

# The 'Open' Book

A guide to Ohio law on public records, open meetings



## Ohio's Open Meetings Act Under the COVID-19 Emergency Declaration: Frequently Asked Questions

The Ohio General Assembly recently passed legislation whose wide-ranging provisions address challenges posed by the COVID-19 pandemic and the state's emergency declaration related to the virus' spread. Included in amended Substitute House Bill 197 are some temporary changes to Ohio's Open Meetings Act, effective until the end of the declared emergency or Dec. 1, 2020. [A summary of these provisions](#) is available on the Ohio Attorney General's website.

Since the initial distribution of the summary, the Attorney General's Office has received many questions from local governmental officials and the general public regarding the temporary changes. Here, in hopes of helping others, we share our answers to the questions asked most frequently. As always, we suggest that local public bodies consult with their respective legal counsel for guidance on this and other legal matters.

If you have other questions, contact Mark Altier, director of open government in the office of Attorney General Dave Yost, at [mark.altier@ohioattorneygeneral.gov](mailto:mark.altier@ohioattorneygeneral.gov) or (937) 603-8645.

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### **1. Do the changes to Ohio's Open Meetings Act prevent a local public body from continuing to hold all or some of its public meetings or public hearings on an in-person basis and in the presence of the public?**

There is nothing in the legislation preventing a local public body from continuing to conduct all or some of its public meetings or public hearings with its members present in-person or to hold such gatherings in an open setting permitting members of the public to be physically present. It is important to note that, except where the bill made specific changes to the requirements of the law, the provisions of Ohio Revised Code 121.22 related to open meetings – including those regarding notice, the taking and maintenance of minutes, and limitations on executive sessions – continue to apply.

But the emergency declarations issued by Gov. Mike DeWine and the Ohio Department of Health do impose limitations on public gatherings and the number of people permitted to congregate. These declarations have been modified occasionally in substantive respects relevant to public meetings, and additional changes may be forthcoming. In addition, public health officials have provided guidance on maintaining "social distancing" during this pandemic.

As a result, before holding an in-person meeting, a public body should give due consideration to the limitations and guidance and appropriate concern for the health and welfare of the members of the body and their constituents.

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## **2. Can a public body conduct a public meeting or hearing using audio teleconferencing or must video conferencing be used?**

The bill specifically permits a public body to conduct meetings via teleconference, video conference or any similar electronic technology. Thus, a public body may choose to use audio-only teleconferencing. Of course, the law requires that access to any such meetings be afforded through some mechanism that makes it generally available, including teleconferencing; live streaming via the internet; or broadcasting on local radio, cable television or public-access stations. When using audio-only teleconferencing, the public body should ensure that speakers are identified and individual votes announced verbally so that listeners can determine what each member is saying and how he/she is voting.

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## **3. What type of notice should be given if a public body plans to hold a virtual meeting?**

Absent an emergency situation, the law requires that notice of a virtual meeting be provided to the public and to media outlets that have requested notice of the body's meetings at least 24 hours before the meeting. The notice must include the technique being used to conduct the meeting and the method of access available to the media and the public. A public body is encouraged to provide notice in the same way that it has provided notice in the past regarding additions to the content of the notice and its recipients.

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## **4. If a public body can't arrange to have a meeting as scheduled or a quorum is unavailable, may a public meeting be postponed or canceled?**

Nothing in the law prohibits a public body from postponing or canceling a public meeting for any reason. Notice of the cancellation or postponement should be given as soon as possible to the media and members of the public who have requested notice of the body's meetings, and through any other means of notice that the public body commonly uses. As long as a public body has no pressing business requiring it to meet as scheduled, a meeting may be postponed or canceled.

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## **5. Is there a difference in how a public body must afford public access to a virtual "hearing" versus a virtual "meeting"?**

Yes. The law defines a meeting of a public body as a prearranged gathering of a majority of the members of the body for discussing and deliberating upon public business. A public hearing is a specific type of gathering of the body, one designed to yield public input on a matter of interest to the general constituency or to particular stakeholders. A number of provisions in the Ohio Revised Code require a variety of public bodies to hold public hearings on specific matters. Under the bill, both public meetings and public hearings may be conducted virtually. In the case of virtual public meetings, the public body need only provide public access to the content of the meeting. Regarding public hearings required by law, the public body must provide interested parties access to the proceedings as well as a mechanism to provide input, question witnesses and view evidentiary material. Public hearings, therefore, require an interactive function.

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## **6. What about providing for public speech or some other kind of public input in relation to a virtual meeting?**

Nothing in Ohio law affords the public the right to make comments, pose questions or otherwise speak at a meeting of a public body. Generally, most public bodies do give those attending in-person the opportunity to speak, usually under reasonable, defined and uniform limitations. A public body may arrange for such input at a virtual meeting through the electronic technology being used by the body, but it is not required to do so. Clearly, taking steps to allow input is commendable, as it serves to maintain an additional facet of normalcy at meetings of the public body.

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## **7. May a public body hold an executive session as part of a virtual meeting?**

Yes. Nothing has changed regarding the executive sessions that public bodies may hold or the way that a public body enters into executive session.

A public body must convene in open session and, after a motion and a second, vote by roll call to go into an executive session to consider one or more of the permitted topics set out in R.C. 121.22. If a personnel matter is at issue, the section requires more specific identification of the matter. Also, an attorney for the body must participate in any executive session convened for the purpose of discussing pending or imminent litigation. At the conclusion of the executive session, the public body must return to open session before taking any action or vote or before adjourning. These standards apply to both virtual and in-person meetings.

As in all matters related to virtual meetings, there will be challenges. It is suggested that a virtual broadcast could be stayed or paused when the public body moves into an executive session, with appropriate notice to viewers or listeners, and that the broadcast be reinitiated as the public body returns to an open session



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