

BY THE DETROIT CITY COUNCIL

**RESOLUTION CONTINUING PROCEDURES FOR CITY OF DETROIT PUBLIC
BODIES TO MEET REMOTELY THROUGH DECEMBER 31, 2021**

WHEREAS, As a result of the ongoing and continuing COVID-19 pandemic, the City of Detroit’s public bodies, including City Council, have been meeting remotely through electronic means, since March 2020; and

WHEREAS, As amended, the Open Meetings Act (OMA) allows public bodies to hold meetings electronically, under *any circumstances*, retroactive to March 18, 2020, through March 30, 2021 (MCL 15.263a(1)(a)), and further provides that on or after March 31, 2021 through December 31, 2021, public bodies can meet remotely through electronic means pursuant to a “local state of emergency or state of disaster declared pursuant to law or charter or local ordinance by . . . a local official, governing body, or chief administrative officer”; and

WHEREAS, On March 30, 2021, the Chief Public Health Officer of the Detroit Health Department (DHD) issued *Emergency Order for Control of Epidemic* (Emergency Order) determining that “action is necessary to reduce transmission of COVID-19 and to protect the public’s health in Detroit”, noting that cases in Detroit have been on a significant upward trend and that “certain in-person open meetings pose a substantial risk to members of the public and governmental bodies in the City of Detroit”; and

WHEREAS, On May 20, 2021, the Chief Public Health Officer of the DHD made the following findings in a newly issued *Emergency Order for Control of Epidemic*: “COVID-19 remains an imminent threat to the public of the City of Detroit; [p]er the Centers for Disease Control and Prevention (CDC), Michigan remains second in the nation in the number of SARS-CoV-2 B.1.1.7 variant cases at this time; [t]he emergence and spread of the SARS-CoV-2 variants in Detroit and surrounding communities, and current vaccination rates; certain in-person meetings pose a substantial risk to members of the public and governmental bodies in the City of Detroit.”; and

WHEREAS, The Chief Public Health Officer found further that, “[a] number of public bodies in Detroit, subject to the OMA, MCL 15.261 *et seq.*, will find it difficult, if not impossible, to conduct their business in live meetings that are open to the public, without violating safety guidelines issues by the CDC, the Michigan Department of Health and Human Services and the Detroit Health Department. For example, several public bodies do not have facilities that will allow for adequate physical distancing or open attendance in an in-person setting. In those instances requiring public bodies to make their decisions in a meeting open to the public and in person (without the option of telephonic and video conferencing) would risk the personal health and safety of the member of the public or members of the public body.”; and

WHEREAS, The May 20, 2021, DHD Emergency Order declared “a local state of emergency”, effective from May 20, 2021 until June 30, 2021, or until an earlier time when the order is rescinded by a subsequent order. The Order states that public bodies subject to the OMA may

hold in-person meetings only if, on the dates of the scheduled in-person meeting the public body is compliant with the then-current state guidance issued by the MDHHS, requiring that meeting size be limited to 25 members or fewer, and facility capacity allows for social distancing; and

WHEREAS, On June 23, 2021, the Chief Public Health Officer issued a new order entitled, *Declaration of Continued Emergency Due to COVID-19 to Allow Public Meetings of Governmental Bodies to be Held Remotely per MCL 15.263 Extended From June 30, 2021 to July 31, 2021*, declaring “a local public health emergency” and finding that COVID-19 “remains an imminent threat to the public throughout Detroit” because vaccination rates remain “below the level required to achieve herd immunity to limit the spread of the virus”, and that continued spread results in the emergence of more dangerous variants, such as B.1.617.2 (a/k/a, the “Delta variant”); and

WHEREAS, On August 25, 2021, the City’s Chief Public Health Officer issued “City of Detroit Public Health Department Emergency Epidemic Order in Response To The COVID-19 Pandemic Per MCL §333.2453, Declaration of Continued Emergency Due to COVID-19, To Allow Public Meetings of Governmental Bodies To Be Held Remotely Per MCL §15.263, Effective from September 1, 2021 to December 31, 2021” (Order). The Order states, the Chief Public Health Officer “hereby extends the Local Public Health Emergency Epidemic Order (originally issued March 20, 2021) for the Coronavirus Disease 2019 (COVID-19) pursuant to §333.2453 of the Public Health Code of the State of Michigan, as it has been determined that doing so is necessary to continue to protect the public health from further transmission of COVID-19 within the City of Detroit.” The Order further recognizes the need to provide maximum access by the public to public meetings through remote, hybrid, and in-person meetings when a body determines that in-person meetings may be safely held within current state capacity guidelines; and

WHEREAS, The Detroit City Council does not have meeting facilities of sufficient size to allow for social distancing of unvaccinated attendees, nor can the Body limit attendance at in-person meetings without violating the Open Meetings Act. In fact, Council Members and staff alone, not including any members of the public, would reach or exceed the capacity for a safe meeting space. Other City public bodies similarly lack the resources to research, provide guidance, and monitor compliance with the OMA under current circumstances, and are particularly lacking large enough meeting facilities to allow for required social distancing.

NOW, THEREFORE, BE IT

RESOLVED, All public bodies of the City of Detroit whose meetings include more than 25 individuals **or** cannot accommodate necessary social distancing of attendees may continue to meet remotely pursuant to the DHD Emergency Order through December 31, 2021, unless the Order is rescinded by subsequent order earlier, and the following procedures as set forth in Public Act 228 of 2020, amended section 3a of the OMA, in pertinent part are adopted:

- A meeting of a public body held electronically under this section must be conducted in a manner that permits 2-way communication so that members of the public body can hear and be heard by other members of the public body, and so that public participants can hear members of the public body and can be

heard by members of the public body and other participants during a public comment period. A public body may use technology 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 under this subsection that members of the public be heard by others during the electronic meeting and the requirement under section 3(5) that members of the public be permitted to address the electronic meeting.

