

Open Meetings Act

(Corrections in Red)

3/16/2020

Can an emergency meeting be conducted via telephone conference?

Yes, state law has always allowed a city council to hold a meeting via telephone conference or video conference assuming certain, complex requirements were met. This evening, the governor's office listened to a request from TML and local government leaders to relax some of the burdensome requirements associated with doing so. His office issued the following [guidance](#) on the subject:

Governor Greg Abbott today acted to maintain government transparency and continued government operations while reducing face-to-face contact for government open meetings. As Texas works to mitigate the spread of COVID-19, the Governor granted the Office of the Attorney General's request for suspension of certain open-meeting statutes. This temporary suspension will allow for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people.

"Even as the State of Texas takes precautionary measures to contain the spread of COVID-19, we also have a responsibility to maintain government transparency," said Governor Abbott. "With today's action, Texas is reducing non-essential in-person contact for a limited period, while ensuring that state and local government entities continue to work to fulfill necessary functions and with full transparency for the people of Texas. I urge state and local officials to do their part to mitigate the spread of COVID-19 by avoiding meetings that bring people into large group settings."

In accordance with section 418.016 of the Texas Government Code, Governor Abbott has suspended various provisions that require government officials and members of the public to be physically present at a specified meeting location. This temporary suspension will leave important open-meeting protections in place:

- Members of the public will be entitled to participate and address the governmental body during any telephonic or videoconference meeting.
- To hold a telephonic or videoconference meeting, a governmental body must post a written notice that gives the public a way to participate remotely, such as a toll-free dial-in number, and that includes an electronic copy of any agenda packet that officials will consider at the meeting.
- A governmental body must provide the public with access to a recording of any telephonic or videoconference meeting.

Local officials who have questions about open meeting requirements after this suspension should submit them to the Office of the Attorney General via e-mail at TOMA@oag.texas.gov or by leaving a message at (888) 672-6787. Officials with questions about teleconference and

videoconference capabilities offered by the Texas Department of Information Resources should visit dir.texas.gov or call (512) 475-4700. Officials who hold videoconference meetings are encouraged to provide for participation via telephone for members of the public without videoconferencing capability. If officials are not holding a telephonic or videoconference meeting, all open-meeting requirements apply.

The guidance above does leave some questions. Presumably, the existing notice requirements in the Open Meetings Act apply, including those related to one-hour posting for emergency meetings if certain conditions are met. League attorneys will review and make further clarifications as more information becomes available.

Please contact Scott Houston, TML General Counsel, at shouston@tml.org with questions.

3/17/2020

Has the governor taken action to make videoconference and teleconference meetings easier under the Texas Open Meetings Act?

Yes. The governor has [suspended various provisions](#) of the Open Meetings Act pursuant to his state disaster authority, and the attorney general's office has issued [guidance](#) on the suspension. TEX. GOV'T CODE § 418.016(e). The changes are effective March 16, 2020, until further notice or until the state disaster declaration expires. The following questions and answers apply *only during the state of suspension*.

According to the attorney general, "statutes that may be interpreted to require face-to-face interaction between members of the public and public officials are suspended (see below); provided, however, that governmental bodies must offer alternative methods of communicating with their public officials."

TML understands this to mean that a city doesn't have to allow members of the public to physically attend meetings, but it would need to allow them to submit comments via videoconference, telephone, written submissions, email, or similar means. *Id.* § 551.007. The idea is to provide as much transparency as possible, while avoiding contact with COVID-19.

Does the Open Meetings Act allow a city councilmember or city employee to participate in a city council meeting via videoconference call?

Yes. Government Code Section 551.127 authorizes a member or employee of a governmental body to participate remotely in a meeting of the governmental body by means of a videoconference. TEX. GOV'T CODE § 551.127(a-1); *see also id.* § 551.127(a) (providing that the Act does not prohibit a governmental body from holding an open or closed meeting by videoconference call, except as provided by Section 551.127). According to the attorney general, "neither a quorum nor a presiding officer need to be physically present at the specified location of the meeting; provided, however, that a quorum still must participate in the videoconference meeting."

What procedures must a city follow when a councilmember or employee will participate in a meeting via videoconference call?

According to the attorney general, statutory 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; provided, however, that the dial-in number or videoconference link provided in the notice must make the meeting audible to members of the public and allow for their two-way communication; and further provided that a recording of the meeting must be made available to the public."

At a minimum: (1) the video and audio feed of the member's or employee's participation, as applicable, must be broadcast live at the meeting; and (2) the city council must make at least an audio recording of the meeting and the recording must be made available to the public. *Id.* § 551.127(a-1) & (g).

A member of a governmental body who participates remotely in a meeting by means of a videoconference call must be counted present at the meeting for *all* purposes. TEX. GOV'T CODE § 551.127 (a-2).

