

Suspension of Certain Requirements Under the Texas Open Meetings Act

03.23.20

Effective March 16, 2020, Governor Abbott's office temporarily suspended a limited number of open meeting laws in response to the Coronavirus (COVID-19) disaster.¹ This action will allow governmental bodies to conduct meetings by telephone or video conference to advance the public health goal of limiting face-to-face meetings (also called "social distancing") to slow the spread of the Coronavirus (COVID-19). This suspension is in effect until terminated by the Governor's office or until the disaster declaration is lifted or expires.

Is a quorum still required to be physically present at the location of a meeting?

No, a quorum does not need to be physically present, but a quorum still must participate in the telephonic or video conferencing.

Does a notice still need to be posted physically?

No, notices may be posted online instead. However, the notice must include a toll-free dial-in number or a free videoconference link and an electronic agenda packet.

Are public officials still required to be physically accessible to the public?

No, public officials are not required to have face-to-face interaction with the public, but governmental bodies must offer alternative methods of communication for the public with their public officials.

Are there any other open meeting requirements that are suspended?

Provisions that require the telephonic or videoconference meeting to be audible to members of the public who are physically present at the specified location of the meeting are suspended, but the dial-in number or videoconference link provided in the notice must make the meeting audible to the public. The specific provisions under various statutes that have been suspended can be found on the Attorney General's website.²

Is two-way communication between the public and the governmental body required?

The Texas Municipal League ("TML") believes that since the Governor suspended the requirement that the public has a right to speak on agenda items,³ two-way communication is not absolutely required for public comment on agenda items, but is encouraged.⁴ This does not apply to statutorily mandated public hearings such as zoning hearings or hearings on the formation of special districts such as public improvement districts or tax increment reinvestment zones. If audio or video two-way communication is not reasonable, TML suggests an email address or online drop box where citizens can submit written comments.⁵

What are some requirements that still need to be followed for open meetings?

Governmental bodies are still required to conduct meetings in a transparent and accessible manner. To facilitate access in lieu of an in-person meeting, they must:

1. provide online written notice containing a public toll-free dial-in number or a free-of-charge videoconference link, as well as an electronic copy of any agenda packet, before conducting telephonic or video conference meetings,
2. provide the public with access and a means to participate in those meetings, preferably through two-way audio or video connections, and
3. provide the public with access to a recording of those meetings.

Furthermore, the Governor's order does not suspend the 72- hour posting requirement or emergency meeting requirements.

Are governmental bodies prohibited from holding in-person meetings?

TML does not believe Governor Abbott's executive order, GA-08,⁶ prohibits a governmental body from holding an in-person meeting, because a meeting of the governmental body is not a "social" function, but a public business.⁷

Who should we contact if we need help implementing audio or video conferencing?

The Texas Department of Information Resources offers support regarding teleconferencing and videoconferencing. Visit dir.texas.gov, email askdir@dir.texas.gov, or call (512) 475-4700 for more information or questions.

TML is currently recommending LogMeIn and has an agreement with them to help governmental bodies connect with the company's products, which include GoToMeeting and GoToWebinar. LogMeIn's solutions are capable of muting/unmuting a public call-in line which may be helpful in avoiding disruptive background noise and to permit orderly public comment when appropriate. Texas cities interested in using this technology solution should contact Rachael Pitts on the TML staff, who will facilitate a connection with the company. Rachael can be reached at 512-231-7472 or rpitts@tml.org.

Who should we contact if we need help with questions about the Governor's suspensions on certain open meeting laws?

State agencies and local governmental bodies may contact the Winstead public finance department listed below, as well as contact the Office of the Attorney General, with questions about the suspension order by telephone at (888) 672-6787 or via email at TOMA@oag.texas.gov. Any further updates by the Texas Municipal League can be found here.

Contacts:

Dan Martinez | 210.277.6803 | dmartinez@winstead.com

Ross Martin | 214.745.5353 | rmartin@winstead.com

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¹ <https://www.texasattorneygeneral.gov/news/releases/governors-office-clears-path-governmental-bodies-meet-telephonically-or-videoconference-during>

² <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Open%20Meeting%20Laws%20Subject%20to%20Temporary%20Suspension.pdf>

³ Tex. Gov't Code § 551.007

⁴ <https://www.tml.org/Blog.aspx?CID=2>

⁵ <https://www.tml.org/Blog.aspx?CID=2>

⁶ https://gov.texas.gov/uploads/files/press/EO-GA_08_COVID-19_preparedness_and_mitigation_FINAL_03-19-2020_1.pdf

⁷ <https://www.tml.org/Blog.aspx?CID=2>

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