CHRISTOPHER T. SUNUNU
Governor

STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

STATE OF NEW HAMPSHIRE
BY HIS EXCELLENCY
CHRISTOPHER T. SUNUNU, GOVERNOR

Emergency Order #23 Pursuant to Executive Order 2020-04

Temporary modification of municipal and local government statutory requirements

WHEREAS, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, An order declaring a state of emergency due to the Novel Coronavirus (COVID-19); and

WHEREAS, experts indicate that COVID-19 is most commonly spread from an infected symptomatic person to others through respiratory droplets, including:

- Through the air by coughing and sneezing;
- Close personal contact, such as touching or shaking hands;
- Touching an object or surface with the virus on it, then touching your mouth, nose, or eyes before washing your hands.

WHEREAS, the CDC reports that COVID-19 may be spread before an infected person shows symptoms of the virus; and

WHEREAS, in the days since the Governor declared a State of Emergency, the COVID-19 outbreak in New Hampshire has expanded significantly; and

WHEREAS, the Department of Health and Human Services, Division of Public Health has found that community-based transmission of COVID-19 continues to increase in the State and has been identified in the majority of counties; and

WHEREAS, in response to the public health emergency, Executive Order 2020-04, and the other emergency orders related to COVID-19, many New Hampshire municipalities are operating through a limited or "virtual" manner; and

WHEREAS, municipalities are facing unprecedented challenges in continuing to operate local government and provide necessary services to the citizens of this state; and

107 North Main Street, State House - Rm 208, Concord, New Hampshire 03301
Telephone (603) 271-2121 • FAX (603) 271-7640
Website: http://www.governor.nh.gov/ • Email: governorsununu@nh.gov
TDD Access: Relay NH 1-800-735-2964

WHEREAS, these challenges require municipal and local governmental bodies to have flexibility in order to remain operational.

Now therefore, pursuant to Section 18 of Executive Order 2020-04 it is hereby ordered, effective immediately, that:

1. Municipal and local governmental governing bodies are permitted to use RSA 41:29, I(a) to non-contemporaneously sign manifests outside a public meeting. This permission shall be extended to all public bodies, allowing them to sign manifests and all other documents necessary for the continued operations of local government. Municipal and local governmental bodies are relieved from the statutory requirements of RSA 294-E:18. All local governmental agencies are hereby permitted to send and accept electronic signatures consistent with RSA Chapter 294-E and the Electronic Signatures in Global and National Commerce Act, Public Law 106-229.

2. Municipal and local governmental bodies are relieved from any statutory, local, or charter provisions requiring them to meet on a particular schedule or a certain number of times within a given time frame, including, but not limited to, the requirement that planning boards hold one regular meeting in each month, pursuant to RSA 673:10, II.

3. Municipalities that postpone their town meetings or elections shall not be required to repeat statutory hearings, including hearings on bonds over $100,000, pursuant to RSA 33:8-a.

4. If a municipality's budget is insufficient to fund expenditures associated with addressing the COVID-19 pandemic, the governing body is authorized, once authorization from the Department of Revenue Administration ("DRA") has been obtained, to make such expenditure to the extent other revenues or unrestricted fund balance is available to meet those expenses. During the current health emergency, the public hearing requirement under RSA 32:11, I, for the expenditure of money in excess of an appropriation due to an unusual circumstance is hereby waived. The governing body must still submit an application to the Commissioner of the DRA pursuant to RSA 32:11, I. Upon approval by the governing body to submit an application to DRA for an overexpenditure, DRA shall review the application and notify the requesting governing body of its decision within 2 business days of DRA's receipt of the application. Applications to DRA can be submitted by email to the Director of the Municipal and Property Division of the DRA.

5. Municipal or local governmental bodies are relieved from complying with statutory or local deadlines or deadlines set forth in a municipal charter for taking actions on applications and requests including, but not limited to:

    a) Deadlines for accepting, hearing, and acting on planning board applications under RSA 676:4 and for zoning board of adjustment applications under RSA 676:7;

    b) Requirement to make public records immediately available under RSA 91-A:4, IV, but must still comply with the requirements under RSA 91-A:4, IV(b); and

c) Deadlines for conducting inspections for permits and building code and fire code compliance.