The following requirements have been suspended by the governor:

1. A quorum of the city council need not be present at one physical location. *Id.* § 551.127(b).
2. In light of (1), above, the meeting notice need not specify where the quorum of the city council will be physically present and the intent to have a quorum present. *Id.* § 551.127(e).
3. In light of (1) above, the meeting held by videoconference call is not required to be open to the public at a location where council is present. *Id.* § 551.127(f).
4. The audio and video are not required to meet minimum standards established by Texas Department of Information Resources (DIR) rules, the video doesn't have to be sufficient that a member of the public can observe the demeanor of the participants, the members faces don't have to be clearly visible at all times, and the meeting can continue even if a connection is lost, so long as a quorum is still present. *Id.* § 551.127(a-3); (h); (i); (j).

A meeting held by videoconference call is subject to the notice requirements applicable to other meetings under the Act (see below for information related to posting notice of a meeting pursuant to the governor's suspension).*See, e.g., id.* § 551.127(d).

May a member of the public testify at a meeting by videoconference call?

Yes. The Act provides that "[w]ithout regard to whether a member of the governmental body is participating in a meeting from a remote location by videoconference call, a governmental body may allow a member of the public to testify at a meeting from a remote location by videoconference call." *Id.* § 551.127(k). The Act does not expressly require any special notice of this type of remote participation by a member of the public.

Is a videoconference the same thing as a telephone conference call?

No. The Open Meetings Act makes it clear that a videoconference call and a telephone conference call are alternative types of communication. *See, e.g., id.* § 551.129 (authorizing a governmental body to use a telephone conference call, videoconference call, *or* communications over the Internet to conduct certain consultations).

The Act defines a "videoconference call" to mean "a communication conducted between two or more persons in which one or more of the participants communicate with the other participants through duplex audio and video signals transmitted over a telephone network, a data network, or the Internet." *Id.* § 551.001(8); *see also* 1 Tex. Admin. Code. § 209.1. The phrase "telephone conference call" is not defined in the Act, and there appears to be no reported case or opinion addressing its meaning. Nonetheless, one primary difference between a telephone conference and a video conference call is that a telephone conference call involves only audio communication.

When may a city council hold a meeting by telephone conference?

A city council may hold a meeting by telephone conference call only if the convening at one location of a quorum of the governmental body is difficult or impossible. TEX. GOV'T CODE § 551.125(a); *see also* Tex. Att'y Gen. Op. Nos. GA-0908 (2012), JC-352 (2001). The CDC's recommendation that "the best way to prevent illness is to avoid being exposed to this virus" appears to satisfy that requirement. The attorney general's statute suspensions removed the requirement that an emergency exists to conduct a telephone conference call meeting. *See* TEX. GOV'T CODE §551.125(b)(1); 551.045(b); §551.045(b)(2).

According to the attorney general, "a quorum still must participate in the telephonic meeting." Moreover, statutory provisions "that require the telephonic meeting to be audible to members of the public who are physically present at the specified location of the meeting are suspended; provided, however, that the dial-in number provided in the notice must make the meeting audible to members of the public and allow for their two-way communication; and further provided that a recording of the meeting must be made available to the public."

What notice is required of a meeting, whether held in person or by videoconference or teleconference?

According to the attorney general, a city need not "provide a physical posting of a notice for a meeting; provided, however, that the online notice for [a videoconference or teleconference meeting] must include a toll-free dial-in number or a free-of-charge videoconference link, along with an electronic copy of any agenda packet." In addition, "the dial-in number or videoconference link provided in the notice must make the meeting audible to members of the public and allow for their two-way communication." For an in-person meeting, a telephone or video conference link doesn't appear to be required.

Notice for a meeting need not be posted on a physical or electronic bulletin board at a place convenient to the public in city hall because Government Code Section 551.050(b) is suspended. Thus, for *any meeting*, a city must provide notice at a minimum on its website. For a *non-emergency meeting*, the notice must be posted on its website at least 72 hours in advance on the meeting.

Procedural items to consider when conducting an *emergency* meeting include:

- In an emergency or when there is an urgent public necessity, a governmental body may conduct a meeting without providing the 72-hour notice requirement that is generally required to conduct a meeting under the Open Meetings Act. Instead, a city must provide notice of an emergency meeting, or the supplemental notice to add an emergency item to an already existing agenda of a properly posted meeting, at least one hour before the meeting is convened. TEX. GOV'T CODE § 551.045(a)
- The notice must clearly identify the emergency or urgent public necessity justifying the emergency meeting. *Id.* § 551.045(c).
- The presiding officer or member of a governing body who calls an emergency meeting or adds an emergency item to an existing agenda of a properly posted meeting shall provide notice of the emergency meeting or emergency item to members of the news media who have filed with the city a request to receive the notice and agreed to reimburse the city for the cost of providing the notice *Id.* § 551.047(a), (b). Such notice must be provided by telephone, fax, or email, at least one hour before the meeting is convened. *Id.* § 551.047(c).
- A city that maintains an internet website must also concurrently post notice of an emergency meeting notice on the city's website. *Id.* §§ 551.043(b), 551.056(b). A city with a population of 48,000 or more is also required to concurrently post the agenda of the emergency meeting on the city's internet website. *Id.* § 551.056(c).
- The attorney general's opinion appears to be that a city council may only deliberate or take action on a matter at an emergency meeting that: (1) directly relates to responding to the emergency or public necessity identified in the notice of the meeting; or (2) an agenda item listed on a notice of the meeting before the supplemental notice was posted. *Id.* § 551.045(a-1). Some attorneys disagree with that position.

