State of the EOs

**This information sheet is intended as a tool to assist in clarification and decision making for Public Library Directors and Boards. It is not intended as legal advice. Library Boards and Directors should consult with their library attorneys when determining a plan or policy for their libraries.**

EO 2020-69, issued 4/30/2020 and titled “Temporary restrictions on the use of places of public accommodation,” rescinded EO 2020-42, which , with the same title, had rescinded EO 2020-20 <https://content.govdelivery.com/attachments/MIEOG/2020/04/30/file_attachments/1440573/EO%202020-69%20Emerg%20order%20-%20public%20accommodations%20-%20re-issue.pdf>. All of these EOs have had the same intent: To restrict public gatherings and interactions in order to mitigate and prevent the spread of Covid-19. Libraries have been listed in each of these EOs as one of the places of public accommodation to be closed to the public.

EO 2020-69 continues this. Section 1 (e) lists libraries as one of the entities that:

*“1. Effective immediately and continuing until May 28, 2020 at 11:59 pm, the following places of public accommodation are closed to ingress, egress, use, and occupancy by members of the public”*

The end of section 1 of EO 2020-69 also states:

*“Places of public accommodation subject to this section are encouraged to offer food and beverage using delivery service, window service, walk-up service, drive-through service, or drive-up service, and must use precautions in doing so to mitigate the potential transmission of COVID-19, including social distancing. In offering food or beverage, a place of public accommodation subject to this section may permit up to five members of the public at one time in the place of public accommodation for the purpose of picking up their food or beverage orders, so long as those individuals are at least six feet apart from one another while on premises.*

*This section does not prohibit an employee, contractor, vendor, or supplier of a place of public accommodation from entering, exiting, using, or occupying that place of public accommodation in their professional capacity.*”

Let’s look at each of these paragraphs separately with respect to how they may affect public libraries.

At initial reading, the first paragraph at the bottom of section 1 seems to provide the possibility that libraries, as “*Places of public accommodation subject to this section,”* would be able to offer a curbside service. **HOWEVER**, note that the language states “*are encouraged to offer food and beverage using delivery service, window service, walk-up service, drive-through service, or drive-up service…”* It would seem that this paragraph is meant for entities that offer food and beverages for sale. Since libraries do not offer food and beverages for sale, this does not apply to libraries.

The next paragraph PERMITS staff and employees to enter the library to perform duties – BUT NOT to interact with the general public.

HOWEVER!! It is important to understand that none of the EOs currently in effect should be read in a vacuum. They need to be read as orders that work concurrently until they expire.

In other words, EO 2020-69’s indication that staff can resume “*entering, exiting, using, or occupying that place of public accommodation in their professional capacity.*” cannot be followed because EO 2020-59 (The Stay at Home order) <https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-526894--,00.html> prohibits all *non-essential In-Person work* until May 15, 2020.

EO 2020-48 <https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525888--,00.html> provides that public meetings can be held virtually until May 12, 2020. This has not yet been extended to conform to either EO 2020-59 or EO 2020-69. Libraries with Board meetings scheduled after May 12, 2020 but before May 28, 2020 (when EO 2020-69 expires) should wait until closer to May 12 in the event a new EO is issued, or consult their attorney to determine a course of action

**In Sum:**

**UNTIL May 15, 2020**

EO 2020-59 , Temporary requirement to suspend activities that are not necessary to sustain or protect life - Rescission of Executive Order 2020-42 and EO 2020-69, “Temporary restrictions on the use of places of public accommodation,” are currently in effect, which means that Libraries must stay closed, and the majority of library staff and boards MUST STAY HOME - ONLY staff necessary to perform “Minimal Business Operations” such as payroll, feed pets, pay bills, or activities necessary to safeguard library operations may work in the building. If there IS staff in the building, the library must have a “Covid-19 Preparedness and Response Plan” as outlined in EO 2020-59 <https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-526894--,00.html>.

**What happens after May 15?**

Hard to say now – there will likely be additional Executive Orders that may amend things as they stand now.

**If no additional EO’s are issued before May 15 that alters the status of libraries**:

EO 2020-59 expires 11:59pm, May 15, 2020. Section 1 of EO 2020-69 permits staff to enter the building to complete duties. so as of May 16, Library staff MAY re-enter the libraries and perform work IN THE BUILDING WITH NO PUBLIC INTERACTION.

LIBRARY CURBSIDE SERVICE IS NOT PERMITTED UNDER EO 2020-69

**The research and resources above are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.**

Clare Membiela, Library Law Consultant, Library of Michigan