



New Hampshire Municipal Association

Enforcement of Stay at Home Order & Reopening Guidance

May 18, 2020

NHMA has received questions about the enforceability of Emergency Order #40, also known as “Stay at Home 2.0” and the reopening guidelines that have accompanied its release. By its terms, **Emergency Order #40 may be enforced by the Department of Health and Human Services and State or local police.** In other words, local law enforcement is one of the primary enforcement authorities for Stay at Home 2.0 and the requirements contained within the reopening guidelines.

On March 27, the New Hampshire Attorney General’s Office issued [a memorandum](#) for local law enforcement about enforcing the governor’s emergency orders. The advice in that memorandum applies to Stay at Home 2.0 and any subsequent emergency orders which give local law enforcement the authority to enforce them.

The Attorney General’s office has advised local law enforcement officers that the primary objectives in enforcing the governor’s order are to promote public wellness and safety and to seek voluntary compliance with the Governor’s Orders. Local law enforcement should enforce the governor’s emergency orders using “the type of discretion that law enforcement officers exercise daily in enforcing any other criminal statute.” (March 27 memo, p.2).

Although local law enforcement can enforce emergency orders and reopening requirements, health officers do not have similar authority. As we referenced in [NHMA’s prior memorandum about local health officer authority](#), the role that local health officers will play during the pandemic will be in relation to the authority given to them by DHHS under RSA 141-C. However, local health officers can, of course, continue to enforce those local health ordinances and rules that fall within their authority.

Questions have been raised about how the reopening guidance works with local ordinances and regulations. **All local ordinances, regulations, and requirements continue to apply to businesses as they begin to reopen under the new guidelines.** For example, even if a restaurant has received all necessary state approvals to serve alcoholic beverages in a designated outdoor area, the restaurant would still need to comply with the provisions of RSA 155:18 for an assembly permit, if necessary, and any relevant local ordinances. The restaurant may apply to the town or city for a waiver from any local ordinances, if available, but the state’s action does not override other statutory provisions or valid municipal ordinances.