May a city council ever consult with its attorney at a meeting by telephone conference or videoconference?

Yes. Section 551.129 of the Act authorizes a governmental body to "use a telephone conference call, video conference call, or communications over the Internet to conduct a public consultation with its attorney in an open meeting of the governmental body or a private consultation with its attorney in a closed meeting of the governmental body." TEX. GOV'T CODE § 551.129. This Section only applies to a consultation with an attorney who is not an employee of the city. *Id.* § 551.129(d). An attorney who receives compensation for legal services performed, from which employment taxes are deducted by the governmental body, is an employee of the city for purposes of Section 551.129. *Id.* § 551.129(e).

If the attorney is an employee of the city, the city council may meet with the attorney by videoconference under the Section 551.127 procedures described above.

3/20/2020

Does TML have advice about what technology to use to conduct phone or video meetings that will meet the Governor's guidance for new Open Meetings law exceptions?

There are several companies that offer solutions that could work, but TML is currently recommending LogMeIn and has an agreement with them to help Texas cities connect with the company's products, which include GoToMeeting and GoToWebinar. Because the new Open Meetings exceptions for phone and virtual meetings may require two-way communications by the public when statutorily required, 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.

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.

Do cities have to provide two-way communication for the public to make comments during an open meeting via telephonic or video conferencing during the emergency?

The answer isn't exactly clear. After the governor suspended various requirements of the Texas Open Meetings Act, the attorney general's office issued [guidance](#) on his suspensions. (See detailed reporting on that in a previous update.) The guidance states:

"[T]he dial-in number or videoconference link provided in the [meeting] notice must make the meeting audible to members of the public *and allow for their two-way communication...*"

Many cities are struggling with finding the technology to allow two-way communications in a reasonable format. The questions above and below provide guidance and options on that issue. However, one quirk has become apparent.

In addition to the above guidance, the governor suspended the new requirement (added by H.B. 2840 last legislative session) that the public has a right to speak on agenda items. The suspended provision reads as follows:

"Sec. 551.007. PUBLIC TESTIMONY...

(b) A governmental body shall allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body's consideration of the item..."

Because - for the duration of the statute suspensions - that section no longer mandates a city to allow public comment on normal agenda items, a city isn't required to do so. And, if a city doesn't allow public comment on normal agenda items, the requirement to have two-way communications is superfluous. Thus, a city might be able to have a telephone conference for city councilmembers and not provide a general public comment session or allow members of the public to speak on agenda items. In any case, it makes sense for a city to allow as much public input as possible. One way cities have done so is to provide an email address and/or drop box where citizens can submit written comments. Another way is that some cities have required citizens who wish to comment to sign up in advance with a telephone number, and then have city staff call the person on the phone at the appropriate time to make their comments.

That advice DOES NOT apply to statutorily-mandated public hearings, such as zoning and similar hearings. A city would need to arrange for public communication at those.

Because the attorney general's guidance has conflicting provisions, city officials should consult with local legal counsel regarding their open meetings efforts.

Is there additional guidance on meetings conducted via telephone conference?

Yes, the Texas Department of Information Resources has prepared a [short manual](#) on the subject. DIR has also offered assistance for cities related to teleconferencing and videoconferencing. Visit dir.texas.gov (click on the Cooperative Contracts for Remote Access link), email askdir@dir.texas.gov, or call 512-475-4700.

3/24/2020

Must a city provide for in-person comment/testimony when holding a public hearing?

The term “public hearing” refers to a meeting at which a governmental entity is required to receive and record public comment/testimony on a matter. This requirement may arise under a state or federal statute or rule, a city charter, a city ordinance, a city contract, or some other source. See, e.g., Tex. Loc. Gov’t Code § 102.006(a) (“The governing body of a municipality shall hold a public hearing on the proposed budget. Any person may attend and may participate in the hearing.”).

Existing precedent makes clear the distinction between a public hearing and general public comment at a meeting. One court held that comments by the public at large need to be solicited and heard at a public hearing, and that “the term ‘public hearing’ contemplates the opening of the floor for public comment by anyone desiring to speak on the issue of concern.” *Eudaly v. City of Colleyville*, 642 S.W.2d 75, 77 (Tex. App.—Fort Worth 1982, writ ref’d n.r.e.).

This raises the question of whether the governor’s [guidance](#) about handling general public comment at a meeting during the COVID-19 disaster is equally applicable to a public hearing. In other words, is the receipt of public comment/testimony via telephone, videoconference, email, etc. sufficient for a public hearing?

