Municipal Services

- Access to Village/Town Hall
- Hold or postpone meetings of the Planning Board, Board Of Zoning Appeals, and Board Of Trustees
- Municipal improvement projects

Continuity of Municipal Services – Notice of Public Hearings

In response to the health crisis, Governor Cuomo issued Executive Orders temporarily dispensing with the requirement for the public to physically be present at a meeting or public hearing. The Governor's Executive Orders have also allowed for teleconference hearings that aren't otherwise allowed under the applicable statute.

Continuity of Municipal Services – Notice of Public Hearings

Best Practice For Noticing Public Hearings

- Provide the name of the public body holding the hearing.
- List the date and time of the hearing.
- Provide the method that the public body will be utilizing to conduct the videoconference or teleconference.
- Identify the means by which the public can view and/or listen to the hearing (i.e. conference call number, Zoom Meeting ID and Password).
- Detail the process in which an individual may submit comment/s prior to or during the hearing.
- Meeting minutes and transcription of the public hearing are still required.

Continuity of Municipal Services – Notice of Public Hearings

Share: What are you seeing? Are municipalities holding hearings? Accepting new applications? How, if at all, have attendance/participation from the public been impacted?

Enforcement

Absence of Statute

- No statutorily defined penalty for violating the Governor's Executive Order
- NYS Pause Enforcement Assistance Task Force (1-833-789-0470)

Types of Enforcement Options

- Administrative Enforcement
- Criminal Enforcement
- Civil Penalty
- Injunctive Order

Enforcement

- NYS wants local governments to help enforce the Executive Orders.
- No liability on local governments for not enforcing Executive Orders
- Local officials have prosecutorial discretion

Enforcement Options

- Start with a warning (verbal and written) - goal is to ensure compliance with Executive Orders
- Penal Law § 195.05 – Obstructing Governmental Administration
- Penal Law § 240.20(6) – Disorderly Conduct
- Penal Law § 240.45(1) – Criminal Nuisance
- Public Health Law § § 12, 12-B
- Local Boards of Health – PHL § 308

Enforcement

Share: Have you dealt with any enforcement issues?

How are your clients preparing for continued enforcement gets warmer?

Questions/Comments