

**VIDEOCONFERENCING/TELECONFERENCING UNDER OPEN MEETINGS ACT:
Governor Suspends Various Requirements Pursuant to Coronavirus Disaster Declaration
(These changes are effective March 16, 2020, until further notice.)**

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.

VIDEOCONFERENCING

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.

TELECONFERENCING

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.”

NOTICE OF ANY MEETING: IN PERSON, VIDEOCONFERENCING, OR TELECONFERENCING

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 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.”

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 Tex. Gov’t Code §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. Tex. Gov't Code §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.

Questions? Contact the TML Legal Services Department at legalinfo@tml.org.

**Updated March 17, 2020 (applicable only while governor's statutory suspension is active)*