The answer to that question could depend on a variety of factors, including how the meeting is conducted and the source of the public hearing requirement. See *id.*, e.g., (focusing on the statutory requirement that “parties in interest and citizens shall have an opportunity to be heard”). That said, we find no general requirement that in-person comment/testimony must be allowed when conducting a public hearing.

It is important to note that, while the governor’s suspension allows a city to post notice of a meeting on its website in lieu of posting the meeting notice on a bulletin board, public hearings may require other forms of notice and procedures that have not been suspended. For instance, notice of a public hearing may need to be published in a newspaper. See, e.g., Tex. Loc. Gov’t Code §102.0065 (notice of budget hearing).

What happens if a city official is unable to complete a state-mandated training by the deadline due to the coronavirus?

Social distancing requirements have led to the cancellation of many in-person training sessions across the state, many of which fulfill a state-mandated training requirement. Beyond that, many city officials are simply overwhelmed with performing essential functions in their communities to attend a training session at this time.

Two types of required training – training under the Public Funds Investment Act (PFIA) and the newly-imposed cybersecurity training – are available to be completed online using TML resources. In addition to in-person trainings, TML offers online PFIA training that can be taken anytime. More on PFIA training options through TML can be found [here](#). Mandatory cybersecurity training is being offered by the TML Intergovernmental Risk Pool, and can be taken through a free online video. More on this training option can be found [here](#).

The attorney general offers online [training videos](#) for city officials needing to complete training for the Open Meetings Act or Public Information Act.

Some city officials will understandably not have the time to complete even the online trainings in the coming weeks. Though the trainings mentioned above are mandatory, there are no specific penalty provisions for failing to take the training by the respective deadline. Still, city officials are encouraged to take any mandatory training as soon as possible under the circumstances.

4/23/2020

Did the attorney general issue an opinion on issues related to public comment on agenda items?

Yes, but it isn't necessarily relevant right now because the law that is the subject of the opinion ([Texas Government Code Section 551.007\(b\)](#)) is currently [suspended by the governor](#). It will remain so as long as the state is under a disaster declaration related to the virus.

Yesterday (April 22), the attorney general issued [Opinion No. KP-300](#). The opinion answered two questions about 2019 legislation mandating that the public be allowed to provide input on agenda items at an open meeting. It concludes that: (1) “a governmental body may satisfy [the bill]’s requirements by holding a single public comment period at the beginning of an open meeting to address all items on the agenda;” and (2) “a governmental body may adopt a rule capping the total amount of time a member of the public has to address all items on the agenda if the rule is reasonable.”

A more detailed article on the opinion, with a link to a full Q&A on the law, will appear in tomorrow's (April 24) [TML Legislative Update](#) and in the TML Exchange email.

4/28/2020

What is the status of the suspended Open Meetings Act provisions?

On March 16, the governor [granted](#) the office of the attorney general's request for suspension of certain open meeting statutes. The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people. The [guidance](#) associated with the suspension provides that:

“These suspensions are in effect until terminated by the office of the governor, or until the [March 13, 2020, disaster declaration](#) is lifted or expires.”

The March 13 disaster declaration was extended for another 30 days by his [April 12, 2020, disaster declaration](#). That means the relevant open meetings laws remain suspended.

We can't be certain, but it is highly likely that the governor will extend his April 12 disaster declaration for another 30 days and probably continue to do so repeatedly. So long as he does, the relevant open meetings laws remain suspended, unless and until he takes express action to rescind his suspensions. Unless they expressly state otherwise, his orders have no effect on the suspension.

5/7/2020

What is the status of the suspended Open Meetings Act provisions?

On March 16, the governor [granted](#) the office of the attorney general's request for suspension of certain open meeting statutes. The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people. The [guidance](#) associated with the suspension provides that:

“These suspensions are in effect until terminated by the office of the governor, or until the [March 13, 2020, disaster declaration](#) is lifted or expires.”

The March 13 disaster declaration was extended for another 30 days by his [April 12, 2020, disaster declaration](#). That means the relevant open meetings laws remain suspended.

We can't be certain, but it is highly likely that the governor will extend his April 12 disaster declaration for another 30 days and probably continue to do so repeatedly. We've heard from his staff that they have no immediate plans to make changes. In addition, the Lieutenant Governor's “Texans Back to Work Task Force” issued a [113-page report](#) that contains the following on page 50 related to long-term re-opening of the economy:

“Encourage all levels of government in Texas to accelerate the process of moving as much of their interactions with the public online. For example, government entities should move to accept electronic payments, accept all legal and regulatory filings electronically, maintain records digitally, and conduct administrative hearings by video conference. The Texas Open Meetings

Act and the Texas Public Information Act should be amended, as necessary, to remove barriers to effective use of technology.”

5/12/2020

What is the status of the suspended Open Meetings Act provisions?