- Except as otherwise provided in subsection (8), a physical place is not required for an electronic meeting held under this section, and members of a public body and members of the public participating electronically in a meeting held under this section that occurs in a physical place are to be considered present and in attendance at the meeting for all purposes.
- 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 shall, in addition to any other notices that may be required under this act, post advance notice of a meeting held electronically under this section on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled or electronic public meetings that is accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of non-regularly scheduled or electronic public meetings. Subject to the requirements of this section, any scheduled meeting of a public body may be held as an electronic meeting under this section if a notice consistent with this section is posted at least 18 hours before the meeting begins. Notice of a meeting of a public body held electronically 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 the meeting.
 - How persons with disabilities may participate in the meeting.
- Beginning on the effective date of the amendatory act that added this section, if an agenda exists for an electronic meeting held under this section by a public body that directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, the public body shall, on a portion of the website that is fully accessible to the public, make the agenda available to the public at least 2 hours

before the electronic meeting begins. This publication of the agenda does not prohibit subsequent amendment of the agenda at the meeting.

- A public body shall not, as a condition of participating in an electronic meeting of the public body held under this section, require a person to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, 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.
- Members of the general public otherwise participating in a meeting of a public body held electronically under this section are to be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of this act applicable to a closed session.

AND, BE IT FURTHER

RESOLVED, The Detroit City Clerk is directed to send this resolution to Mayor Mike Duggan, and to publicly and electronically post and distribute copies of the resolution widely.

August 26, 2021



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Denise Fair, MPH, FACHE

Chief Public Health Officer

CITY OF DETROIT PUBLIC HEALTH DEPARTMENT EMERGENCY EPIDEMIC ORDER IN RESPONSE TO THE COVID-19 PANDEMIC PER MCL §333.2453

DECLARATION OF CONTINUED EMERGENCY DUE TO COVID-19

TO ALLOW PUBLIC MEETINGS OF GOVERNMENTAL BODIES TO BE HELD REMOTELY PER MCL §15.263

EFFECTIVE FROM SEPTEMBER 1, 2021 TO DECEMBER 31, 2021

- The undersigned, Denise Fair, the Chief Public Health Officer of the City of Detroit, hereby extends the Local Public Health Emergency Epidemic Order (originally issued March 20, 2021) for the Coronavirus Disease 2019 (COVID-19) pursuant to §333.2453 of the Public Health Code of the State of Michigan, as it has been determined that doing so is necessary to continue to protect the public health from further transmission of COVID-19 within the City of Detroit.
- COVID-19 remains an imminent threat to the public throughout Detroit. Still, meetings of governmental bodies must be accessible to all members of the public, vaccinated and unvaccinated. Therefore, I am issuing an emergency order to allow a local body to continue to hold remote meetings under the Open Meetings Act until December 31, 2021.

This order is based upon several facts and findings:

- Many areas of Detroit have vaccination rates below the level required to achieve community immunity to limit spread of the virus. This remains a concern as the spread of COVID-19 may result in emerging and more dangerous variants, such as B.1.617.2, becoming higher proportionally through the interactions of vaccinated and unvaccinated individuals, all of whom can become infected with COVID-19. Additionally, for certain individuals with mobility or transportation concerns, access to vaccinations has not been fully achieved, as programs for home-bound and other socially vulnerable populations are works in progress.

- The ability to access and participate in public meetings is maximized by allowing for remote, hybrid, and in-person meetings, when local bodies determine that in-person meetings may safely be held. Additionally, multiple governmental bodies in Detroit have directly communicated the desire to have the flexibility to hold hybrid meetings, with both in-person and virtual components.
- The current Michigan Department of Health and Human Services (MDHHS) Emergency COVID-19 Order dated June 1, 2021, does not exempt public bodies from capacity limits for indoor gatherings. For a large meeting, the number of participants could exceed the available venue's capacity, creating concerns about safe and transparent public access to the meeting in conflict with the Open Meetings Act. Based on the current guidance from MDHHS, individual public bodies would be required to research, provide specific guidance, and monitor compliance with the Open Meetings Act, an undertaking that may be well beyond their expertise.
- Finally, many governmental bodies have consulted the Health Department, some on a weekly basis, seeking certainty and expressing the desire to have the appropriate emergency order(s) extended.
- In light of these facts and findings, a local public health emergency is declared, and it is ordered that each individual public body within the jurisdiction of the Detroit Health Department can plan for remote, hybrid, and in-person meetings that allow for safe public access and participation in response to the rapidly changing COVID-19 environment, as contemplated by MCL §15.263a(1)(b).

This order is hereby effective as of September 1, 2021, and will remain in effect until December 31, 2021, at 11:59 p.m., unless withdrawn or replaced by further order of my office. Such measures will be enforced, and any violations are subject to citation and penalties as outlined in the Michigan Public Health Code.

This order may be revised as well as supplemented with specific procedures and orders per the Michigan Public Health Code.

Dated: August 25, 2021

A handwritten signature in black ink, appearing to read "Denise Fair", is written over a horizontal line.

Denise Fair, MBA, MPH, FACHE
Chief Public Health Officer
City of Detroit