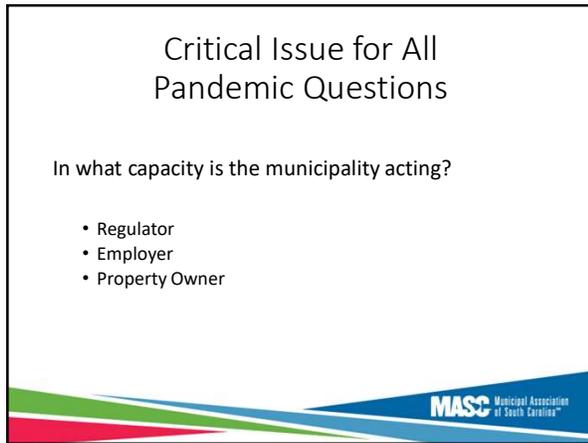


Pandemic 101:
What You Need to Know

Current Issues
Masks, Vaccinations, Finances, Etc....

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of South Carolina

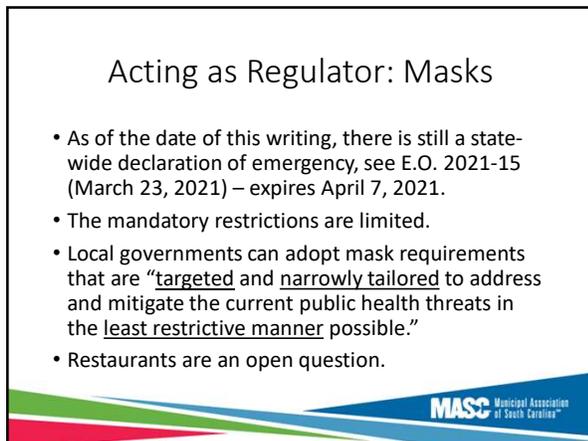


Critical Issue for All
Pandemic Questions

In what capacity is the municipality acting?

- Regulator
- Employer
- Property Owner

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Acting as Regulator: Masks

- As of the date of this writing, there is still a state-wide declaration of emergency, see E.O. 2021-15 (March 23, 2021) – expires April 7, 2021.
- The mandatory restrictions are limited.
- Local governments can adopt mask requirements that are “targeted and narrowly tailored to address and mitigate the current public health threats in the least restrictive manner possible.”
- Restaurants are an open question.

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Acting as Regulator: Vaccinations

- There is a 1905 U.S. Supreme Court case that allows the public health authorities to require public vaccination.
- But it is extremely unlikely that local governments could require that members of the public be vaccinated against COVID-19 – constitutional issues, ADA, preemption.



Acting as Regulator: Gatherings and Events

- As of the date of this writing, the Governor still has gathering guidance, see E.O. 2021-12, Section 4; but it is purely a recommendation rather than a rule.
- It seems unlikely that local governments could regulate private gatherings or events under the current rules. Preemption issues.



Acting as Employer: Masks

- Local governments can likely require that masks be worn by employees, subject to the Americans with Disabilities Act (reasonable accommodation) and religious liberty exemptions.



Acting as Employer: Testing

- Reasonable rules for workplace safety – such as temperature checks, time-off allowances for symptoms, etc. – have been widely adopted and are likely still valid.
- With additional availability for testing, requiring rapid results tests may be permissible, always assuming compliance with ADA and First Amendment.
- The issue is whether it is a medical exam. The answer would ordinarily be “yes,” but the EECO has offered a time-bound exemption. How much longer will this last?



Acting as Employer: Vaccinations

- This is a hotly contested area and the answer is not clear.
- The EEOC says: “Whether an employer may require or mandate COVID-19 vaccination is a matter of state or other applicable law.”
- State law is silent, but preemption issues likely attach. There are also workers compensation issues.
- In any event, ADA and First Amendment will apply.
- The Association recommends that local governments not make vaccination mandatory.



Acting as Employer: Proof of Vaccination

- Again, the answer is not clear.
- One thing that is clear is that proof of vaccination may implicate questions about whether it is a “medical exam” under the ADA and other federal law.
- EEOC: “If an employer requires employees to provide proof that they have received a COVID-19 vaccination from a pharmacy or their own healthcare provider, the employer cannot mandate that the employee provide any medical information as part of the proof.”



**Acting as Property Owner:
Access to Public Buildings**

- Local governments have comparable rights to private property owners in the ownership and management of their own buildings.
- So, for example, it seems likely that local governments can have stricter rules for public buildings on masks, social distancing, hours of operation, access to the public, etc.
- But rules that make distinctions based on vaccination status raise complex issues.



**Acting as Property Owner:
Events and Gatherings**

- The slide above talked about private gatherings; but what if those gatherings will be held in a public facility?
- Because the local government can act as a property owner with respect to those facilities, stricter rules could likely apply.
- On the other hand, the possibility of liability is remote ... Except for employees forced to work at the site.



Other Issues: Virtual Meetings

- Option 1: Remain fully virtual. It is likely that eventually this option will go away.
- Option 2: Have an in-person quorum and public attendance, but allow virtual participation by officials and the public. Likely the new normal.
- Option 3: Have purely in-person meetings with no virtual attendance. Likely will be harder to justify in the future except for the smallest towns.



Other Issues: ARPA

- H.R. 1319, better known as the American Rescue Plan Act, was signed into law on March 11, 2021.
- The \$1.9 trillion emergency relief bill provides \$65.1 billion to municipal governments to respond to the COVID-19 public health emergency, offset revenue losses, bolster economic recovery, and provide premium pay for essential workers.



Other Issues: ARPA

- The U.S. Department of Treasury is expected to release definitive guidance on how the funds may be spent. However, there is no timeline on when it will release that guidance.
- The Association strongly recommends that cities and towns refrain from spending any funds they receive until that guidance is released.
- Spending the funds on unauthorized uses could result in a city or town having to repay those funds to the federal government.



Other Issues: ARPA

- Respond to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to affected industries such as tourism, travel, and hospitality.
- Provide premium pay to eligible workers performing essential work during the COVID-19 pandemic.
- Provide government services to the extent of the reduction in revenue due to the COVID-19 pandemic relative to revenues collected in the most recent full fiscal year prior to the emergency.
- Make necessary investments in water, sewer, or broadband infrastructure.



Other Issues: ARPA

- Funding will be distributed in two buckets the first within 60 days of enactment of the law, and the second 12 months after the first is paid.
- Entitlement cities will receive funding directly from the U.S. Department of Treasury.
- The state will receive the funding for non-entitlement cities and will then have 30 days to disburse.
- The state can request multiple 30-day extensions for distributing funds.
- The state has no authority to change payment amounts or attach additional requirements.