Today, the governor’s office extended the Open Meetings Act suspensions. Previously, on March 16, the governor [granted](#) the office of the attorney general’s request for suspension of certain open meeting statutes. The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people. The [guidance](#) associated with the suspension provides that:

“These suspensions are in effect until terminated by the office of the governor, or until the [March 13, 2020, disaster declaration](#) is lifted or expires.”

The March 13 declaration was extended on April 12, and the April 12 declaration was just [extended for another 30 days](#) today (May 12). That means the relevant open meetings laws remain suspended for at least another 30 days (or until affirmatively rescinded).

We can’t be certain, but it is highly likely that the governor will continue to repeatedly extend his declarations. We’ve heard from his staff that they have no immediate plans to make changes.

6/12/2020

What is the status of the suspended Open Meetings Act provisions?

Yesterday (June 11), the governor’s office extended the Open Meetings Act suspensions. Previously, on March 16, the governor granted the office of the attorney general’s request for [suspension of certain open meeting statutes](#). The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people. The [guidance](#) associated with the suspension provides that:

“These suspensions are in effect until terminated by the office of the governor, or until the March 13, 2020, disaster declaration is lifted or expires.”

The March 13 declaration has been extended for successive 30-day periods, including [yesterday’s extension for 30 days](#). That means the relevant open meetings laws remain suspended for at least another 30 days (or until affirmatively rescinded).

The governor’s disaster declaration extensions have typically been posted on his [website](#) under “News” or “Proclamation” on the evening the previous declaration expires. His office didn’t do that this time, even though the declaration was officially filed at 11:00 a.m. yesterday. That caused many city officials to question whether he had ordered an extension at all. However, the

[declaration](#) was posted on the Texas Legislative Reference Library's [website](#). That site is an alternative place for interested city officials to look in the future.

We can't be certain, but it is highly likely that the governor will continue to repeatedly extend his declarations. We've heard from his staff that they have no immediate plans to rescind the suspensions, which are sensible and seem to be working well, but that can't be guaranteed.

7/10/2020

What is the status of the suspended Open Meetings Act provisions?

Today (7/10), the governor's office extended the Open Meetings Act suspensions. Previously, on March 16, the governor granted the office of the attorney general's request for [suspension of certain open meeting statutes](#). The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people.

The [guidance](#) associated with the suspension provides that:

“These suspensions are in effect until terminated by the office of the governor, or until the March 13, 2020, disaster declaration is lifted or expires.”

The March 13 declaration has been extended for successive 30-day periods, including [today's extension for 30 days](#). That means the relevant open meetings laws remain suspended for at least another 30 days (or until affirmatively rescinded).

We can't be certain, but it is highly likely that the governor will continue to repeatedly extend his declarations. We've heard from his staff that they have no immediate plans to rescind the suspensions, which are sensible and seem to be working well, but that can't be guaranteed.

8/10/2020

What's the latest with regard to the effect of the pandemic on public hearings, especially a city's statutorily-required property tax hearing?

Some state legislators are having a tough time deciding what to do, but the answer is in state law for a city's tax rate hearing. As it stands right now, Texas House committees aren't allowing in-person hearings. [That decision](#), made by Speaker Bonnen, may or may not stand permanently.

The Texas Sunset Advisory Commission (a 12-member legislative committee that periodically reviews the functions and efficiencies of state agencies) met last week. According to *The Texas Tribune*, “[a]fter two hours, members couldn't agree whether to let people testify in person or online, or choose between the two options. Their unpleasant meeting was a miniature version of the argument we've all been watching for months.”

Several weeks ago, the City of Austin asked the governor to suspend the following [provision from Tax Code 26.06](#): “(a) A public hearing required by Section [26.05](#) may not be held before

the fifth day after the date the notice of the public hearing is given. The hearing must be on a weekday that is not a public holiday. The hearing must be held inside the boundaries of the unit **in a publicly owned building** or, if a suitable publicly owned building is not available, in a **suitable building to which the public normally has access**. At the hearing, the governing body must afford adequate opportunity for proponents and opponents of the tax increase to present their views.”

The governor refused to suspend the requirement that the hearing be “in-person” in a public or suitable building. He presumably did so because he believes doing so would reduce public input on city tax rates. Austin also posed the question to the attorney general’s “disaster counsel” email. The attorney general’s office responded that they believe Section 26.06(a) requires an in-person hearing. Please note that the tax hearing in question is the one cities hold only if they are exceeding the ~~no-new-revenue rate (formerly called the effective rate)~~ lower of the no-new-revenue rate (formerly called the effective rate) or the voter-approval rate.

That advice raises questions about any number of statutorily-required public hearings. The governor’s Open Meetings Act suspensions don’t mention any provision outside of the Act related to hearings. Many attorneys argue that, if the meeting itself may be conducted virtually, a hearing within that meeting may be as well. Others point out that the governor hasn’t expressly suspended any public hearing requirement. That answer may lie in a statute’s language relating to a required hearing. In other words, the Tax Code provision discussed above has very specific language.

