

New Hampshire Municipal Association

Reopening Task Force Testimony

May 14, 2020

All 234 towns and cities are members of the New Hampshire Municipal Association (NHMA). NHMA serves our members through legal advice, training, and advocacy. As I'm sure you are aware, like businesses, towns and cities have been severely impacted by COVID-19—with decreases in revenues, increases in expenses, and working to change the way they operate so that they can continue to serve their public while keeping residents and municipal officials as safe as possible. As a result, NHMA has had no shortage of issues and questions to help our members untangle, and we have been grateful to work alongside state officials on many of these matters. Collaboration is key right now, and NHMA has been working hard to facilitate that collaboration.

NHMA has received many questions and concerns from our members throughout the reopening process, particularly about why towns and cities have not had a voice in the reopening process when they are so integral in the implementation of the reopening of businesses. I have also been listening to most task force meetings, including yesterday's meeting, so I am aware of the feedback and concerns some of the task force members are hearing about issues happening at the local level.

My goal here today is to provide you the municipal perspective and explain the issues towns and cities are facing in the reopening process; advocate for the task force to take municipal input in the process going forward; and answer any questions from the task that I can.

It is no secret that we have been advocating for the task force to include a municipal representative. You may wonder why the Task Force would need a municipal member when local government is not an industry or sector that requires the reopening by the governor. As you are aware, local government was expressly exempt from both stay at home orders, which allows them to make local decisions about closing their own facilities, working remotely, and suspending or cancelling programs and activities.

But the reopening process is happening in our towns and cities, all of which have local ordinances and regulations that exist for health, safety, and welfare purposes. For that reason, it is crucial that the reopening guidance include input from towns and cities. Not only are towns and cities directly impacted by every step towards reopening, they are also on the frontlines of enforcing the rules and dealing with the effects of businesses reopening. Town and city officials are also the ones who receive complaints from residents about reopening too fast, and complaints from businesses that that they are making it too slow. It is their police officers, health officers, and other officials who respond and attempt to enforce the restrictions the task force has recommended for safe reopening, and they are, of course, very concerned about new spread of COVID-19 in their communities, as well as potential exposure of their first responders and other municipal officials.

Here are some examples of the efforts and issues happening at the local level with the reopening process.

Like in many municipalities, the expansion of a restaurant in Bristol would normally require site plan approval. Not wanting to put restaurants through that, they created a simple form asking for basic

information, like seating arrangement, number of seats per table, spacing between tables, etc. There is no fee and they guarantee a turn-around within 48 hours of receipt so that all necessary permits can be issued much more quickly than normal. But they received pushback from some businesses that they are expressly exempt from local requirements and do not need to comply. Similar issues have been reported from other municipalities, particularly with restaurants and with campgrounds.

In the Town of Hanover, municipal officials have reported success working with business owners, but there are still steps they have had to take, working to quickly free up public sidewalks and parking spaces for restaurant use, tent installation, and certifying occupancies. They have authorized the use of town property without charging a permit fee and are issuing licenses to operate without the normal fee. Some of the additional costs of their efforts may be reimbursable, but they are nonetheless incurring the expenses to help get their local economy running.

Manchester is allowing restaurants to use private parking lots or sidewalks for outdoor dining where possible. Manchester is even considering a request to close Elm Street, and Concord is looking at how it might close down sections of Main Street for outdoor dining to use space that is usually for parking or sidewalks.

There seems to be a perception that towns and cities are inappropriately stalling the process, but, instead, they are trying to navigate through policies and rules at the local level to allow reopening to happen in a safe and legal way. A thriving main street is good for local government: businesses drive revenue into towns and cities, they pay taxes, they employ people. But while businesses and industry representatives have been able to give input on how much time they would need to prepare to reopen safely, and what they would need to do to comply with requirements or guidelines, towns and cities did not have the chance to prepare themselves or to explain to the task force what they would need to do to give businesses the approval necessary to move forward.

As the governor has made very clear, local ordinances and regulations still apply to the businesses that are reopening. Towns and cities don't have the ability to ignore their own regulations or ordinances, and many of them are moving as quickly as they can to implement processes for waivers, quick approvals, or other relief that would not normally be granted. If municipal input were provided along the way, some of the conflict or confusion that you may be hearing about as businesses work to reopen could have been resolved ahead of time. There was also conversation at the task force meeting yesterday about the need to monitor the reopening and consider the impacts of the guidance, including what is not working. I hope that municipal input will be received in conducting that review.

Enforcement is also an issue and has been a significant source of confusion. And although the method of enforcement is not part of the task force's charge, it is an important part of the picture at the local level. There has been confusion not only about what can be enforced at the local level, but also which local officials have the authority—police, health officers, code enforcement, the state, etc. For example, in municipalities like Nashua, their health officers normally enforce all restaurant regulations. But as municipalities are being directed that it is local law enforcement that has the authority to enforce the emergency orders and reopening requirements, police officers are now being asked to step in and deal with these issues. As a result, NHMA has been communicating with

the Attorney General's Office and are working to create guidance on the enforceability of Stay at Home Order 2.0 (EO #40) and the reopening guidance documents.

As a final point, although towns and cities were exempt from the Stay at Home Order, there are still programs, activities, and facilities they could use guidance on reopening safely or whether to hold them at all. Many of them have been forced to make decisions to cancel summer programs and events, while others are holding out as long as possible before making that decision, but time is running out. Here is a nonexhaustive list of some of the more pressing items municipalities are seeking guidance or assistance with:

- Special events
- Pools
- Parks and playgrounds
- Summer camps and recreational leagues
- Traveling carnivals
- Gaming industry
- Additional guidance for retail operations

In conclusion, we respectfully advocate for the following steps to be taken to improve the reopening process going forward:

- Actively include the municipal voice in the reopening process in order to consider their concerns, anticipate issues, and clarify confusion before it occurs.
- Even if the task force is not the appropriate entity to make decisions or recommendations about enforcement of reopening standards and guidance, ensure there is clear guidance on enforcement before more reopening orders are issued.
- Clarify the appropriate individuals at the state level for towns and cities to contact with questions or issues on various topics.
- Use NHMA as a resource moving forward.