

Legislative Update Open Meeting Act Changes

Section 12 of Am. Sub. H.B. No. 197 signed into law today, allows public bodies to conduct virtual meetings/hearings during the COVID-19 crisis. The following is a summary of the law.

Effective Date: Upon signature of Governor DeWine until the cancellation of the emergency declaration contained in Executive Order 2020-01D or December 1, 2020 whichever is later

Public Bodies Affected:

The Amendment applies to all public bodies as that term is defined by the Open Meetings Act. Accordingly, all public bodies that were required to hold public meetings may utilize the modified meeting format permitted by the Amendment.

Type of Meetings Affected:

The Amendment applies to all meetings which were required to be held in public pursuant to the Open Meetings Act. The Amendment also extends its provisions to “hearings,” including hearings as defined in Section 119.01 of the Ohio Revised Code, administrative hearings, or other hearings at which a person may present written or oral testimony on a matter before the public body.

Authority Granted by Amendment:

The Amendment allows public bodies to **conduct** meetings and hearings virtually by:

- Teleconference;
- Videoconference; or
- Any similar electronic technology.

The Amendment allows members of public bodies to **attend** meetings and hearings virtually via the electronic technology described above.

The Amendment allows members of public bodies **to be considered present, to vote and to be counted for purposes of a quorum** when they participate in meetings/hearings virtually via the electronic technology described above.

Notification Requirements for Virtual Meetings/Hearings:

Persons to be Notified of Virtual Meetings/Hearings: Except in emergency situations requiring immediate action (see below), notification of virtual meetings/hearings must be provided to:

- the public;
- the media that have requested notification of meetings/hearings; and
- the parties required to be notified of any hearing.

Timing of Required Notification: Except in emergency situations requiring immediate action (see below), notification of virtual meetings/hearings must be provided at least 24-hours prior to the meeting or hearing.

Method of Notification of Virtual Meetings/Hearings: Notification of virtual meetings/hearings can be made by any reasonable method (e.g. posting, website).

Content of Notification of Virtual Meetings/Hearings: Except in emergency situations requiring immediate action (see below), notifications of virtual meetings/hearings must state the:

- time;
- location; and
- manner in which the meeting/hearing will be held.

Notification for Emergency Meetings/Hearings: In emergency situations where immediate action is required, public bodies must **immediately** notify the news media that have requested to be notified of meetings/hearings, and any parties required to be notified of hearings (where applicable) of the:

- time;
- location; and
- purpose of the meeting/hearing.

Required Public Access to Virtual Meetings:

The public must be provided access to all virtual meetings which they would have been entitled to attend in person prior to the Amendment. Public access must ensure that the public can observe and hear the discussions of all members of the public body.

Type of Public Access to Virtual Meetings: The public access provided to meetings under the Amendment is access commensurate with the manner in which the meeting/hearing is being conducted. Accordingly, if the meeting is being conducted by teleconference, the public must be able to hear the discussions of the public body and other persons speaking at the meeting. If the meeting is being conducted by videoconference, the public must be able to see and hear the discussions of the public body and other persons speaking at the meeting.

Requirement to Permit Public Comment During Virtual Meetings: The Amendment does not address whether the public must be permitted to comment during virtual meetings. As a general rule, there is no requirement that the public be permitted to comment during any public meetings. However, certain jurisdictions have adopted this requirement into their charters or rules of council. Such jurisdictions must abide by their charters and/or rules of council and provide a means for public comment during virtual. Of course, rules of council can be amended to remove any right to public comment during virtual meetings.

Types of Electronic Technology which may be used to Provide Public Access: The types of electronic technology which may be used to provide public access to meetings are:

- live-streaming by means of the internet, local radio, television, cable, or public access channels;
- call in information for a teleconference; or
- any other similar electronic technology.

Executive Sessions: The Amendment does not address virtual executive sessions, but it seems reasonable that such sessions can be held virtually for the reasons set forth in Section 121.22(G) of the Ohio Revised Code, after a majority of a quorum of the public body determines, by roll call vote, during a virtual public meeting open to the public, to hold an executive session for one or more of the permitted purposes set forth in the statute.

Required Public Access to Virtual Hearings:

The public must be provided access to any virtual hearing to which they would have been entitled to attend in person prior to the Amendment. Public access must ensure that the public can observe and hear the discussions of all members of the public body.

Type of Public Access to Virtual Hearings: When a public body conducts a virtual hearing, it must establish a means, through the use of electronic equipment that is widely available to the general public, to converse with witnesses, and to receive documentary testimony and physical evidence.

Types of Electronic Technology which may be used to Provide Public Access: The types of electronic technology which may be used to provide public access to virtual hearings are:

- live-streaming by means of the internet, local radio, television, cable, or public access channels;
- call in information for a teleconference; or
- any other similar electronic technology.

Effect of Resolutions, Rules, or Action Taken during Virtual Meetings/Hearings Authorized by Amendment:

The effect of resolutions, rules, or formal action of any kind taken during virtual meetings/hearings will be the same as if the formal actions were taken during an open meeting or hearing of the public body so long as the requirements of the Amendment are followed. There is no need to ratify these actions once the Amendment expires.