Contrast that with, for example, zoning-related hearing requirements in Local Government Code Sections 211.007 and 211.0075. (The “zoning commission shall make a preliminary report and hold public hearings on that report...”.) Or consider the budget hearing required by Section 102.006. (“The governing body of a municipality shall hold a public hearing on the proposed budget. Any person may attend and may participate in the hearing.”) Those sections don’t seem to restrict hearings from being held virtually, and we find no general requirement that in-person comment must be allowed when conducting a public hearing. That being said, many cities are conducting them in-person out of an abundance of caution.

The bottom line: As always, city officials should rely on their attorney’s advice.

What is the status of the suspended Open Meetings Act provisions?

Last Friday (August 10), the governor’s office extended the Open Meetings Act suspensions. Previously, on March 16, the governor granted the office of the attorney general’s request for suspension of certain open meeting statutes.

The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people.

The guidance associated with the suspension provides that: “These suspensions are in effect until terminated by the office of the governor, or until the March 13, 2020, disaster declaration is

lifted or expires.” The March 13 declaration has been extended for successive 30-day periods, including [Friday’s extension](#) for 30 days. That means the relevant open meetings laws remain suspended for at least another 30 days (or until affirmatively rescinded).

We can’t be certain, but it is highly likely that the governor will continue to repeatedly extend his declarations. We’ve heard from his staff that they have no immediate plans to rescind the suspensions, which are sensible and seem to be working well, but that can’t be guaranteed

9/8/2020

What is the status of the suspended Open Meetings Act provisions?

Yesterday (September 7), the governor’s office extended the Open Meetings Act suspensions for another 30 days. Previously, on March 16, the governor granted the office of the attorney general’s request for suspension of [certain open meeting statutes](#).

The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people.

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The March 13 declaration has been extended for successive 30-day periods, including [yesterday’s extension](#) for 30 days. That means the relevant open meetings laws remain suspended for at least another 30 days (or until affirmatively rescinded).

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9/28/2020

May we still have our city council meetings in a fully remote setting?

Yes. In March 2020, the governor [suspended](#) various parts of the Open Meetings Act, as detailed in a [letter](#) to the Office of the Attorney General. Those suspensions are still in place. The suspension order permits meetings to occur in a fully remote setting, provided certain requirements are met.

The governor’s order reflects three overarching goals for remote meetings:

-offer the public, city employees, and members of the city council the opportunity to engage in self isolation or social distancing as recommended by the Centers for Disease Control and the State of Texas;

- ensure the public is able to hear open deliberations by the city council; and
- allow the public to interact with the city council during any public comment period or to otherwise address the city council.

In attempting to meet these goals, TML has received frequent questions from city officials about: (1) how best to provide for public interaction with the city council; and (2) how to plan for and address technical problems.

How should a city allow the public to interact with the city council during a public comment period or otherwise address the city council during a remote meeting?

In tackling this issue, it is important to understand the details of the [governor's order](#). Typically, Government Code Section [551.007\(b\)](#) requires your city council to allow each member of the public who desires to address the body regarding an item on an agenda to address the body regarding the item at the meeting before or during the body's consideration of the item. The governor's order suspends this requirement, but requires that a city "offer alternative methods of communicating" with city officials. The governor's order does not impact the city council's ability to have reasonable rules to manage public comment.

A quick online search reveals myriad ways that governmental bodies allow for public interaction and comment during a remote meeting. For instance, some cities engage in the following practices:

- Provide a dedicated voicemail or email where the public may submit comments. These comments may be read or played aloud at the meeting, or simply provided to the city council for review prior to the meeting.
- Allow the public to address the city council by phone during the meeting. This is typically achieved by requiring an individual to provide a contact phone number prior to the meeting that can be used by the presiding officer to call the individual.
- Utilize videoconference software that offers a "moderator" function, giving the presiding officer the ability to unmute a registered speaker to deliver live comments.

A [recent meeting notice](#) of the Texas Commission of Licensing and Regulation exemplifies some of these practices.

The variety of methods used by cities to interact with the public during remote meetings is likely a function of both the assortment of technologies used to hold meetings and differing legal interpretations of the governor's suspension order.

Each city should consult its own legal counsel in making a final decision about how best to address this issue.

How does our city council plan for and respond to technical problems that impact the public's ability to hear or interact with the city council at a remote meeting?

Among other things, the [governor's order](#) requires the notice of a remote meeting to include a toll-free dial-in number or a free-of-charge videoconference link that provides two-way communication for members of the public to both hear the meeting and address the governmental body. Other specifics about the quality of video and audio have been suspended.

If a technical problem prohibits the public from hearing the meeting or interacting with the city council at the meeting, the city council may (depending on the circumstances) want to: (1) temporarily recess the meeting to address the problem; (2) redirect the public to an alternative means of hearing the meeting and/or interacting with the city council; (3) adjourn and reconvene the following regular business day; or (4) cancel the meeting altogether.

