LEGAL UPDATES

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Texas Open Meeting Act Requirements to Return September 1, 2021

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On June 30, 2021, Governor Abbott approved Attorney General Ken Paxton's request to lift the open meeting law suspensions that had been temporarily suspended in March 2020 in response to the COVID-19 pandemic. As a result, **all open meeting requirements will resume on September 1, 2021.**

The suspensions have allowed Texas governmental bodies and other entities subject to the provisions of the Open Meetings Act to utilize more easily telephonic and videoconference meetings amid the COVID-19 outbreak while ensuring governmental transparency to the public. Come September 1, entities subject to the Act wishing to utilize remote tools must comply with all open meetings laws as written.

A. Telephonic Meetings.

Generally, the Texas Open Meetings Act allows telephone meetings in lieu of in-person meetings if "an emergency or public necessity exists" and "the convening at one location of a quorum of the governmental body is difficult or impossible." The suspensions essentially provided that the "emergency requirement" was met for the entire duration of Governor Abbott's order. With that order lifted, the "emergency requirement" must again be met on a case-by-case basis for all meetings taking place after September 1. An "emergency" includes an imminent threat to public health and safety, including a threat of fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm; power failure, transportation failure, or interruption of communication facilities; epidemic; or riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence."

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In order to conduct a telephonic meeting, two-way communication must be provided during the entire call, and the identification of each speaker must be clearly stated before speaking. The call must also be audible to the public at the location specified in the notice of the meeting as the location of the meeting. A recording of the meeting must be made available to the public.

B. Videoconferencing.

Under the COVID-19 suspensions, a quorum of remote, videoconferencing attendees was sufficient—meaning all members could be at separate locations and all be counted as present. Once the suspensions are lifted on September 1, a quorum must be physically present at the meeting in order to utilize videoconferencing. Pursuant to § 551.127 of the Act:

A member or employee of a governmental body may participate remotely and be counted as present if the video and audio feed of the member's or employee's participation is broadcast live at the meeting.

A physically-present quorum is not required for a meeting of a state governmental body or a governmental body that extends into three or more counties, but the member of the governmental body presiding over the meeting must be physically present at one location open to the public during the open portions of the meeting.

The notice of the meeting held by videoconference must specify the location where a quorum of the governmental body is physically present as the location of the meeting and must specify the intent for a quorum to be present at that location.

The meeting must be visible and audible to the public at the physical location.

While a remote participant is speaking, the person's face must be clearly visible, and voice audible to each participant and to the members of the public in attendance at the physical location.

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 member of the public to testify at a meeting from a remote location by videoconference call.

The governmental body must make an audio recording of the meeting available to the public.

What This Means to You

Governmental entities widely used videoconferencing tools to conduct entire meetings by video amid the COVID-19 pandemic. After September 1, 2021, more stringent requirements must be met to utilize videoconferencing for an open meeting.

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Contact Us

If you have questions about this update or how it might affect your business, contact Kate David, Robert Eckels, Mike Stafford, Sandy Hellums-Gomez, Ben Stephens or Logan Leal

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