6. In municipalities that have adopted an enforcement mechanism pursuant to RSA 674:51 and are not presently offering any building permits and construction inspection functions, contractors may follow these guidelines to keep construction progressing:

a) Complete typical paperwork relating to the requested construction permit or building inspection. Permit applications with submittal documents shall be submitted to the Building Official by first class mail, drop box, if provided, or by electronic submission such as email where available.

b) Make and keep record of all reasonable attempts to communicate with municipal officials to determine the availability of services and follow instructions from municipal officials if typical or modified arrangements are offered.

c) If, as a result of exigent circumstances relating to COVID-19, a building official is unable to or refuses to issue any building construction or building systems permit pursuant to and within the time frame provided by RSA 676:13, III, the permit applicant or contractor may, ten days after written notification to the Building Official, commence construction pursuant to the prepared project plans and documentations as if a proper building permit has been issued.

d) The contractor may only proceed without a permit or approval with the prior written approval of the client. Written approval by the client must be separate from the contractor's standard contract and must state in at least 10 point bold font that the client understands that if they choose to proceed with the project, the contractor's plans will not be reviewed or preapproved by a town building official. Written approval must also specify whether or not the client can be charged for any remedial work necessary upon ultimate inspection.

e) If a construction inspection is refused or cannot be reasonably or timely offered (i.e., within five (5) working days), the applicant or contractor may continue with construction work in accord with issued permits after documenting completed work and materials using photographic and/or video methods to preserve evidence for subsequent review. Work should be left unconcealed and visible for later inspection to the greatest extent practicable. Should the photographic or video documenting not show all necessary aspects of the inspection process needed to demonstrate code compliance, nothing in this order prohibits the Building Official to take all necessary actions to verify compliance with applicable codes.

f) Once a municipality resumes operations, the applicant or contractor shall communicate with municipal officials to provide updates regarding the status of commenced or progressed construction and obtain after-the-fact inspections and/or documentation of the same.

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g) Proceeding with construction under paragraph (c) above in the absence of proper and customary building permits and inspections shall be considered a practice of last resort to commence and keep New Hampshire construction projects, vital to the economy, active and progressing during these extraordinary times.

h) The contractor shall bear responsibility for arranging review of photographic and/or video evidence, and obtaining proper documentation of completion at such time as normal municipal inspection services resume. The contractor remains responsible and liable for meeting minimum code requirements of the building and fire codes, as adopted in New Hampshire. The contractor further bears the risk that construction work must be altered or repaired after-the-fact to achieve code compliance. Nothing in this order prohibits the Building Official from taking all necessary actions to verify compliance with applicable codes.

i) Municipal officials shall operate in good faith to administer these interim practices, however, no municipal official or municipality shall be liable to the contractor or any third party for any failure on the part of a contractor to comply with these provisions or the failure to construct pursuant to applicable codes.

7. Marriage licenses that would expire during the state of emergency are hereby extended 60 days from the end of the state of emergency.

8. Municipal or local governmental bodies are permitted to transition to phone, online, and limited appointment-only services to allow for proper social distancing as defined by the Center for Disease Control. This includes, but is not limited to, vital records requests and applications, as well as applications for welfare and other municipal services.

9. The requirement that the business meeting must conclude before newly elected officers and officials can assume office under RSA 42:3 is hereby waived. Municipal and local governmental bodies are permitted to swear-in newly elected officers and officials, and those individuals may assume office before the business meeting has concluded. Additionally, in light of Emergency Order #16 (prohibiting scheduled gatherings of 10 or more attendees), municipal and local governmental bodies are permitted to administer oaths of office by electronic means. This is provided the following protocol is followed:

a) The person giving the oath must know the person taking the oath or he/she must establish his/her identity.

b) If both the person taking the oath and the person receiving the oath has the capability, best practice is to use Skype/FaceTime or a similar audio/video service that will allow parties to see and hear the other. If a video interface is in use, the person showing a photo ID through the video can establish identity.

c) If only telephone communication is practical, there must be a witness present with the person taking the oath. The person receiving the oath must obtain the name

and address of the witness and receive a statement from the witness that: (i) the witness verifies the identity of the person taking the oath; and (ii) that the witnesses observed the oath taking. The person receiving the oath should document on the oath form the name and address of the witness. The witness can be a family member, co-worker, caregiver, or any other person.

d) The person taking the oath should document on the oath form, or on paper attached to the oath form, that the oath was taken virtually or by phone. If an authorized official other than the clerk takes the oath, the person taking the oath must deliver the completed oath form to the clerk for town/district records.

e) Instruct the person taking the oath that he/she must come to the clerk's office and affirm the oath taking by signing the oath form, at the point in the future when doing so is appropriate.

f) The clerk should notify the chair of the board or commission that the person taking the oath was elected to, that the oath has been taken and the person has assumed office.

Given under my hand and seal at the Executive Chambers in Concord, this 1st day of April, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.

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