It may be advisable to include relevant details about what the public should do in case of a technical problem in the meeting notice itself. Each city should consult its own legal counsel in making a final decision about how best to address this issue.

Where can I find additional information about meetings?

You will find a compilation of TML's daily COVID-19 updates on the subject of meetings [here](#).

You may contact the [attorney general's office](#) with questions about the interpretation of the governor's suspension order by telephone at (888) 672-6787 or via email at TOMA@oag.texas.gov.

10/8/2020

What is the status of the suspended Open Meetings Act provisions?

Yesterday (October 7), the governor's office extended the Open Meetings Act suspensions for another 30 days. Previously, on March 16, the governor granted the office of the attorney general's request for suspension of [certain open meeting statutes](#).

The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people.

The [guidance](#) associated with the suspension provides that: "These suspensions are in effect until terminated by the office of the governor, or until the March 13, 2020, disaster declaration is lifted or expires."

The March 13 declaration has been extended for successive 30-day periods, including [yesterday's extension for 30 days](#). That means the relevant open meetings laws remain suspended for at least another 30 days (or until affirmatively rescinded).

We can't be certain, but it is highly likely that the governor will continue to repeatedly extend his declarations. We've heard from his staff that they have no immediate plans to rescind the suspensions, which are sensible and seem to be working well, but that can't be guaranteed.

11/11/2020

What is the status of the suspended Open Meetings Act provisions?

On Friday (November 6), the governor’s office extended the Open Meetings Act suspensions for another 30 days. Previously, on March 16, the governor granted the office of the attorney general’s request for suspension of [certain open meeting statutes](#). The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people. The [guidance](#) associated with the suspension provides that: “These suspensions are in effect until terminated by the office of the governor, or until the March 13, 2020, disaster declaration is lifted or expires.” The March 13 declaration has been extended for successive 30-day periods, including [Friday’s extension](#). That means the relevant open meetings laws remain suspended for at least another 30 days (or until affirmatively rescinded).

We can’t be certain, but it is highly likely that the governor will continue to repeatedly extend his declarations. We’ve heard from his staff that they have no immediate plans to rescind the suspensions, which are sensible and seem to be working well, but that can’t be guaranteed.

We are sorry for the delay in reporting the recent extension; we initially missed the order in our daily review of relevant press releases.

12/8/2020

What is the status of the suspended Open Meetings Act provisions?

On Sunday (December 6), the governor’s office extended the Open Meetings Act suspensions for another 30 days. Previously, on March 16, the governor granted the office of the attorney general’s request for suspension of [certain open meeting statutes](#). The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people. The [guidance](#) associated with the suspension provides that: “These suspensions are in effect until terminated by the office of the governor, or until the March 13, 2020, disaster declaration is lifted or expires.” The March 13 declaration has been extended for successive 30-day periods, including [Sunday’s extension](#). That means the relevant open meetings laws remain suspended for at least another 30 days (or until affirmatively rescinded).

We still can’t be certain, but it is highly likely that the governor will continue to repeatedly extend his declarations. We’ve heard from his staff that they have no immediate plans to rescind the suspensions, which are sensible and seem to be working well, but that can’t be guaranteed.

1/7/2021

What is the status of the suspended Open Meetings Act provisions?

On Tuesday (January 5), the governor’s office extended the Open Meetings Act suspensions for another 30 days. Previously, on March 16, the governor granted the office of the attorney general’s request for suspension of [certain open meeting statutes](#). The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people. The [guidance](#) associated with the suspension provides that: “These suspensions are in effect until terminated by the office of the governor, or until the March 13, 2020, disaster declaration is lifted or expires.” The March 13 declaration has been extended for successive 30-day periods, including [Monday’s extension](#). That means the relevant open meetings laws remain suspended for at least another 30 days (or until affirmatively rescinded).

We still can’t be certain, but it is highly likely that the governor will continue to repeatedly extend his declarations. We’ve heard from his staff that they have no immediate plans to rescind the suspensions, which are sensible and seem to be working well, but that can’t be guaranteed.

2/9/2021

What is the status of the suspended Open Meetings Act provisions?

On February 4, the governor’s office [extended the Open Meetings Act suspensions for another 30 days](#).

Previously, on March 16, 2020, the governor granted the office of the attorney general’s request for suspension of [certain open meeting statutes](#). The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people. The [guidance associated with the suspension](#) provides that: “These suspensions are in effect until terminated by the office of the governor, or until the March 13, 2020, disaster declaration is lifted or expires.”

The March 13 declaration has been extended for successive 30-day periods, including the February 4 extension. That means the relevant open meetings laws remain suspended for at least another 30 days (or until affirmatively rescinded).

We still can’t be certain, but it is highly likely that the governor will continue to repeatedly extend his declarations. We’ve heard from his staff that they have no immediate plans to rescind the suspensions. It’s likely that legislation will soon be filed to make some of the governor’s suspensions permanent.

3/4/2021

What is the status of the suspended Open Meetings Act provisions?

