

Guidance: Municipal Authority to Enact Protective Measures Related to COVID-19

The determination of a local government's legal authority to enact measures related to COVID-19 is a question for their legal counsel. Such measures may include local health mandates and other restrictions to protect the health and safety of local residents. Some municipalities are hesitant to enact such measures because they believe they do not have the authority to do so. This notion is simply incorrect. The Alaska Constitution, and decisions from the Alaska Supreme Court, make it clear that local self-government is the preferred form of government in Alaska, and unless specifically restricted by the legislature, or preempted by executive action, local governments have broad powers to protect the health and safety of their residents. The following are some legal principles that are useful to a community's analysis:

1. The Alaska Constitution:

Article X of the Alaska Constitution establishes the framework for local government in Alaska. Section 1 of Article X makes clear that the purpose of Article X is to provide for maximum local self-government.

2. Alaska State Statutes:

A. The Alaska Disaster Act (AS 26.23) provides in part:

- Local governments have authority to prevent, prepare for, respond to, and recover from disasters (AS 26.23.010(4)).
- A local disaster emergency may be declared by the principle executive officer of a political subdivision (AS 26.23.140).
- A proclamation of disaster emergency by the governor activates local disaster emergency plans (AS 26.23.020(e)).
- AS 26.23.060(b) allows a local government to be responsible for disaster preparedness and coordination of response.
- It is important to note that AS 26.23 does not confer upon local governments responsibilities that it is not otherwise empowered to perform (AS 26.23.060(h)).

B. Municipal government statutes (AS 29) provide in part:

- Home rule, first class and second class cities enjoy those powers not otherwise prohibited by law.
- Subject to the provisions of the Alaska Disaster Act, Title 29, and individual municipal codes, local communities may generally institute measures

necessary to respond to the current declared disaster related to COVID-19 provided such actions are not expressly prohibited by state law, impermissibly conflict with state law, are unconstitutional, or are otherwise preempted by state action.

- Each community must evaluate their own municipal code to determine the scope of their authority to take action during this emergency.
- A list of home rule, first class and second class boroughs and first and second class cities are listed in Attachment A.

3. **Additional Legal Considerations:**

- Keep in mind constitutional considerations, such as the freedom of religion, assembly, equal protection and due process, etc.
- State primacy (how do your mandates impact state employees who are working or traveling to your communities), including making sure that the action taken does not conflict with the specific language in existing mandates. Currently, there are only two mandates that contain restrictions most likely to affect what a local government can do:
- **Mandate 18:** Allows local communities to enact travel restrictions, but cannot require automatic quarantine or measures that prevent travel for
 - (1) critical personal needs, or
 - (2) the conduct of essential services/critical infrastructure. Those terms are defined at the following hyperlinks:

[COVID-19 Health Mandate 018](#)

[COVID-19 Health Mandate 010](#)

If the above links do not open or become broken, the health mandates can be found at:
<https://covid19.alaska.gov/health-mandates/>

- **Mandate 15:** Relates to services by health care providers, supersedes all local health mandates.
- Consider the Americans with Disabilities Act (ADA) when enacting restrictions. For example, allow exceptions for disabled individuals if you impose a mask restriction.

Please contact the Alaska Municipal League with specific questions about this guidance to Nils Andreassen at nils@akml.org, or 907-790-5305.