The [letter](#) from the governor’s office provides that the Open Meetings Act suspensions are “in effect until terminated by the office of the governor, or until the March 13, 2020, disaster declaration is lifted or expires.” The governor’s staff assured the League that he intends to

continue successively extending his 30-day COVID-19 disaster declaration because it is needed to ensure eligibility for federal assistance, among other things.

That means the coinciding [Open Meetings Act suspensions](#) should continue for the foreseeable future. (Even if he decides to independently end the suspensions, his staff assures the League that he will give ample notice of that action.)

On February 4, the governor's office last extended the disaster declaration (and the Open Meetings Act suspensions) for another 30 days. That [declaration](#) expires March 5. But there's no need to worry because we are confident he will renew it by then. If you'd like to confirm, look to the "Proclamation" page of www.gov.texas.gov. (Click "News" at the top of the page, and then "Proclamation" on the right side of that page.)

While they don't replicate the suspensions exactly, several bills have been filed thus far relating to videoconference and teleconferencing. For example:

[S.B. 639 \(Menéndez\)](#) – Open Meetings: would: (1) provide that, without regard to whether a member of the governmental body is participating in a meeting from a remote location by telephone conference call, a governmental body may allow a member of the public to speak at a meeting from a remote location by telephone conference call; (2) provide that, when a member of a governmental body loses audio or video during a videoconference meeting, the meeting may continue when a quorum of the body remain audible and visible to each other and, during the open portion of the meeting, to the public; (3) allow a meeting by videoconference so long as the presiding officer is present at a physical location open to the public where members of the public may observe and participate in the meeting; (4) set out the notice requirements for a videoconference meeting; and (5) provide that, without regard to whether a member of the governmental body is participating in a meeting from a remote location by videoconference call, a governmental body may allow a person to speak at a meeting from a remote location by videoconference call. (Companion bill is **H.B. 2560** by Martinez.)

[H.B. 1888 \(Fierro\)](#) – Open Meetings: would: (1) authorize a governmental body to hold an open or closed meeting by conference call; (2) define "conference call" to mean a meeting held by telephone conference call, videoconference call, or telephone conference and videoconference call; (3) require that each part of a meeting held by conference call required to be open to the public shall: (a) be audible to the public; (b) be visible to the public if it is a videoconference call; and (c) have two-way communication with each participant; (4) provide that a member or employee of a governmental body may participate in a meeting by conference call only if the audio signal of the participant is heard live at the meeting; (5) provide that a member of a governmental body who participates in a meeting by conference call shall: (a) be counted as present at the meeting for all purposes; and (b) be considered absent from any portion of the meeting during which audio communication with the member is lost or disconnected, but allow the governmental body to continue the meeting if a quorum of the body continues to participate in the meeting; (6) provide that a governmental body may allow a member of the public to testify at a meeting by conference call; (7) provide that a meeting held by conference call is subject to the notice requirements applicable to other meetings and also must include certain instructions to the public; (8) require that a meeting held by conference call be recorded, and that the recording

be made available to the public; and (9) require the Department of Information Resources by rule to specify minimum standards for the recording of a meeting held by conference call.

League staff summarizes each city-related bill in the [Legislative Update](#) Newsletter, which is included in your Friday “TML Exchange” email. The bills are categorized by subject matter.

For the current legislative session, we’ve added the new subject heading of “Emergency Management.” Many pandemic-related bills will show up in that section, with some falling under other headings, such as Open Government, Public Safety, etc. Also, a complete list of bills filed to date by subject matter is updated each week. To view it, go to www.tml.org, hover over “policy” at the top of the page, and click on “legislative information.”

3/9/2021

What is the status of the suspended Open Meetings Act provisions?

On March 6, the governor’s office once again, by [continuing his COVID-19 disaster declaration for another 30 days](#), extended the [Open Meetings Act suspensions](#) for another 30 days. His office tells League staff that he should continue doing so for the foreseeable future. (Even if he decides to independently end the suspensions, his staff assures the League that he will give ample notice of that action.)

3/16/2021

You’ve told us that the governor doesn’t plan to rescind the Open Meetings Act suspensions for some time. But are we *required* to continue holding virtual meetings?

As we reported last week, the governor, by [continuing his COVID-19 disaster declaration for another 30 days](#), extended the [Open Meetings Act suspensions](#) for another 30 days. His office tells League staff that he should continue doing so for the foreseeable future. (Even if he decided to independently end the suspensions, his staff also assured us that we would have ample notice of that action.)

While the suspensions allow governmental bodies to conduct meetings by telephone or video conference, they don’t require such meetings. A city council or other governmental body that has a “normal” in-person meeting should follow the Texas Open Meetings Act requirements as they were prior to the suspensions. A city council that imposes some pandemic mitigation measure (e.g., social distancing) should do the same. Consult local legal counsel and/or the [attorney general](#) if you anticipate any locally-imposed mitigation measure (e.g. social distancing) may impact a person’s ability to attend an in-person meeting.